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ADMINISTRATIVE LAW

(Paper Code - 0904)

BSL/B. A. LL.B. – V (Sem. – IX) Pattern – 2014

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(Asso. Prof.)
B.Sc. (Hons.), LL.M., Ph.D. (Law), NET (Law)

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STUDY MATERIAL
FOR
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Place: Ahmednagar

Date: 26th June 2020

Dr. More Atul Lalasaheb
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Preface

The course of Administrative Law Paper (Paper Code - 0904) of BSL/B. A. LL.B. – V (Sem. – IX) Pattern – 2014 is recommended by Bar Council of India, UGC, New Delhi and designed by BoS (Faculty of Law), SPPU, Pune with an objective to acquaint the law students with the Principles of Administrative Law which is emerged as a subject to curb the misuse of power by the governmental administrative agencies. Today's reality is that the State organs due to overburden of work delegates their power to these agencies by enactment of the legislation, such powers can be termed as *Administrative, Quasi-legislative* or *Quasi-judicial* powers. In the democratic countries in order to perform welfare functions there is an unavoidable trend to enact legislation for establishment of large numbers of delegated governmental administrative agencies. So, the administrative powers of hundreds of such agencies are *executive, legislative,* or *judicial* in nature. The decisions made by these governmental administrative agencies are called *Administrative Actions*. Moreover, these delegated agencies take responsibility to act within such delegated power and not to go beyond it. However, the actual exercise of those delegated powers by the administrative agencies it is revealed that they cannot foresee the consequences and tilted to ignore the concept of Separation of Powers and Rule of Law, so in turn, these agencies involved in misusing those powers.

Therefore, the object of Administrative Law is to set principles to exercise delegated powers by these agencies, to maintain fairness in their actions and provide remedies to those affected by administrative action of these agencies. The detailed study of which is categorized into the syllabus of this paper. No one can deny that the Constitutional Law and Administrative Law both are public laws and complementary and supplementary to each other. Hence, Administrative Law need to be studied in the *Social, Economic* and *Political* context as enshrine under the Preamble and various provisions of the Constitution of India. So, in this study material I've tried to cover all important components of these laws as given in the syllabus of this paper.

I would like to suggest in above context to all law students, researcher and readers of this subject that to avoid lengthiness of study material I have mentioned only those relevant aspects which need to be studied to understand the Principles of Administrative Law. So, they should read in detail those aspects from the reference material which I acknowledged at the end leaf of this study material. Really I appreciate the great work done by those authors in this subject.

I hope this study material will be useful to you, I will be happy to accept any relevant suggestion to improve the contents of this study material.

Dr. More Atul Lalasaheb
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Syllabus

ADMINISTRATIVE LAW

BSL/B. A. LL.B. – V (Sem. – X)
(Pattern -2014)

PART – I
(80 Marks)

1. **Nature and scope of administrative law.**
2. **Necessity of Administrative Law in Modern state.**
3. **Rule of law and separation of power.**
4. **Delegated Legislation.**
   a) Nature Meaning and Growth.
   b) Constitutional validity.
   c) Judicial Control. Doctrine of ultravires, legislative control (parliamentary Control) sub-Delegation.
5. **Administrative Tribunals:**
   a) Nature growth and need.
   b) Judicial control on administrative Tribunals Doctrine of Ultravires lack of Jurisdiction delinking Jurisdiction.
   c) Principles of Natural Justice bias Audi alteram parten Hearing.
   d) Administrative discretion.
      I. Judicial review of administrative discretion.
      II. Judicial control of exercise of administrative discretion.
6. **Commission of Inquiry.**
   a) Nature scope need and functions.
   b) Procedure and legal status.
7. **Judicial control of administrative action through writs**.
   a) General conditions for using of writs.
   b) The writs.
   c) The scope of review through writs.
8. **Public Corporations:**
   a) Growth, need, rights and liabilities of public corporations,
   b) Parliamentary control.
9. **Suits against the government in torts and contract, court privileges in Legal proceeding.**
10. **The ombudsman: the necessity of ombudsman. Judicial control of administrative action. Ombudsman in India – The Lokpal and Lokykta**

PART – II
(20 Marks)

11. The Right to Information Act, 2005 with latest amendment

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PART – I

Chapter - I

NATURE AND SCOPE OF ADMINISTRATIVE LAW

Meaning

The main object of the Government in any State is to establish peace and to ensure social security. The State, through the instrumentality of law relates the conduct of man and thereby ensures peace and security. The law may be divided into two heads - (1) Private Law; and (2) Public Law. Administrative Law is one of the most important and significant branches of the public law. The branches of Public Law are: Public International Law, Constitutional Law, Administrative Law and Criminal Law or Law of Crimes, which is sub-divided into Substantive Law of Crimes or Indian Penal Code, 1860 and Procedural Law of Crimes or The Code of Criminal Procedure, 1973. It detern1ines the organisation, powers and duties of the administrative authorities, known as Executives or Government Officials. Administrative Law is the law relating to public administration. Earlier, it was regarded as the part and parcel of Constitutional Law. It witnessed rapid growth and development in the twentieth century. With the expansion of Governmental machinery and increase in t e disputes between the Government and the individuals, most of the cases of Supreme Court involve the judicial review of the administrative actions. Therefore, the rapid growth and development of this branch of law took place in the twentieth century.

Definition

In view of its tremendous growth and development, it is very difficult to define 'Administrative Law'. The attempts made (definitions given) by some of the jurists, are given below -

1. Ivor Jennings

According to him, "Administrative Law is the Law, which determines the organisation, powers and duties of administrative authorities". This definition is regarded as widely accepted definition. However, it has the following defects:

a) It does not distinguish between Administrative Law and Constitutional Law.

b) It is a very wide definition.

2. A. V. Dicey:

It is that portion of a nation's legal system which determines the legal status and liabilities of all State officials, which defines the rights and liabilities of private individuals in their dealings with public officials and which specifies the procedure by which their rights and liabilities are enforced.

This definition has been criticized as being too narrow. It excludes the various administrative authorities (e.g., public corporation, etc.) which are not State officials in strict sense and also excludes the procedures to be followed by the administrative

authorities. It also excludes the powers and functions of the administrative authorities.

3. Garner

Administrative Law contains those rules which are recognised by the courts as law and which relates to and regulates the administration of government".

(In simple words, Administrative Law is that portion of the legal system, which defines the rights and liabilities of private individuals in their dealings with public officials").

This definition was criticised on the ground that it was too narrow, since it did not cover the study of administrative bodies like public corporations etc.

NATURE AND SCOPE OF ADMINISTRATIVE LAW

Object

The main object of administrative law is to control and regulate the administrative authorities so that their discretionary powers may not be turned into arbitrary powers.

Growth and Development

The main reason for the rapid growth and development of administrative law is the radical change in Government's philosophy from 'Laissez faire to the social welfare state'. This change resulted in expansion of governmental functions. The expression 'Laissez Faire' means "individualism, self-help, minimum government control and maximum free enterprise". Social Welfare State means "a state, which aims to promote socio-economic welfare of the people". This ideal of establishing a welfare state imposed an obligation on the Government (State) to take care of its citizens and actuated the growth and development of administrative law.

Reasons for the growth of Administrative Law:

Following are the reasons for the rapid growth and development of Administrative Law.

1. Present judicial system is inadequate and expensive. Further, there is inordinate delay in disposal of cases. For instance, burning problems like disputes between the Employer and Employees, Strikes, Lockouts etc. cannot be solved amicably through the Courts of Law. Labor Courts, Industrial Tribunals etc. possess technical knowledge and experience in the respective/relevant fields, so that they will be able to handle/settle such complex problems amicably and effectively. Therefore, most (more than 50%) of the decisions of the Supreme Court involve judicial review of the administrative actions.
2. Owing to lack of proper legislations or inadequacy of legislations in India, it became inevitable to delegate some powers to the administrative authorities.
3. The legislation is rigid in character, while the administrative process is flexible.
4. The administrative tribunals are not bound by the rules of evidence, procedure etc. (as in the case of the Coutts of Law) and hence, they can take into consideration, practical view and decide the cases.

5. Unlike the Courts of Law, Administrative Authorities can take up preventive measures without waiting for parties to appear before them with disputes. E.g. Licensing, Rate fixing etc.
6. Administrative Authorities can take effective steps on persons violating the rules of law by suspension, revocation and cancellation of license;

Constitutional Law and Administrative Law (Relation/Distinction between Constitutional Law and Administrative Law)

According to Keith, it is logically impossible to distinguish Administrative Law from Constitutional Law. Till recently, Administrative Law was regarded as the part and parcel of the Constitutional Law. Many concepts of Administrative Law at present were included in Constitutional Law. Both the subjects deal with public administration.

Constitutional Law is the body of rules, which determine the constitution of the state. In simple words, it is the fundamental law of the land. Prof. A. V. Dicey defines it as "Constitutional Law includes all the rules, which directly or indirectly affect the distribution or the exercise of the governing power in the State".

However, there is a distinction between the two, as enumerated hereunder:

1. Constitutional Law deals with structure and rules that regulate the functions, while Administrative Law deals with the detailed study of such functions.
2. Constitutional Law deals with organisation and functions of the Government, while Administrative Law would put the organisation and functions in operation/motion.
3. Indian Constitution lays down the general principles of the three organs of the Government viz. Executive, Legislature and Judiciary and their functions inter se towards the citizens, while Administrative Law is concerned with that part of Constitutional Law, which deals in detail with the powers and functions of the administrative authorities.
4. Constitutional Law deals with Constitutional Status of Ministers and Civil Servants, while Administrative Law deals with Organisation and Working of various departments of the Government.

Sources of Administrative Law

Following are the main sources of Administrative Law.

1. **Constitutional Law**

   Earlier, administrative law was regarded as the part and parcel of constitutional law. Constitution in any country regulates the affairs between the individuals and State. Constitutional law on the other hand, is the supreme law of the land. It is a body of rules, which determine the Constitution of the State. Any law, which is repugnant or inconsistent to any provision of the Constitution is declared as void (Art.13 (1). Constitution is the main source of administrative law in the sense, it forms basis for administrative law.

2. **Precedents or Judicial Precedents or Case Law**

'Precedent' means "The ratio of a judicial decision. The decisions of the judges in the cases coming before them are also considered to be an important source of the administrative law. The doctrine of judicial precedent has played important role in the development of the administrative law. The precedent helps in the development of law according to the changed conditions and needs of the society. In India the existence and the acceleration of the development of administrative law mainly depend upon the judicial pronouncements on the various issues concerning the administrative law.

3. **Statutes and Delegated Legislation**

In India there is no special statute to mention as a big source for the development of administrative law. But Acts of Parliament and State legislatures which delegate law making power to the executive and those which create quasi-judicial bodies' acts as a source in those areas of administrative law. But in England statutes like (i) Rule Publication Act, 1983, (ii) Statutory Instruments Act, 1946, (iii) Tribunals and Enquiries Act, 1958; and (iv) Crown Proceedings Act, 1947 play an important role as a source for the development of English administrative law. Similarly in U.S.A. also statutes like (1) Administrative Procedure Act, 1946; and (ii) Federal Tort Claims Act, 1946 contribute as a major source to the development of administrative law.

4. **Ordinances by the President and Governor**

The administrative authorities are conferred powers and functions by Ordinances made by the President or the Governor of the State. Article 123 of the Constitution of India empowers the President to promulgate ordinances during recess of Parliament. Article 213 empowers the Governor of the State to promulgate ordinances in case the State Legislature is not in session.

5. **Reports of the Committees and Commissions**

The reports of the Committees and Commissions are also considered important source of the Administrative Law. They have played major role in the development of the administrative law. In England, the Reports of the

Committee on Minister's powers (also known as Donoughmore Committee, 1932) the Frank Committee on Administrative Tribunals and Enquiries, 1957, Select Committee on Statutory Instruments, National Insurance Advisory Committee etc. have played an important role in the development of the administrative law. The reports are given due importance in other Commonwealth Countries also.

In India, Reports of Law Commissions and of Parliament's committees on subordinate legislation have played an important role in the development of the administrative law in India. The Fifth Law Commission in its first report has prepared a Bill in order to define

the extent of the tortious liability of the State for the acts of its servants, but unfortunately no law has yet been enacted. The liability of the State for the torts committed by its servants are determined on the basis of the principles developed by the courts.

Origin, Development and Growth of Administrative Law

The origin of administrative law is as old as the executive government. But, it witnessed tremendous growth and development in the 20th century. In France, the administrative law in or droit administratif was fully developed even before the twentieth century. Administrative law relates to the public administration and therefore it has been in some form or other in every country having some form of Government.

Origin and Development in France (Droit Administratif)

French Administrative law is known as 'Droit Administratif'. It means a body of rules, which determine the organisation, powers and duties of public administration and regulate the relation of the administration with the citizens of the country. It does not represent rules and principles enacted by Parliament. It contains the rules developed by the administrative courts.

In the French legal system, droit administratif, there are two types of laws and two sets of courts independent of each other. The ordinary courts administer the ordinary civil law as between subjects and subjects. The administrative courts administer the law as between the subject and the state. An administrative authority or official is not subject to the jurisdiction of the ordinary civil courts exercising powers under the civil law in disputes between the private individuals. All claims and disputes in which these authorities or officials are parties fall outside the scope of the jurisdiction of ordinary courts and the) must be dealt with and decided by the special tribunals. Though the system of droit administratif is very old, it was regularly put into practice by Napoleon in the 18th century.

Napoleon, who favored droit administratif, established an institution called "Conseil d' Etat to give relief to the people against the excess of the administration. The main object of Conseil d' Etat (established in F799) was to resolve difficulties, which arise in the course of the administration. Its main function was to advise the Minister. Later, it started exercising judicial functions also.

In case of any conflict between the ordinary courts and the administrative courts, the matter is decided by the Tribunal des Conflicts. This tribunal consists of equal number of judges of both ordinary Courts and administrative courts. Another aspect of droit administratif is that it protects government officials from ordinary courts.

Main Features

Following are the main features of Droit Administratif.

1) Dual system of Courts - separate administrative courts.
2) Conseil d' Etat.
3) Tribunal des conflicts; and 4. Application of Special rules.

1. **Dual system of Courts-separate administrative Courts**

In France, there are two types of courts-Regular or ordinary courts and the Administrative Courts. The cases concerning the administrative officials or in which State is party with the exception of criminal cases are tried and decided by the administrative courts headed by Conseil d' Etat. The ordinary civil courts decide the cases between subjects and subjects. The ordinary courts administer the ordinary civil law between the subjects and subjects while the administrative courts administer the law as between subjects and the State or as between the subjects and the administrative officials or authorities. The administrative authorities or officials are not subject to the ordinary courts but to the administrative courts. The administrative courts decide the case~ according to the rules developed by the administrative courts themselves. Thus, the cases brought by private citizens against the administration are decided by the administrative courts.

2. Counseil d' Etat

It is the highest administrative court in France. It was established by Napoleon Bonaparte in 1799 with the object of providing relief to the citizens against the excesses of the administration. In the beginning it performed the function of resolving difficulties found in the course of the administration, but later it started exercising judicial powers in the matters involving the administration.

In the beginning its function was advisory and it was not an independent court. Its main function was to advise the ministers and not to give judgments. Gradually its powers were increased and it started exercising judicial functioning. In 1872, its power to give judgment was formally accepted and established. In 1873, it was settled that in all matters involving administration, its jurisdiction would be final. Thus, at present, all the matters involving administration are decided by the administrative courts headed by Council d'Etat according to the rules developed by themselves. Counseil d'Etat is, at present, not only adjudicatory but also consultative body.

Conseil d'Etat consists of civil servants in France. It is a part of the French Administration. It is divided into several sections, e.g. judicial section, advisory section, etc. The judicial section has again been divided into several sections.

3. Tribunal des Conflicts

Disputes as to jurisdiction between ordinary courts and administrative courts are determined by a separate court called Tribunal des Conflicts. A case concerning an alleged conflict of jurisdiction can be raised only by an administrative court and not by the ordinary court. Tribunal des Conflicts consists of an equal number of judges from ordinary civil court and judges from Conseil d'Etat and presided over by the minister of justice and its decision regarding the jurisdiction is final.

4. Application of Special Rules

As has been stated above all the matters involving administration are

decided by the administrative courts and not by the ordinary courts. Such cases are decided by the administrative courts according to the rules developed by the administrative courts themselves.

Critical Appraisal of French Administrative System (Droit Administratif)

French administrative system is subject to criticism. Prof. Dicey, an eminent jurist viewed that the administrative courts being part of the administration could not have independent status as the judiciary and could not protect the citizens against the abuse of power by the administration. He thought that the administrative courts were established to protect the Government officials from the control of the ordinary courts and he took it as a preferential treatment to the Government officials and against the principles of equality which is part of the rule of law. He, thus, held the view that there was no rule of law in France.

The criticism by Dicey was found to be baseless. Recent research shows that Conseil d' Etat has done so much for the protection of the citizens against the excess of administration compared to the ordinary courts in other countries. Considering all these developments Dicey himself in his last days realised his misconception and ill founded notion against droit administratif and Conceil d' Etat. He regretted his failure to notice the vast areas of administrative law existing in England when his rule of law thesis was published.

Origin and Development in England (Position in England)

In England, the existence of administrative law as a separate branch of law was not accepted until the advent of the 20th century. In 1885, Dicey in his famous thesis on rule of law observed that there was no administrative law in England. In 1914, however, Dicey changed his views. In the last edition of his famous book, 'Law and the Constitution', published in 1915, he admitted that during the last thirty years, due to increase of duties and authority of English officials, some elements of droit administratif had entered in the law of England. But even then, he did not concede that there was administrative law in England. However, after two decisions of the House of Lords in Board of Education v. Rice[1] and Local Government Board v. Arlidge [2] in his article "The Development of Administrative Law in England" he observed: "Legislation had conferred a considerable amount of quasi judicial authority on the administration which was a considerable step towards the introduction of administrative law in England".

Origin and Development in U.S.A

Administrative Law was in existence in America in the 18th century, when the first federal administrative law was embodied in the statute in 1789, but it grew rapidly with the passing of the Inter-state Commerce Act, 1877. In 1893, Frank Good now published a book on 'Comparative Administrative Law' and in 1905, another book on the 'Principles of Administrative Law of the United States' was published. In 1911, Ernst Freud's 'Case Book

1. (1911) AC 179
2. (1915) AC 120

on Administrative Law' was published. The powers of the administrative bodies continued to increase day by day and they became a 'Fourth Branch' of the Government.

After the New Deal, it was felt necessary to take effective steps in this field. A special committee was appointed in 1933, which called for greater judicial control over administrative agencies. After the report of Roscoe Pound Committee of 1938 and Attorney General's Committee in 1939, the Administrative Procedure Act, 1946 was passed which contained many provisions relating to the judicial control over administrative actions.

Position in India

In India, administrative law can be traced to the well organized administration under the Mauryas and the Guptas. However, during the period of the East India Company, it was modernized and in the 20th century it has' developed into a separate branch of public law distinct from the Constitutional Law. Under the Mauryas and Guptas, several centuries before Christ, there was well organized and centralized administration in India. The rules of Dharma were observed by the kings and administrators and nobody claimed any exemption from it. The basic principles of natural justice and fair play were followed by the kings and officers and the administration could be run only on those principles accepted by Dharma.

With the establishment of East India Company and the advent of the British Rule in India, the powers of the government had increased. Many Acts, statutes and legislations were passed by the British Government regulating public safety, health, morality, transport and labour relations. The practice of granting administrative licence began with the Stage Carriage Act, 1861. The first public corporation was established under the Bombay Port Trusts Act, 1879. Delegated legislation was accepted by the Northern India Canal and Drainage Act, 1873 and the Opium Act, 1878. Proper and effective steps were taken to regulate the trade and traffic in explosives by the Indian Explosives Act, 1884. In many statutes, provisions were made with regard to holding of permits and licenses and or the settlement of disputes by the administrative authorities and tribunals.

Since Independence, the activities and the functions of the government have further increased. Under the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Factories Act, 1948 and the Employees' State Insurance Act, 1948, important social security measures have been taken for those employed in industries. In the Constitution itself the provisions are made to secure to all citizens social, economic and political justice, equality of status and opportunity. 'To secure these objects, several steps have been taken by the Parliament by passing many Acts; e.g. the Industrial (Development and Regulation) Act, 1951, the Requisitioning and Acquisition of Immovable Property Act, 1952, the Essential Commodities Act, 1955, the Companies Act, 1956, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, the Equal

Remuneration Act, 1976, the Urban Land (Ceiling and Regulation) Act, 1976, the Beedi Workers' Welfare Fund Act, 1976 etc. Further, the judiciary, while interpreting the provisions of the constitution, is taking into consideration the objects and ideals of welfare State.

In India, the activities and powers of the Government have been-expanded/increased and hence there is a greater need for the enforcement of rule of law and judicial review. For this purpose several provisions are made in the statutes providing for right of appeal, revision etc. Further Articles 32, 226 and 227 of the Constitution provide for extraordinary remedies.

Chapter - II

NECESSITY OF ADMINISTRATIVE LAW IN MODERN STATE

As we know that properly exercised, the new powers of the executive leads to the Welfare State; but abuse they lead to the Totalitarian State. And it is one of the important object of the study of administrative law is to unravel the way in which these administrative authorities could be kept within their limits so that the discretionary powers may not be turned into arbitrary powers.

Today state is not merely Police or Laissez Faire State, but as a progressive democratic state it seeks to ensure social security & social welfare for the common man and do various functions e.g. – Excelware case[3], Kameshwar sing case[4].

In democratic State Govt. has to play following role

(1) **Protector** – Law & order, Life, Liberty and Property,
(2) **Provider** – the Livelihood to the citizens,
(3) **Eco-controller** – removal of the inequalities,
(4) **Interplunar** – enter into contracts,
(5) **Arbitral** – settle the disputes.

All these developments have widen the scope & ambit of the

Administrative law as these help to determine the following –

1. Who are the administrative authorities,
2. What sort of powers are exercised by such authorities,
3. Limitations of powers of such authorities,
4. Procedure to be followed while exercise the power by them,
5. Provide the remedies against the administrative authorities.

Thus the administrative law became tool to regulate functions of state it makes policies & provides the leadership to legislation as well as executives, it therefore apart from administrative power the administrative authority having legislative or discretionary or adjudicative powers. Because of all the above the administrative law became an independent branch of study under the realm of public law.

***Factors which contributes the growth of administrative law**

The following factors are responsible for the growth of administrative law:

(a) The concept of a welfare state

As the States changed their nature from laissez-faire to that of a welfare state, government activities increased and thus the need to regulate the same. There is a radical change in the philosophy of the role played by the state. The negative policy of maintaining law and order and social welfare is changing. The state has not confined its scope to the traditional and minimum functions of defense and administration of justice, but has adopted the positive policy and as a welfare state has

[3]. 1978 SCC (4) 224
[4]. AIR 1962 SC 1166

undertaken to perform varied functions. Thus, this branch of law developed.

(b) The inefficiency of Judiciary

The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. It was already overburdened and it was not possible to expect speedy disposal of even very important matters. The important problems could not be solved by mere literally interpreting the provisions of some statutes, but required consideration of various other factors and it could not be done by the ordinary courts of law. Therefore, industrial tribunals and labour courts. Were established, which possessed the techniques and expertise to handle these complex problems.

(c) The inadequacy of legislature

The legislature has no time to legislate upon the day-to-day ever-changing needs of the society. Even if it does, the lengthy and time-taking legislating procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented. Besides this it was impossible for it to lay down detailed rules and procedures, and even when detailed provisions were laid down by the legislature, they have found to be defective and inadequate. Therefore, it was necessary to delegate some powers to the administrative authorities.

Hence, the executive is given the power to legislate and use its discretionary powers. Consequently, when powers are given there arises a need to regulate the same.

(d) The scope for experiments

There is scope for experiments in administrative process. Here unlike, in legislation, it is not necessary to continue a rule until commencement of the next session of the legislature. Here a rule can be made , tired for some time and if it is defective, can be altered or modified within a short period. Thus, legislation is rigid in character , while the administrative process is flexible.

(e) Scope for the experiment

As administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again because the administrative authorities can avoid technicalities. Administrative law represents functional rather than a theoretical and legislative approach. The traditional judiciary is conservative, rigid and technical. It is impossible for courts to decide cases without formality and technicality. Administrative tribunals are not bound by rules of evidence and procedure and they can take a practical view of the matter to decide complex problems.

(f) To take preventive measures

Administrative authorities can take preventive measures. Unlike regular courts of law, they do not have to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of law. As Freeman says, “Inspection and grading of meat answers the consumers need more

adequately than does a right to sue the seller after the consumer injured".

Thus the Administrative authorities can take effective steps for the enforcement of the aforesaid preventive measures e.g. suspension, revocation and cancellation of license, destruction of contaminated articles etc., which are not generally available through regular courts of law.

The Role of administrative law is to limit the powers of the government agencies and keep a check in on the administrative authorities. it is not always possible to rely upon some general statutes for rising disputes between the individuals and the public authorities thus there should be a proper law to govern such disputes, Administrative law act as the proper law which governs the administrative actions.

Besides this, the Administrative law is generally a unwritten and uncodified law. Administrative law is a judge-made law. It is recommended to bring an codified form of administrative law which ensures an complete growth of Administrative law and also makes the job of administrative tribunals in deciding cases. An written form of administrative law gives an well-versed recognisation of administration among the citizens of the country.

Chapter - III

SEPARATION OF POWERAND RULE OF LAW

I. Doctrine of Separation of Powers

The theory (doctrine) of Separation of Powers has engaged in several forms at different periods. It was originated by Aristotle and it was developed by Locke. In the 16th and 17th centuries, French Philosopher John Bodin and British Politician Locke respectively had expressed their views about the theory of separation of powers. But, the rule (or doctrine) of separation of powers was propounded/expounded for the first time by the French Jurist, Montesquieu. He formulates this theory in his famous book "The Spirit of Laws" published in 1748. According to him, there are three main organs of the Government in a State namely: i) the Legislature; ii) the Executive; and iii) the Judiciary. Hence, the governmental machinery must be divided into three parts and must be vested in these three organs namely:

1. the Legislature;
2. the Executive; and
3. the Judiciary.

According to this theory of separation of powers, these three powers and functions of the Government in a free democracy must be kept separate and exercised by separate organs of the Government.

In other words, the legislative (law making) functions should be exercised by the legislature alone. The executive functions should be exercised by the executive alone and the judicial functions should be exercised by the judiciary alone.

One organ of the Government should not exercise the functions of the other two organs. One organ of the Government should not encroach/intervene upon the affairs of the other two organs. In other words:

i) The legislature cannot exercise the powers of the Executive or Judiciary;
ii) The executive cannot exercise the powers of the Legislature or Judiciary; and
iii) The judiciary cannot exercise the powers of the Legislature or Executive.

Wade and Philips

According to him, this theory means 'the same set of persons should not compose more than one organ of the Government' .

Object

The main object of this theory of Separation of Powers is to distribute the powers between different organs, and to avoid or minimize arbitrariness in the Government functions.

Effect of the Doctrine

The Doctrine of Separation of Powers had a very good impact on the development of Administrative Law and in the functioning of the Governments. It is well appreciated and accepted by the Jurists and Politicians in England and America.

State Practice

The State Practice can be explained with reference to its position in America (U.S.A), England (U.K) and India.

Position in America (U.S.A)

The Doctrine of Separation of Powers has been accepted and strictly adopted by the constitution of U.S.A. In America, the legislative powers are vested in the Congress (Article 1), the Executive Powers in the President (Article 2) and the Judicial Powers in the Supreme Court and its subordinate Courts (Article 3).

In America, there is a system of 'Checks' and Balances' to see that one organ should not encroach upon the powers of the other organ. However, in view of the development of Administrative Law and expansion of the Government Machinery, strict compliance to this doctrine is impracticable (not possible). Therefore, the doctrine of Separation of Powers has been relaxed in certain cases. For instance, the President being the Executive Head encroaches (intervenes) upon the legislative power, while giving assent to Bills. Similarly, the Congress being the legislative organ, controls the executive by the power of impeachment of the President (Executive Head). It (the Congress) also controls the judiciary in appointment and impeachment of the judges. Likewise, the Judiciary, by exercising the power of Judicial Review over legislations, controls the legislature.

Position in England (U.K)

The Theory of Separation of Powers is not followed strictly in England. In U.K. there is complete confusion of the executive and legislative powers. The legislation of Great Britain-enjoys judicial powers as well. The House of Lords, the upper house of legislature is the highest court of appeal in Great Britain. The Cabinet through the King can dissolve the House of Commons. Cabinet through the King introduces the Bill in parliament. Certain Bills can only be introduced by cabinet through the King. It is the cabinet, which formulates ordinances through the King. However, these three powers are vested in different organs. But, one organ controls the powers of the others. E.g.: The House of Lords, being a legislative body exercises Judicial Functions also.

Position in India

There is no provision in the Indian Constitution to adopt this doctrine. Article 50 of the Indian Constitution speaks about the Separation of Powers. In India, the legislation empowers are vested in the Parliament, Executive Powers in the President and Judicial Powers in the Supreme Court, High Courts and the Subordinate Courts. The provisions of the constitution reveal that there are many deviations from the application of this doctrine since one organ encroach upon the other. For instance, Parliament exercises judicial powers by punishing a person for breach of privilege. It also controls the judiciary by exercising the power of impeachment of Judges. Similarly, the Judiciary by reviewing legislations controls the Parliament. As such, the Executive (President) is vested with law making (delegated legislation) and judicial functions (Quasi Judicial) and also controls the appointment of judges.

In view of various deviations stated above, the doctrine of Separation of Powers is not fully accepted in the Indian Constitution.

In Indira Nehru Gandhi vs. Raj Narain[5]. The Supreme Court through A. N. Ray, CJ enunciated that there is a separation of powers in Indian Constitution in abroad sense only, not in a rigid sense (as in the case of American or Australian Constitution).

Defects of the Doctrine (Criticism)

The doctrine of the separation of powers is subject to criticism on the following grounds:

1. According to Friedmann, strict compliance of the doctrine of Separation of Powers is not only a theoretical absurdity, but also a practical impossibility.
2. A modern welfare state like India has to deal with various socio-economic problems. It is not possible to stick on to the Rule/Doctrine of Separation of Powers.

Thus, the three organs of the Government viz. The Legislature, Executive and Judiciary are not independently independent, but inter-dependently independent

Relation with Administrative Law

Administrative Law is totally opposite to the Rules/Doctrine of Separation of Powers. Both aim at the maximum protection of the rights and liberties of individuals. But, they suggest different means to achieve the objects. Despite certain conflicts between the two, the Doctrine of Separation of Powers has a significant impact on the development of the modern administrative law.

II. The Doctrine of Rule of Law

The expression 'Rule of Law' has been derived from the French phrase 'la principle de legalite" i.e. a Government based on the principle of law. In simple words, the term 'rule of law' indicates the state of affairs in a country where, in main, the law. Law may be taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognised and applied by the state in the administration of justice. The Rule of law, according to Gamer, is often used simply to describe the state of affairs in a country where, in main, the law is observed and order is kept. It is an expression synonymous with law and order.

The basis of Administrative Law is the 'Doctrine of the Rule of Law'. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A. V. Dicey in his book 'The Law of the Constitution' published in 1885. According Coke, in a battle against King, he should be under God and the Law, thereby the Supremacy of Law is established.

Dicey regarded rule of law as the bedrock of the British Legal System. This doctrine is accepted in the constitutions of U.S.A. and India.

According to Prof. Dicey, rules of law contains three principles or it has three meanings as stated below:

1. Supremacy of Law or the First meaning of the Rule of Law.

[5]. AIR 1975 SC 2299

2. Equality before Law or the Second meaning of the Rule of Law; and
3. Predominance of Legal Spirit or the Third meaning of the Rule of Law.

(1) Supremacy of Law

The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordi1ary courts of the land. It implies that a man may be punished for a breach of law but cannot be punished for anything else. No man can be punished except for a breach of law. An alleged offence is required to be proved before the ordinary courts in accordance with the ordinary procedure.

According to Dicey, Law is Supreme. It is opposed to the influence of arbitrary power, prerogative or even wide discretionary power on the part of the Government. In short, rule of law, according to Dicey means absolute.

Wade: Administrative Law (1971)

"The rule of law requires that the Government should be subject to the law, rather than law subject to the Government.

(2) Equality before Law

The Second meaning of the Rule of Law is that no man is above law. Every man whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunal.

Prof. Dicey states that, there must be equality before the law or equal subjection of all classes to the ordinary law of the land. He criticized the French legal system of droit Administratif in which there were separate administrative tribunals for deciding the cases of State Officials and citizens separately. He criticizes such system as negation of law.

(3) Predominance of Legal Spirit:- The Third meaning of the rule of law is that the general principles of the Constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the Court.

Dicey states that many constitutions of the states (countries) guarantee their citizens certain rights (fundamental or human or basic rights) such as right to personal liberty, freedom from arrest etc. According to him, documentary guarantee of such rights is not enough. Such rights can be made available to the citizens only when they are properly enforceable in the Courts of law. For instance, in England there is no written constitution and such rights are the result of judicial decision.

Application of the Doctrine in England

Though, there is no written constitution, the rule of law is applied in concrete cases. In England, the Courts are the guarantors of the individual rights. Rule of law establishes an effective control over the executive and administrative power.

However, Dicey's rule of law was not accepted in full in England. In those days, many statutes allowed priority of administrative power in many cases, and the same was not challenged before the Courts. Further sovereign immunity existed on the ground of 'King can do no wrong'. The sovereign immunity was abolished by the 'Crown Proceedings Act, 1947. Prof. Dicey

could not distinguish arbitrary power from discretionary power, and failed to understand the merits of French legal system.

Rule of Law under the Constitution of India

The doctrine of Rule of Law has been adopted in Indian Constitution. /The ideals of the Constitution, justice, liberty and equality are enshrined (embodied) in the preamble.

The Constitution of India has been made the supreme law of the country and other laws are required to be in conformity with the Constitution. Any law which is found in violation of any provision of the Constitution is declared invalid.

Part III of the Constitution of India guarantees the Fundamental Rights. Article 13(1) of the Constitution makes it clear that all laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provision of Part III dealing with the Fundamental Rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State should not make any law which takes away or abridges the fundamental rights and any law made in contravention of this clause shall, to the extent of the contravention, be void. The Constitution guarantees equality before law and equal protection of laws. Article 21 guarantees right to life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. Article 19(1)(a) guarantees the third principle of rule of law (freedom of speech and expression).

Article 19 guarantees six Fundamental Freedoms to the citizens of India - freedom of speech and expression, freedom of assembly, freedom to form associations or unions, freedom to live in any part of the territory of India and freedom of profession, occupation, trade or business. The right to these freedoms is not absolute, but subject to the reasonable restrictions which may be imposed by the State.

Article 20(1). provides that no person shall be convicted of any offence except for violation of a law in force at the time of the commis1ion of the act charged as an offence not be subject to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. According to Article 20(2), no person shall be prosecuted and punished for the same offence more than once. Article 20(3) makes it clear that no person accused of the offence shall be compelled to be witness against himself. In India, Constitution is supreme and the three organs of the Government viz. Legislature, Executive and Judiciary are subordinate to it. The Constitution provided for encroachment of one organ (E.g.: Judiciary) upon another (E.g.: Legislature) if its action is mala fide, as the citizen (individual) can challenge under Article 32 of the Constitution.

In India, the meaning of rule of law has been much expanded. It is regarded as a part of the basic structure of the Constitution and, therefore, it cannot be abrogated or destroyed even by Parliament. It is also regarded as a part of natural justice.

In Kesavananda Bharati v. State of Kerala[6] the Supreme Court enunciated the rule of law as one of the most important aspects of the doctrine of basic structure.

In Menaka Gandhi v. Union of India, AIR 1978 SC 597 the Supreme Court declared that Article 14 strikes against arbitrariness. In Indira Gandhi Nehru v. Raj Narain[7], Article 329-A was inserted in the Constitution under 39th amendment, which provided certain immunities to the election of office of Prime Minister from judicial review. The Supreme Court declared Article 329A as invalid since it abridges the basic structure of the Constitution.

A. D. M. Jabalpur v. Shivakant Shukla [8] this case is popularly known as Habeas Corpus case. On 25th June, emergency was proclaimed under Article 359.

Large number of persons was arrested under MISA (Maintenance of Internal Security Act, 1971) without informing the grounds for arrest. Some of them filed petitions in various High Courts for writ of Hebeas Corpus. The petitioners contend that their detention is violation of Article 21. It was argued on the other side that the protection under Article 21 is not available (suspended) during emergency. The preliminary objection (not to file writ petitions during emergency) was rejected by various High Courts. The Madhya Pradesh Government through Additional District Magistrate, Jabalpur and Government of India filed appeals before Supreme Court.

The question before the Supreme Court was, whether there was any rule of law in India apart from Article 21 of the Constitution. The Supreme Court by majority held that there is no rule of law other than the constitutional rule of law. Article 21 is our rule of law. If it is suspended, there is no rule of law.

6. AIR 1973 SC 1461
7. AIR 1975 SC 2299
8. AIR 1976 SC 1207

Chapter - IV
DELEGATED LEGISLATION

Among the sources of law, legislation is of great importance. It may be termed as supreme law of the land. The expression 'Legislation' is derived from two Latin words: legis and lation, which means 'law' and 'to make' respectively. It means, "law making power". The law making body/authority is called 'Legislature or Legislative Authority". Salmond has classified the legislation into two heads namely: 1) Supreme Legislation (i.e. the legislation passed directly by the Sovereign/Supreme Legislature. In India, Parliament is the Supreme Legislature); and ii) Subordinate Legislation (i.e. 'Legislation passed under the power/authority delegated to the Executive or Administrative authority by the Supreme Legislature). Supreme legislation is the legislation made by the supreme power in the State. Subordinate legislation is the legislation made by the authority other than the supreme authority in the State in the exercise of the power delegated to it by the supreme authority. The subordinate legislation is dependent on some superior or supreme authority for its continued existence and validity.

Meaning and Definition

Meaning

The expression 'Delegation of Authority or Delegated Authority' means "transfer of authority/power by the superior to the subordinate". Accordingly, when a subordinate by virtue of delegated authority passed a law/legislation, it is called 'delegated legislation'. Delegated Legislation is also known as 'Subordinate Legislation' or 'Administrative Legislation'. It means, "Conferring one's power of law making to another". It is the extension of law making power to the Executive by the Legislature. E.g.: In India, the legislative authority (law making body) is parliament. It is not possible" for the Parliament to pass laws at all times in all cases. Hence, it may delegate this law making power to the Executive or Administrative Authorities

Definition:- Salmond defines Delegated Legislation as 'that which proceeds from any authority other than the sovereign power and is therefore dependent for its continued existence and validity on some superior authority'. In short, it means and includes 'all rules, regulations, bylaws, orders etc.'

The delegated legislation may be defined as the legislation made by the authority other than the Legislature acting under the' authority delegated to it by the Legislature. According to Jain and Jain, the term 'delegated legislation' is used in two senses:

a) the exercise by a subordinate agency of the legislative power delegated to it by the legislature; or
b) the subsidiary rules themselves which are made by the subordinate agency in pursuance of the power conferred on it by the legislature.

In the second sense, the 'delegated legislation' includes the rules, regulations, orders, by-laws, etc. Administrative law is more concerned with the delegated legislation used in the first sense. Thus, the administrative law is more concerned with the exercise of the legislative power by authority other than the Legislature delegated to it by the Legislature.

Reasons for Growth of Delegated Legislation

The Committee on Ministers' powers in England enumerated the following reasons for the growth of Delegated Legislation (in India also):

1. Pressure upon Parliamentary Time;
2. Technicality (lack of technical know-how);
3. Not flexible (difficulty in amendment) or Rigidity;
4. Emergency Situations (Emergency Decisions Ordinances);
5. Secrecy (Law cannot be made public till it comes into force. Secrecy is possible only in Delegated Legislation).

(1) Pressure upon Parliamentary Time

In modem welfare State the bulk of the Legislature has increased and it does not have sufficient time to discuss minor details and also to provide all the details. Consequently, it has to confer on the executive or other agency, the authority to make subordinate legislation (e.g. rules, by-laws, regulations, etc.) to supplement the legislation made by the Legislature. The Legislature, thus, passes skeleton legislation and gives authority to the concerned authority-to supply flesh and blood to the skeleton by making rules, regulations, by-laws, orders, etc.

(2) Technicality

Sometimes the subject matter of the legislation is of technical nature and it requires handling by the experts. In such cases, it becomes necessary to delegate to appropriate authority the power to deal with such subject matters.

(3) Not flexible

Delegated legislation or subordinate legislation is more flexible than ordinary legislation. The rules, regulations, by-laws, or orders, etc. if found to be defective, may easily be amended. The orders, etc. if found to be defective, may easily be amended. The practice of delegated legislation enables experiment. If the experiment is found to be unsuccessful, the rules and regulations may be revoked or modified according to the requirements and if the experiment is found to be successful, the rules and regulations may be extended or made perpetual.

(4) Emergency Situations

Sometimes the economic and national emergencies require quick action but because of being overburdened, the legislature finds it very difficult to act as promptly as the situation demands. Hence, the executive delegates the power to make rules, regulations, etc. to deal with such situation.

(5) Secrecy

In some cases the public interest demands that the provisions of the law should not be known until the time fixed for their operation comes, e.g. imposition of import duty or exchange control, rationing schemes,

etc. This also necessitates the delegation of power to make rules, regulations, by-laws, etc. to the executive or other agency.

Advantages of Delegated Legislation

1. It minimises the workload of Legislature.
2. It enables to bring out flexible Legislations (E.g. rules, regulations etc.).
3. Legislations on technical matters can be done effectively.
4. It helps the Government to tackle the emergency situations.

Disadvantages or Demerits

1. Peoples' Representatives' will is not present in Delegated Legislation.
2. Public opinion is absent; and
3. It is unknown till it is notified.

Forms of Delegated Legislation

There are six important forms by which the legislature may delegate the law making power to the executive as detailed below:

1. Central Act may delegate law-making power to the Central Government. E.g. (i) Sec.3 of the Defence of India Act, 1962; (ii) Sec.3 of the All India Services Act, 1951.
2. Central Act may delegate law-making power to the state government. E.g. (i) Sec.8 of the Opium Act, 1878; (ii) Sec.2 of the Musalman Wakf Act, 1923.
3. Central Act may delegate law making power to both central and state governments. E.g. (i) Sec.13 of the Mines and Minerals Act, 1957 gives power to the central government and Sec.15 gives power to the state government to make rules; (ii) Sec.35 of the Administrative Tribunals Act, 1985 empowers the center and Sec.36 empowers the state government to make rules.
4. Central Act may delegate law-making power to statutory bodies. E.g. Sec.49 of the Advocates Act, 1961 empowers the Bar Council of India to make rules under the Act.
5. State Act may delegate legislative power to state government. E.g. (i) Sec.69 of the Andhra Pradesh Panchayat Samitis Act, 1959 empowered the state government to make rules for carrying out the purposes of the Act. (ii) Sec.99 of the Andhra Pradesh Education Act, 1982.
6. State Act may delegate legislative power to statutory bodies. E.g. The Andhra Pradesh Electricity Act empowers the Electricity Board to make rules under the Act.

Classification or Types of Delegated Legislation

Proper understanding of the subject, delegated legislation has been classified by different authors on different basis stated below:

1) Title based;
2) Purpose based.

(1) Title Based Classification

On the basis of nomenclature, the delegated legislation may be classified as follows:

1. Rule;
2. Regulation;
3. Order;
4. Bye-laws;
5. Direction;

6. Scheme.

Rule - It means a rule made in exercise of powers conferred by any enactment and includes regulation made as a rule under any enactment.

Regulation - It means an instrument by which decisions, orders and acts of the government are made known to the public. In the sphere of delegated legislation, the term relates to the situation where power is given to fix the date for the enforcement of an Act or to grant exemptions from the Act or to fix prices etc.

Order - There is not much difference between rule and order. Only in the name it differs. Depending upon the nature of the power delegated to the executive, it can make two kinds of orders such as General and Particular orders.

Bye-laws - It means rules made by the semi - Govemment authorities established under the Act or statute, e.g. rules made by local authority, statutory crop., etc. Bylaws are, thus, made by the semi-Government authorities established under the Act or statute. They are, thus, made by local authority or statutory corporation, etc.

Direction - Directions are generally framed by the head of the department to regulate the internal functions of the department. It may be mandatory or recommendatory in nature.

Scheme - It is used to refer to a situation where the executive or administrative authority is authorised by the Act or statute to lay down a framework within which the concerned authority is to function.

(2) Purpose Based Classification

Delegated legislation may be classified on the basis of the purpose for which the delegation is made, as follows:

a) Power to bring the Act into operation;
b) Power to extend the scope/life of the Act;
c) Power to include or exclude persons or objects;
d) Power to modify the Act or Statute;
e) Power to remove difficulties;
f) Power to adopt laws from other States;
g) Power to prescribe punishments.

Power to bring the Act into operation - All Acts contain a 'commencement clause'. In majority of the Acts the commencement clause empowers the respective governments to appoint a day for the commencement of the Act to come into force. In such cases, the commencement of the operation of the Act depends upon the decision of the government, e.g. Section 1(3) of the Industries (Development and Regulation) Act, 1951; Consumer Protection Act, 1986; Section 1(3) of the Protection of Civil Rights Act, 1955, Section 1(3) of the Hire Purchase Act, etc. Such delegation has been held to be valid. It does not amount to excessive delegation.

Power to extend the scope/life of the Act - Sometimes the legislature may pass an Act declaring that it is applicable to limited territories/persons/commodities or it shall apply for a particular period in the first instance. Later, it empowers the executive to extend its jurisdiction or extends its life for a further period. E.g. Sec.27 of the Minimum Wages Act 1952. The Minimum Wages Act, 1952·which authorizes the Central Government to include any industry to the

schedule containing the list of the industries to which the Act is to apply. It has been held valid because the legislative policy is apparent on the face of the Act. Sometimes the legislature which passes the Act declare that the Act will apply only for particular period and empowers the executive to extend its life or duration, e.g. The Bihar Maintenance of Public Order Act, 1948.

Power to include or exclude persons or objects - The legislature may pass an Act applicable to a particular individual, class or persons, institutions, or commodities, but empowers the government to include any other similar type of individuals, class or persons, institutions, or commodities within the purview of the Act. Similarly, the Act may empower the Government to exempt certain persons, class of persons, institutions from its operation or commodities.

Power to modify the Act or Statute - Sometimes the Act or statute making the delegation of legislative power authorises the executive to modify the Act or statute itself. Sometimes it becomes necessary to enable the executive to meet the changing circumstances. Consequently, such delegation is, often held valid, if there is no change in the legislative policy of the Act or statute.

Power to remove difficulties - Some statutes authorise the government to modify the provisions of the parent Act for the purpose of removing difficulties. E.g. Sec.34 of the Administrative Tribunals Act, 1985 which reads as follows: "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appears to be necessary or expedient for removing difficulty."

Power to adopt laws from other States - In this type of delegation the executive is given the power to adopt and apply statutes existing in other states. E.g. Sec.7 of Part C States Law Act delegates powers to the central government to extend to any Part-C state, with such restrictions and modifications, as it thinks fit, any enactment, which is in force in any Part-A state.

Power to prescribe punishments - In this type of delegated legislation the law will be made in its full form by the legislature, but the executive will be empowered to prescribe punishment for the breach of the provisions of the Act subject to the maximum punishment laid down in the Act, E.g. Sec.37 of the Electricity Act, 1910. (If the maximum punishment is not prescribed in the Act the delegation can be held invalid on the ground of excessive delegation).

Limits and Constitutionality of Delegated Legislation

There is no express provision empowering the legislature to delegate law-making power to the Executive. However, Article l3(3)(a) confers on the legislature, to delegate law-making power to the Executive. However, Article 13(3)(a) confers on the legislature, implied authority to delegate the law making power. Art. 13 (3)(a) defines the term 'law'. According to this Article, "law" includes any rules, orders, byelaws, regulations and notifications etc. This wide

definition for law given under Art. 13 (3)(a) impliedly covers the area of delegated legislation also. The constitutionality of the delegated legislation can be better studied by analysing the judicial pronouncements of the Privy Council upto 1949 Federal Court after 1949 and the Supreme Court of India after 1950.

Delegated Legislation in England

In England, Parliament is supreme. It has unlimited powers to make any law. It cannot be questioned by the Court on any ground. So there is no limit on the Parliament in the case of delegation of its power to the executive. The Parliament need not provide any standard for the exercise of that power. There is no external authority to compel the Parliament to provide policy or safeguards in the statute delegating legislative power. The remedy against misuse lies in the parliament itself. It can control delegation if it pleases.

Delegated Legislation in U.S.A.

Delegated Legislation in U.S.A. may be explained with reference to:

a) In theory; and
b) In Practice.

In theory

In U.S.A, the law of delegated legislation is based on two doctrines viz. "'[he doctrine of separation. of powers and delegates non-protest delegare. In other words, delegated legislation is not accepted in U.S. Constitution in theory for two reasons namely:

1. The Doctrine of separation of powers is adopted in U.S. Constitution and hence, the U.S. Congress cannot delegate legislative power.
2. Delegatus non-protest delegare: It means a delegate cannot further delegate. The Congress gets power from people and is a delegate. Being a delegate, it cannot further delegate its power to another.

In spite of this above two doctrines, the U.S Congress (legislature) has power to delegate its law making power subject to fulfilment of certain conditions.

In Yakus v. United States[9], case the delegation by the Congress was held to be valid on the ground that the statute making the delegation prescribed sufficiently definite standards to guide the delegate. In this case the validity of delegation by the Emergency Price Control Act, 1942 to the Price Administrator was challenged. This Act empowered the Price Administrator to establish 'such maximum price or prices as in his judgment will be generally fair and equitable and will effectuate the purposes' of the Act in case in his opinion the commodity prices rose or threatened to rise to an extent or in a manner inconsistent with the purposes of the Act.

In Practice

In Practice, it is not possible in America to stick on to the above rule. In view of the expansion of governmental functions, it is not possible for the Congress to enact all statutes with all particulars.

In Panama Refining Co. vs. Ryan[10] (Hot oil case) under Section 9 (c) of the National Industrial Recovery Act (NIRA), the President was authorised by the Congress to prohibit transportation of oil in inter-state commerce in

[9]. 321 U.S. 414, 64 **S**. Ct. 660 (1944)
[10]. (1935) 293 US 388

excess of the quota fixed by the concerned state. The Supreme Court by majority held that the delegation was invalid. According to the Court the Congress had not declared legislative policy or standard.

Delegated Legislation in India

The Delegated Legislation in India may be studied with reference to:

1) Pre-Constitution Period; and
2) Post-Constitution period.

Pre Constitution Period

In India, Delegated Legislation is accepted both in Pre Constitution and Post-Constitution period. During the period of King Henry III, the executive under the delegated legislation was empowered to amend the parent act.

Post-Constitution period

With regard to Post-Constitution period, the principle of delegated legislation is well accepted. Indian Parliament conferred on Executive and other Administrative Authorities to formulate laws, rules, regulations, bye laws etc. for the peaceful and successful administration of the Government.

Delegation of Taxing Power (Taxing Statutes or Delegation in Taxing Legislation)

The power to levy tax is an essential function. According to Article 265 of the Constitution, no tax can be levied or collected without the authority of law. Law, here means 'law passed by the competent legislature'. The legislature cannot delegate the power to impose tax to any (Executive) Authority.

However, certain permissible limits have been provided for to levy tax, after laying down in parent Act certain conditions-(viz. Thing to be taxed, extent of taxation etc.).

There had been a controversy as to the competence of the legislature to delegate taxing power to the Executive without prescribing any limits.

In Devi Das vs. State of Punjab[11], the Supreme Court held that the legislature cannot delegate tax fixing power to the Executive.

But, in the case of Corporation of Calcutta vs. Liberty Cinema[12], the Supreme Court justified the delegation of taxing power to the Executive, provided necessary guidelines are provided. This view was followed in subsequent cases.

Sub-Delegation

Meaning

Delegated Legislation means 'Conferring one's power of law making to another, or extension of law making power to the Executive by the Legislature. If the Executive, i.e. the delegate further delegates such power to any subordinate authority or agency, it is called' Sub-Delegation'. The authority which confers law-making power on delegate is called 'Parent' or 'delegate' and the further delegates are called 'Children'.

Criticism:- There is a well-known maxim, which criticises sub-delegation. It is 'Delegatus non protest delegare', which means, "a delegate cannot further delegate". This principle applies in case of delegated legislation also unless there is an express or implied provision to that effect. It is also contended that sub-delegation is against the

[11]. 1967 AIR 1895
[12]. 1965 AIR 1107

principles of rule of law and Parliamentary Sovereignty.

In Jackson vs. Butterworth[13] - Certain circulars issued by the sub-delegate were held to be bad (invalid).

Position in India

In India also, the principle of sub delegation is not accepted unless there is an express or implied provision by the statute.

Ganapati vs. State of Azmeer[14], in this case, the Parent Act conferred on the Chief Commissioner to frame rules for proper system of conservancy and sanitation at fairs. The rules made by the Chief Commissioner were further conferred on the District Magistrate to devise his own system. The Supreme Court held the rules framed by the District Magistrate Ultra vires.

Conditional or Contingent Legislation

Meaning

Conditional legislation is also known as Contingent legislation. It comes into force upon the happening of a contingency or upon the fulfilment of a condition by the Executive. It was invented/introduced by the British Parliament to enabling itself to rule its colonies.

In this case, the legislature makes law in full and complete. No legislative power is delegated to the Executive. It is left to the Executive to bring the Act into force on fulfilment of certain condition or contingency. Such legislation is called 'Conditional or Contingent' Legislation.

Definition

1) **Hart**

'Conditional legislation is a statute that provides controls but specifies that they are to go into effect only when a given administrative authority fulfils the existence of conditions defined in the statute.'

2) **Cooley**

'It is not always essential that a legislative act should be a completed statute which must in any event take effect as law at the time it leaves the hands of the legislative department. A statute may be conditional, and its taking into effect may be made to depend upon some subsequent event'.

Types/Classification of Conditional Legislation:

1. This type of legislation is seen in almost all the statutes, where the date of commencement of the Act is left to the discretion of the Executive.
2. The Executive is given power to extend the life of the Act.
3. Statute confers power on the Executive to apply and adopt the statutes in other states.
4. The executive may be empowered to extend the provisions of the Act to more territories.

Distinction between Delegated Legislation and Conditional Legislation

Sr. No.	Delegated Legislation	Conditional Legislation
1	It is also known as 'Subordinate Legislation	It is also known as 'Contingent Legislation.'

[13]. [1946] VLR 330
[14]. AIR 1955 SC 188

2	In delegated legislation, the legislature confers power on the sub-ordinates i.e. executive to legislate/ pass law	In conditional legislation, power to legislate/pass law is conferred on the executive subject to fulfillment of a condition by the executive.
3	It is not subject to fulfillment of a condition or happening of contingency	It is subject to fulfillment of a condition or happening of a contingency.
4	The subordinate authority, which is conferred law making power Exercises discretionary power in law making.	The subordinate authority has no such discretionary power.

Henry VIII Clause

The expression 'Henry VIII Clause' refers to "Executive Authority". Generally, any legislature, while delegating its power of law making to the Executive does not confer power on the executive to amend or vary the Parent Act. If a clause is inserted in the statute conferring power on the executive to amend or vary the Parent Act, it is called "Henry VIII Clause". In England, during the period/ regime of the King Henry VIII, several laws were passed empowering the executive to even to amend the Parent Act. This type of delegated legislation is popularly known/nicknamed as 'Henry VIII Clause type of delegated legislation.' It implies a naked delegation of essential legislative power to the executive by the legislature.

Object

The main object of the Henry Clause VIII type of delegated legislation is to remove certain difficulties. King Henry VIII succeeded in removing all difficulties in the enforcement of his will by resorting to/adopting this type of delegation. E.g. National Insurance Act, 1911 in England.

The Henry VIII Clause type of delegated legislation should be conferred on the executive only in exceptional cases to remove difficulties.

Position in England

In England, National Insurance Act, 1961 empowered the Insurance Commissioners 'to do anything that they thought necessary and expedient if any difficulty arose in bringing the Act into operation and for that purpose modify the provisions of the Act itself.'

In England such type of delegations could not be challenged, as the Parliament is superior there. Hewart in his book 'The New Despotism' published in 1929 criticised this type of delegation severely. The Committee on Ministers' Powers also criticised the use of the Henry VIII Clause, and suggested that this clause should be used for the sole purpose of bringing an Act into operation and that too only for a period of one year from the passing of that Act and that too only when 'demonstrably' essential.

In October 1929 the Parliament appointed a Committee on Minister's Powers to enquire into the subject of delegated legislation. The Committee in its report pointed out that such broad delegation is against the principles of parliamentary government and the permissible limits of delegated legislation. Following recommendations were made by the committee.

i. Henry VIII type of delegation should be avoided, as far as possible and to be resorted only sparingly under exceptional and extraordinary circumstances in which it was absolutely necessary.
ii. Such clause should be given effect only for a limited period of one year from the date of passing of the Act, that too only for the removal of difficulties arising in the implementation of the Act.

After this recommendation of the committee, the Henry VIII clause type of delegation was almost stopped in Britain.

Position in India:- In India Henry VIII Clause type of delegation was sparingly adopted in past. E.g. I) Sections 120 and 128 of the State Re-organisation Act, 1956 contained such a clause (now repealed); ii) Article 392 (1) of the Constitution (42nd Amendment Act, 1976) empowered the President to make such provisions including any adoption or modification of any provision of the Constitution as appeared to him to be necessary or expedient for the purpose of removing the difficulties in the constitutional provisions (repealed by Constitution 44th Amendment Act, 1978).

Now, in India Henry VIII Clauses are not valid. There is no statute containing Henry VIII Clause type of delegation. The Supreme Court of India quashed such type of delegation (Jalan Trading Company vs. Mill Mazoor Union, AIR 1967 SC 497).

DELEGATED LEGISLATION (CONTROLS AND SAFEGUARDS) CONTROL OVER DELEGATED LEGISLATION

Introduction:- In modem welfare state, the workload of the legislature has increased tremendously and hence, it has become incompatible (inevitable) to resort to delegated legislation (to delegate the power of law making to the subordinate authority/the Executive). The legislature, therefore, passes the skeleton legislation and empowers the concerned authority to supply flesh and blood to the skeleton by rules, regulations, etc. The system of delegated legislation reduces the burden or workload of the legislature and thereby enables the legislature to give sufficient time for the considerations on the policy matters.

The legislature i.e. the Parliament lays down essential legislative policy in the Parent Act and delegates the power to the Executive, Owing to complexity, diversity, emergency etc. certain essential legislative powers escape into the Executive fold. In order to check such excessive delegation and to keep the delegated legislation within its limits certain control mechanisms are necessary to safeguard the legislative power from abuse/criticism. Such controls are as follows:

1. Judicial Control.
2. Legislative or Parliamentary Control; and
3. Other Controls.

(1) Judicial control over the Delegated Legislation

In the control mechanism of delegated legislation, judicial control occupies first place. The history of judicial control over Delegated Legislation can be traced back to as early as 1877 in Queen vs. Burah : The Calcutta High Court declared a delegated legislation invalid.

Grounds for Judicial Control/Review:- Judiciary can control/review the delegated legislation on the following grounds:

1. The Parent Act is ultra vires the Constitution.
2. Delegated Legislation is ultra vires the Constitution.
3. Delegated Legislation is ultra vires the Parent Act.
4. Delegated Legislation ultra vires the General Law.
5. Unreasonableness.
6. Mala fide.
7. Sub-Delegation; and
8. Excessive Delegation.

The expression' Ultra Vires' means beyond powers. (Ultra means beyond, Vires means power).

(1) Parent Act is ultra vires the Constitution

If the Parent Act violates the provisions of the Constitution, It is void and unconstitutional. The delegation made under such Act also is void. Relevant case on this point is Chintaman Rao vs. State of M.P.[15] The District Collector under delegated authority passed an order prohibiting beedi manufacture. It was held ultra vires, since it violates freedom of trade and profession guaranteed under Article 19(1)(g) of the Constitution.

(2) Delegated Legislation Ultra Vires the Constitution

Sometimes, the Parent Act holds good, and is within the limits '- of the Constitution. However, the delegated legislation made under the Parent Act may be ultra vires the Constitution.

In Air India vs. Nergesh Meerza[16]. The regulation may be Air India providing for termination of service of an airhostess on her first pregnancy, was held violative of Article 14 of the Constitution.

(3) Delegated Legislation is ultra vires the Parent Act

The validity of delegated legislation can be questioned on the ground that it is ultra vires the Parent Act. In Ram Prasad vs. State of U.P. [17]The Uttar Pradesh Panchayat Raj Rule 87 framed under the Parent Act (U.P. Panchayat Raj Act, 1947) was held to be ultra vires the Parent Act.

(4) Delegated Legislation Ultra Vires any General Law/Rule of Law

The validity of the Delegated Legislation can be challenged on the ground that it is ultra vires the general law. It takes place, when the delegated legislation makes a law in force unlawful and unlawful act lawful.

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[15]. AIR 1951 SC 118
[16]. AIR 1981 SC 1829
[17]. AIR 1952 All 843

In A. V. Nachane vs. Union of India[18] In this case the rules framed by the Union Government under delegated authority by L.I.C. with regard to bonus to Class-III and Class-IV employees was held ultra vires since it supersedes the terms of the Bonus Settlement 1974.

(5) Unreasonableness

Generally, a statute cannot be challenged on the ground of unreasonableness. But, in exceptional cases, it can be challenged on the ground of unreasonableness.[19]

(6) Mala fide (Bad faith)

Mala fide means 'bad faith' or ulterior motive. Delegated Legislation can be challenged on the ground of Mala fide, if it has no relation to the purpose for which the law making power was delegated.

(7) Excessive Delegation

In India, only in few cases, delegation of law making power is struck down by the Courts on the ground of excessive delegation.

(8) Sub-Delegation

As stated above, the principle of sub-delegation is subject to criticism and not accepted, unless there is a provision express or implied to that effect. Hence, the validity of an act under sub-delegation can be questioned ultra vires)

(2) Legislative or Parliamentary Control over Delegated Legislation

The Parliament or Legislature, which delegates law making power on the Executive has a duty to see and check whether such delegated authority in making laws is properly exercised.

The Legislative or Parliamentary control over the Delegated legislation can be effectively exercised by:

1. Laying on the Table; and
2. Scrutinizes Committee.

(1) Laying on the Table

It means placing before the table. It is made to make the~leiis1ators know, as to the law making power to be conferred on the Executive. It also gives an opportunity to the members to question or' challenge the proposed delegation of authority on the Executive. There are several types of laying.

The select committee on Delegated legislation in its report in 1953 summarized laying procedure under different heads. They are:

(1) **Simple laying**: The rules will come into force as soon as they are laid before the House. The object of this type of laying is to inform the House about the rules and regulations. Here there is no effective control at all.

(2) **Laying subject to annulment**: Here also the rules will come into force as soon as they are placed before the House. But those rules can be amended or annulled by the House through a resolution. This type of laying is a check on the rule making power of the executive.

(3) **Laying subject to affirmative resolution**: The rules will not have any effect unless approved by the House through resolution. This type of laying is

[18]. AIR 1982 SC 1126
[19]. State of Assam vs. Om Prakash 1973 AIR 678

the most effective control over delegated legislation.

(4) **Laying subject to negative resolution**: If there is any provision for such a type of laying, the draft Rules must be placed before the House. Such rules shall come into force after forty days from the date of laying unless it is disapproved by the House before that period.

(5) **Laying of draft rules**: There may be provision requiring laying of draft rules before the House. Laying draft rule with affirmative resolution is considered to be one of the most effective controls. The draft rules shall not have any effect unless approved by the House. In India only a handful of the Acts have provided laying procedure. But by the Delegated Legislation Provision (Amendment) Act, 1983, amended nearly fifty statutes and inserted provision for laying before the House.

(2) Scrutiny Committees

Parliament would be of no use, unless the rules are properly studied and scrutinized. In order to strengthen the parliamentary control over Delegated Legislation, scrutiny committees are constituted. In India, two types of such committees are established.

They are:

1. The Lok Sabha Committee on Subordinate Legislation; and
2. The Rajya Sabha Committee on Subordinate Legislation.

The Lok Sabha Committee on Subordinate Legislation: It was established in 1953. It consists of fifteen members. The members are appointed by the Loa Sabha speaker for a period of one year. Ministers are prohibited from becoming members. Generally all decisions are taken unanimously and party considerations are not given importance. The Chairman of the committee will generally be a member of the opposition.

The Rajya Sabha Committee on Subordinate Legislation: It was established in 1964. It also consists of fifteen members. Both the members and Chairman of the Committee are nominated by the Chairman of the Rajya Sabha. In the case of Rajya Sabha Committee, ministers also can become members. The committee will continue in office till a new committee is appointed.

Since from the establishment to till today the committees always objected about the laying down formula not followed by the govt. as it resulted in dilution of the legislative control over the delegated legislation.

FUNCTIONS OF THE COMMITTEES

These are as follow –

I. To scrutinize & report to the respective houses whether the power to make legislations, rules, sub rules, bylaws etc. conferred by the constitution or delegated by the Parliament are being properly exercised within such delegations &

II. They act as a watchdog, which bark & arouse their masters from the slumber when they find that invasion on the premises has taken place.

IMPORTANT RECOMMONDATIONS OF THE COMMITTEES

The recommendations & suggestions given the committees acts as the stipulations

on the delegated legislation. Some of the important recommendations of these committees are as follow –

1) Power of the judicial review should not be taken away or curtailed by the rules of the delegate legislations,
2) A financial or levy of tax should not be imposed by the rules of delegated legislation,
3) Language of rules should be simple & clear and not ambiguous,
4) Rules should not be given the retrospective operation unless provided in the Parent Act as they may prejudicially affect the vested rights of persons,
5) Legislative policy must formulated by the legislatures only & details left to the executives,
6) Sub delegation allowed as per proper authority,
7) Discriminatory rules shouldn't framed by the administrative authorities,
8) Rules shouldn't go beyond the rule making power given by the Parent Act,
9) Final authority of interpretation of the rules shouldn't be with the administrative authority,
10) The Principles of Natural Justice must be followed while giving the delegated legislation whenever the individuals rights & liberties are involved,
11) Removal of difficulties clause must no given to the administrative authorities as it indirectly gives power of amendment of the statute itself therefore it is undemocratic one, etc.

Thus it's secondary control by the legislation on the delegated legislation but it can't neglect as it provides affirmative approval which itself resort out various difficulties while delegated legislative power delegated to the executives.

3. Other Controls

In addition to the above, there are other controls and safeguards to regulate delegated legislation in the form of firstly Publication, Consultation of the Interested Groups. Since the modern technique of the delegated legislation require in relation to social & economical matters the participation of the interested groups is required in order to maintain the democratic system of the Nation other wise it will be antidemocratic. secondly sub-delegation as discussed below –

1. Publication

As we know the ignorance of law no excuse, but this can be legitimized only after the publication of law, therefore it is duty of the concerned authority that people should come to know what law is?

The people may came to know the law by the means of (1) debates & discussion in the Parliament, (2) Public opinion about the new law & (3) through the electronic media. Then only we can say that ignorance of law is no excuse.

1) Position in USA

Before 1935 there was no such provision for the publication of the delegated legislation, therefore people get affected due to lack of knowledge so that Congress enacted following statutes –

(1) Federal Registration Act

To provide the publication of all Federal rules & regulations.

(2) Administrative Procedure Act, 1946

U/s. 552 it is provided that every agency was required to publish in the

Federal Register in the fields of procedural or substantive rules.

U/s. 553 it is provided that the rules shall be published at least 30 days before the delegation.

Thus these Acts strengthen the notion of delegated legislation in the USA.

2) Position in UK

In UK it is compulsory to publish the delegated legislations under the Statutory Instruments Act, 1946.

3) Position in India

We don't have the specific statute therefore lots of difficulties are aroused. In 1960 govt. of India published various rules & titled them as "Statutory Rules & Order". But inspite of this the publication remains essential to give the validity of the delegated legislation.

In Harla v. State of Rajsthan case[20] the law in question make by the executives remained unpublished for several years. The SC held that even in absence of statutory provision if delegated legislation not published such delegate legislation would be invalid because publication is the kind of aspect of Principles of Natural Justice, therefore it should be publish the delegated legislation in order to meet the standard of law & their behavior.

Importance of the Publication

The publication is important because it gives -

1. Certainty,
2. Uniformity,
3. Predictability &
4. Legitimacy to the law

Due to these reasons the Publication became the integral part of the access to Justice.

In Govindlal v. Agricultural product Market Committee Case[21] the notification the regulation of purchase & sale of the agricultural product must be publish by the director of Agricultural & Market Committee in Official Gazette & Gujrati newspaper. He published the regulation only in the Official Gazette & not in the Gujrati newspaper.

The SC held that intention of publication is to make the people inform about the regulations the publication in the Official Gazette doesn't help the peoples in the remote area, therefore the double publication as per the statute is required so it publication in only Official Gazette not meeting the standard of the publication.

In Maharashtra v. George Case[22] the notification of the Reserve Bank of India on 8th Nov. 1962 published in the Official Gazette on 24th Nov. 1962. The person taking gold to foreign on 27th Nov. 1962 arrested.

The SC held that since the notification published in the Official Gazette its ignorance on part of accused is totally irrelevant.

[20]. AIR 1951 SC 467

[21]. AIR 1976 SC 263

[22]. AIR 1965 SC 722

But this decision is creatised as this decision was not rigid but also not liberal one as court ignores the reasonability of rule or order i.e. what law ought to be & not what law is?

When delegated legislation came into effect on amendment?

The committees observed that when rule amended still the proper publication is required, as information to public is the basis of binding the standard of people's behavior as per the law.

2. Sub-delegation

While sub-delegate the legislative powers by the delegated legislation there is a question of what extent it permit & what kind of control mechanism? E.g. Essential Commodities Act, u/s. 5 the central govt. might delegate its power either to state govt. or other officers, therefore it amount to sub-delegation.

Criticism

1. No accountability towards the legislation,
2. It is undemocratic as no represent will of the people

But even though above criticisms are no such ground based as statute itself laid down certain general principles, Standard & Policies. Thus the Parent Act is the genus from which the sub-delegation derives its power; therefore on the sub-delegation there are double limitation – (1) limitation by the Parent Act & (2) limitation by the delegated legislation in order to avoid the excessive delegated legislation or blame of ultra vires conduct.

The committees on subordinate legislation observed that while law making power delegated to sub-delegation the language should be clear & not vague i.e. language should be as per the Parent Act & if Parent Act silent then sub-delegation not allow.

Control on the Sub-delegation

The control on sub-delegation is similar as per control on delegated legislation i.e. -

I. Laying down,
II. Scrutiny amd
III. Publication.

Chapter - V
ADMINISTRATIVE TRIBUNALS

I. ADMINISTRATIVE TRIBUNALS

In Administrative law, the term ‘tribunal’ is used in a significant sense and refers to only the adjudicatory bodies which lie outside the sphere of the ordinary judicial system. Technically in India, the judicial powers are vested in the Courts which aims to safeguard the rights of the individuals and promotes justice. Therefore, to institute an effective system of the judiciary with fewer complexities, the judicial powers are delegated to the administrative authorities, thus, giving rise to administrative tribunals or administrative adjudicatory bodies which holds quasi-judicial features.

History of Tribunalisation

The concept of tribunalisation came into existence in India with the establishment of the Income Tax Appellate Tribunal before the independence of the country. After independence, a need was being felt for resolving administrative disputes with flexibility and speed. The core objective of tribunalisation was to provide specialised and speedy justice to the people.

After the drafting of the Indian Constitution, several rights for the welfare of the individuals were guaranteed by the Constitution. People have the right to speedy trials and of specialised quality which cannot be delivered by the prevailing judicial system due to the overburden of cases and appeals, technicalities in procedure etc.

Meaning

The word 'Tribunal' means "seat or bench upon which a judge or judges sit in a court or court of justice". It is a judging body that is appointed to make a judgment or enquiry and includes even ordinary courts. In Administrative Law, the term 'Tribunal' is used to refer to bodies other than the regular courts of the land. In simple words, tribunal is a body with judicial or quasi-judicial powers/functions set up by the statute outside the usual judicial hierarchy of Supreme Court and High Courts. The word 'tribunal' is wider than 'court', and hence it is said that "all courts are tribunals, but all tribunals are not courts. A body, which determines controversies or the rights of parties, is called a 'tribunal', when it possesses some but not all the trappings of a court.

Examples:.- i) Industrial Tribunal set up under the Industrial Disputes Act, 1947; ii) Income Tax Appellate Tribunal constituted under the Income Tax Act, 1961. There are certain administrative tribunals, which are termed as courts, but they are not strictly courts, and they are only tribunals. (E.g.) i) Employees' Insurance Court under Employees' State Insurance Act, 1948; ii) Labour Court under Industrial Disputes Act, 1947.

Definition

The word tribunal has been used in Articles 136 and 227 of the Constitution of India, but it has not been defined in the

Constitution. In Administrative Law, the word 'Tribunal' is used to refer to the adjudicatory bodies outside the sphere of ordinary courts. A tribunal may be defined as a body independent of a department, which is entrusted with adjudicatory function and whose decisions are binding on the parties (subject to regular appeal).

Durga Shanker Mehta vs. Raghuraj Singh[23] in this case, Supreme Court defined 'tribunal' in the following words: " ... The expression 'Tribunal' as used in Article 136 does not mean the same thing as 'Court' but includes, within its ambit, all adjudicating bodies, provided they are constituted by the State and are invested with judicial as distinguished from administrative or executive functions.

Bharat Bank vs. Employees[24] in this case, the Supreme Court observed that though tribunals are clad in many of the trappings of a court and though they exercise quasi-judicial functions, are not full-fledged courts. Thus, a tribunal is an adjudicating body, which decides controversies between the parties and exercises judicial powers as distinguished from purely administrative functions and thus possesses some powers of a court, but not all.

Growth of Administrative Tribunals

The 42nd Amendment to the Constitution introduced Part XIV-A which included Article 323A and 323B providing for constitution of tribunals dealing with administrative matters and other issues. According to these provisions of the Constitution, tribunals are to be organized and established in such a manner that they do not violate the integrity of the judicial system given in the Constitution which forms the basic structure of the Constitution.

The introduction of Article 323A and 323B was done with the primary objective of excluding the jurisdiction of the High Courts under Article 226 and 227, except the jurisdiction of the Supreme Court under Article 136 and for originating an efficacious alternative institutional mechanism or authority for specific judicial cases.

The purpose of establishing tribunals to the exclusion of the jurisdiction of the High Courts was done to reduce the pendency and lower the burden of cases. Therefore, tribunals are organised as a part of civil and criminal court system under the supremacy of the Supreme Court of India.

From a functional point of view, an administrative tribunal is neither an exclusively judicial body nor an absolute administrative body but is somewhere between the two. That is why an administrative tribunal is also called ‘quasi-judicial’ body.

Characteristic Features of a Tribunal

Following are the features of the administrative tribunals:

i. Administrative tribunals are established by the government by a statute or under a statute.
ii. It performs quasi-judicial functions.
iii. Its proceedings are deemed to be judicial proceedings.
iv. It is not bound by the provisions of the Code of Civil Procedure, 1908 or the

[23]. AIR 1954 SC 520 (522)
[24]. AIR 1950 SC 188

Indian Evidence Act, 1872. It follows the rules prescribed by the statute under which, it has been created and the principles of natural justice. In certain cases the tribunal is left free to develop its own procedure.

v. It has the power to compel the attendance of witnesses (just like a civil court) and its proceedings are just like a civil court proceedings.
vi. In their proceedings it has to follow openness, fairness and impartiality (principles of natural justice).
vii. It is independent and not subject to any administrative interference in the discharge of its functions.
viii. It mainly decides disputes arising out of the policies and programs of the welfare state.
ix. These tribunals are bound to abide by the principle of natural justice.
x. A fair, open and impartial act is the indispensable requisite of the administrative tribunals.
xi. The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.
xii. In the absence of any statutory provision, a tribunal cannot review its own decision.

Kinds of Tribunals

Tribunals may be classified into:

1. Statutory or Administrative Tribunals; and
2. Domestic Tribunals.

Statutory or Administrative Tribunals

The word' Administrative' means "of administrative relating to a business or organisation" and "administration" 'means the management of the affairs of a business or organization or executive branch of a Government.

Administrative Tribunal is a body constituted under a Statute to perform adjudicatory functions of the management of the affairs of an organization or executive branch of a government. The Administrative Tribunals are not courts, but are vested with the State's inherent judicial power. They are set up to perform quasijudicial functions.

Kinds of Administrative Tribunals:- In India, different kinds of Administrative Tribunals exist as stated below:

1) Income Tax Appellate Tribunals: It is created/ constituted by the Central Government under Section 252 of the Income Tax Act.
2) Industrial Tribunal: The Industrial Tribunal and National Tribunal are created by the Central Government under Section 7-A and 7-B respectively of the Industrial Disputes Act, 1947 (to settle the disputes between the Employer and Employees).
3) Railway Rates Tribunal: It is constituted under the Indian Railway Act, 1890.
4) Administrative Tribunals under the Administrative Tribunals Act, 1985:
   a) Administrative Tribunals for service matter (Article 323A) - Article 323A provides the establishment of administrative tribunals by law made by Parliament for the adjudication of disputes and complaints related to the recruitment and conditions of service

of Government servants under the Central Government and the State Government. It includes the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government.

The establishment of such tribunals must be at the centre and state level separately for each state or for two or more states. The law must incorporate the provisions for the jurisdiction, power and authority to be exercised by tribunals; the procedure to be followed by tribunals; the exclusion of the jurisdiction of all other courts except the Supreme Court of India.

b) Tribunals for other matters (Article 323B) - Article 323B empowers the Parliament and the State Legislature to establish tribunals for the adjudication of any dispute or complaint with respect to the matters specified under clause (2) of Article 323B. Some of the matters given under clause (2) are a levy, assessment, collection and enforcement of any tax; foreign exchange and export; industrial and labour disputes; production, procurement, supply and distribution of foodstuffs; rent and it's regulation and control and tenancy issues etc. Such a law must define the jurisdiction, powers of such tribunals and lays down the procedure to be followed.

Need for the Establishment of Administrative Tribunals

1. The courts are over burdened and there is inordinate delay in the delivery of justice as they are not able to dispose of the cases quickly. The Tribunals Inquiries Act, 1971 was passed and a Council on Tribunals has been constituted.
2. Due to the adoption of Welfare State, there has been enormous increase in the functions of the government. With this, there arise a number of new problems. To solve the new problems arising from the activities of government, administrative adjudication came into existence to lessen the burden on the court.
3. Administrative Tribunals are intended to provide quick justice- Speeding up the procedure by overriding the procedure laid down in the Civil Procedure Code or the Evidence Act.
4. The expenses to get justice in ordinary cases are very high as they have to engage advocates and long period is required to decide the cases. The expenses in Administrative Tribunals are low when compared to that of ordinary Courts.
5. Some cases require persons having special experience and training in particular field to decide the cases, as the judges of ordinary Courts are generic. It is better to entrust such cases to the Administrative Tribunals created

specially for certain purposes consisting of the experts in the subjects.

6. The Courts deal with the cases in accordance with law and they are fit to deal with the cases consisting policy consideration. Such issues can be dealt with better if they are entrusted to the Administrative Tribunals.

As per Kagzi, Administrative Tribunals are needed as they discharge their functions more rapidly, more cheaply more efficiently than ordinary Courts, possess greater technical knowledge and fewer prejudices against the Government, give greater lead to the social interests involved, decide disputes with conscious effort at furthering social policy embodied in the legislation.

Reasons for the growth of Administrative Tribunals or Merits:- The change of Government's philosophy from the laissez faire' to the 'social welfare state' has inevitably led to a phenomenal growth of administrative law. Owing to the expansion of the governmental machinery in the modem welfare state, the ordinary courts of law are overburdened and find it difficult to solve all the problems. In order to overcome this situation and to minimise the workload of the courts, many administrative tribunals have been emerged in India. There are more than 50 tribunals functioning under various enactments. The main reasons for the growth and development of Administrative Tribunals are detailed below:

i. The modem welfare state has undertaken many welfare measures, which gave rise to a lot of problems. If all these problems are left to the Courts, the courts will be overburdened. It will also slow down the welfare measures taken by the Government. So it was necessary to develop administrative adjudication, to solve those problems. It will respond to the social needs, better than the Courts.
ii. The problems arising from the modem welfare government needed policy considerations also. Courts will not take such matters into consideration. Adjudicatory bodies outside the courts can have such facilities.
iii. Expert knowledge is required to solve the modem problems.
iv. A judge is a generalist. An expect can adjudicate such problems better than a generalist.
v. Adjudication in a Court will take much time because of the elaborate procedures and other technicalities. Administrative adjudication on the other hand, is speedy and free from such formalities and technicalities.
vi. Administrative adjudication is cheaper and more flexible compared to the ordinary Courts.

De-Merits

Administrative Tribunals suffer from the following:

i. There is no uniformity in the composition and procedure of the Administrative Tribunals. Each Tribunal is formulated by separate statute and that statute lays down the rules of procedure of that particular Administrative Tribunal.

ii. All judges who are members of the Bench are law graduates qualified to be appointed as Judges. But, all the members of the Tribunals are not required to be legal experts or to possess legal qualifications. The appointment of Administrative Members to Administrative Tribunals is a drawback.

iii. There may be poor quality of investigation into the question of fact in the case of Administrative Tribunals. One of the criticisms against the Administrative Tribunals is lack of proper cross-examination.

iv. There will be departmental bias in the Governmental Administrative Tribunals.

v. There may be no uniformity in the matter of appeal against the decisions of the Tribunals. The provisions of appeals may be differently provided in different statutes.

vi. The Administrative Tribunals are not competent to test the constitutional validity of statutory provisions.

vii. The functions of the Administrative Tribunals are only supplementary and all such decisions of the Tribunals will be subject to scrutiny before the Divisional Benches of the respective High Courts. The Power vested in the High Courts to exercise judicial superintendence over the decisions of Administrative Tribunals within their respective jurisdictions is part of the basic structure of the Constitution.

viii. The Administrative Tribunals have to act as the only Courts of first instance in respect of the areas of law for which they have been constituted.

ix. Administrative Tribunals cannot review their decisions unless the powers to review their decisions have been conferred on them by the relevant statutes.

Distinction between 'Court' and 'Tribunal'

Sr. No.	Court	Tribunal
1	The institution of Court is traditional i.e. some centuries old.	The institution of Tribunal recent development
2	Court deals with all matters including service matters	Tribunal deals with service matters only.
3	It is headed/presided over by a person, who is an expert in legally qualified.	It is headed/presided over by an expert in law in certain cases and in other cases by an official not trained in law.
4	The decision of the Court is objective. Its decisions based on the evidence and materials produced before the court.	The decision of the Court is subjective. It decides the matters taking into account the policy and expediency.
5	It is bound by precedents, the principle of res	It is not obligatory to follow precedents and

	judicata and the principle of natural justice.	principle of res judicata but the principle of natural justice must be followed.
6	A court is vested with jurisdiction over all matters, civil and criminal.	It is vested with limited jurisdiction to decide cases only.
7	It can decide the validity of legislation.	It cannot decide the validity of legislation.
8	Court has to follow the procedural laws viz. C.P.C, Cr.P.C, Law of Evidence etc	It need not follow the procedural laws.

Domestic Tribunals

Domestic Tribunals means "an agency created to regulate the internal discipline among the members by exercising the adjudicatory and investigating powers". Domestic Tribunals are sub-divided into:

i. Statutory Domestic Tribunals; and
ii. Non-Statutory or Contractual Domestic Tribunals.

Statutory Domestic Tribunal means 'the domestic tribunal created by or under a statute'. E.g.: Bar Council of India and State Bar councils created under the Advocates Act, 1961. Similarly, Medical Councils created under the Medical Council Act, 1956. While the Contractual Domestic Tribunal is created by an agreement between the parties and exercises jurisdiction and powers arising out of the agreement. E.g.: Clubs, Trade Unions, Societies etc.

Differences between 'Statutory Domestic Tribunals' and 'Non-Statutory Domestic Tribunals':

Sr. No.	Statutory Domestic Tribunals	'Non-Statutory Domestic Tribunals'
1	These Tribunals are conferred force of law directly.	These Tribunals are conferred Force of law indirectly.
2	The aggrieved can invoke consti-tutional remedy viz. Writ of mandamus, Certiorari, prohibition etc.	Such writs cannot be availed against these tribunals.
3	These tribunals resolve/solve the problems/disputes between the members and also between the members and third persons.	These tribunals resolve/solve the problems/disputes between the members only.
4	The decisions of the statutory domestic tribunals are subject to judicial review.	The decisions of the nonstatutory domestic tribunals are not subject to judicial review.

THE ADMINISTRATIVE TRIBUNALS ACT, 1985

In pursuance of the provisions in Article 323A, Parliament passed the Administrative

Tribunal Act, 1985, providing for all the matters falling within the clause(1) of Article 323-A.

According to this Act, there must be a Central Administrative Tribunal (CAT) at the centre and a State Administrative Tribunal (SAT) at the state level for every state.

The tribunal is competent to declare the constitutionality of the relevant laws and statutes. The Act extends to, in so far as it is related to the Central Administrative Tribunal, to the whole of India and in relation to the Administrative tribunals for states.

Objective for the establishment of Administrative Tribunals

The main purpose of the introduction of this act was :

1. To relieve congestion in courts or to lower the burden of cases in courts.
2. To provide for speedier disposal of disputes relating to the service matters.

Salient Features of the Administrative Tribunals Act, 1985:

1. The Administrative Tribunals Act, 1985 (Act No.XIII of 1985) has 37 Sections. These 37 Sections are arranged in 5 Chapters.
2. Objectives: The Preamble of Act 13 of 1985 provides the objectives of the Act as follows: 'An Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution and for matters connected therewith or incidental thereto.'
3. Chapter-l contains three sections. Sec. 1 says about the short title, extent and commencement. Sec.2 provides that the Act does not apply to naval, military or air force etc. Sec.3 gives the definitions viz. Administrative Tribunal, application, Chairman, member, notification, post, rules, services etc.
4. Service Matters: The Administrative Tribunals are established to solve the service matters. Section 3(q) clearly defines what are the service matters.

Sec.3(q):- 'Service matters' in relation to a person, mean all matters relating to the conditions of his in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects -

i. Remuneration (including allowances), pension and other retirement benefits;
ii. Tenure including conformation, seniority, promotion,
iii. reversion, premature retirement and superannuation;
iv. Leave of any kind;
v. Disciplinary matters; or
vi. Any other matters whatsoever.

Sec.3(r):- 'Service rules' as to redressal of grievances in relation to any matter, mean the rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act of any grievances in relation to such matters.

5. Chapter-II deals with establishment of Tribunals and Benches thereof from Sections 4 to 13.
6. Chapter-III contains from Sections 14 to 18, deals with jurisdiction, powers and authority of Tribunals.
7. Chapter-IV containing from Sections 19 to 27, deals with procedure.
8. Chapter-V containing from Sections 28 to 37, deals with miscellaneous provisions.
9. Section 19 empowers the aggrieved person to apply by an application along with documents before the Administrative Tribunal. The acceptance of application depends upon the discretion of Tribunal. Application shall have to be submitted after all other remedies have been exhausted. The Limitation Act applies to the Tribunal (Section 21).
10. Section 22 empowers the Tribunal exempts from the Rules of C.P.C. and Evidence, but at the same time, it imposes restriction to follow the principles of natural justice.
11. The applicant has a right to appoint a legal practitioner on behalf of him (Sec.23).
12. The Tribunal has power to pass any interim orders, by way of injunction or stay or any other manner as it thinks fit. (Sec.24).
13. The decision of the Tribunal is given by majority (Sec.25).

Advantages of Administrative Tribunals

The concept of administrative tribunals was introduced because it has certain advantages over ordinary courts. Few of them are mentioned below

(1) Flexibility: The introduction of administrative tribunals engendered flexibility and versatility in the judicial system of India. Unlike the procedures of the ordinary court which are stringent and inflexible, the administrative tribunals have a quite informal and easy-going procedure.

(2) Speedy Justice: The core objective of the administrative tribunal is to deliver quick and quality justice. Since the procedure here is not so complex, so, it is easy to decide the matters quickly and efficiently.

(3) Less Expensive: The Administrative Tribunals take less time to solve the cases as compared to the ordinary courts. As a result, the expenses are reduced. On the other hand, the ordinary courts have cumbrous and slow-going, thus, making the litigation costly. Therefore, the administrative tribunals are cheaper than ordinary courts.

(4) Quality Justice: If we consider the present scenario, the administrative tribunals are the best and the most effective method of providing adequate and quality justice in less time. Relief to Courts: The system of administrative adjudication has lowered

down the burden of the cases on the ordinary courts.

Drawbacks of Administrative Tribunals

Although, administrative tribunals play a very crucial role in the welfare of modern society, yet it has some defects in it. Some of the criticisms of the administrative tribunal are discussed below

(1) Against the Rule of Law: It can be observed that the establishment of the administrative tribunals has repudiated the concept of rule of law. Rule of law was propounded to promote equality before the law and supremacy of ordinary law over the arbitrary functioning of the government. The administrative tribunals somewhere restrict the ambit of the rule of law by providing separate laws and procedures for certain matters.

(2) Lack of specified procedure: The administrative adjudicatory bodies do not have any rigid set of rules and procedures. Thus, there is a chance of violation of the principle of natural justice.

(3) No prediction of future decisions: Since the administrative tribunals do not follow precedents, it is not possible to predict future decisions.

(4) Scope of Arbitrariness: The civil and criminal courts work on a uniform code of procedure as prescribed under C.P.C and Cr.P.C respectively. But the administrative tribunals have no such stringent procedure. They are allowed to make their own procedure which may lead to arbitrariness in the functioning of these tribunals.

(5) Absence of legal expertise: It is not necessary that the members of the administrative tribunals must belong to a legal background. They may be the experts of different fields but not essentially trained in judicial work. Therefore, they may lack the required legal expertise which is an indispensable part of resolving disputes.

Merging of Tribunals

The Finance Act of 2017 merged eight tribunals according to functional similarity. The list of the tribunals that have been merged are given below:

a. The Employees Provident Fund Appellate Tribunal with The Industrial Tribunal.
b. The Copyright Board with The Intellectual Property Appellate Board .
c. The Railways Rates Tribunal with The Railways Claims Tribunal.
d. The Appellate Tribunal for Foreign Exchange with The Appellate Tribunal (Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976.
e. The National Highways Tribunal with The Airport Appellate Tribunal.
f. The Cyber Appellate Tribunal and The Airports Economic Regulatory Authority Appellate Tribunal with The Settlement and Appellate Tribunal (TDSAT) .
g. The Competition Appellate Tribunal with the National Company Law Appellate Tribunal.

Thus in the present scenario, the administration has become an important part of the government as well as the citizen's life. Due to this increasing role, it is important to establish a competent authority for the redressal of people's grievances and adjudication of the disputes. Therefore, the concept of administrative tribunals was emerged and is dynamically flourishing in India holding certain flaws and strengths.

II. JUDICIAL REVIEW AGAINST DECISIONS OF ADMINISTRATIVE TRIBUNALS

1) Section 28 provides for the exclusion with regard to the matters mentioned within the jurisdiction of Tribunal from all Courts, except that of the Supreme Court under Article 136 of the Constitution. Therefore, the High Courts have no jurisdiction to interfere with the judgment of the Tribunal. Article 136 empowers the Supreme Court, which may in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence, or order in any cause or matter passed or made by any court or tribunal in the territory of India. Appellate power vested in the Supreme Court under Article 136 is not an ordinary appellate power. It is plenary. The Supreme Court has itself set the limit by permitting invocation of this power in very exceptional circumstances, viz. When a question of law of general public importance arises or a decision shocks the conscience of the Court.
2) The Administrative Tribunals Act, 1985 has been amended by the Administrative Tribunals Act, 1986 in which the phrase 'Article 136' has been omitted. It means, now the Supreme Court has appellate jurisdiction under Articles 32 and 136. By the deletion of the reference to Article 136 in Sections 14, 15 and 28 of the Administrative Tribunal Act it is made clear beyond doubt that the Supreme Court's power under Article 32 of the Constitution remain unaffected. The Supreme Court has to decide whether or not even in service litigation involving alleged violations of Fundamental Rights has occurred or not.
3) Jurisdiction of the High Courts under Articles 226 and 227 has also been taken away by Sections 14, 15 and 28 of the Administrative Tribunals Act. Some of the jurists opine that the exclusion of the jurisdiction of the High Courts from the Administrative Tribunals is unjustified. The Andhra Pradesh High Court, in September 1993 interfered with the decision of the Andhra Pradesh Administrative Tribunal. In recent cases, the Supreme Court upheld that the High Courts should entertain jurisdiction over the decisions of redress is clearly, effectively, efficiently pointed out by the statute (here the Administrative Tribunals Act, 1985) and also the statute specifically mentions the jurisdiction of the High Courts under Articles 226 and 227 should be excluded. The jurisdiction of the Tribunal is conferred by the

statutory provisions for the purpose of determining rights, problems of service matters enacted by Parliament, which is the supreme legislative body in the country.

III. THE PRINCIPLES OF NATURAL JUSTICE

The principles of Natural Justice, namely:

1. Rule against bias
   a) Pecuniary Bias;
   b) Personal Bias;
   c) Subject matter Bias.
2. Audi Alterem Partem
   a) Notice.
   b) Fair-hearing.

'Natural Justice' is an expression of English common law, and involves a procedural requirement of fairness.' The principles of natural justice have great significance in the study of Administrative Law. It is also known as 'substantial justice or fundamental justice or universal justice or fair play in action'. The principles of natural justice are not embodied rules and are not codified. They are judge made rules and are regarded as counterpart of the American procedural due process.

Definition

There is no precise and scientific definition of 'Natural Justice'. However, the principles of natural justice are being accepted and enforced. Different judges, lawyers and scholars defined it in various ways.

In Vionet vs. Barrett[25], Lord Esher M.R., has defined it as 'The natural sense of what is right and wrong'. Later, he had chosen to define natural justice as 'fundamental justice' in a subsequent case Hopkins vs. Smethwick Local Board of Health[26] Lord Parker has defined it as 'duty act fairly'. Mr. Justice Bhagwati has taken it as 'fair play in action'. Articles 14 and 21 of the Indian Constitution have strengthened the concept of natural justice.

Basis of the application of the principles of natural justice

The principles of natural justice, originated from common law in England are based on two Latin maxims, (which were drawn from 'jus naturale'). In simple words, English law recognizes two principles of Natural Justice as stated below:

1. Nemo Judex in causa sua or Nemo debet esse judex in propria causa or rule against bias (no man shall be a judge in his own cause)
2. Audi Alteram Partem or the Rule of Fair Hearing (Hearing the other side). '

I. Rule against bias 'or' bias of interest

The term bias means 'anything which tends to or may be regarded as tending to cause such a person to decide a case otherwise than on evidence must be held to be biased'. In simple words, bias means 'deciding a case otherwise than on the principles of evidence'. This principle is based on the following rules/principles.

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[25]. (1885) 55 LJ RB 39
[26]. (1890) 24 QB 713)

i. No one should be a judge in his own cause.
ii. Justice should not only be done, but manifestly and undoubtedly be' seen to be done; and
iii. Judges like Ceaser's wife should be above suspicion.

The above principles make it clear that judiciary must be free from bias and should deliver pure and impartial justice. Judges must act judicially and decide the case without considering anything other than the principles of evidence.

Kinds/Types of Bias

The rule against bias may be classified under the following three heads:

1) Pecuniary Bias;
2) Personal Bias; and
3) Bias as to subject matter.

(1) Pecuniary Bias

Pecuniary bias arises, when the adjudicator/judge has monetary/economic interest in the subject matter of the dispute/case. The judge, while deciding a case should not have any pecuniary or economic interest. In other words, pecuniary interest in the subject matter of litigation disqualifies a person from acting as a judge. Relevant leading case on this point is Dr. Benham's Case[27] Dr. Benham was fined for practicing in the city of London without license of the College of Physicians. According to the statute, the college is entitled to half of the amount, and the remaining goes to the King. Coke CJ. Dis-allowed the claim (fine) on the ground that the College had a pecuniary interest. (Fine against Dr. Benham was dismissed).

The rule of pecuniary bias was laid down in the case of: Dimes vs. D.J. Canal[28] - A company filed a suit against a landowner. Lord Chancellor (Judge), who was a shareholder of the Plaintiff Company heard the case and decided in favor of the company. On appeal, the House of Lords quashed this decision on the ground that 'no man shall be judge of his own cause'.

R. VS. Hendon Rural District Council, Ex parte Charley[29] - In this case, one of the members of the Planning Commission was an estate agent and he was acting for the applicant to whom permission was granted by the Planning Commission. The decision of the Planning Commission granting the permission was quashed on the ground of pecuniary bias.

Jeejeebhoy vs. Asst. Collector[30], in this case, it was found that one of the members of the Bench of the court was also a member of the co-operative society for which the disputed land had been acquired. The Bench was reconstituted. Similarly in Visakhapatnam Co-operative Motor Transport Ltd. vs . G.Bangar Raju[31], in this case, the District Collector as the Chairman of the Regional Transport Authority granted motor permit to the above co-operative Society, to which he was also the president. The Court set aside the Collector's action on the ground of pecuniary bias.

[27]. 8 Co. Rep. 107 77 Eng. Rep. 638

[28]. (1852) 3 HLC 579
[29]. (1933) 2 KB 606
[30]. AIR 1965 SC 455
[31]. AIR 1953 Mad 212

(2) Personal Bias

Personal bias arises from l1ear and dear i.e. from friendship, relationship, business or professional association. Such relationship disqualifies a person from acting as a judge. Relevant Case on this point is: A. K. Kripak vs. Union of India [32], the Supreme Court quashed the selections made by the Selection Board on the ground that one of the candidates appeared before selection committee was also a member of the Selection Board.

Meenglass Tea Estate vs. Their Workmen,[33] in this case, the Manager of the factory conducted inquiry against the workmen who were alleged to have assaulted him. The court disqualified the Manager on the ground of personal bias.

State of U.P. vs. Mohd. Nooh[34], in this case a departmental inquiry was held against an employee and one of the witnesses against the employee turned hostile. The Inquiry Officer, then left the inquiry and gave evidence against him and thereafter resumed to complete the inquiry and passed the order of dismissal. The order of dismissal was quashed on the ground of personal bias.

Mineral Development Ltd. vs. State of Bihar[35], in this case, the Petitioner Company was owned by Raja Kamakshya Narain Singh. The petitioner was granted mining license for 99 years. The license was cancelled by the Minister of Revenue acting under Bihar Mica Act. Raja Kamakshya Narain Singh, the owner of the company had opposed the Minister and filed a criminal case under Section 500 of the Indian Penal Code. The case was political rivalry between the minister and Raja Kamakshya Narain Singh. The cancellation order was set aside on the ground of personal bias.

Kirti Deshmankar vs. Union of India[36], in this case, the mother-in-law of a student selected for the admission to the Medical College was vitally interested in her admission. The mother-in-law was a member of the college and Hospital Council and she participated in the meeting of the Council. On this ground the court held that the selection of the student for the admission to the Medical College was vitiated. The Court made it clear that it was not necessary to establish bias. Reasonable likelihood of bias was considered sufficient to vitiate the selection for admission. In short, for vitiating the decision on the ground of bias, it is not necessary to establish bias. It is sufficient to invalidate the decision if it can be shown that there has been reasonable likelihood of bias.

(3) Bias as to subject matter (Official Bias)

Any interest or prejudice will disqualify a judge from hearing the case. When the adjudicator or the judge has general interest in the subject matter in dispute on account of his association with the administration or private body, he will be disqualified on the ground of bias if he has intimately identified himself with the issues in dispute. To disqualify on the ground there

[32]. AIR 1970 SC 150
[33]. AIR 1963 SC 1719
[34]. AIR 1958 SC 86
[35]. AIR 1960 SC 468

[36]. (1991) 1 SCC 104

must be intimate and direct connection between the adjudicator and the issues in dispute.

Now the question is, whether this principle can be extended to administrative adjudication also. If so, no decision will be free from bias.

Gullampally Nageswara Rao vs. APSRRTC[37], in this case, the Government proposed nationalization of motor transport. Objections for nationalization were referred to be heard by the Secretary to the Government, who upheld the validity of the scheme (for nationalization). It was challenged on the ground that the said Secretary in fact, initiated the nationalization. The Supreme Court held the Government Secretary's action invalid.

K. Chelliah vs. Chairman, Industrial Finance Corporation[38], in this case the disciplinary action against an employee was taken by the Chairman of the Corporation. There was statutory provision for the appeal from the Chairman to the Board of Directors. The Chairman was also a member of the Board of Directors. The Chairman participated in the meeting of the Board in which the appeal was considered.

The order of the Board was quashed on the ground of bias. The presence of the Chairman in the meeting of the Board in which the appeal was considered created a reasonable apprehension in the mind of the party that there was real likelihood of bias.

Lavanya vs. Osmania University,[39] in this case Lavanya wrote B.Sc. (Maths) examinations of Osmania University in 1999. In the result, it was intimated that she failed in Maths. She applied for re-valuation. In re-valuation she passed. She appeared for M.B.A. Entrance Examination in 1999 and qualified for admission. However, Osmania University authorities refused to admit her rejecting her application that she passed in re-va1uation. She sought directions from the A.P. High Court.

The Andhra Pradesh High Court gave judgment on 13-10-1999 in favour of Lavanya and ordered the Osmania University authorities to admit her.

Exception to the rule against bias or the Doctrine of Necessity

When bias is provided, it disqualifies the adjudicator and an impartial adjudicator should replace him. However, there are certain extreme cases in which substitution/replacement of impartial adjudicator is not possible. In such situations, the principles of natural justice, under necessity has to give way. Otherwise the administration of justice breaks down and there is no other means to decide. Though Indian Courts have not expressly adopted it, this doctrine (of necessity) has been impliedly applied in several occasions. In contempt of court, the rule that no one shall be a judge in his own cause is not followed strictly. Similarly, in departmental enquiry in service matters, the employer appoints enquiry officer

[37]. AIR 1959 SC 308 : (1959) Supp. (1) SCR 319
[38]. AIR 1973 Mad. 122
[39]. (1999) A.P 209

and there is every possibility that the enquiry officer acts in favour of the employer.

II. Audi alteram partem 'or' the rule of fair hearing (Hear the other side)

Meaning

The second fundamental principle of natural justice is 'Audi Alteram Partem' or 'The Rule of Pair Hearing'. It means, "no one shall be condemned unheard" i.e. there must be fairness on the part of the deciding authority. According to this principle, reasonable opportunity must be given to a person before taking any action against him.

This rule insists that the affected person must be given an opportunity to produce evidence in support of his case. He should be disclosed the evidence to be utilized against him and should be given an opportunity to rebut the evidence produced by the other party.

Essentials of Fair Hearing

To constitute fair hearing, the following ingredients are to be satisfied:

1) Notice; and
2) Hearing.

(1) Notice

There is a duty on the part of the deciding authority to give notice to a person before taking any action against him. The notice must be reasonable and must contain the time, place, nature of hearing and other particulars. If the notice is defective or vague, all subsequent proceedings '"would be vitiated. Relevant case on this point is:

Punjab National Bank vs. All India Bank Employees' Federation[40], in this case, notice did not contain the charges against which fine was imposed.

The Supreme Court held the notice defective and quashed the fine. Similarly in R. V. University of Cambridge[41] (Dr. Bentley's case) - In this case, the University authorities J without- giving any notice cancelled the degree of Dr. Bentley on the ground of misconduct. The University' action was held violative of the principle of natural justice.

R. vs. Newmarket Assessment Committee [42] in this case the Municipality issued a notice to the house owner stating that it was going to tax the house @ 2,5001 pounds per year, and also stated that if the owner consented to it, he need not attend before 'Assessment Committee'. The house owner did not attend. Later the municipal committee enhanced the tax to @ 4,500 pounds without giving any notice.

The House of Lords quashed the municipal assessment order in the Writ of Certiorari. The object of the notice is to provide an opportunity to the person so that he can equip himself to defend his case. Any order passed without giving a notice is against the principles of natural justice and is void ab initio.

Board. of High School vs. Kumari Chitra,[43] in this case, the petitioner appeared for the examination. But the Board, without

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[40]. AIR 1960 SC 16
[41]. (1723) 1 Str. 757
[42]. 1945 All ER
[43]. AIR 1970 SC 1039

giving a notice cancelled the examination on the ground of the shortage of attendance. The petitioner was not given an opportunity of being heard. The Board contended that giving show cause notice would not serve the purpose since the evidence (shortage of attendance) is borne on the record. The Supreme Court rejected the contention of the Board and held the action violative of the principles of natural justice. The principles of natural justice must be observed irrespective of the reason, whether the purpose would be served or not.

Maneka Gandhi vs. Union of India[44], this is a leading case in personal1iberty under Article 21 of the Indian Constitution. The petitioner, Maneka Gandhi's passport was impounded without giving any opportunity (by the Government of India) in public interest. The Supreme Court held the order of the Government violative of the principles of natural justice, and laid down the following propositions:

1. The adjudicating authority (judge) must be impartial and without any interest or bias.
2. The adjudicating authority, whether judicial or quasi-judicial cannot delegate or sub-delegate its power (the power to decide the case should not be delegated).
3. The adjudicating authority must disclose all the material placed before it and must give reasonable opportunity to the affected interest to submit their case.

(2) Hearing:

Meaning Fair hearing in its full sense means that a person against whom an order to his prejudice is passed should be informed of the charges against him, be given an opportunity to submit his explanation thereto, have a right to know the evidence both oral and documentary, by which the matter is proposed to be decided and to have the witnesses examined in his presence and have the right to cross examine them and to lead his own evidence both oral and documentary in his defence. It is a code of procedure, which has no definite content, but varies with the facts and circumstances of the case.

Ingredients of Fair Hearing

A hearing will be treated as fair-hearing if the following conditions are satisfied:

1. Adjudicating authority receives all the relevant material produced by the individual.
2. The adjudicating authority discloses the individual concerned evidence or material, which it wishes to use against him.
3. The adjudicating authority provides the person concerned an opportunity to rebut the evidence or m~erJa1, which the said authority wants to use against him.

Cooper vs. Wandsworth Board of Works[45], in this case Wandsworth Board of Works was a statutory municipal authority. It had powers to demolish any structure, if it was constructed in breach of the statutory conditions. The plaintiff had proceeded with the erection of a house without consulting the

[44]. AIR 1978 SC 597

[45]. (1863) 14 CBNS 180

Board as required. The Board in turn demolished the plaintiff's house on the basis that he had built it unlawfully. The plaintiff brought this action for trespass on the basis that he had been given no warning as to the action the Board would take.

The Home of Lords held that the Board had acted unlawfully in demolishing the house without first giving the plaintiff an opportunity to be heard.

Spackman VS. Plumstead Board of Works, [46] in this case Plumstead Board of Works was a statutory Body, and it was a superintendent architect fixing the 'general line of buildings' along with the road violation of the rules were liable to be prosecuted. The petitioner constructed his house encroaching some little area of roadside margin area by oversight. The Board demolished the building without giving any notice, and also prosecuted him.

The Court held that both these acts of the Board were unconstitutional and violative of the principles of natural justice.

Ridge vs. Baldwin[47] in this case Mr. Ridge was the Chief Constable of Brighton during 1957-58. During his tenure, there were several complaints and criticisms about his corruption. Trials were commenced against him by the local Watch Committee. He was suspended during the trials. In the trials, no convictions were recorded against him. Even after completion of trials, he was not reinstated into service. The Watch Committee dismissed Ridge from the service in March 1958 under Section 191 (4) of The Municipal Corporations Act, 1882. No specific charges were mentioned in the dismissal order. Ridge represented the Committee by a solicitor. He was not reinstated. He appealed to the Home Secretary, who dismissed the appeal. Finally, Ridge appealed to the House of Lords.

The House of Lords allowed the appeal of Ridge, and opined that the Committee should have informed him of the charges against him, and given him a proper opportunity to be heard, which had not been done.

IV. ADMINISTRATIVE DISCRETION AND ITS REVIEW - JUDICIAL CONTROL

The fundamental principle of rule of law is all authorities and their actions are subject to law. The administrative authorities is discharging their duties may act beyond the power (ultra vires) or abuse the power conferred on them. As a result, individual rights and liberties/freedoms may be affected. Therefore, it is necessary that there should be judicial control/review over misuse of discretionary power of the administrative authorities so that the rights of the people are not adversely affected.

SC Advocates-on-Record Association vs. Union of India[48] The Supreme Court has made it clear that there has to be room for discretionary authority within the operation of the rule of law, even though it has to be reduced to the minimum extent necessary for proper governance. Within the area of

[46]. 1885 QB All ER
[47]. 1964 AC 40
[48]. (1933) 4 SCC 441

discretionary authority, the existence of proper guidelines or norms of general application excludes any arbitrary exercise of discretionary authority. Several methods of control of administrative discretion have been developed e.g. Doctrine of natural justice and fairness, excessive delegation, ultra vires etc.

Administrative Discretion -Meaning and Definition

Meaning

The word 'discretion' implies power to make a choice between alternative courses of action. According to Coke, discretion is a science or understanding to discern between falsity and truth, between right and wrong and not do according to will and private affection. In the words of Mr. Justice Frankfurter, 'Discretion without a criterion of its exercise is authorisation of arbitrariness'.

Definition

Professor Freund: **Administrative Powers over Persons and Property, 1928**.

"When we speak of administrative discretion, we mean that a determination may be reached, in part at least, upon the basis of consideration not entirely susceptible of proof or disproof.

It may be practically convenient to say that discretion includes the case in which the ascertainment of fact is legitimately left to administrative determination'.

Dicey

'Wherever there is discretion, there is room for arbitrariness and that in a republic no less than under a monarchy discretionary authority on the part of the government must meant insecurity for legal freedom on the part of its subject'.

Types of Discretion

Basing on the type of satisfaction, administrative discretion may be classified into -

i. Subjective Satisfaction Type; and
ii. Objective Satisfaction Type.

(1) Subjective Satisfaction Type

Where the statute empowers the administrative authority to set its own limits to determine the criteria for a decision, such type of discretion is called subjective satisfaction type. The expressions like 'if in his opinion', 'if he thinks fit', 'if he deems', 'if he considers' etc. are the good examples of the subjective satisfaction type of discretion.

(2) Objective Satisfaction Type

When the statute which empowers the executive with discretionary power itself imposes defined or ascertainable predetermined criteria, with the help of which the decision maker must make his choice, it is called objective satisfaction type of discretion. The existence of the objective element may be viewed as condition precedent for the exercise or the power e.g.: Section 237(b) of the Companies Act, 1956 empowers the Company Law Board to appoint Inspectors on its own motion, if there are circumstances suggesting the following.

i. Fraud, oppression, or illegality;
ii. Fraud, misfeasance or misconduct;
iii. Inadequate information.

Here discretion of the Company Law Board to appoint Inspectors can be exercised

only objectively when anyone of the above conditions is satisfied.

Judicial Control or Review over Administrative Discretion

The general rule is that courts should not interfere with the actions taken in exercise of discretionary powers by the administrative authorities. While disposing the case 'Westminster Corporation VS. London & North Western Rly. Co. [49] expressed as follows: 'Where the Legislature has conferred the power to a particular body, with a discretion how it is to be used, it is beyond the power of any court to contest that discretion. '

The Supreme Court of India also expressed the similar views in a number of cases, viz. Gopalan vs. State of Madras [50], Lakshanpal vs. Union of India[51] etc.

However, unfettered and vast discretionary powers on the administrative authorities leads to mal-administration, corruption, suppression and atrocities. Therefore, there should be judicial control/review over the decisions given in exercise of discretionary powers by the administrative authorities.

Kinds of Judicial Review

Indian Constitution provides for judicial review. Articles 32 and 226 of the Constitution confer on the Supreme Court and High Courts respectively the power of judicial review to examine the constitutional validity of a law passed by the Parliament or State Legislature.

There are different Kinds of judicial Review over administrative discretion as detailed below

DIFFERENT KINDS OF JUDICIAL REVIEW OVER ADMINISTRATIVE DISCRETION

(A) Failure to Exercise Discretion

1) Sub-delegation;
2) Imposing fetters on discretion by self--imposed rules of policy;
3) Acting under dictation; and
4) Non-application of mind.

(B) Excess or abuse of discretion

1) Exceeding jurisdiction;
2) Irrelevant considerations;
3) Leaving out relevant considerations;
4) Mixed considerations;
5) Mala fides;
6) Improper purpose or Collateral Purpose;
7) Colorable exercise of power;
8) Violation or principles of natural justice; and
9) Unreasonableness

(C) Violation of fundamental rights

(D) Ultra Vires

There are different valid and reasonable grounds, on which the courts can interfere with the administrative discretion. Mainly there are three grounds. They are:

1. Failure to exercise discretion;
2. Excess or Abuse of Discretion; and
3. Infringement or Violation of Fundamental Rights.

(A) Failure to Exercise Discretion

The parent Act confers certain powers on the administrative authority. Such authority

[49]. (1905) A. C. 426
[50]. AIR 1950 SC 27
[51]. AIR 1967 SC 908

should exercise such powers within the limits and bounds mentioned in the parent Act. If he fails to exercise discretionary powers, then the courts can interfere. Generally, there are four circumstances in which failure to exercise - discretion arises.

Those circumstances are

1. Sub-delegation;
2. Imposing fetters on discretion by self-imposed rules of policy
3. Acting under dictation; and
4. Non-application of mind

(1) Sub-delegation

'Ddegatus non potest delegare'. A delegate cannot delegate. A person to whom powers have been delegated cannot delegate them to another.

(2) Imposing fetters on discretion by self-imposed rules of policy

The authority has discretion on certain general policy. But he imposes fetters on policy to be applied by it rigidly to all cases coming before him for decision.

(3) Acting under dictation

The parent Act delegated certain powers upon certain administrative authority. He himself should perform such action. If he seeks the instructions from any other person, or from his superior person, it becomes bad in law. It is known as acting under dictation.

(4) Non-application of mind

Where the discretionary powers are vested in the executive, he must apply it with highest care, diligence, caution and responsibility. He should not act mere mechanically. He should apply his own mind according to the circumstances. If he performs without due care and non-application of mind, then he comes under failure to exercise discretionary powers. It is bad in law.

(B) Violation of Fundamental Rights

When discretionary power is conferred on an administrative authority, it should be exercised according to law. Otherwise, it amounts to abuse of power. It is inferred under the following circumstances:

a) Exceeding jurisdiction;
b) Irrelevant considerations;
c) Leaving out relevant considerations;
d) Mixed considerations;
e) Mala fide;
f) Improper purpose or Collateral purpose;
g) Colorable exercise of power;
h) Violation of principles of natural justice;
i) Unreasonableness.

(1) Exceeding jurisdiction

An administrative authority is required to exercise discretionary power within the limits of the statute. An action or decision going beyond what is authorized by law is ultra vires. For example, if the administrative authority is empowered to control the price of bread it will be in excess of its jurisdiction to control the price of butter. The entire order will be ultra vires and void for exceeding jurisdiction.

Calcutta Electricity Supply Corporation vs. Workers Union[52], in this case, it was held that, if an authority is empowered to award a claim for the medical aid of employees, it will be exceeding in its

[52]. AIR 1959 SC 1191

jurisdiction in granting the said benefit to the family members of the employees

(2) Irrelevant considerations

A discretionary power conferred on an administrative authority by a statute must be exercised on relevant and not on irrelevant or extraneous considerations. It means that the power must be exercised on considerations relevant to the purpose for which it is conferred. If the authority takes into account wholly irrelevant or extraneous circumstances, the exercise of power by the authority will be ultra vires and the action bad.

Thus, in Ram Manohar Lohia vs. State of Bihar[53] in this case under the Defence of India Rules, the authority was empowered to detain a person to prevent subversion of 'public order'. The petitioner was detained with the view to prevent him from acting in a manner prejudicial to the maintenance of 'law and order'. The Court set aside order of detention. In the opinion of the concept of 'law and order' was wider than the concept of 'public order'.

(3) Leaving out relevant considerations

While exercising the discretionary power the administrative authority is expected to take all the relevant factors into consideration. Failure to do so will render the decision invalid. It is very difficult to prove that certain relevant factors were not taken into consideration by the authority, unless detailed reasons are given in the impugned order, from which it can be inferred.

In Rampur Distillery vs. Company Law Board[54] in this case the Company Law Board refused to give its approval for renewing the managing agency of the company on the ground that Justice Vivin Bose Commission had severely criticised the past dealings of the Managing Director Mr. Dalmia. The Court conceded that the past conduct of the Directors was a relevant consideration but pointed out that the Board has failed to take into account their present conduct, which is more relevant to consider the application of renewal of managing agency.

(4) Mixed considerations

Sometimes, it so happens that the order is not wholly based on irrelevant or extraneous considerations. It is founded partly on relevant and existing considerations and partly on irrelevant or non-existent considerations. Judicial pronouncements do not depict a uniform approach on this point.

In Dhiraj Lal vs. Commr. of Income Tax [55] , there was a question before the Supreme Court whether the applicant was liable to assessment or not. The tribunal relying on relevant as well as irrelevant materials held the appellant liable. The Court quashed the order of assessment because of the use of inadmissible material.

In Shibban Lal vs, State of U.P.[56] in this case the petitioner was detained on two grounds. Later the government revoked an order of detention on one of the grounds but

[53]. AIR 1966 SC 740

[54]. AIR 1970 SC 1978
[55]. AIR 1955 SC 271
[56]. AIR 1954 SC 179

continued detention on the other ground. The Court quashed the final detention order.

(5) Mala fide

The expression 'mala fide' means "dishonest intention or bad faith or corrupt motive." When the exercise of discretion is tainted with mala fide the decision is bad and it is liable to be set aside. The person alleging mala fide must prove it, and proving it against the mighty administration is a very difficult task.

In Pratap Singh vs. State of Punjab[57], in this case the petitioner was a civil surgeon and he had taken leave preparatory to retirement. Initially the leave was granted but subsequently it was revoked, and a departmental enquiry was ordered against him and he was placed under suspension. The enquiry was instituted against him on the charge of receiving Rs.16 from a patient in an illegal manner during the period he was working as a civil surgeon and ultimately he was removed from service. The petitioner alleged that all these actions were instigated by the Chief Minister because he had refused to yield to certain illegal demands of the Chief Minister and members of his family. Though there was no direct evidence proving mala fide, the Court has inferred mala fide from the circumstances of the case and quashed the order by issuing a writ of certiorari.

In Sadanandan vs. State of Kerala[58], in this case the petitioner, a kerosene dealer, was detained under the Defence of India Rules with a view to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the life of the community. The petitioner challenged the detention alleging mala fide against the D.S.P. (civil supplies c.ell) that he had made false reports against the petitioner so that he would be eliminated as a wholesale kerosene dealer and a relative of the D.S.P. might benefit by obtaining the distributorship for kerosene. No affidavit was filed by the D.S.P. denying the allegations made against him and the affidavit filed by the Home Secretary was very vague and defective in many material respects. The Court concluded that the detention was tainted with mala fide and the order was quashed by issuing a writ of certiorari.

In Rowjee vs. State of A.P.[59] in this case the State Road Transport Corporation had framed a scheme for nationalization of certain bus routes in western parts of the Kurnool District. This was done as per directions of the Chief Minister. It was alleged by the petitioner that the particular routes were selected with mala fide to take vengeance against the private transport operators of that area as they were his political opponents. The Supreme Court upheld the contention and quashed the order.

(6) Improper purpose or Collateral purpose

If the statutory power conferred on the administrative authority for a particular purpose and if exercised for some other purpose, it is called 'abuse of discretion for improper purpose' and the action may be quashed. In the case of mala fide the action is tainted with personal ill will or malice, but it is

[57]. AIR 1964 SC 72
[58]. AIR 1966 SC 1925
[59]. AIR 1962 SC 962

not so in the case of improper purpose. Even if the action of an authority is motivated by public interest it is liable to be set aside if it was exercised for a purpose not covered by the statute.

In Nalini vs. District Magistrate [60], under the relevant statute power was conferred on the authority to rehabilitate persons displaced from Pakistan as a result of communal violence but it was exercised to accommodate a person who had come from Pakistan on a Medical Leave. The order was set aside.

Similarly, in Ahmedabad Mfg. And Calico printing Co. vs. Municipal Corporation Ahmedabad[61], the relevant statute empowered the Commissioner to disapprove the construction of any building if it contravened any of the provisions of the statute. If the said power is exercised to bring pressure on the company to provide drainage facility to its other existing buildings, the order cannot be upheld.

In State of Bombay vs. K. P. Krishnan[62], in this case the workmen resorted to go slow during the year. On this ground, the government refused to make a reference. The Supreme Court held that the reason was not germane to the scope of the Act and quashed the order.

(7) Colourable exercise of power

Where the discretionary power is exercised by the authority ostensibly for the purpose for which. It was conferred, but in reality for some other purpose, it is called colourable exercise of power. Colourable exercise of power arises when the statute does not prescribe the particular manner in which discretion must be exercised; and the authority exercises the power under the colour or guise of legality.

It is very difficult to draw a dividing line between improper purpose and colourable exercise of power. Both are almost same and the differences if any are only illusory. If the discretion is exercised for an improper purpose, there is colourable exercise of power. Similarly, if there is colourable exercise of power there is improper purpose. It may be submitted that the use of anyone of the phrase improper purpose or colourable exercise may be avoided.

(8) Violation of principles of natural justice

If the administrative authority, while exercising its discretionary power, violates the principles of natural justice, the court can set aside the order/decision of the administrative authority.

(9) Unreasonableness

The administrative authority must use its discretionary power with utmost reasonableness. If it acts without reasonableness, the court can set aside its orders and decision

(C) Infringement or Violation of Fundamental Rights

Part-III of the Indian Constitution containing Articles 12 to 35 confers on citizens certain Fundamental Rights. An administrative authority must exercise its

60. AIR 1951 Ca1.346
61. AIR 1956 Bom.317
62. AIR 1960 SC 1223

discretionary powers in consonance with those rights

In West Bengal vs. Anwar Ali[63], in this case the validity of the West Bengal Special Courts Act, 1950 was challenged, which empowered the state government to refer any offence for trial by a Special Court. According to the preamble of that Act, the purpose of the Act was speedier trial of certain offences. The respondent was tried and convicted by the Special Court. He challenged the validity of the Act on the ground that it was violative of Art. 14. The Supreme Court held the Act invalid on the ground that it confers a wide discretion on the government as there was no yardstick for grouping either of the persons or offences. Moreover the expression 'speedier trial' was too vague, uncertain and indefinite

In Chandra Bhan Singh vs. Bihar[64], in this case the government acquired vast area of land belonging to several persons but released lands owned by a family by way of pure and simple favouritism. The acquisition order was held invalid on the ground of violation of Art. 14

(D) Ultra Vires

The expression 'Ultra vires' means "beyond powers". The discretionary power conferred on the administrative authority must be exercised within the limits. If the administrative authority in exercising the discretionary power exceeds the limits, it is said to be ultra vires. When the limits of the discretion are precisely defined, it is easy to check the excess, but if the discretion conferred is too wide, checking it on the ground of ultra vires is a difficult task. In such cases the limits of the discretion must be ascertained first.

In Gurbachan Singh vs. Bombay[65], in this case the Bombay Police Act authorised two kinds of externment: i) externment from greater Bombay; and ii) externment from the State of Bombay. In the first kind the order of externment must specify the place where (within the state) the externee was to remove himself, whereas in the second type of cases the externee might stay anywhere outside the state. An externment order issued under the first kind asking the externee to leave Greater Bombay and go to Amritsar was held ultra vires the powers conferred.

63. AIR 1952 SC 75
64. AIR 1984 SC 1767
65. AIR 1952 SC 221, see also Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 749

Chapter - VI
COMMISSION OF INQUIRY

NEED

The need for such inquiry, broadly speaking, is to collect the views of the parties to be affected by the exercise of the statutory power, together with the relevant facts and to place them before the Govt. or the authority for its consideration in exercising the power.

*Nelsonville v. Minister of Housing 1962

HOL held that though the statutory authority is not bound to act according to the inquiry report by must exercise his independent view.

TYPES OF INQUIRY

There are two types of inquiry (1) Statutory inquiry & (2) Ad hoc inquiry. In first kind of inquiry the procedure followed as per laid down in the statute, and the party affected by the resulting statutory order must be given notice of the inquiry. While in second kind of inquiry to make some investigation as to any administrative matter of public importance, in order to enable the govt. to obtain facts and other materials involved in such matter i.e. this inquiry is an administrative inquiry, which is not governed by any statutory provisions.

In this topic we are concerned only with the ad hoc inquiry in general, any public inquiry may be ordered by the govt. or Minister, without any statutory provision, to inquire into and report on any matter of public importance i.e. the conduct of official involved in the disposal of certain matters and any person may be authorized to hold such inquiry. He is called as Commission of Inquiry. In India there is Commission of Inquiry Act, 1952 that deals with tribunal or commissions of inquiry separately.

FUNCTIONS OF COMMISSION OF INQUIRY

I. Position in UK

A commission may be set up under the Tribunals of Inquiry (Evidence) Act, 1921, when both the Houses of Parliament resolve that it is expedient so to do to inquire into "a definite matter of urgent public importance". This commission ahs to sit in public unless it would in the opinion of the commission is against the public interest to do so.

It has all the powers of the High Court in the matter of attendance of witnesses, production of documents and the like and witnesses appearing before the Tribunals have the same privileges and immunities as in a court of law.

II. Position in India

In India Commissions of Inquiry Act, 1952 u/s. 3(1) laid down the conditions and provision for the setting up of a Commission of Inquiry to make investigation into any matter of public importance, which has been set up by either the Govt. of India or the State Govt.

It is evident from the provision of sec. 3 that when a resolution is that behalf is made by the Legislatures, the appropriate govt. is bound to appoint a Commission of Inquiry

under this Act e.g. – Tendulkar Commission – to inquire into the affairs of Dalmia.

Some time even in the absence of such a resolution, the appropriate govt. may appoint such commission to make an inquiry into a matter of public importance within its own jurisdiction. In Jagnnath v. State of Orissa AIR 1969 SC 215 the Governor appointed the a commission without a resolution in the State Legislature.

DIFFERENCE BETWEEN JUDICIAL INQUIRY & COMMISSION OF INQUIRY

Sr. No.	Judicial inquiry	Commission of inquiry
I	On the basis of evidences produced by the parties to the litigation.	It can follow own method to find out the truth on the matter referred to it.
II	It has power to make any self-executing order, such as imposition of penalty, any other award of damages etc.	It has no such power its only function is to report its findings to the authority who created it.
III	It is judicial in nature	It is only inquisitorial in nature and not judicial.
IV	To dispose of the matter as per the legal provision.	To investigate into facts, to collect evidence and to make its findings available to the govt.

In Shambhu v. Kedar[66] case it was held that there is nothing to bar a succeeding Ministry from advising the Governor to order inquiry an outgoing Ministry. Nor is there any legal bar to the appointment of an inquiry during the pendency of a suit or prosecution where the subject matter before the Commission is different from that before the Commission.

***SCOPE OF THE FUNCTIONS OF A COMMISSION OF INQIRY**

It has the following scope

1) The inquiry made by a commission of inquiry under the Act of 1952 is not judicial or quasi-judicial inquiry. In Ram Krishna v. Tendulkar[67] SC held that its only function is to investigate facts and record its findings thereon and then to report to the Govt. in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or t o implement the beneficial objects it has in view.
2) It can't passed the order which can be enforced proprio vigour. In Ram Krishna v. Tendulkar[68] the SC held that the commission may make the recommendation to the Govt. as to what measures may be adopted, including punishment for future action as a deterrent for delinquents in future, yet, not being a court, it cannot recommend the taking of

[66]. 1972 AIR 1515
[67]. 1958 AIR 538 19
[68]. Ibid

action by way of punishment of the wrongdoer for past acts, for punishment for wrongs already committed can be imposed only by a court of law.

3) The purpose of inquiry may be (a) to ascertain facts so as to enable the appropriate legislature to undertake legislation relating to a matter of public importance; or (b) to make an administrative investigation into certain facts e.g. – an inquiry into wrongs alleged to have been committed by an individual or a group of individuals, so that appropriate action may be taken in the matter to eradicate the evil or by way of a preventive in future cases.

   In Jagannath v. State of Orissa[69] in this case the SC held that it is legitimate to hold an inquiry for investigation of facts for the purpose of taking appropriate legislative or administrative measure to maintain the purity & integrity of political administration in the State.

4) A matter does not cease to be of public importance merely because the minister who is involved has ceased to hold his office, or because there has been no public agitation over it. This was held in State of J&K v. Ghulam Mohammad[70]

5) It can exercise the ancillary powers –
   i. To collect materials,
   ii. To record its findings on the facts investigated,
   iii. To express its views on the facts so found,
   iv. To recommend future action, as an advisory body,
   v. To permit inspection of documents produced before it, to a party appearing in the matter.

6) The legislature or the executive cannot usurp judicial powers belonging to the courts by setting up a commission of inquiry.

   In State of Karnataka v. Union of India[71] the SC held that a commission of inquiry cannot be set up with the power to recommend the action which should be taken as and by way of securing redress or punishment, the later being functions of a court of law.

7) The SC in State of Karnataka v. Union of India [72] held by (6:1) majority that allegations into the conduct of Ministers of a state government is a matter of public importance which the Union Govt. would be competent to inquire into as the appropriate govt. u/s. 3(1) of the commission of Inquiry Act, 1952. If so in such matter both the Union and State govt. would be entitled to exercise the power under this Act, to appoint parallel commissions. The argument that it would affect the responsibility of the state ministers to the state legislative assembly was turned down on the ground inter alia that the collection of facts through a commission would not affect such responsibility. At the same time the majority observed that the Union Govt

[69]. 1966 AIR 1140
[70]. 1967 AIR 122
[71]. AIR 1978 SC 68
[72]. ibid

should use such power sparingly and not to interfere with the day-to-day working of the state govt. or in a manner vitiated by mala fides. The result of this decision is somewhat intriguing and may be expected to be clarified in some future decision.

8) In State of Gujarat v. Consumer Research Center[73] U/s. 7(1)(a) the govt. has the discretion to discontinue a commission if at any time it is of the opinion that the inquiry was necessary; and the court cannot quash such order in the absence of mala fides.

In Ebrahim v. Susheel[74] it was held that since the commission is simply a fact-finding body, without any power of adjudication, there is no bar to its appointment pending any litigation.

***PROCEDURE FOLLOWED BY THE COMMISSION**

1. Subject to any rules made by the appropriate govt. in this behalf, the commission of inquiry may regulate its own procedure and to decide whether it will sit in private or in public (sec. 8). The commission has the power of a civil court in respect of summoning of witnesses; production of documents, receiving evidence on affidavit and such other powers as may be specified in the notification creating the commission (sec. 4-5).
2. In O'connor v. Waldron case[75] it was held that since a commission of inquiry is an administrative body and not a judicial or quasi-judicial tribunal it is not bound by the rules of evidence. It is not trying any cause between contesting parties and its proceedings are not as formal as in a judicial inquiry. Nevertheless it must be fair and impartial.
3. The commission may proceed on affidavits and there is no scope for cross-examination of any witness by a party likely to be affected by the proceedings of the commission unless a witness gives oral evidence this was held in Ebrahim case 1983.
4. Since the proceedings before the commission is not a quasi-judicial procedure and the commission is a purely fact-finding body there is no question of invoking the rules of natural justice except in so far as they are incorporated in the Act itself e.g. in Sec. 8B-8C of the Act or in the Rules made thereunder this was held in State of Karnataka v. Union of India 1978.

LEGAL STATUS OF THE COMMISSION

1. Not being a quasi-judicial body, the members of a commission of inquiry cannot claim that absolute privilege from defamation which belongs to judicial and quasi-judicial authority.
2. Similarly not being a court the members of a commission of inquiry cannot in the

[73]. (1981) 22 GLR 712
[74]. AIR 1983 AP 69
[75]. [1932] S.C.R. 183

absence of statutory protection claim immunity from contempt of court. But they cannot be held guilty for contempt merely by reason of the fact that the commission has been set up for inquiry into some matter relating to which a suit or other proceeding is pending in a court of law because the scope of the commission and the court are altogether different.

3. Conversely the law of contempt being applicable only to courts of justice and to the judges of such courts (*A.G. v. B.B.C. 1980) and a commission of inquiry not being a court a person cannot be convicted for the offence of contempt of court for offending utterances against a commission of inquiry in the absence of statutory provision in that behalf.[76]
4. It follows that a commission of inquiry in India cannot punish anybody under the contempt of courts Act for violating its own orders.[77]
5. A commission of inquiry is not a 'court' for the purpose of section 195(1)(b) (complaint by court in respect of certain offences) of Cr. P. C.
6. As a statutory body a commission of inquiry is subject to the writ jurisdiction of the High Court under Arts. 226 and 227.[78]
7. On the other hand the commission of inquiry being a temporary body not having continuous sittings where a High Court Judge is appointed as a commission of inquiry he does not demit his office as a Judge or cease to have the power to sit and act as a judge of the High Court whenever he has time to do so.

JUDICIAL REVIEW OF ORDERS OF A COMMISSION OF INQUIRY

I. Position in UK

1. In UK it has been held that where a commission of inquiry is set up by statute its acts and orders would be subject to judicial review on grounds which are applicable to all statutory authorities e.g. ultra vires[79]. Thus the court can and will intervene in the interests of the public if it exceeds its powers as conferred by the statute by doing something or refraining from doing something not intended by the Legislature. It is the business of the court to interpret the statute and to enforce it against the statutory body.
2. The court can also intervene on the ground that the exercise of its statutory power has been unreasonable. Since however the function of a statutory commission of inquiry only to make recommendations as distinguished form any final decision or executive order the court would be slow to interfere with any recommendation made by such commission on the merits i.e. on the ground that the court might have made different recommendations. The court might of course intervene if it is shown that on the material before it no reasonable commission could have come to such conclusion. But the onus lies upon the

[76]. Badry v. D.P.P. [1982] UKPC 1
[77]. Brajnandan v. Jyoti Narain 1956 AIR 66
[78]. Alok v. Sarma 1968 AIR 453 1958
[79]. R. Boundry Commn 1983

applicant heavily to establish such unreasonableness.

3. Another limitation upon the power of judicial review in such a cases is that since the final decision in the matter referred to a commission lies with Parliament itself the court cannot take up the function of Parliament to interfere with the conclusions of the commission on the merits; it can only interfere where the commission has failed to carry out the instructions given by Parliament while creating the statutory commission.

II. POSITION IN INDIA

1. It has been held that the appointment of a commission of inquiry can be challenged on the ground of ultra vires or mala fides[80].
2. U/s. 3(1) of the Act has come up before the courts for interpretation of the conditions specified in the above provisions and it has been held that when an order constituting a commission under this Act is made the party into whose affairs the investigation is directed this Act is made the party into whose affairs the investigation is directed may challenge the validity of the order on the following grounds –
   i. That the conditions specified in sec. 3(1) have not been fulfilled.[81]
   ii. That the order is mala fide but mere existence of political rivalry is not enough.
   iii. That the order is unconstitutional having violated Art. 14 of the constitution.
   iv. That the Act is itself unconstitutional.
   v. That the order is ultra vires e.g. where the charges are vague in which case the reference cannot be said to related to a definite matter of public importance.[82]

CONDITION SPECIFIED IN SEC. 3

I. Matter of public importance,

II. The matter into which the inquiry is to be directed must be one of public importance i.e. – (1) in order to be a matter of public importance it is not necessary that there must be a public agitation in respect of it or a public demand for inquiry & (2) nor does public importance necessarily mean that the matter must involve the public benefit or advantage in the abstract e.g. – public health, sanitation or the like or some public evil or prejudice – flood famine or pestilence or the like.

In Jagganath case[83] it was held quite conceivably that the conduct of an individual person or company may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public importance urgently calling for a full inquiry.

III. The matter or the allegation into which the inquiry is to be directed must be definite as distinguished from being vague.

[80]. State of Karnataka 1978
[81]. State of J&K 1967
[82]. Krishna Ballabh v. Commission of Inquiry AIR 1969 SC 258
[83]. 1969 AIR 215

IV. The party affected may also contend that he should not have been singled out for the purpose of the inquiry where there were other people against whom similar allegations existed[84] *

Exception

1. If there is an allegation of corruption against a particular Minister he cannot contend that an order directing inquiry into those allegations is discriminatory because the acts of the minister were supported by the collective decisions of the council of minister.
2. a minister who is charge with corruption constitutes a class by himself.

***NATIONAL COMMISSION FOR SHEDULED CASTES AND SHEDULED TRIBES.**

Under Article 338(1) of the Constitution as amended by the 65th amendment in 1990, there has been set up a National Commission for the Scheduled Castes and Scheduled Tribes. Its principal functions will be to investigate and monitor matter relating to safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or any other law and to discharge certain other functions laid down in Articles 338(5) of the Constitution.

[84]. Krishna Ballabh v. Commission of Inquiry AIR 1969 SC 258.

Chapter - VII

JUDICIAL CONTROL OF ADMINISTRATIVE ACTION THROUGH WRITS AND OTHER REMEDIES

A person whose right is infringed by an arbitrary administrative action approaches the court for relief/remedy. Administrative Law provides for various kinds of remedies and reliefs to the aggrieved against an illegal administrative action. These remedies are classified as follows:

I. CONSTITUTIONAL REMEDIES:

1. Scope of Articles 32 & 226 of Indian Constitution;
2. Exhaustion of Remedies;
3. Writs:
   a) Hebeas Corpus;
   b) Mandamus;
   c) Certiorari;
   d) Prohibition; and
   e) Quo Warranto.
4. Special Leave to Appeal (Article 136 of the Constitution).

II. CIVIL LAW REMEDIES:

1. Injunction;
2. Declaration; and
3. Damages.

Among the above, Articles 32 & 226; Writs and Special Leave to Appeal (Art. 136) are important from examination point of view. Every student/citizen must know about them irrespective of their appearance in the examination).

I. CONSTITUTIONAL REMEDIES

Scope of Articles 32 and 226

Article 32

Article 32 of the Indian Constitution is a fundamental right placed under Part-III of the Constitution. Art.32 (i) confers a fundamental right to an individual to move the Supreme Court for the enforcement of Fundamental Right. It (Art.32) also confers power on the Supreme Court to issue various 'writs viz. Hebeas Corpus, Mandamus, Prohibition, Certiorari and Quo Warranto for enforcement of the Fundamental Rights.

Article 32 confers on the Supreme Court wide (enormous) powers. Under Article 32, the Supreme Court is empowered to relax the traditional rule of Locus Standi and allow the public interest litigation petitions at the instance of the public-spirited citizens. The Supreme Court can provide relief to bonded labour, under trial prisoners, victims of police torture etc. The Supreme Court awarded exemplary damages by exercising its power under Article 32 of the Constitution in the following cases:

Bhim Singh vs. State of J & K,[85] Bhim Singh, an M.L.A. of J & K Assembly was awarded exemplary damages of Rs.50,000/- by the Supreme Court for unlawful arrest.

Rudul Sha vs. State of Bihar[86], In Rudu1 Shaw's case, an acquitted person who was detained for more than 14 years was awarded exemplary damages ofRs.35,000/-

[85]. AIR 1986 SC 494
[86]. AIR 1983 SC 1086

Sebastian M. Hongray vs. Union of India, [87] similarly, in Sebastian's case, exemplary damages of Rs.1,00,000/- each was awarded to the wives of two persons, who were taken to military camp by the Jawans of the army and the Government failed to produce them before the Court.

Article 226

Article 226 of the Indian Constitution empowers the High Court to issue various writs viz. Habeas Corpus, Mandamus etc. like under Article 32 by the Supreme Court. It (Art.226) also guarantees an individual to move the High Court for enforcement of the fundamental rights, or for any other purpose. Article 226 confers wider power on the High Court. It serves as a big reservoir of judicial power to control administration. Its power under Art.226 cannot be curtailed by legislation. Even if a statute declares an administrative action as final, still it can be challenged under Art.226. Thus, the power conferred on High Court under Art.226 is wider, when compared to the power conferred on Supreme Court under Art.32.

Distinction between 'Art.32' and 'Art.226'

Sr. No.	Article 32	Article 226
1	The right guaranteed under Article 32 can be exercised only for enforcement of the Fundamental Rights.	The right under Article 226 can be exercised for enforcement of the Fundamental Rights and also for any other purpose.
2	Jurisdiction of the Supreme Court under ArU2 is part of Basic structure.	Judicial Review of High Court with respect to Administrative Tribunals and Special Courts forms part of the Basic structure[88]
3	Article 32 itself is a Fundamental	Article 226 is not a Fundamental Right.

Exhaustion of Remedies

Exhaustion of Remedies means when a statute provides any remedy or relief to an administrative error, the aggrieved person shall seek first such remedies as available. This is called exhaustion of remedies. E.g.: Motor Vehicles Act, 1939 (as amended in 1982 and 1988) provided the scheme for issue of permits and also provided remedies for redressal.

Therefore, an aggrieved party shall first seek remedy available under the statute; thereafter, he may resort to court by filing a Writ. Writs are considered as extra-ordinary remedies. Courts refuse to issue writ if adequate remedy is available under the statute.

Writs

Articles 32 and 226 of the Indian Constitution confer writ jurisdiction on Supreme Court and High Courts respectively. Writ is an instrument or order of the court by

87. AIR 1984 SC 1026

88. The State Of Andhra Pradesh & Ors. vs K. Mohanlal & Anr. 1998 (5) SCC 468

which the court (High Court or Supreme Court) directs an individual or official or an authority to do an act or abstain from doing an act.

Writs are classified under the following heads:

a) Writ of Habeas Corpus;
b) Writ of Mandamus;
c) Writ of Certiorari;
d) Writ of Prohibition; and
e) Writ of Quo Warranto.

a) Writ of Habeas Corpus

Meaning

The expression 'Habeas Corpus' is a Latin term. It means have (produce) the body. If a person is detained unlawfully, he or his relatives or friends can move the court by filing an application under Article 226 in High Court or under Article 32 in Supreme Court for the writ of Habeas Corpus.

The Court on being satisfied with the contents therein issues the writ of Habeas Corpus. This writ is in the form of an order directing a person who has detained, to produce that person before the court. He is also asked to let the court know by what authority he has detained that person. If the cause shown has no legal justification, the court orders immediate release of the person detained. The court may also award exemplary damage.

The Supreme Court, in[89], AIR 1983 SC 1086 awarded the exemplary damages of Rs.35,000/- to an acquitted person, who was detained for more than 14 days. Similarly in Bhim Singh vs. State of J & K, AIR 1986 SC 494, the Court awarded the exemplary damages ofRs.50,000/-.

Who can apply for the Writ of Habeas Corpus (Locus Stadii)

The general rule is, the person who is detained can apply, for the writ. But, in certain cases, the application can be made on his behalf by his friends or relatives. However, a total stranger cannot make the petition for the writ of Habeas Corpus.

Scope of the Writ of Habeas Corpus

It is the most effective and speedy remedy in case of unlawful detention. The purpose of the writ is not to punish the wrongdoer, but to protect the personal liberty of the person detained. The burden of proof (that he is under lawful detention) is on the part of the respondent. As it protects the right guaranteed under Article 21, it is called 'Freedom Writ'. It is a writ of right, not discretionary like other writs.

In Sunil Batra VS. Delhi Administration, AIR 1970 SC 1675 - A prisoner addressed a letter to the Court that the Jail Authorities were assaulting another prisoner. The court treated the letter as a petition for Habeas Corpus.

Rudul Sha vs. State of Bihar[90], an acquitted person was detained for more than 14 years. The Supreme Court through Y. V. Chandrachud, C.J. directed immediate release and awarded exemplary damages ofRs.35,000/-

[89]. Rudul Sha vs. State of Bihar (1983) 4 SCC 141

[90]. AIR 1983 SC 1086

Bhim Singh vs. State of J & K[91], Bhim Singh, an M.L.A. was arrested unlawfully. His wife filed an application for Habeas Corpus. Then, the Supreme Court directed immediate release and awarded the exemplary damages of Rs.50,000J- .

b) Writ of Mandamus

Meaning

The expression 'Mandamus' is a Latin term, which means "We Command". Mandamus is a Judicial Order issued in form of a command to any Constitutional, Statutory or Non Statutory authority asking to carry out a public duty imposed by law or to refrain from doing a particular act, which the authority is not entitled to do under the law. It is an important writ to check arbitrariness of an administrative action. It gives positive as well as negative remedy. It is popularly known as the 'Writ of Justice'

Locus Standi or who can file a petition for the Writ

The rule of Locus Standi is strictly followed except in public interest litigation. The petitioner has to prove that he has a right to enforce public duty in his favour.

Authorities to which the writ may be issued

The Writ of Mandamus may be issued against the Government, Semi Government and all public Authorities (Judiciary, Tribunals, Universities, Colleges etc.). In short, it is available ,against all administrative actions.

Conditions

The petitioner seeking the writ, has to satisfy the following conditions:

1. There must be a public duty on the part of the respondent;
2. Such duty must be absolute;
3. There must be specific demand and refusal;
4. Subsisting Duty.

In Gujarat State Financial Corporation vs. Lotus Hotels (P) Ltd., [92] the Corporation entered into an agreement with Lotus Hotels to provide finance for construction of a hotel, and did not release the funds. The Gujarat High Court issued the Writ of Mandamus to release the funds as agree.

Manjula Manjari vs. Director of Public Instructions [93] , in this case, the petitioner applied for the Writ of Mandamus since the respondent, Director of Public Instructions did not include his book in the list of prescribed books. The Orissa High Court refused the petition on the ground that the respondent had a discretionary power to select good books.

c) Writ of Certiorari

Meaning

This writ confers power on the Supreme Court and High Courts, over the lower courts to correct illegality of their decisions.

'Certiorari' is an order or command by the Supreme Court or High Court to an inferior (lower) court or quasi-judicial or administrative body. The inferior authority is directed to transmit the records, to check whether the decision by such authority is

[91]. AIR 1986 SC 494

[92]. AIR 1983 SC 848

[93]. AIR 1952 Ori. 344

illegal or against the principles of natural justice. If it is found illegal, the decision is quashed. But, nothing is Substituted to such decision quashed.

Grounds for issuing the writ

The Writ of certiorari may be issued on the following grounds:

1. Judicial Error or Lack of Jurisdiction;
2. Improper constitution of such authority;
3. If the authority is incompetent;
4. Its jurisdiction is unconstitutional; and
5. Violation of the principles of natural justice.

In A.K.Kripak vs. Union of India[94], the Supreme Court issued the Writ of Certiorari to quash the selection list of the Indian Forest service on the ground that one of the se1ected candidates was the ex-officio member of the selection committee.

Hari Vishnu vs. SyedAhmed[95], the Supreme Court quashed the decision taken by the Election Tribunal on the ground that it ignored certain rules.

d) Writ of Prohibition

The Writ of Certiorari and the Writ of Prohibition have so many common characteristic features, the only difference between the two is:

The Writ of Prohibition is issued to prevent the decision or administrative action in the process, so that it cannot proceed further, while; the Writ of Certiorari is issued to quash the decision already given.

e) Writ of Quo Warranto

Meaning

The Writ of 'Quo Warranto' questions the title as to the holder of an office. The term 'Quo Warranto' means "By What Authority". It is a judicial order asking a person, who occupies public office, to show by what authority he holds the office. If it is found that the holder of the office has no valid title, then the Writ of Quo Warranto is issued to him to oust (vacate) from the office.

Locus Standi (Who can file a petition for the writ)

A petition for the Writ of Quo Warranto can be filed by any person though he is not an aggrieved person.

Conditions for the Grant of Quo Warranto

If the Writ of Quo Warranto is to be issued, the following conditions should be satisfied:

1. The office must be a public office;
2. The office must be substantive in nature (permanent in character and not terminable).
3. The person must be in actual possession of the office;
4. The person must have held the office contrary to law; and
5. Subsequent disqualification:

In K.Bhima Raju vs. State of Andhra Pradesh[96], the Andhra Pradesh High Court quashed the appointment of a Government Pleader on the ground that the rules for the said appointment are not complied with.

94. AIR 1970 SC 150
95. AIR 1955 SC 233
96. AIR 1981 AP 24

The Writ of Quo Warranto cannot be issued if it does not serve any purpose i.e. it is futile.

Lakhan Pal vs. A.N.Ray[97], in this case, the 'appointment of Justice A.N.Ray as the Chief Justice of India ignoring three senior Judges was questioned through a petition for quo warranto. The Supreme Court quashed the petition on the ground that the writ would not serve the purpose since the three senior Judges had already resigned.

SPECIAL LEAVE TO APPEAL (Art.136)

Article 136 of the Indian Constitution empowers the Supreme Court to grant special leave to appeal from any judgment, decree, determination, sentence or order in any matter passed by any Court or Tribunal. The Supreme Court can exercise discretionary power in this connection.

There are number of appeals before the Supreme Court under Article 136 and hence this Article is called 'Lawyers Paradise'.

Grounds for granting special leave

The remedy under Article 136 is extra-ordinary and discretionary, and hence, it is granted in exceptional cases on the following grounds. If the tribunal –

1. has acted in excess of the jurisdiction;
2. failed to exercise its apparent jurisdiction;
3. committed an error of law apparent on the face of the record;
4. acted illegally;
5. violated the principles of natural justice;
6. the decision involved an important question of law.

In view of the increasing number of appeals under Article 136, the Supreme Court suggested the Government (Janata Government) to curtail its jurisdiction under Article 136. But the proposal could not be materialised since lawyers opposed it.

II. CIVIL LAW REMEDIES

In addition to the constitutional remedies stated above, the aggrieved can have the following remedies known as 'Civil Law Remedies'.

1. Injunction;
2. Declaration; and
3. Damages.

1) Injunction

An 'injunction' is an order of the Court of justice directing the defendant to do some positive act or restraining the commission or continuance of some prohibitory act causing injury to the plaintiff. It may be interim (temporary) or perpetual (permanent).

2) Declaration

Declaration of rights of parties by, the Court without giving further relief.

3) Damages

The expression 'damages' means "compensation in form of a certain sum of money, which the injured (plaintiff) is entitled to get for having suffered such injury. There are different kinds of damages namely: Contemptuous damages, Nominal damages, Liquidated, Unliquidated, Exemplary damages etc.

97. AIR 1975 Del. 66

Chapter - VIII

PUBLIC UNDERTAKINGS AND PUBLIC CORPORATIONS

In view of the change in the Government Philosophy from the laissez faire to the social welfare state, there has been tremendous growth and development of public undertakings and corporations. Article 298 of the Indian Constitution empowers the Union of India and states to carry on any trade or business by entering into contracts through its executive power. The trade or business may be carried on by the State/Government through the Public Undertakings or Public Corporations. This lecture covers:

Public Undertakings: Meaning and Classification

When trading of business or social service functions· are carried on by the Government through a Public Corporation/Statutory Corporation, a Government Department or a Government Company, it is called a Public Undertaking. E.g.: Railway Department, State Trading Corporation, State Electricity Board etc.

The Public Undertakings may be classified into the following:

1. Government Departmental Undertakings.
2. Government Companies (Non-statutory public undertakings); and
3. Public Corporations or Statutory Corporation.

1) Government Departmental Undertakings

The main object of these undertakings is development activities. There is no consistent pattern visible in the choice of Government from the various forms of organisations. A large number of public enterprises are run by the Government departments such as Railways, Posts, Telegraphs, Telecommunications etc. under the Ministry of Railway, Industries etc.

2) Government Companies (Non-statutory public undertakings)

Government Companies are non--statutory Public Undertakings registered under the Companies Act, 1956. They are limited liability companies where the government holds the majority share capital. A Government Company is defined under Section 617 of the Companies Act, 1956 in the following terms: "For the .purpose of this Act, 'Government Company' means any Company in which not less than fifty-one per cent of the paid-up Share Capital is held by the Central Government or by State Government or Governments, or partly by the central Government and partly by one or more State Governments and includes a Company which is subsidiary of a government company thus defined".

A Government Company is not a 'State' within the meaning of Article 12 of the Constitution of India [98] . Employees of a Government Company are not government

[98]. Vide Kartick Chandra Nandi vs. W.B.Small Industries Corp., AIR 1967 Ca1.231

servants within the meaning of Article 311 of the Constitution[99].

Since a Government Company is neither a creation of a statute nor State within the meaning of Article 12 of the Constitution, it is not subject to the Writ jurisdiction of High Court under Article 226 of the Constitution (R. Lakshmi vs. Neyveli Lignite Corp. [100] . Nevertheless, a Writ of mandamus would be issued against a Government Company to enforce a statutory or public nevertheless, a Writ of mandamus would be issued against a Government Company to enforce a statutory or public duty required by the statute [101] . Accordingly, the Kerala High Court issued a Writ against a Government Company when it acted in violation of statutory duty imposed upon it by the Import and Export Control Act, 1947 in matters of regulation of import and export in cashewnuts[102].

A number of huge projects are being run as Government Companies rather than statutory Corporations, E.g.: Hindustan Steel Ltd., Heavy Engineering Corporation; Mining and Allied Machinery Corporation; Steel Authority of India; Fertilizer Corporation; Hindustan Antibiotics, Cement Corporation; State Trading Corporation of India etc.

3) Public Corporations or Statutory Corporations

A public corporation may be taken to mean a body created by or under a statute and entrusted with various functions of public importance and owned or controlled by the State. It is an artificial person being created by law having legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession notwithstanding changes in its membership. The public corporation (statutory corporation) has both the features of a Government Department and business company.

Definition:- There is no precise definition to the expression 'corporation' either in the statutes or in the judicial decisions. Public corporation means a body established by or under a statute and is owned or controlled by the state and which is entrusted with various developmental, managerial, or economic functions of public importance.

A Pubic Con oration may be defined as an agency created by a statute of legislature, running a service on behalf of the government, but as an independent legal entity with funds of its own and largely autonomous in management. It has no regular form and no specialised function. It is employed wherever it is convenient to confer corporate personality. In Stkhdev Singh vs. Bhagatram [103] , Mathew, J. the crux of the matter is that Public Corporation is a new type of institution which has sprung from the new social and economic functions of government and that it therefore does not neatly fit into old legal categorie,. Instead of forcing it into them,

[99]. State of Assam vs. Kanak Chandra Dutta, AIR 1967 SC 884

[100]. AIR 1966 Mad. 399

[101]. Praga Tools Corp. vs. C A.Immanuel, AIR 1969 SC 1306

[102]. K.L.Mathew vs. Union of India, AIR 1974 Kerla

[103]. AIR 1975 SC 1331

the latter should be adapted to the needs of changing times and conditions.

Garner rightly enunciates

A Public Corporation is a legal entity established 10rmally by Parliament and always under legal authority, usually n. the form of a special statute charged with the duty of carrying 011: specified governmental functions in the national interest, those functions being confined to a comparatively restricted field, and subject to control by the Executive, while the Corporation remains juristically an independent entity nor directly responsible to Parliament.

In Halsbury' Laws of England a Corporation is defined as 'a body of persons a an office which is recognised by law as having a personality which is distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of he office in question.

A Corporaion is defined in Dhanoa vs. Municipal Corporation, Delli [104] in the following terms:

A Corporation is an artificial being created by law having legal entity entirely sep8"ate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses the capacity as such legal entity of taking, holding and conveying property, entering 1to contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may.

Characteristics

A Public Corporation is a 'hybrid organism', since it contains/comprises of both the features of a Government department and of a business company. A Public Corporation whether created by or under a statute possesses the following characteristic features:

1. A Public Corporation is created by or under a statute. It operates an activity on behalf of the government in public interest. It discharges functions of a government character.
2. A Public Corporation possesses an independent corporate personality. It is a body corporate with perpetual succession and common seal. It can sue and be sued in its corporate name.
3. A Public Corporation has those rights and exercises those functions entrusted to it by its constituent statute by which it is created. Any action of such Corporation not expressly or impliedly authorised by the statute is ultra vires and cannot bind the Corporation. Such ultra vires action has no legal effect whatsoever.
4. A Public Corporation can possess, hold and dispose of property by its corporate name.
5. Depending on the provisions of the statute by or under which a public Corporation is created such Corporation is by and large an autonomous body. The Corporation is its own master in day-to-day management and administration.

[104]. AIR 1981 SC 1395

6. The constituent statute may delegate rule-making power to a Public Corporation. Such rules, regulations and bylaws are binding and enforceable unless they are ultra vires the enabling Act and the Constitution of India.
7. A Public Corporation created by or under a statute is a 'State' within the definition of the term in Article 12 of the Constitution, and therefore, is subject to the Writ jurisdiction of the Supreme Court under Article 32 and of the High· Courts under Article 226 of the Constitution.
8. Employees of a Public Corporation do not hold a 'Civil Post' under the Union or the State within the meaning of Part XIV of the Constitution of India.
9. A Public Corporation is not a 'citizen' within the meaning of Part II of the Constitution and therefore, it cannot claim the benefits of those Fundamental Rights, which have been guaranteed only to the citizens.
10. Since a Public Corporation is neither a department nor an organ of the government, it cannot claim the privilege of the government to withhold documents.

Classification of Public Corporations

Basing on the nature of work undertaken, Public Corporations may be classified into 4 categories as follows:

i. Commercial Corporations;
ii. Development Corporations;
iii. Social Services Corporation; and
iv. Financial Corporation.

The above classification is not watertight and is based on the dominant objective of the concerned undertaking.

1) Commercial Corporations

This classification includes those Corporations, which carryon commercial and industrial functions. State Trading Corporation, Hindustan Machine Tools Ltd., Indian Airlines Corporation and Air India are some of the Commercial Corporations.

2) Development Corporations

Development Corporations are those which encourage national progress by undertaking developmental work in the Country. Oil and Natural Gas Commission, Food Corporation of India, National Small Industries Corporation, Damodar Valley Corporation, River Boards, Warehousing Corporations, National Research Development Corporation Ltd., Rehabilitation Housing Corporation Ltd., etc. are Development Corporations.

3) Social Service Corporations

Corporations which have been created for the purpose of providing certain essential services to the people, like transportation, electricity, communications, energy, etc. are social services Corporations. This objective of such Corporations is to provide services to the community economically and efficiently and earning profits is not the primary aim. Hospital Boards, Employees' State Insurance Corporation, Housing Board, etc. are included under this classification.

4) Financial Corporations

Under this classification one may include such Corporations as Reserve Bank of India, State Bank of India, Industrial Finance Corporation, Life Insurance Corporation of India, Film Financing Corporations, Industrial Reconstruction Bank, Unit Trust of India, etc. These bodies advance loans to institutions carrying on trade, business or industry on such terms and conditions as may be agreed upon.

Reasons for Growth of Public Corporations

Following are the main reasons for the growth and development of the Public Corporations:

i. The main reason for its tremendous growth is the change in the government philosophy from the 'laissez fair' concept to the 'social welfare state'. The multifarious functions of the modem welfare state cannot be discharged through the government departments alone. Thus for doing various functions of the government a number of public corporations have been created.

ii. The Directive Principles of State Policy [Art.38 (b) (c)] which requires the state to adopt a policy towards securing the ownership and control of material resources of the community are 'So distributed as best to serve the common good, and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. To achieve this goal the government has also entered the commercial world through various public corporations.

iii. The Industrial-Policy Resolution, 1948 of the government was strongly in favour of public corporations for the management of state enterprises.

iv. Administrative Reforms Commission, 1967 also recommended the creation of public corporations for government's commercial activities.

Working of public Corporations

The Constitution, structure, functions, powers and duties of the public corporations can be better understood by the survey/study of the actual working of a few public corporations as detailed below:

1) Life Insurance Corporation of India (L.I.C).
2) Reserve Bank of India (R.B.I).
3) State Bank 0 India (S.B.I).
4) Oil and Natural Gas Commission (O.N.G.C).
5) Road Transport Corporation (R.T.C.).
6) State Trading Corporation (S.T.C).
7) Air Corporations.
8) Damodar Valley Corporation (D.Y.C).
9) Rehabilitation Finance Corporation.
10) Broadcasting Corporation of India.

1) Life Insurance Corporation of India (L.I.C)

The Life Insurance Corporation of India has been established by the Life Insurance Corporation Act, 1956 to carry on the business of Life Insurance which has been Nationalised. It is a body Corporate with perpetual succession and common seal. It can acquire, hold and dispose of property. It can sue and be sued.

The Corporation is constituted of such number of persons not exceeding sixteen as the Central Government may think fit to appoint. It has a Central Office and a number of Zonal Offices. It enjoys exclusive privilege of carrying on Life Insurance business in India.

Under the Act, the Corporation is required to develop the business to the best advantage of the community. The Central Government is empowered to give directions in writing in the matters of policy involving public interest. The Corporation shall be guided by such directions.

The Corporation is an autonomous body as regards its day-to-day management and administration. It is an independent institution free from ministerial control as to broad guidelines of policy.

2) Reserve Bank of India (R.B.I)

The Reserve Bank of India was established under the Reserve Bank of India Act, 1934. It was Nationalised in 1948 by the Reserve Bank (Transfer of Public Ownership) Act, 1948. It is a body corporate with perpetual succession and common seal. It is a legal entity. It can sue and be sued. It is managed by a Board of Directors, consisting of a Governor, two Deputy Governors and a number of Directors. The Governor and Deputy Governors are whole-time employees. They are appointed by the Central Government for a term of five years. They receive such salaries and allowances as may be fixed by the Board with the approval of the Central Government.

The Reserve Bank has been given extensive powers over the Banking business in India by the Banking Companies Act, 1949. It is empowered to grant licences without which no Company can carryon Banking business. Before giving such licence, it can inquire into the affairs of the Company to satisfy itself as regards the Company's capacity to pay back to its depositors. It can cancel a licence on the ground that the conditions specified therein had not been complied with.

Broad discretionary powers have been conferred on the Reserve Bank. It determines the policy relating to Bank advances frames proposals for amalgamation of two or more Banks. Representation may be made by it to suspend the operation of the Banking Companies Act. In case of emergency, the Governor of the Bank is empowered to suspend the operation of the Act for 30 days. The Courts have upheld the validity of these broad discretionary powers.

3) State Bank of India (S.B.I)

The State Bank of India was created by the State Bank of India Act, 1955 to carry on Banking business under Government Control. It follows the policies laid down by the Central Government. The Central Government determines the policies in consultation with Governor of Reserve Bank and Chairman of the State Bank. The decision of the Central Government is final on matters of policy in public interest.

4) Oil and Natural Gas Commission (O.N.G.C)

The Oil and Natural Gas Commission has been set up by the Oil and Natural Gas

Commission Act, 1959, for the development of petroleum resources. It is a body corporate and enjoys perpetual succession and common seal. It can sue and be sued. It has power to hold and dispose of property.

The Commission consists of the Chairman and two or more members not exceeding eight. All are to be appointed by the Central Government. Except the Finance Minister, others may be part-time or full-time members. Any member may be removed by the Central Government after giving a show-cause notice and a reasonable opportunity of being heard.

The Commission has its own funds and all receipts of the Commission are credited thereto and expenditures of the Commission are made there from. It also maintains an account with the Reserve Bank of India. With the prior approval of the Central Government, the Commission can borrow money.

The functions of the Commission range from planning, promotion, organisation or implementation of programs for the development of petroleum resources to production and sale of petroleum products it produces. Geological surveys are also conducted by the Commission for the exploration of petroleum. The Commission also undertakes drilling and prospecting operations. The purposes connected with the Commission's work are deemed to be public purposes within the meaning of the aforesaid Act.

5) Road Transport Corporations (R.T.C)

The Road Transport Corporation Act, 1950 empowers State Governments for the incorporation of Road Transport Corporations in which the Central and State Governments are to be properly represented, for the purpose of improving Road Transport facilities, E.g.: Gujarat State Road Transport Corporation.

A Road Transport Corporation is managed by a Chief Executive Officer, a General Manager and a Chief Accountant who are appointed by the State Government for constituting the Corporation. The capital is contributed in part by the Central Government, while the remaining capital is borne by the State Government concerned in proportions as agreed. The capital can be raised by the Corporation by issuing non-transferable shares. The Capital, Shares and dividends arc guaranteed by the Government.

The Corporation is a legal entity and independent of the State Government. It is a body corporate with perpetual succession and a common seal. It can sue and be sued in its corporate name. The employees are public servants within the meaning of Sec.2 1 of the Indian Penal Code, and not Civil Servants within the meaning of Articles 311 of the Constitution.

As regards function, the Corporation is required to provide efficient, adequate, economical and a properly co-ordinate system of Road Transport Services in the Country. It has power to acquire, hold and dispose of property. It can borrow money subject to approval of the State Government.

6) State Trading Corporation (S.T.C)

State Trading Corporation of India is a Government Company. It is wholly owned by the Government. All the shares are held by the

Central Government and two Secretaries of the Government of India.

The object of the Corporation as stated in the memorandum of the association is to organise and undertake generally with the State Trading Countries and also other Countries trade in commodities entrusted to it for such purposes by the Central Government from time to time and undertake the purchase, sale and transport of such commodities in India or anywhere else in the World. It can do various acts for that purpose. Since the Corporation is constituted under the Companies Act, 1956, all the provisions of the Act apply to it. It can be wound up by a competent Court. It is neither a department nor an organ of the Government of India. Its functions are commercial in nature.

7) Air Corporations

The Air Corporations Act, 1953 has established two corporations, called 'Indian Airlines' and 'Air India International'. This Act was enacted with the object to nationalise the existing airlines in India. Each corporation is managed by a Board of Directors and the Chairman of each corporation is appointed by the Central Government.

It is the function of each Corporation to provide safe, efficient, adequate, economical and properly co-ordinate air transport services, whether national or international or both. However, in discharging its duties, each corporation is to act on business principles.

8) Damodar Valley Corporation

Damodar Valley Corporation (D.V.C) has been set up by the Damodar Valley Corporation Act, 1948. The Damodar Valley Corporation is a corporate body having perpetual succession and common seal. It has separate legal entity. The Board of Management consists of a Chairman and two members. They are to be appointed by the Union Government in consultation with the State of the West Bengal and Bihar and they may be removed by the Union Government for incapacity or abuse of position. The Corporation has been established for controlling floods in Damodar River and for utilising the water of Damodar river for irrigation, navigation and generation of electrical energy. For this purpose, the Corporation has been given power to establish experimental institutions and research stations. It can establish and operate laboratories also. The Corporation provides assistance in construction of powerhouses; dams, etc. It also promotes sanitation and economic and social welfare of the Damodar Valley and supplies electricity and water. The corporation has its own funds. Its funds have been deposited in the Reserve Bank of India. The Corporation can borrow money after obtaining the approval of the Union Government. It is a legal person and has power to acquire, hold and dispose of its property and liable to income tax, sales tax, etc. It can sue and be sued in its own name.

9) Rehabilitation Finance Corporation

It has been established by the Rehabilitation Finance Corporation Act, 1948. It has separate legal personality and has perpetual succession and common seal. Its main object is to provide financial assistance on reasonable terms to displaced persons so as

to enable them to settle in business, trade or industry. It has been given wide powers for the recovery of the loans. It is managed by a Chairman and other members appointed by the Union Government. They hold offices during the pleasure of the Union Government. The Advisory Board and Regional Committees extend them assistance to it in the discharge of its functions.

10) Broadcasting Corporation of India

The Central Government declared the constitution of Broadcasting Board of India on November 23, 1997. It is notable that the Broadcasting Corporation of India Act granting autonomy to Radio and Television came into force on September 15, 1997, but even after, the signature of the President, it was kept pending for 7 years and was notified on July 22, 1997.

Although the Board will not be under the control of the Government, even then it is provided in the Act that the Government can issue directions to prevent any special broadcasting or broadcast any special matter.

On account of certain practical shortcomings existing in the Broadcasting Corporation of India Act, the Central Government has made certain important amendments in the Act by issuing an Ordinance on October 31, 1997.

Status of Public Corporations

Public Corporations enjoy juristic and constitutional status as stated below:

A Public Corporation is a juristic person. It possesses a separate and distinct corporate personality. It is a body corporate having perpetual succession and a common seal. It can sue and be sued in its corporate name.

Public Corporations has been recognised in the Constitution of India. As provided under it, the State may carry on any trade, industry, business or service either itself or through a Corporation owned or controlled by it to the exclusion of citizens. The laws providing for State monopolies are also saved by the Constitution.

Rights and Liabilities of Public Corporation

1) Rights

Public Corporation (statutory corporation) has independent legal personality. It is a legal person. It is a body corporate and has perpetual succession and a common seal. Being a legal person, it can own, enjoy and dispose of property in its own name. Being a legal person, it can sue and be sued in its own name.

A Public Corporation is a person but not a citizen. And therefore it can claim the benefit of the Fundamental Rights guaranteed to the every person whether citizen or non-citizen but it cannot claim the benefit of the Fundamental Rights guaranteed only to the citizens.

Thus, being a person, a public corporation can enforce those Fundamental Rights which are guaranteed to all persons whether citizen or not but not being a citizen, it cannot enforce the Fundamental Right guaranteed only to the citizens.

It is to be noted that the Fundamental Rights in Articles 15, 16, 19, 29 and 30 are available only to the citizens while the Fundamental Rights guaranteed by other

Articles are available to the citizens and also to non-citizens. A public corporation is not a citizen and therefore it cannot enforce the Fundamental Rights guaranteed by Articles 15, 16, 19,29 and 30 but being a person it can enforce the Fundamental Rights guaranteed by the other Articles.

2) Liabilities of the Public Corporation

The liability of the Public Corporations may be explained with reference to the following heads:

i. Liability in Contracts or Contractual Liability.
ii. Liability in Torts or Tortious Liability; and
iii. Liability for Crimes or Criminal Liability.

i) Liability in Contracts or Contractual Liability

A Public Corporation can enter into contract. It can sue and be sued for breach of contract. Since a public Corporation is a statutory public undertaking, it can do only those acts which ar:e authorised by the statute either expressly or by necessary implication. If any requirement has been laid down in the constituent statute or in the rules, regulations or bylaws of the Corporation, it must be complied with[105]. Whatever is not expressly or impliedly authorised by the constituent statute can be said to be prohibited and must be held to be ultra vires. The contract, which is ultra vires, is void ab initio and cannot be ratified (Lakshmanswami vs. L.I. c., AIR 1963 SC 1185). No right can be said to have accrued in favour of a private individual and no corresponding duty of a Corporation arises for breach of a contract, which is void.

ii) Liability in Torts or Tortious Liability

A public Corporation can be sued for the torts committed by its servants provided the act is within the powers of the Corporation and that it would be actionable if committed by a private individual. But the Corporation would not be liable if the act of the servant is ultra vires the powers of the Corporation or is such that it could under no circumstances have authorised its servant to commit it. For acts, which are ultra vires, the servant would be personally liable[106].

A state creating a Public Corporation may exclude liability for acts done by its servants in good faith under the Act. For example, Section 28 of the Oil and Natural Gas Commission Act, 19591ay down: "No suit, prosecution or other legal proceedings shall lie against the Commission or any member or employee of the Committee for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule regulation made thereunder".

iii) Liability for Crimes or Criminal Liability

A Public Corporation may also incur liability for offences committed by its servants in the course of employment. However, since it is an artificial person having corporate identity, it cannot be punished with death or imprisonment. It follows that a Corporation

[105]. Cope vs. Thames Rly Co. (1849) 3 Ex 841; British Transport Corpn. v. Westmorland Country Council, (1957) 2 All ER 353

[106]. Lakshmanswami vs. LIC, AIR 1963 SC 1185

cannot be found guilty of an offence for which the punishment is death or imprisonment. A Corporation can also not be held liable for an offence, which can only be committed by a natural person, E.g.: Bigamy.

But a Public Corporation can be held vicariously liable for offences committed by its agents, servants and employees, E.g.: Libel[107], Fraud[108] and Public Nuisance[109].

CONTROLS OVER PUBLIC CORPORATIONS

Public Corporations are established with the objective of promoting economic activity. Since the public corporations are conferred autonomy and enormous powers, there is a possibility for misuse of the power. Therefore, it is necessary to control the public corporation so that the powers of the public corporations are not misused. Such controls are discussed under the following heads:

(a) Judicial Control.
(b) Parliamentary Control.
(c) Government Control, and
(d) Public Control.

A) Judicial Control

A Public Corporation is a juristic person having legal entity to sue and be sued. It is a body corporate with perpetual succession and common seal. Legal proceedings may be instituted by or against a Corporation in its corporate name. Its entity is distinct and separate from government.

Jurisdiction of Courts over a Public Corporation is the same as it is over a private or Public Company, which can sue and be sued like any ordinary person. Accordingly, a Public Corporation is liable for a breach of contract and also in tort for the tortious acts of its servants like any other person. It is bound by a statute.

Traditionally, judicial control on corporation is exercised through the doctrine of ultra vires by declaring an act ultra vires if the corporation exceeds its authority. In practice, however, it may be difficult to invoke the doctrine of ultra vires because in many cases powers of the corporation are so widely described that it may not be possible for the court to declare any particular act of the corporation to be ultra vires. With the passage of time, the courts have been expanding the scope and extent of their control over public corporations beyond the doctrine of ultra vires. The courts have been conscious of the fact that the bodies participating in the administrative process are kept out of their supervision, then there will be arbitrariness in the administration.

In Lakshmanaswami vs. L.I. C. of India, the Company passed a resolution donating a sum of Rs.2 lakhs to a trust from the amount to be paid to the shareholders. Under the Articles of Association, the Company was not authorised to make such donation. The Supreme Court held that the resolution was ultra vires.

In course of time, the Courts have been expanding the scope and extent of their control over public undertakings beyond the

[107]. Triplex Safety Glass Co. vs. Lancegaya Safety Glass Co. (1939) 2 All ER 613
[108]. R. vs. I.C.R.Hanlage (1944) 1 All ER 691
[109]. Campbell vs. Paddington Corpn. (1911) 1 KB 869

confines of the doctrine of ultra vires. The Courts have been conscious of the fact that a 'Welfare State' acts through statutory Corporations and Companies. Thus, Corporation has become a third arm of the government. The functions, which they perform, are otherwise to be performed by the government. Being a creation of State, a public corporation must be subject to the same constitutional limitations as the State itself. Moreover, statutory Corporations and Government Companies are held to be other authorities and as such, State within the meaning of Article 12 of the Constitution. There is no reason why these Corporations should not be subject to the same judicial control as the government itself. However, statutory Corporations are subject to the Writ jurisdiction of the Supreme Court and High Courts[110].

Explaining the philosophy of judicial control of public undertakings in Fertilizer Corporation Kamgar Union vs. Union of India[111] Krishna Iyer, J. observed that Public Sector has assumed great significance in India. Public enterprises are owned by the people and those who run them are accountable to the people. Public enterprises are autonomous and this autonomy is vital to effective business management. But judicial control of public power is essential to ensure that it does not behave in an irresponsible manner. In the words of Justice Iyer: 'The active co-existence of Public Sector autonomy so vital to effective business managements, and judicial control of public power tending to berserk, is one of the creative claims upon functional jurisprudence'. Public Sector occupies the commanding heights of national economy. Accordingly, this sector cannot assert a right to be free from judicial review.

With regard to the judicial control over public corporations is concerned, the question that arises is whether public corporations are state within the meaning Art.12 for the purpose of enforcing fundamental rights against it. Faced with this situation, the courts have extended the notion of state to the public corporations so as to bring them within the bounds of judicial control and increase the extent and effectiveness of judicial control over the public corporations. And as such it is subject to the writ jurisdiction of the Supreme Court under Art.32 and the High Courts under Art.226.

In Rajasthan State Electricity Board vs. Mohanlal[112] the question arose whether the Electricity Board was an authority and hence state within the meaning of Art.12. The Supreme Court held the Board to be state. The reason given by the Court to treat the Board as state were (1) it was created by a statute and (ii) it was carrying on governmental or quasi-governmental functions. Applying the same tests in Sukhdev Singh vs. Bhagatram[113] the Supreme Court held that the Oil and Natural Gas Commission, the Life Insurance Corporation and the Industrial Finance

[110]. R.D.Shetty vs. International Airport Authority, AIR 1979 SC 1628
[111]. AIR 1981 SC 344
[112]. AIR 1967 SC 1857
[113]. AIR 1974 SC 1331

Corporation as a state within the meaning of Art.12.

The Supreme Court continued to attach great importance to the manner of creation of the bodies, in determining their legal status was evident from Sabhajit Tewary vs. Union of India[114] wherein the Supreme Court held that the Council of Scientific and Industrial Research which is a society registered under the Societies Registration Act not to be state. The court held that the society does not have a statutory character.

The question received a detailed examination in R.D.Shetty vs. International Airport Authority of India[115] and the Court held that to determine whether a legal entity is state within the meaning of Art. 12, the main test was to examine the nature of its function and the extent of governmental involvement and control. The fact that it is created by a statute or under a statute would be an irrelevant consideration in determining the question whether it is state. The same view was expressed by the Supreme Court in Ajay Hassia vs. Kalid Mujib[116]. In this case Bhagwati J. said 'it is immaterial for determining whether a corporation is an authority, whether the corporation is created by a statute or under a statute. The test is whether it is an instrumentality or agency of the government and not how it is created. The enquiry has to be not as to how the juristic person (corporation) is born but why it has been brought into existence'

Still, it remains how far can the court go? Apart from applying the constitutional and public law checks, could the court act as a super watchdog? The courts can control the corporation on the broad parameters of fairness in administration, bona fides in action and the reasonable management of public business. A public corporation can be sued for breach of contract under ordinary law. It is vicariously liable for torts committed by its servants just like any other incorporated body. The writ of mandamus will lie against a public corporation for enforcement of statutory duty, such as duty to provide public benefit or facility. In Corporation of Nagpur vs. Nagpur Electric Light & Power Co.[117] mandamus was issued at the instance of Corporation of Nagpur (a consumer) against the respondent, a public utility corporation established for the supply of electricity to the public, to compel it to supply electricity to the Nagpur Corporation.

In Rowjee vs. State of A.P[118] the Supreme Court struck down a scheme prepared by the A.P.S.R.T.C. to nationalise certain road transport routes. There was evidence that the scheme was prepared at the instance of the Transport Minister who had political rivalry with private bus operators whose routes were proposed to be nationalised. The Court viewed the action mala fide and on the ground it struck down the scheme.

[114]. AIR 1975 SC 1331
[115]. AIR 1979 SC 1628
[116]. AIR 1981 SC 487
[117]. AIR 1953 Born. 498
[118]. AIR 1964 SC 1962

B) PARLIAMENTARY CONTROL

Public Corporations are created and owned by the State. They are financed from the funds supplied by the government. They are required to exercise their powers in public intcrest. It is, therefore, necessary for Parliament to exercise control over these Corporations.

The establishment and continuance of the public corporation depend on the statute, which creates it. The statute enacted by Parliament for the creation of the public corporation (statutory corporation) determines the powers and functions of the corporation. The public corporation cannot violate the provisions of the statute, which creates it. It can do only those acts, which are authorised by the statute either expressly or by necessary implication. The act of the public corporation which is not expressly or impliedly authorised by the statute is held to be ultra vires and, therefore, void and cannot be validated by ratification. If the powers are misused and the corporation acts against the interest of society. Parliament which has passed the statute for the establishment of the corporation may supersede or abolish it. Parliament can amend the statute, which has been passed by it for the establishment of the corporation. At the time of amendment of the statute. Parliament gets opportunity to discuss the affairs of working of the corporation. When the bill for the creation of the public corporation is presented in the House for passage, it is debated for a long time and an attempt is made to insert in the bill the provisions or its proper control so that the powers are not misused.

The another method of controlling the public corporation is the provision for laying the rules and regulations on the table of the House of Parliament. Usually the statute creating the corporation contains the provision requiring the rules and regulations made under the statute to be laid before the House of Parliament. However, all the statutes do not contain such provisions. For example, the Damodar Valley Corporation Act does not provide for such laying. The laying provision enables Parliament to scrutinize the functioning of the corporation.

Discussions of annual accounts and reports submitted by the public corporation to Parliament is an important method of parliamentary control of the public corporations. This also provides opportunity to Parliament for discussion on the functioning of the public corporation. However, there is no general, legal obligation on the part of the public corporation to present their budget estimates to Parliament. The real control is exercised by Parliament through its committee.

The most effective Parliamentary control over the affairs conducted by public Corporations is exercised through the Parliamentary Committees. Parliament is too large and busy body and it is not possible for it to probe into details the working of these Corporations. It was in sequel to the recommendations of Menon Committee on Parliamentary Supervision over State undertakings that the Parliament has constituted the Committee on Public Undertakings in 1964. The functions of the Committee are:

a) to examine the reports and accounts of the public undertakings;
b) to examine the reports, if any, of the Comptroller and Auditor General on the Public Corporations;
c) to examine in the context of the autonomy and efficiency of the Public Corporations whether their affairs are being managed in accordance with sound business principles and prudent commercial practices.

The recommendations of the Committee are advisory and therefore, not binding on the government. However, by convention, they are regarded as the recommendations of Parliament, and the government accepts them, and in case of non-acceptance, the Ministry concerned has to give reasons therefore.

C) GOVERNMENT CONTROL (MINISTERIAL CONTROL)

Since Government is the custodian of public interest, it also exercises control and supervision over the affairs of public Corporations. However, government control does not mean governmental interference in the day-to-day working of the Corporation, which is highly destructive of the idea of autonomy necessary for the success of any commercial or service undertaking. There is not any uniform pattern of governmental control over all statutory public Corporations. However, there are various techniques of governmental control in the following shapes:

i. By issuing Directions to the Corporation.
ii. Appointment and removal of members.
iii. Order enquiries.
iv. Financial Control.
v. Rules and Regulations.

(1) **By issuing Directions to the Corporation**:- One of the important methods of Governmental Control of the public corporation is to authorise the Government to issue directives to the public corporation on the matters of policy. For example, the Life Insurance Corporation Act, 1956 provides that in the discharge of its functions under this Act, the Corporation shall be guided by such directions in matters of policy involving public interest, as the Central Government therein shall be final. Similarly, under the Damodar Valley Corporation Act, 1948 the Central Government has been authorised to give directions to the corporation with regard to its policy. The corporation is required to follow this direction. In practice, it is very difficult to distinguish the matters of policy from day to day working of the corporation and usually the Government has upper hand in deciding whether a matter is of policy or not and, therefore, by this method the public corporation may effectively be controlled by the Government

(2) **Appointment and removal of members**:- Generally, the power to appoint and remove the Chairman and the Members of a Public Corporation is vested in the Government by the constituent statute. This is the mosteffective means of control over a

pubic Corporation. rn some statutes, the terms of office of a member is left to be determined by the government. In some case, the government is empowered to remove a member of the Corporation.

(3) **Order enquiries**:- Usually the Government is given power to order enquiries regarding the functions of the public corporation. By this method the misuse of the power by the corporation can be brought into light and such misuse may be checked and suitable action may be taken by the Government. The Government may appoint, through its executive power, a committee or commission to review the working of a public undertaking.

(4) **Financial control**:- The Government's control over the financial matters relating to the public corporation provides teeth to the Governmental control of the public corporations. Generally, the Government is vested with the powers of controlling the borrowing expenditure and capital formation. For example, the Oil and Natural Gas Commission Act, 1956 provides that the Commission can borrow money with the prior approval of the Central Government. Similarly, the Damodar Valley Corporation Act provides that the Corporation can borrow money with the prior approval of the Central Government. The statute creating the corporation may require the corporation to submit to the Government its budget and program for the next year.

(5) **Rules and Regulations**:- Usually the statute creating the corporation empowers the Central Government to make rules to give effect to the provisions of the Act. Sometimes the corporation is empowereJ to make regulations with the prior approval of the Central Government. This also helps the Government in controlling the public corporation.

D) PUBLIC CONTROL

The public corporations are created for the benefit of public and to promote public interest. Their main aim is not to make profit but to promote the public good. They are required to manage their affairs in public interest. They must respond to the opinion of the citizens. A balance between the accountability to the people and autonomy of action should be maintained. Consequently, the mass media may playa significant role in controlling the public corporations. They may expose the corruption and inefficiency prevailing in the management of the public corporations.

The Consumer Protection Act, 1986 makes provisions for the establishment of the Central Consumer Protection Council and the State Consumer Protection Councils. The object of the Councils is to promote and protect the rights of the consumer. The Central Council shall consist of the Minister-in-charge of the Department of Food and Civil Supplies in the Central Government who shall be its chairman and such other members as may be prescribed. The State Consumer Protection Council shall consist of such member or

members as may be prescribed by the State Government. These Councils are expected to be useful in controlling the public enterprises including public corporations in the interest of the consumers. They will be helpful in curbing the growth of corrupt practices.

Chapter – IX

SUITS AGAINST THE GOVERNMENT IN TORT AND CONTRACT, PRIVILEGES IN LEGAL PROCEEDINGS

Articles 299 and 300 of the Constitution deal with Government Liability or State Liability, which may be explained with reference of the following heads:

1. Tortious Liability of the State (Article 300);
2. Contractual Liability of the State (Article 299).

I. TORTIOUS LIABILITY OF THE STATE (Art. 300)

Tortious Liability of the State means 'Liability of the State/ Government for the torts committed by its servants'. 'Tort' means a civil wrong causing injury or damage to another (injured or aggrieved). The injury may be personal, physical, mental or otherwise and the injured party resorts to remedy by an action in civil court. The remedy may be unliquidated damages or injunction or restitution of property etc.

In view of tremendous growth in administrative functions, being discharged by the Government Servants, danger to another's person or property may take place. Then the question arises is: whether the government or State is vicariously liable for the torts committed by its servants? (Vicarious liability means 'liability of one person for the tort (wrong) committed by another).

Underlying Principle

The doctrine of vicarious liability is based on the following two maxims:

1. Qui facit per alium facit per se

It means 'he who does an act through another deemed in law to do it himself. When a person authorises another to perform an act and a tort is committed, while performing the act, the former is liable as if he had committed it himself'.

2. Respondent Superior

It means 'let the Superior (Principal) be liable'. 'If the liability is imposed on a superior/stronger man ignoring the weaker man, the injured party/aggrieved would get appropriate remedy.

Position in England

Earlier, the King (Crown) or the State in England enjoyed complete immunity (i.e. not liable) for the torts committed by its servants. This immunity was given on the basis of the well-known maxim 'The King can do no wrong'. In course of time, with the increase in functions of the Government and expansion of the Governmental machinery, such immunity was found to be impracticable in the interests of justice and social security. Consequently, the Crown Proceedings Act, 1947 was passed, and the immunity was withdrawn. According to Section 2(1) ofthe Act, the Crown is vicariously liable like an ordinary individual or any other employer for the torts committed by the servants.

Position in India

Indian Parliament has not passed any Act like the Crown Proceedings Act,

prescribing the tortious liability of the Government/State. However, Article 300 of the Indian Constitution lays down the provisions relating to the liability of the Government/State for the torts committed by its servants. In India also, the Government/ State is vicariously liable for the torts committed by its servant.

Article 300(1) of the Constitution provides that the Government of India may be sued in relation to its affairs in the like case as the Dominion of India, subject to any law, which may be made by Act of Parliament. However, the position and extent of liability is not clear (uncertain) due to lack of proper legislation. Whenever such situation to prescribe State/Government liability arises, the Courts traced back to pre-constitutional period and followed sovereign, non sovereign dichotomy, enunciated in 1861 in P & 0 Steam Navigation Case[119].

Sovereign Immunity

'Sovereign Immunity' means "exemption (immunity) from liability on the ground of being sovereign". The State or Government is not vicariously liable for the torts committed by its servants (enjoys sovereign immunity) provided the following conditions are satisfied.

1. The tort is committed by the servant in discharge of duty or obligation imposed on him by law.
2. Discharge of such duty, must be in delegation of sovereign power.

Now, the question is what is sovereign power? And what is non-sovereign power? Sovereign and Non-sovereign Dichotomy:- Peacock, C.J. made a distinction between sovereign power and non-sovereign power in the leading case of:

P & O Steam Navigation Co. vs. Secretary of State for India[120], in this case, the plaintiff's servant was travelling in a carriage, driven by two horses through the Kidderpore Dockyard. Due to the negligence of the defendant (Dockyard's) servant, an iron rod hit the plaintiff's servant and the horses and they were injured. In an action by the plaintiff, the defendant Company pleaded immunity on the ground that they were engaged in ship repair process, managed by the East India Company to which sovereign power were accorded. But, Peacock C.J. did not agree with the contention and held the defendant liable.

There is no test or definition to distinguish between sovereign and non-sovereign function. However, those functions, which can alone be undertaken by the State/Government viz. Army, navy, air-force, Administration of Justice, Law and Order etc. are regarded as sovereign functions. There are some other functions like trade, commerce, roads and buildings, transport, communication etc. may be delegated to any private person or an agency, and hence, they are regarded as non-sovereign functions.

Position of State/Government Liability after the Constitution of India

Even after the Constitution of India came into force, the courts followed sovereign, non-sovereign dichotomy in many cases in

[119] (5 Born. H.C.R. Appl. 1)

[120]. (1861) 5 Born. H.C.R. App. 1,

spite of the Supreme Court's decision in Vidyavathi's case[121] in this case Vidyavathi's husband died of an accident having knocked down by a Collector's jeep on official trip. On appeal, the Supreme Court through Sinha C.J. held the State liable without taking into consideration, the Sovereign, Non-Sovereign Dichotomy.

In spite of the Supreme Court's decision in Vidyavathi's Case, the position as to the liability of the Government/State is not certain! clear. Following cases illustrate on this point:

Kasturilal vs. State of Uttar Pradesh[122], in this case, Kasturilal's gold was seized by the police under the suspicion that it was the stolen property. The gold was kept in the Police Malkhana under the custody of a Head Constable. He misappropriated the gold and fled to Pakistan. In an action by Kasturilal against the State for recovery of the Gold or its equivalent value, the trial court dismissed the suit. On appeal, the Supreme Court upheld the Trial Court's decision following the rule of Sovereign; non-sovereign dichotomy laid down in P & 0 Steam Navigation Case.

The above rule was followed by the Supreme Court in: State of Uttar Pradesh vs. Tulasi Ram[123], it is to be noted that to plead the immunity both the conditions stated above are to be satisfied. If either of the two conditions is absent, the State is liable as in the case of Hindustan Lever Limited vs. State of Uttar Pradesh.[124]

Gross negligence by the Servant

The Government/State is vicariously liable for the gross negligence of its servants. In Ramakonda Reddy vs. State[125] the A.P High Court held the State liable to pay compensation. In this case, an under trial prisoner died due to negligence of the prison authorities. The Court viewed that the sovereign immunity could no longer be applicable in cases for violation of the right to life and personal liberty guaranteed under Article 21 of the Constitution.

Existing position in India and the Role of Judiciary

The existing position in India with regard to the Government Liability is not certain. Hence, Gajendra Gadkar C.J. in Kasturilal's_case expressed dissatisfaction over the lawlessness in respect of the State Liability. However, the judiciary by exercising its discretionary power, removed the uncertainty in the following cases:

1. Rudul Shah vs. State of Bihar (AIR 1983 SC 1086).
2. Bhim Singh vs. State of J & K (AIR 1986 SC 494).
3. Sebastian M. Hongray vs. Union of India (AIR 1984 SC 1026).
4. Saheli, A Womell S Resource Center vs. Commissioner of Police, Delhi (AIR 1990 SC 513).
5. In Rudul Shah s Case, an acquitted person was detained in prison for more than 14

[121]. State of Rajasthan vs. Vidyavathi, AIR 1962 SC 933
[122]. AIR 1965 SC 1039
[123]. AIR 1971 All. 162
[124]. AIR 1972 All. 486.
[125]. AIR 1989 AP 235

years. The Supreme Court directed the State to release him immediately and awarded exemplary damage of Rs.35,000/-

6. In Bhim Singh s Case, he was awarded Rs.50,000/- as exemplary damages (by the Supreme Court) for unlawful detention.
7. In Sebastian's Case, two persons were taken to military camp by the army jawans. The Government failed to produce them before the Court. The Supreme Court awarded exemplary damages of Rs.1,00,00/- each to the wives of the said two persons for having undergone torture, mental agony etc.
8. In Saheli s Case, a child of 9 years was beaten to death by the Police. The Supreme Court awarded a compensation ofRs.75,000/- to the mother of the child.

The Government (Liability in Tort) Bill, 1967:- In view of uncertainty as to State Liability, due to lack of proper legislation, the Law Commission recommended the legislation enshrining various provisions relating to State Liability. Consequently a bill entitled 'The Government (Liability in Tort) Bill, 1967 was introduced in Lok Sabha in 1969. But it has not yet been passed into law.

II. CONTRACTUAL LIABILITY OF THE STATE (Art. 299)

A modem welfare State is shouldered with the responsibility of implementing various schemes for the welfare of its citizens. In this connection, the State/Government enters into variety of contracts with the individuals and other agencies. In such situations, state as a party to the contract, is subject to the same contractual obligations, rights and liabilities. However, the State in implementation of the welfare measures, deserves certain privileges and immunities.

Government Contract

A contract entered into with/by the Government/State must fulfill the essentials of a valid contract under Sec.10 of the Indian Contract Act, 1872, and also the conditions/ provisions enshrined under Art.299 (1) of the Indian Constitution. Therefore, a Government contract to be valid the following conditions are to be satisfied.

1. Essentials of a valid contract under Sec.10 of the Indian Contract Act, 1872; and
2. The provisions under Art.299 (1) of the Indian Constitution.

Article 298 of the Indian Constitution empowers the Union of India and States to carry on any trade or business by entering into contracts through its executive power.

Historical Baekground

In England, the Crown (State/ Government) enjoyed immunity (exemption) from liability on the ground of a well known maxim 'The king can do no wrong'. However, such immunity was never enjoyed by the Crown in respect of Contractual Liability.

In Bank of Bengal vs. The United Company (1831) - The Government (East India Company) was held liable for the contractual liability.

But the Government/State was held not liable for contractual liability on the

ground of Sovereign Power in Nobin Chunder vs. Secretary of State (1875) - In England, the Crown Proceedings Act, 1947, abolished sovereign immunity and held the Government liable like an employer or an ordinary individual. In India, according to Sec.79 of the Civil Procedure Code, 1883, the Government is liable in contract like a private individual.

Constitutional Provisions

Art.298 of the Constitution empowers the Government (Union of India and the States) to carry on any trade or business by entering into contracts through its executive power.

Article 299 (1) lays down the procedure for entering into contract by/with the Government. Accordingly, the contract with/by the Government to be valid, the following conditions are to be satisfied:

1. The contract must be expressed to be made by the President or the Governor as the case may be.
2. Such contract must be executed by the person authorised by the President or Governor as the case may be .
3. The contract must be executed on behalf of the President or the Governor as the case may be.

Earlier, the above rules were strictly followed to safeguard the interests of the Government. In course of time, strict adherence to .the above conditions became impracticable. In the interests of the parties contracted with the Government, Courts liberalised the strict compliance of the above rules. However, the Government contract must be in writing and the oral contract is not enforceable.'

The Government contract to' be valid, no formal agreement is essential. In Union of India vs. A.L.Rullia Ram[126], the defendant Government servant, the Chief Director of Purchase issued tenders for purchase of certain quantity of cigarettes and the plaintiff's tender (quotation) was accep.ted and signed by the Chief Director. But, no formal agreement was entered into for the purchase. The plaintiff sued the Government for specific performance of the contract. The defendant (Government) contended that the contract was not enforceable since there was no formal agreement. The Supreme Court denied this contention and held in favour of the plaintiff that the contract was enforceable.

1. The contract must be in the name of the President or Governor:- The Government contract to be valid and binding, it must be made in the name of the Governor in case a contract by the State .and the President in case a contract by the Union of India.
2. Person Authorised:- The Government contract to be valid, it must have been entered into by the person so authorised by the President or Governor as the case may

   Such authority may be expressed or implied.! A contract under an implied authority is valid and enforceable as in the case of: Bhikraj Jaipuria vs. Union of India, AIR 1962 SC 113 - A Contract for

[126]. AIR 1963 SC 1685

supply of large quantity of food grains was entered into between the plaintiff and the defendant Government's servant, the Divisional Superintendent, Eastern Railways. But, there was no express authority to the Divisional Superintendent to enter into such contract. The plaintiff supplied the food grains and the same was distributed to the employees, and a part of the amount also was paid. In an action for payment of the balance, the defendant Government was held liable, on the ground that the Divisional Superintendent had an implied authority to enter into the contract.

3. On behalf of the President or the Governor: The Government contract to be valid, it must have been entered into by the person so authorised on behalf of the President or Governor as the case may be and it must be made in the name of the President or Governor as the case may be. Otherwise, it is not valid.

Karamshi vs. Bombay[127], in this case, an agreement for supply of canal water for irrigation purposes was entered into between the plaintiff and the P.W.D. Minister, through some letters. But, there was no formal agreement to that effect i.e. in the name of the Governor. The Supreme Court held the contract void, and not enforceable.

This view was followed in D. G. Factory vs. State of Rajasthan[128], and Punjab vs. OPB.Krishnan[129].

Article 299 (1) - Mandatory and no Ratification

For the validity and enforceability of a contract entered into with/by the Government, the provisions of Article 299 (1) of the Constitution are to strictly complied with and are mandatory. Any contract, violating these provisions is defective, and cannot be ratified by the Government (as laid down in Mulchand vs. State of Madhya Pradesh).

No personal liability to the Governor/President (Art.299 (2)

Article 299 (2) protects the President and Governor from personal liability arising out of such contracts.

III. PRIVILEGES AND IMMUNITIES OF GOVERNMENT IN LEGAL PROCEEDINGS (GOVERNMENT PRIVILEGES)

The word privilege literally means 'a special right/benefit or advantage conferred by virtue of one's position'. The expression 'Government privilege' in the present chapter denotes immunity (exemption from liability) of the Government from judicial proceedings.

Earlier, state was not liable for the torts committed by, its servants. This immunity from tortious liability was enjoyed by the state under the doctrine 'The king can

[127]. AIR 1964 SC 1714

[128]. AIR 1971 SC 141

[129]. AIR 1988 SC 2149

do no wrong'. The immunity enjoyed by the state is called' Sovereign Immunity'. Now the state is regarded as any other employer and is vicariously liable for the torts committed by its servants subject to certain conditions.

Position in England

Earlier, the king or the state enjoyed immunity from tortious liability. 'With the increase in functions of the state and expansion of the Government Machinery, such immunity is not possible in the interests of justice. Hence, the British Parliament enacted 'the Crown Proceedings Act, 1947' which provides for Government liability.

Position in India

There is no enactment like the Crown Proceedings Act prescribing tortious liability of the State. However, Art.300 of the Indian Constitution lays down the provisions relating to the liability of State or Government for the torts committed by its servants. In India, the state or the Government is vicariously liable like an individual or an employer in respect of the torts committed by its servants. However, the existing position in India is not satisfactory.

GOVERNMENT PRIVILEGES

As stated above, in public law litigation, the principles and rules of law, which are applicable to an individual are also applicable to the Government as a party to the legislation. However, there are certain circumstances, some privileges and immunities are granted to the Government in a litigation as stated hereunder:

1. Privilege as to Notice Under Section 80 (1) of the Code of Civil Procedure 1908.
2. Privilege to withhold documents Under Section 123 of the Indian Evidence Act 1872.
3. Immunity from the Operation of Statutes; and
4. Immunity from Estoppel.

1) Privilege as to Notice Under Section 80 (1) of the Code of Civil Procedure 1908

Section 80 (1) of the Code of Civil Procedure 1908 provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered in the manner provided in the section. This section is mandatory and admits of no exception. Thus, the requirement of notice is mandatory. However, it is to be noted that if a public officer acts without jurisdiction, the requirement of notice is not mandatory. Its object appears to provide the Government or the public officer an opportunity to consider the legal position thereon and settle the claim without litigation.

The Government may waive the requirement of notice, the waiver may be express or implied.

The requirement of notice causes much inconvenience to the litigants specially when they seek immediate relief against the Government. State of Orissa vs. Madan Gopal, AIR 1952 SC 12, may be mentioned to illustrate the difficulties created by this rule. In this case, the Government notified to the lessees of mines that their leases had become void. The lessees were directed to remove their

assets within a fortnight. The lessees wanted to file a suit for injunction but the rule of compulsory notice created difficulty and therefore they filed a petition for the issue of the writ of Mandamus. The High Court granted the said writ on the ground that the alternative remedy available to the petitioners was not adequate and directed the State Government that it should not disturb the possession for three months, during which the petitioners could file suit after complying with the requirement of the notice as provided under Sec.80 of the C.P.C. But the decision of the High Court was reversed by the Supreme Court on the ground that it was erroneous.

The Law Commission has also recommended the abolition of this rule because it causes great inconvenience to the litigants especially when they seek immediate relief against the Government.

To minimise the hardships to the litigants, a new Clause (2) was inserted in Sec.80 of the C.P.c. by the Civil Procedure Code Amendment Act, 1976. The clause provides that the Court may grant leave to person to file a suit against the Government or a public officer without serving the two months' notice in case where relief claimed is immediate and urgent. Before granting this exemption the Court is required to satisfy itself about the immediate and urgent need.

It is to be noted that Sec.80 of the c.P.C. does not apply to a suit against a statutory Corporation. Consequently, in case the suit is filed against the statutory Corporation. Consequently, such notice is not required to be given in case the suit is filed against the statutory Corporation.

Section 80 does not apply with respect to a claim against the Government before the claim Tribunal under the Motor Vehicles Act.

Section 80 of the C.P.C. does not apply to a writ petition against the Government. Therefore, m case a writ petition is filed against the Government or a public officer, the requirement of notice as provided under Sec.80 of the C.P.C.. is not required to be complied with.

Section 80 of the C.P.C.also provides privilege to the Government. According to this section, where in a suit by or against the Government or by or against a public officer a decree is passed against the Government or the public officer, a time shall be specified in the decree within which it shall be satisfied and if the decree is not satisfied within the time so specified and within three months from the date of the decree, where no time is so specified, the Court shall report the case for the orders of the Government. Thus, a decree against the Government or a public officer is not executable immediately. The Court is required to specify the time within which the decree has to be satisfied and where no such time has been specified, three months from the date of the decree will be taken to be the time within which it is to be satisfied. If the decree is not satisfied within such time limit, the Court shall report the case for the orders of the Government.

2) Privilege to withhold documents Under Section 123 of the Indian Evidence Act, 1872

Section 123 of the Indian Evidence Act, 1872 provides that no one shall be permitted to give any evidence derived from unpublished official records relating to any affair of State, except with the permission of the officer at the HEAD OF THE Department concerned who shall give or withhold such permission as he thinks fit., Only those records relating to the affairs of the State are privileged, the disclosure of which would cause injury to the public interest. To claim this immunity, the document must relate to affairs of State and disclosure thereof must be against interest of the State or public service and public interest must be so strong as to outweigh the private or any other interest. For the application of this section there must be unpublished official record relating to the affairs of the State and attempt by someone to give evidence derived from such records. In such conditions, such evidence cannot be permitted to be produced except with the permission of the officer at the Head of the Department concerned. The Head of the Department can give or withhold such permission. He has been given discretion in this matter.

The privilege extends to the confidential official communication under Sec.l24 of the Indian Evidence Act. Section 124 provides that no public officer shall be compelled to disclose communication made to him in official confidence when he considers that the public interest would suffer by the disclosure. For this purpose the communication which is required to be disclosed must have been made to the public officer in public confidence. The Court has power to decide as to whether such communication has been made to the officer in official confidence. For the application of Section 124, the communication is required to have made to a public officer in official confidence and the public officer must consider that the disclosure of the communication will cause injury to the public interest.

Position in England

Sec.123 of the Evidence Act is based on the English principle that the Crown has the privilege not to produce any document if the disclosure will affect public interest. In Duncan VS. Cammell Laird and Co. Ltd. Case[130] , the submarine 'Thetis' sank during trial run and ninety-nine people on board died. The dependants of the deceased filed a suit for compensation against the contractor who built the ship on the ground of negligence. The plaintiffs asked the contractor to produce certain documents concerning the design of the submarine. The Minister filed an affidavit claiming privilege on the ground that the production will affect public interest. The Court held that the Minister's affidavit cannot be challenged. If the Minister claims certain document as confidential and the production will affect the interest is of the public then that claim is conclusive. The Court observed that the test of public interest is (1) by having

[130]. 1942 AC 624

regard to the contents of the document in question, or (2) by the fact that the document belonged to a class which must be withheld on the ground of public interest.

The above decision was overruled by the House of Lords in the case Conway VS. Rimmer, 1968 1 AllER 874 - In this case one police constable sued the superintendent of police for malicious prosecution. The plaintiff demanded the production of certain documents before the court. The department claimed privilege. The court declared that the statement by a minister cannot be accepted as conclusive. The Court can decide whether the production is injurious to public interest or not. The decision in Conway case is the law in England with regard to the privilege of the Crown to withhold documents.

Position in India

The scope of Sec.123 of the Evidence Act was examined by the Supreme Court in Punjab v. Sodhi Sukhdev Singh Case[131], the respondent, who was a district judge was dismissed from service. He made a representation against his removal. After consulting the Public Service Commission, the Government decided to appoint him in some other post. This was challenged before the Court. The plaintiff demanded the production of the minutes of the Cabinet meeting.

The Government claimed privilege on the ground that it will be injurious to public interest. But it can make a preliminary inquiry whether the production of the document involves a question of public interest or not. It was held that the Court cannot look into the document having reference to the affairs of the State. It can see only the validity of the objection. It was further held that the minutes of the meeting of the Council of Ministers need not be produced. The reason was that it would affect the freedom of expression of the ministers while carrying out the policies of the Government.

The decision in Conway v. Rimmer influenced the Indian courts also. The courts were not ready to follow the decision in Sukhdev Singh's case in its later decisions. In State of Kerala vs. Midland Rubber Produce Co., Case[132] the High Court rejected the claim of privilege after examining the documents. Referring to Conway case it was held that the court can see whether the disclosure will affect public interest or not. Similarly in Indira Gandhi vs. Raj Narain Case,[133] the Supreme Court disallowed the claim of privilege not to produce the Blue Book. In s.p Gupta vs. Union of India Case,[134] the Supreme Court held that the government cannot claim privilege with regard to the production of certain reports. The law provides that the chief justice of the High Court and the Supreme Court must be consulted by the Law Minister with regard to the appointment of an additional judge. Here the question was whether these reports are to be produced before the Court or not. The court held that no privilege can be claimed.

[131]. AIR 1916 SC 49

[132]. AIR 1971 Ker. 228
[133]. AIR 1975 SC 2299
[134]. AIR 1982 SC 149

3) Immunity from the operation of statutes

In England the Crown enjoys the privilege that it is not bound by a statute unless it is expressly provided. This law was accepted in India also. In Director of Rationing vs. Corporation of Calcutta Case,[135] the Calcutta Municipal Act 1923 prohibited storing rice, flour, etc. without a license. The Director of Rationing was sought to be prosecuted for storing these commodities without a license. The question here was whether the State was bound by the statute. The Supreme Court held that the state would not be bound by a statute unless it was laid down expressly. It was observed that the old common law principle is adopted in Indi;] But the above decision was overruled by the Supreme Court in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Corporation of Calcutta Case,[136] the Court held that the state is bound by the statute unless it is expressly exempted.

4) Immunity from Estoppel

Meaning & Definition

The expression Estoppel is derived from the French word 'Estoup' which means, "shut the mouth". When a person tells us something, we generally hear him. If he says something different or contradicting, we would not hear any more, and contradict such statement. Otherwise, we shall comply with' E.g.: A, intentionally and falsely tells B that, he is the owner of certain land and induces him (B) to purchase and pay for it. Later, A happens to become the owner of the said land. Then A cannot set aside the sale on the ground that he did not have title at the time of the contract for sale. In other words, A cannot estop B for execution of the contract of sale.

When a person by declaration (act or omission) makes/induces another to believe a thing, he cannot deny its truth subsequently. The other person cannot be estopped from proceeding upon such declaration. Estoppel is a rule of evidence, by which a person is not allowed to plead the contrary of a fact or state of things, which he has formally asserted as existing.

Section 115 of the Evidence Act embodies the principle of Estoppel.

It runs as follows:

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

Basis, object and underlying principle

The principle of estoppel is based on the principle of equity and good conscience. The object of the principle of estoppel is to prevent fraud and to manifest good faith amongst the parties. This principle is enshrined in the maxim 'Allgans Contraria Non Est Audiendus'. It means, "a man alleging contradictory facts ought not to be heard".

Immunity from Estoppel

The administrative authority is vested with large discretionary powers. As a result the

[135]. AIR 1960 SC 1355
[136]. AIR 1967 SC 997

Government may make some prior pronouncement of its policies or it may give some advice or promise to an individual. The question here is whether the Government is bound by those pronouncements or promises. In other words whether the rule of estoppel is applicable to the government or not.

Estoppel means that a party is prevented from denying the existence of some facts, which he had previously admitted and on which the other party had relief or entitled to rely. In India the courts reluctant to apply the rule of estoppel against the Government, formerly. There are so many cases to assert the above point. In Amer Singh vs. Rajastan Case,[137] the Supreme Court refused to apply the principle of estoppel. Here the petitioner argued that the Collector had made certain promise that the petitioner's jagir would not be taken during his lifetime. The Court held that the Government cannot be estopped on the ground of the promise made by the Collector. Similarly in Sankaranarayan vs. Kerala Case,[138] the Supreme Court refused to apply the principle of promissory estoppel. Here the Government extended the age of retirement on the basis of an agreement between the Government and the employees. But again the retirement age was lowered through another ordinance. Held that the power under Art.309 cannot be curtailed by applying the principle of estoppel.

In India vs. Anglo Afghan Agencies Limited Case,[139] the Supreme Court applied promissory estoppel against the Government. The Central Government notified in the Gazette an export promotion scheme under which an exporter will be entitled to import raw materials equal to the amount, which is exported. The petitioner exported 5 lakh rupees worth of goods, but he was given import license for an amount below 2 lakh rupees only. This was challenged before the court. The Court held that the Government is bound to keep its promise and the petitioner is entitled to get the benefit of the scheme. This case is considered to have created a new judicial trend. The above decision was followed in Motilal Padampat Sugar Mills vs. U. P. Case,[140] the Government assured through newspapers that the Government will give tax exemption for three years to new industrial units. Later the Government retreated from its earlier assurance. The court held that the Government was bound by its assurance. But the effect of the above decision was diluted by the Supreme Court in lit Ram Siv Kumar vs. Haryana Case,[141] a municipality resolved not to collect octroi duty on certain items. Later it changed its mind and levied octroi. The court held that the municipality could not be estopped because the decision not to levy octroi was ultra vires its power. In M.P vs. Orient Paper Mills Ltd., Case, [142] - The Government was held to be bound by its assurance to grant electricity duty exemption on the basis of the principle of promissory estoppel.

[137]. AIR 1965 Raj 160
[138]. AIR 1971 SC 1897
[139]. AIR 1968 SC 718
[140]. AIR 1979 SC 621
[141]. AIR 1980 SC 1285
[142]. AIR 1990 SC 176

Promissory Estoppel

The rule of 'Promissory Estoppel' is recognised by the courts of Equity in England. It is also known as 'Requisite Estoppel' or 'New Estoppel'. It does not come within the meaning of Sec. 115 of the Evidence Act. It relates to future promises (Sec. 115 relates to existing facts). Where a person makes a promise to another thereby induces him to do an act to alter his position; the person promised is estopped from denying the truth of that promise.

The concept of promissory estoppel was involved for the first time in India in the case of: M.P. Sugar Mills v. State of UP Case,[143] in the instant case, the Government through the Chief Secretary announced categorical assurance for total exemption from Sales Tax. Basing on this promise, the defendant set up a hydro generation's plant by raising huge loan. Later, the Government changed its policy and announced the exemption of Sales Tax @ 3%, 2.1/2% and 2% for the 1st, 2nd and 3rd years respectively. The Tax exemption was completely withdrawn later, when the defendant's factory started its production. The Supreme Court held that the Government was bound by its promise and directed to give exemption to the defendant's company.

In Ashok Kumar Maheswari vs. State of UP Case,[144] there was provision for only direct appointment to the post of Lecturer in Medical College. There was no avenue for promotion from the post of demonstrator to the post of Lecturer. Appellants pleaded that the State Government had assured that they would be promoted to the post of lecturer. The contention was rejected on the ground that there could be no promissory estoppel against provisions of law.

Burden of proof

Burden of proving estoppel lies upon the party who claims estoppel. He has to prove the ingredients of Section 115 of the Evidence Act for this purpose.

[143]. AIR 1979 SC 621
[144]. AIR 1998 SC 966

Chapter – X

THE CONCEPT OF OMBUDSMAN, OMBUDSMAN IN INDIA – THE LOKPAL AND LOKYKTA

The necessity of ombudsman

The concepts of ombudsman arise or developed due to the inadequacy of judicial control over the administration. E.g. Sir John Whyatt in his book 'International Commission of Jurists' (1962) said that the opportunity & scope for judicial review of administrative decisions is very meager except in the few cases where there is statutory provision for an appeal to an administrative tribunal.

Also in the sphere of constitutional protection in form of judicial review is limited as it only ensuring the minimum standard of justice or fair hearing & there is no means of correcting an erroneous decision on facts or investigating into complaints of misconduct inefficiency, delay, negligence or the like against official.

In such a cases only remedy to an aggrieved citizen is to persuade the concerned minister if he is accessible or to draw his attention by raising question in parliament to which he is responsible. But this is also very difficult to recourse this remedy as it is very difficult to private person to bring motion of confidence against such minister or as he belongs to majority party it is difficult to inquire against him for misconduct or any other charges.

Thus as above two system i.e. Judicial review & party system of tradition pattern failed to provide relief to aggrieved to think of alternative or additional institution to control wrong decisions maladministration or corruption of public official.

The government finds the following alternatives.

The Conseil d'Etat under the French system of Droit Administratuf, it Administrative judiciary provide for bringing all Administration Authority before it therefore conseil d'Etat. It is not judicial body, it composed of experienced member of the civil service, and it has got both Advisory & Judicial power it can quash an administrative decision & award compensation to the aggrieved citizen. It has not only power to advise the government on question of policy & Administration in general but also to entertain complaints against the administration directly from the aggrieved citizen.

Procedure

On receipt of complaint the conseil can require the official or minister to Justify his act.

This conseil not only see the administration observes the highest standard of behavior but also to see whether they arrive at a 1) correct decision or 2) reasonable decision 3) observe fair & formal procedure.

Therefore if the Administrative Authority fails to satisfy any of above standard the conseil may quash it and award compensation to the citizen aggrieved.

Office of Ombudsman

The other alternative is the Swedish system of ombudsman i.e. the grievance man or a commissioner of the administration.

Difference between Conseil d'Etat & Ombudsman

Sr. No.	Ombudsman	Conseil d'Etat
1.	He has not reviews all the Administrative Authority and also not having power to enforce its decision	He has power to review all the Administrative Authority and also not having power to enforce its decision
2.	He has having independent advisory authority	He has not only having independent advisory but also judicial authority.
3.	He cannot quash not enforce its own decision.	He can quash as well as enforce his own decision.
4.	He only makes investigation & give recommendation for action to the Parliament.	He can make investigation & take action on its own.

The office of ombudsman was set up in Sweden over one & a half century ago (1809) & that's why then it has been adopted in many countries like Finland (1919), Denmark (1954), Norway (1960), New Zealand 1962), Mauritius (1966) Guyam (1966) & U. K. (1966).

I. Position of ombudsman in England

Franks committee rejected the suggestion to introduce the French system of 'droit admistratif' & suggested for the appointment of a parliamentary commissioner of the Scandinavian type, which had initially been made by jurist, but eventually the office of the parliamentary commissioner for administration has been created by Legislation, namely, the parliamentary commissioner Act 1987.

Status

Independent like the comptroller & Auditor General & has got statutory powers.

Appointment

By crown & cannot be dismissed except by a motion in parliament.

Salary

The salary & pension are charged on the consolidated fund.

He is an ex-officio member of the council on Tribunals, set up under the Tribunals & Inquiries Act 1958.

Power.

To entertain any complaint of a subject as regards his relationship with the Central Government. The commissioner can't, however entertain a complaint direct from a citizen; it must come through a member of the House of Commons.

In following matter he has not power to entertain the complaint.

1) Diplomatic Affairs.
2) Foreign Diplomatic Affairs.
3) Matters affecting the security of the state or

4) Personnel in the civil service
5) Personnel from Armed forces.
6) Investigation of crime &
7) A matter, which is justifiable & redress through the courts is available.

Procedure.

The procedure before the commissioner is informal, but he can call for oral or documentary evidence from any body except cabinet documents & he can take evidence on oath.

If anybody refuse to comply order of commissioner he cannot punish but this refer for consideration of the High Court.

Jurisdiction of commissioner

It confined to faults in the Administration only & not any other.

His jurisdiction extends to Ministers but certain matters excluded as above.

Functions.

His only functions to report to parliament & it are for parliament to decide what action should be taken on his report & not the commissioner.

II. Position in India

In India the creation of the office of a Lokpal similar to that of ombudsman, which was recommended by the Interim Report of Administrative Reforms Commissioner (1966 – By Morarji Desai) for the following reasons -

1) As India having Democrat form of Government therefore it has an obligation to satisfy the citizens about its functioning & to offer them adequate means for the ventilation & redress of their grievances.
2) Due to expansion of range of government activities most of which are discretionary the institution of judicial review & Parliamentary control become inadequate. Therefore the institution of ombudsman considered by the commissioner as an easy, quick & inexpensive machinery for the redress of individuals grievances of the citizens, in the light of the experience of other countries.

While setting such institution in India the commissioner suggested following points must be considered as well -

1) He should be independent & impartial.
2) His investigation & proceedings should be conducted in private & should be informal in character.
3) His appointment as far as possible be non- political
4) His status compare with highest judicial functionary in the country.
5) He should deal with matters in the discretionary field involving acts of injustice, corruption or favoritism.
6) His Proceedings should not be subject to judicial interference & he should have the maximum latitude & powers in obtaining information relevant to his duties.
7) He should not look forward to any benefit or pecuniary advantage from the executive government.

OMBUDSMAN IN INDIA - LOKPAL AND LOKAYUKTAS UNDER THE LOKPAL AND LOKAYUKTA ACT, 2013

Maladministration is like a termite that slowly erodes the foundation of a nation. It

hinders administration from completing its task. Corruption is the root cause of this problem that our country faces. Though there are many anti-corruption agencies in India, most of these anti-corruption agencies are hardly independent. Even the CBI has been termed as a "caged parrot" and "its master's voice" by the Supreme Court of India.

Many of these agencies are only advisory bodies with no effective powers to deal with this evil of corruption and their advice is rarely followed. There also exists the problem of internal transparency and accountability. Moreover, there is not any effective and separate mechanism to maintain checks on such agencies.

In this context, an independent institution of Lokpal and Lokayukta has been a landmark move in the history of Indian polity which offered a solution to the never-ending menace of corruption. It provides a powerful and effective measure to counter corruption at all levels of the government.

What are Lokpal and Lokayuktas?

The Lokpal and Lokayukta Act, 2013 mandated for the establishment of Lokpal at the Union level and Lokayukta at the State level. Lokpal and Lokayuktas are statutory bodies and these do not have any constitutional status. These institutions perform the function and role of an "Ombudsman" (an official appointed to investigate individuals' complaints against a company or organization, especially a public authority). They inquire into allegations of corruption against certain public bodies/organizations and for other related matters.

Origin and History

The story of the Lokpal and the Lokayukta has a long story. Lokpal and Lokayukta is not Indian origin concept. The concept of ombudsman originated in 1809 with the official inauguration of the institution of Ombudsman in Sweden. Later in the 20th century, after the Second World War, the institution of ombudsman developed and grew most significantly. Countries like New Zealand and Norway also adopted the system of ombudsman in the year 1962. This system proved extremely significant in spreading the concept of ombudsman to other countries across the globe.

Great Britain adopted the institution of the Ombudsman in the year 1967, on the recommendations of the Whyatt Report of 1961. Through the adoption of such a system, Great Britain became the first eminent nation in the democratic world to have such an anti-corruption institution. After great Britain, Guyana emerged as the first developing nation to adopt the concept of the ombudsman in the year 1966. Subsequently, this concept was further adopted by Mauritius, Singapore, Malaysia, and India as well.

In India, the former law minister Ashok Kumar Sen became the first Indian to propose the concept of constitutional Ombudsman in Parliament in the early 1960s. Further, Dr. L. M. Singhvi coined the term Lokpal and Lokayukta. Later in the year 1966, the First Administrative Reform Commission passed recommendations regarding the setting

up of two independent authorities at the central and at the state level. According to the commission's recommendation, the two independent authorities were appointed to look into complaints against public functionaries, including members of Parliament as well.

After the recommendations from the commission, the Lokpal bill was passed in Lok Sabha in 1968 but lapsed due to the dissolution of Lok Sabha. Since then, the bill was introduced many times in Lok Sabha but has lapsed. Till 2011 as many as eight attempts were made to pass the Bill, but each of them failed.

Before 2011, a commission, headed by M.N. Venkatachaliah, was also set up, in the year 2002 to review the working of the Constitution. This Commission recommended the appointment of the Lokpal and Lokayuktas. The commission also recommended that the Prime Minister ought to be kept out of the ambit of the Lokpal. Later in 2005, the Second Administrative Reforms Commission chaired by Veerappa Moily came up with the recommendation that the office of Lokpal needs to be established without delay.

Though all these recommendations were never given the due preference, the government in 2011 formed a Group of Ministers, chaired by the former President Pranab Mukherjee. These groups of ministers worked to examine the proposal of a Lokpal Bill and to suggest measures to tackle corruption.

Not only the administration and the government but even the people of India felt the need for such a system to be introduced into the Indian governance system. India rose into a nationwide protest for Lokpal. The "India Against Corruption" movement was led by Anna Hazare to exert pressure on the United Progressive Alliance (UPA) government at the Centre.

The protests and the movement resulted in the passing of the Lokpal and Lokayuktas Bill, 2013, in both the Houses of Parliament. The bill received assent from President on 1 January 2014 and came into force on 16 January 2014 under the name "The Lokpal and Lokayukta Act 2013".

Lokpal and Lokayukta Amendment Act, 2016

After the introduction of the Lokpal and Lokayukta Act 2013, a bill was passed by Parliament in July 2016 which amended the Lokpal and Lokayukta Act, 2013. This amendment enabled the leader of the single largest opposition party in the Lok Sabha to become a member of the selection committee in the absence of a recognized Leader of Opposition.

This bill also amended Section 44 of the Lokpal and Lokayukta Act 2013. Section 44 of the Act dealt with the provisions of furnishing of details of assets and liabilities, within 30 days of joining the government service, of any public servant. This amendment replaced the time limit of 30 days. It stated that the public servants will make a declaration of their assets and liabilities in the form and manner as prescribed by the government.

In the case where any non-governmental organization receives funds of more than Rs. 1 crore from government or

receives foreign funding of more than Rs. 10 lakh then the assets of the trustees and board members were to be disclosed to the Lokpal. The bill provided an extension to the time limit given to trustees and board members to declare their assets and those of their spouses.

Structure of the Lokpal

Lokpal is a multi-member body consisting of one chairperson and a maximum of 8 members.

The person to be appointed as the chairperson of the Lokpal must be either:

1. The former Chief Justice of India; or
2. The former Judge of the Supreme Court; or
3. An eminent person with impeccable integrity and outstanding ability, who must possess special knowledge and a minimum experience of 25 years in matters relating to: 1. Anti-corruption policy; 2. Public administration; 3. Vigilance; 4. Finance including insurance and banking; 5. Law and management.

The maximum number of members must not exceed eight. These eight members must constitute:

Half members to be judicial members; Minimum 50% of the Members should be from SC/ ST/ OBC/ minorities and women.

The judicial member of the Lokpal must be either:

A former Judge of the Supreme Court or; A former Chief Justice of the High Court.

The non-judicial member of the Lokpal needs to be an eminent person with flawless integrity and outstanding ability. The person must possess special knowledge and an experience of a minimum of 25 years in matters relating to:

Anti-corruption policy; Public administration; Vigilance; Finance including insurance and banking; Law and management.

Term and appointment to the oce of Lokpal

Lokpal Chairman and the Members can hold the office for a term of 5 years or till they attain the age of 70 years, whichever is earlier. The members and the chairman of Lokpal are appointed by the president on the recommendation of a selection committee.

1) The selection committee consists of:
2) The Prime Minister of India;
3) The Speaker of Lok Sabha;
4) The Leader of Opposition in Lok Sabha;
5) The Chief Justice of India or any Judge nominated by Chief Justice of India;
6) One eminent jurist.

The Prime Minister is the Chairperson of the selection committee. The selection of the chairperson and the members is carried out by a search panel of at least eight persons, constituted by the selection committee.

Lokpal search committee

As per the Lokpal Act of 2013, the Department of Personnel and Training needs to create a list of candidates who are interested to become the chairperson or members of the Lokpal. The list was then to be presented to the proposed eight-member search committee. The committee on receiving the list shortlists the names and place them before the selection panel, headed by the Prime Minister.

The selection panel has discretion in selecting the names from the list presented by the search committee. In September 2018, a search committee was constituted by the government which was headed by former Supreme Court judge Justice Ranjana Prakash Desai. The Lokpal and Lokayukta Act of 2013 also mandates that all states must set up the office of the Lokayukta within one year from the commencement of the Act.

Jurisdiction and powers of Lokpal

The Jurisdiction of Lokpal extends to:

1) Prime Minister,
2) Ministers,
3) Members of Parliament,
4) Groups A, B, C and D officers,
5) Officials of Central Government.

The Jurisdiction of the Lokpal extends to the Prime Minister, except in the cases of allegations of corruption relating to:

1) International relations;
2) Security;
3) The public order;
4) Atomic energy and space.

The jurisdiction of the Lokpal does not include ministers and members of Parliament in the matter relating to:

1) Any speeches delivered in the Parliament or;
2) For a vote cast in the Parliament.

Lokpal's jurisdiction also includes:

Every person who is or has been in charge (director/ manager/ secretary) of a body or a society set up by the act of central government, Any society or body financed or controlled by the central government, Any person involved in act of abetting, Bribe giving or bribe-taking.

The Lokpal and Lokayukta Act states that all public officials need to furnish their assets and liabilities as well as their respective dependents. The Lokpal also possesses the powers to superintendence over the CBI. It also has the authority to give direction to CBI. If a case is referred to CBI by the Lokpal, then the investigating officer in such a case cannot be transferred without the prior approval of the Lokpal. The powers of a civil court have been vested with the Inquiry Wing of the Lokpal.

The Lokpal also possesses powers regarding the confiscation of assets, proceeds, receipts, and benefits arisen or procured by means of corruption in special circumstances. It also has the power to make recommendations regarding the transfer or suspension of public servants connected with the allegations of corruption.

Lokpal is capable of giving directions to prevent the destruction of records during the preliminary inquiry.

Limitations

The institution of Lokpal came up as a much-needed change in the battle against corruption. The Lokpal was a weapon to curtail the corruption that was spreading in the entire administrative structure of India. But at the same time, there are loopholes and lacunae which need to be corrected. The appointing committee of Lokpal consists of members from political parties that put Lokpal under political influence.

There are no criteria to decide who is an 'eminent jurist' or 'a person of integrity'

which manipulates the method of the appointment of Lokpal. The Lokpal and Lokayukta Act 2013 failed to provide any kind of concrete immunity to the whistleblowers. The provision related to the initiation of inquiry against the complainant, in cases where the accused is found innocent, leads to discouraging people from making complaints. One of the biggest lacunae is the exclusion of the judiciary from the ambit of the Lokpal.

The Lokpal does not have any constitutional backing. Also, there are no adequate provisions for appeal against the actions of Lokpal. The states have complete discretion with respect to the specific details in relation to the appointment of Lokayukta. The need for functional independence of the CBI has been catered to some extent, by the change brought forth in the selection process of CBI's Director, by the Lokpal and Lokayukta Act.

The Lokpal and Lokayukta Act also mandates that no complaint against corruption can be registered after a period of seven years from the date on which the mentioned offense is alleged to have been committed.

Thus in order to tackle the problem of corruption, the institution of the ombudsman should be strengthened both in terms of functional autonomy and the availability of manpower. The appointment of Lokpal in itself is not enough. The government should address the issues based on which people are demanding a Lokpal. Merely adding to the strength of investigative agencies will increase the size of the government but not necessarily improve governance. The slogan adopted by the government of "less government and more governance", should be followed in letter and spirit.

Moreover, Lokpal and Lokayukta must be financially, administratively and legally independent of those whom they are called upon to investigate and prosecute. Lokpal and Lokayukta appointments must be done transparently so as to minimize the chances of the wrong sorts of people getting in. There is a need for a multiplicity of decentralized institutions with appropriate accountability mechanisms, to avoid the concentration of too much power in any one institution or authority.

***Features of the Lokpal**

1. Fact finding body.

It is purely a fact finding body, it has the only function to legislate in cases where the government doesn't voluntarily remove the defects pointed out would be to report to parliament. It is the disadvantage over the Swedish ombudsman, as he has power to institute a suit against the concerned minister or state authority.

He has advantage over the English parliamentary commissioner who cannot act except when a complaint received through a member of parliament, while Lokpal can act on direct complaint.

2. This concept contrary to the principle cabinet responsibility'

The word maladministration is quite vague & wide, it may be due to faulty policy – making as well therefore a person who is outside the cabinet if allowed or exercise his functions of other consideration, enquires into question of policy then it will create

confliction between outside agency and also undermine the principle of cabinet responsibility.

3. Immunity from Judicial control

The one of the recommendations of the commission regarding the office of Lokpal, that, the proceeding before the Lokpal shall not be subject to judicial interference. But it is well accepted that such cases of other administrative authority therefore aggrieved person exclusion allowed only in cases of inferior courts & not in cases of jurisdiction of High Court & Supreme Court therefore High Court & Supreme Court having the supervisory jurisdiction over Lokpal, as in may initiate the proceeding against Lokpal before High Court or Supreme Court if he refuses to exercise his statutory powers or excess his jurisdiction.

If at all, he is immune by making constitutional amendment then it will be a patent breach of Rule of Law, which has been characterized as a basic feature of our constitution.

PART – II

THE RIGHT TO INFORAMTION ACT, 2005

Historical Background

There was a demand by the citizens of India to ensure greater and more effective access to information; therefore there is a need of the Act which is more progressive, participatory and meaningful to ensure this right.

In Bennet Coleman v. India case[145] the SC – the right to information included in the freedom of speech and expression guaranteed by article 19(1)(a)

Also National Advisory Council deliberated on the issue and suggested to enact the Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make the law with the following important provisions-

1. Establishment of Appellate machinery with investigating powers to review decisions of the Public Information Officers;
2. Penal provisions for failure to provide information as per law,
3. Ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and
4. Effective mechanism for access to information and disclosure by authorities, etc.

Thus the legislation will provide an effective framework for effectuating the Right of Information recognized under Article 19 of the Constitution of India. The Act seeks to achieve the above objects.

Important Definitions under the Act

1. **Government u/s. 2 (a) -** in relation to a public authority established, constituted owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or a Union territory administration, means the Central Government;
2. **Public Information Officer u/s. 2 (c) -** means the Public Information Officer appointed under sub-section (1), and includes an Assistant Information Officer designated as such under sub-section (2), of section 5;
3. **Information u/s. 2 (f) -** means any material in any form, including records, documents; memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;
4. **"Public Authority" u/s. 2 (h) -** means any authority or body established or constituted -

[145]. 1973 AIR 106

(a) by or under the Constitution;

(b) by any other law made by Parliament;

(c) by notification issued or order made by the Government, and includes any other body owned or controlled by the Government;

5. **Record u/s. 2 (i) -** includes- (i) any document, manuscript and file; (ii) any microfilm, microfiche and facsimile copy of a document; (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (iv) any other material produced by a computer or any other device;

Right to Information u/s. 2 (j) - means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to- (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of materially, (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

6. **Third Party u/s. 2 (n) -** means a person other than the person making a request for information and includes a public authority.

RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

This chapter is the core of right to information Act because this chapter laid down enabling provision to exercise right to information. As per section 3 all citizens shall have the right to information.

Under section 3 it is provided that all citizens shall have the right to information, subject to provision of this Act.

Under section 4 laid down the obligations on the public authorities regarding right to information as follow –

1. maintain all its records duly catalogued and indexed in a manner and form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network allover the country on different systems so that access to such records is facilitated;
2. publish before the commencement of this Act,- (i) the particulars of its organization, functions and duties; (ii) the powers and duties of its officers and employees; (iii) the procedure followed in the decision making process, including channels of supervision and accountability; (iv) the norms set by it for the discharge of its functions; (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; (vi) a statement of the categories of documents that are held by it or under its control; (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of

its policy or implementation thereof; (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public; (ix) a directory of its officers and employees; (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; (xl) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes; (xiii) particulars of concessions, permits or authorizations granted by it; (xiv) details in respect of the information, available to or held by it, reduced in an electronic form; (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; (xvi) the names, designations and other particulars of the Public Information Officers; (xvii) such other information as may be prescribed; and thereafter update these publications within such intervals in each year as may be prescribed;

3. publish all relevant facts while formulating important policies or announcing the decisions which affect public
4. provide reasons for its administrative or quasi-judicial decisions to affected persons;
5. before initiating any project/ or formulating any policy/ scheme/ programme or law/ publish or communicate to the public in general or to the persons likely to be affected thereby in particular/ the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interest of natural justice and promotion of democratic principles.

It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications so that the public have minimum resort to the use of this Act to obtain information.

For the purpose of sub-section (1) every information shall be disseminated widely and in such form and manner which is easily accessible and comprehensible to the public.

All materials shall be disseminated taking into consideration the cost effectiveness/local language and the most effective method of communication in that local area and the information should be easily accessible/ to the extent possible in electronic format with the Public Information Officer/

available free or at such cost of the medium or the print cost price as may be prescribed.

Disseminated

As per explanation to section 4, it means making known or communicated the information to the public through notice boards/ newspapers/ public announcements/ media broadcasts/ the internet or any other means/ including inspection of offices of any public authority.

Public Information Officers u/s. 5

As per this section every public authority shall within one hundred days of the enactment of this Act appoint the –

1. **Public Information Officer** in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act. or
2. **Assistant Public Information Officer** at each sub-divisional level or other sub-district level to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or to the Government:

Provided that where an application for information or appeal is given to an Assistant Public Information Officer or a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

Procedure followed by PIO u/s. 5(3)

`Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

The Public Information Officer may seek the assistance of any other, officer as he or she considers it necessary for the proper discharge of his or her duties.

Obligations on other officers of the department u/s. 5(5)

Any officer whose assistance has been sought under this section or shall render all assistance to the Public Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act such other officer shall be treated as a Public Information Officer.

Request for obtaining information u/s. 6

A person who desires to obtain any information under this Act shall make a request –

1. in writing or
2. through electronic means in English or
3. in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to –

   (a) The Public Information Officer of the concerned public authority,

   (b) The Assistant Public Information Officers, specifying the particulars of the information sought by him or her:

Duty of PIO

Where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

Whether reason for requesting the information need to be given?

As per section 6 (2) an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

Procedure followed by PIO

Where an application is made to a public authority requesting for an information, - (i) which is held by another public authority or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer. This has to be done within the **five days** after receipt of the application.

Disposal of request u/s. 7

The disposal of request can be done as follow by the PIO –

1. The Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within **thirty days** of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9. If the information sought for concerns the life or liberty of a person, the same shall be provided within **forty-eight** hours of the receipt of the request.
2. If the Public Information Officer fails to give decision on the request for information within the period specified as above then Public Information Officer shall be deemed to have **refused the request.**
3. Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, with giving the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed and requesting him to deposit that fees, and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days.
4. information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.
5. Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the public authority shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.
6. Where access to information is to be provided in the printed or in any electronic

format, the applicant has to pay such fee as may be the prescribed.

7. The person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified as specified earlier.
8. Bore taking any decision under this section the Public Information Officer shall take into consideration the representation made by a third party under section 11.
9. Where a request has been deemed to be rejected under this section the Public Information Officer shall communicate to the person making the request –
   (a) The reasons for such rejection;
   (b) The period within which an appeal against such rejection may be preferred; and
   (c) The particulars of the appellate authority.
10. Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

EXEMPTION & NON-EXEMPTION FROM THE DISCLOSURE OF INFORMATION

Sec. 8

I] INFORMATION WHICH CAN BE DENIED BY THE AUTHORITY (EXEMPTED INFORMATION)

The following information exempted from disclosure -

I. Information, the disclosure of which would -
   (a) Prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or economic interest of the State, relation with foreign State; or
   (b) Lead to an incitement to commit an offence;
II. Information, which has been expressly forbidden to be disclosed by any Court of law or tribunal or the disclosure of which may constitute contempt of Court;
III. Information the disclosure of which may result in a breach of privileges of Parliament or the Legislature of a State;
IV. Information, including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party: Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information;
V. Information available to a person in his fiduciary relationship: Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information;
VI. Information received in confidence from a foreign Government;
VII. Information, the disclosure of which would endanger the life or physical safety

of any person or cause to identify the source of information or assistance given in confidence of law enforcement or security purposes;

VIII. Information, the disclosure of which would impede the process of investigation or apprehension or prosecution of offenders;

IX. The Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers: Provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken, shall be made public after the decision has been taken, and the matter in complete, or over: Provided further that those matters which come under the exemptions listed in this section shall not be disclosed;

X. Information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual: Provided that such information may be disclosed, if the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.

II] INFORMATION WHICH CAN'T BE DENIED BY THE AUTHORITY (NON-EXEMPTED INFORMATION)

The following information which is non-exempted from disclosure -

I. Information which cannot be denied to Parliament or Legislature of a State, as the case may be, shall not be denied to any person.

II. A public authority may allow access to information if public interest in disclosure of the information outweighs the harm to the public authority.

III. Any information relating to any occurrence, event or matter which has taken place or occurred twenty years before the date on which any request is made under section 6, shall be provided to the person making the request under that section. Where any question arises to the date from which the said period **of twenty years** has to be computed and in case of dispute computation of period the decision of the Central Government shall be final.

Grounds for rejection to access in certain cases u/s. 9

A Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State subject to doctrine of severability.

Severability sec. 10

It means the public authority to severe and provides partial information which falls partly under the exempted categories and partly under the non-exempted categories.

THIRD PARTY INFORMATION Sec. 11

It means the consultation with the third party where the request relates to or has been supplied by a third party and has been treated as confidential by that party.

1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall within **five days** from the receipt of the request, give a written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information. Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.
2) Where a notice is served by the Public Information Officer as above to a third party in respect of any information or record or part thereof the third party shall, **within ten days** from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.
3) The Public Information Officer shall within **forty days** after receipt of the request under section 6, if the third party has been given an opportunity to make representation under as mentioned above, make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
4) A notice given as above shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision.

THE CENTRAL INFORMATION COMMISSION

12 to 14 provides for constitution of Central Information Commission, the terms and conditions of service and the powers of the Information Commissioners and the Deputy Information Commissioners.

I. Central Information Commission u/s. 12

It can be constituted by the Central Government by notification in the Official Gazette. This CIC has to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

II. Composition of the CIC

The Commission shall consist of-

1) The Information Commissioner; and
2) Such number of Deputy Information Commissioners not exceeding **ten** as may be deemed necessary.

III. Appointment

The Information Commissioner and the Deputy Information Commissioners shall be appointed by the President on the recommendation of a select committee consisting of-

1. The Prime Minister, who shall be the Chairperson of the committee;
2. The Leader of Opposition in the Lok Sabha; and
3. The Chief Justice of India.

IV. Powers of CIC

The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who shall be assisted by the Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Commission autonomously without being subjected to directions by any other authority under this Act.

V. Qualifications

1) The Chief Information Commissioner and the Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or of administration and governance.
2) The Information Commissioner or a Deputy Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

VI. Headquarter

The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

Every Deputy Information Commissioner shall perform his functions within such area as may be specified by the Central Government.

Term of office and conditions of service u/s. 13

1) The Information Commissioner shall hold office for a term of **five years** from the date on which he enters upon his office and shall not be eligible for re-appointment. The Central Government may extend the term of five years by one more year if recommended by the committee u/s. 12. The Information Commissioner shall not hold office as such after he has attained the age of 65 years.
2) Every Deputy Information Commissioner shall hold office for a term of **four years** from the date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. The Deputy Information Commissioner shall, on vacating his office under this section is eligible for appointment as the Information Commissioner in the manner specified in section 12. The Deputy Information Commissioner is appointed as the Information Commissioner, his term of

office shall not be more than five years in aggregate as the Deputy Information Commissioner and the Information Commissioner.

3) The Information Commissioner or a Deputy Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
4) The Information Commissioner or a Deputy Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office.
5) The Information Commissioner or a Deputy Information Commissioner may be removed in the manner specified under section 14.
6) The Information Commissioner or a Deputy Information Commissioner shall, on cessation of his office, not be eligible for –
   (a) Any diplomatic assignment,
   (b) assignment as administrator of a Union territory or such other assignment or
   (c) appointment which is required by law to be made by the President by warrant under his hand and seal;
7) CIC or Dy. CIC can not hold employment to any office of profit under the Government of India or the Government of a State.

Salary

1. The salaries and allowances payable to and other terms and conditions of service of-

1. The Information Commissioner shall be the same as that of a Secretary to the Government of India.
2. The Deputy Information Commissioner shall be the same as that of a Joint Secretary or an Additional Secretary to the Government of India.

Provided that the Information Commissioner or the Deputy Information Commissioner taking the benefits of pension equivalent to the retirement benefits those can be reduce from the salary. The salaries, allowances and the other conditions of service of the Information Commissioner and the Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

Office staff

The Central Government shall provide the Information Commissioner and the Deputy Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Removal of Information Commissioner or Deputy Information Commissioner u/s. 14

The Information Commissioner or any Deputy Information Commissioner shall be removed from his office only by order of the President on the ground of –

1. Proved misbehavior or
2. Incapacity

Only after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Information Commissioner or any Deputy Information Commissioner, as the case may be, ought on such ground be removed.

The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Information Commissioner or Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

Under section 14 (3) the President may by order remove from office the Information Commissioner or any Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may be –

1. is adjudged an insolvent; or
2. has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
3. engages during his term of office in any paid employment outside the duties of his office; or
4. is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
5. has acquired such financial or other interest as is likely to affect prejudicially his functions as an Information Commissioner or a Deputy Information Commissioner.

THE STATE INFORMATION COMMISSION

I. State Information Commission u/s. 15

It can be constituted by the State Government by notification in the Official Gazette. This SIC has to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

II. Composition of the SIC

The Commission shall consist of-

3) The State Chief Information Commissioner; and
4) Such number of Deputy Information Commissioners not exceeding **ten** as may be deemed necessary.

III. Appointment

The Information Commissioner and the Deputy Information Commissioners shall be appointed by the Governor of the State on the recommendation of a committee consisting of-

1. The Chief Minister, who shall be the Chairperson of the committee;
2. The Leader of Opposition in the State Legislative Assembly; and
3. A Cabinet Minister to be nominated by Chief Minister.

IV. Powers of CIC

The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who shall be assisted by the Deputy Information Commissioners and may exercise all such powers and do all such acts

and things which may be exercised or done by the Commission autonomously without being subjected to directions by any other authority under this Act.

V. Qualifications

1) The Chief Information Commissioner and the Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or of administration and governance.
2) The Information Commissioner or a Deputy Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

VI. Headquarter

The headquarters of the State Commission shall be at such place in the State as the State Govt. may by notification in the Official Gazette and the SIC by approval of the State Government, establish offices at other places in State.

Term of office and conditions of service u/s. 16

1) The State Chief Information Commissioner shall hold office for a term of **five years** from the date on which he enters upon his office and shall not be eligible for re-appointment. The State Chief Information Commissioner shall not hold office as such after he has attained the age of 65 years.
2) Every Deputy State Information Commissioner shall hold office for a term of **five years** from the date on which he enters upon his office or till he attains the age of 65 years, whichever is earlier. The Deputy Information Commissioner shall, on vacating his office under this section is eligible for appointment as the Information Commissioner in the manner specified in section 15 (3) . The Deputy State Information Commissioner is appointed as the Information Commissioner, his term of office shall not be more than five years in aggregate as the Deputy Information Commissioner and the Information Commissioner.
3) The Information Commissioner or a Deputy Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
4) The State Chief Information Commissioner or a Deputy State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office.
5) The Information Commissioner or a Deputy Information Commissioner may be removed in the manner specified under section 17.
6) The State Chief Information Commissioner or a Deputy State

Information Commissioner shall, on cessation of his office, not be eligible for –

(a) Any diplomatic assignment,

(b) assignment as administrator of a Union territory or such other assignment or

(c) appointment which is required by law to be made by the President by warrant under his hand and seal;

7) SCIC or Dy. SIC can not hold employment to any office of profit under the Government of India or the Government of a State.

Salary

2. The salaries and allowances payable to and other terms and conditions of service of-

3. The Information Commissioner shall be the same as that of a Secretary to the Government of India.

4. The Deputy Information Commissioner shall be the same as that of a Joint Secretary or an Additional Secretary to the State Government.

Provided that the State Chief Information Commissioner or the Deputy State Information Commissioner taking the benefits of pension equivalent to the retirement benefits those can be reduce from the salary. The salaries, allowances and the other conditions of service of the State Chief Information Commissioner and the Deputy State Information Commissioners shall not be varied to their disadvantage after their appointment.

Office staff u/s. 16(6)

The State Government shall provide the State Chief Information Commissioner and the Deputy State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Removal of State Chief Information Commissioner or Deputy State Information Commissioner u/s. 17

The State Chief Information Commissioner or any Deputy State Information Commissioner shall be removed from his office only by order of the Governor on the ground of –

1. Proved misbehavior or
2. Incapacity

Only after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Information Commissioner or any Deputy Information Commissioner, as the case may be, ought on such ground be removed.

The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Information Commissioner or Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court until the President has passed orders on receipt of the report of the Supreme Court on such reference.

Under section 17 (3) the Governor may by order remove from office the State Chief Information Commissioner or any

Deputy State Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may be –

1. is adjudged an insolvent; or
2. has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or
3. engages during his term of office in any paid employment outside the duties of his office; or
4. is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or
5. has acquired such financial or other interest as is likely to affect prejudicially his functions as an Information Commissioner or a Deputy Information Commissioner.

Powers and functions of CIC u/s. 18

Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission –

1. to receive and inquire into a complaint from any person –
   (a) who has been unable to submit a request to a Public Information Officer/ either by reason that no such officer has been appointed under this Act/ or because the Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the Government. Who has been refused access to any information requested under this Act;
   (b) Who has not been given a response to a request for information or access to information within the time limits specified under this Act;
   (c) Who has been required to pay an amount of fee which he or she considers unreasonable;
   (d) Who believes that he or she has been given incomplete/ misleading or false information under this Act; and
   (e) In respect of any other matter relating to requesting or obtaining access \ to records under this Act.

If the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof. The Commission shall while inquiring into any matter under this section have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matters namely:-

1. Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
2. Requiring the discovery and inspection of documents;
3. Receiving evidence on affidavit;
4. Requisitioning any public record or copies thereof from any Court or office;
5. Issuing summons for examination of witnesses or documents; and
6. Any other matter which may be prescribed.

The Commission may during the inquiry of any complaint under this Act can examine any record to which this Act applies which is under the control of the public authority and no such record may be withheld from it on any grounds.

APPEAL u/s. 19

Sect. 19 seeks to provide for first and second appeals, the first appeals lies with the officer senior in rank to the Public Information Officer and the second appeal may be made to the Commission.

1. Any person who does not receive a decision within the time specified in this Act or is aggrieved by a decision of the Public Information Officer may within **thirty days** from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer in each public authority. Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
2. A second appeal against the decision given as above shall lie within **ninety days** from the date on which the decision should have been made or was actually received, with the Commission. The Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
3. Where an appeal is preferred against an order made by the Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within **thirty days** from the date of the order. In this matter the Commission shall give a reasonable opportunity of being heard to that third party.
4. In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the **public authority** which denied the request.
5. An appeals shall be disposed of within **thirty days** of the receipt of the appeal or within such extended period not exceeding a total of **forty-five** days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.
6. The decision of the Commission shall be binding. In its decision, the Commission has the power to -
   (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-
      (a) by providing access to information, if so requested, in a particular form;
      (b) by appointing a Public Information Officer;
      (c) by publishing certain information or categories of information;
      (d) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(e) by enhancing the provision of training on the right to information for its officials;

(f) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) Require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) Impose any of the penalties provided under this Act;

(d) reject the application.

The Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority. The Commission shall decide the appeal in accordance with such procedure as may be prescribed. An appeal against the decision of the Commission shall lie in the High Court on any point of fact and law.

Penalties

Sect. 20 provides for imposition of penalty on a PIO for persistently failing to provide information without any reasonable cause within the specified period.

As per Sec 20(1) If CIC and SCIC is of the opinion regarding the Central or State Public Information Officer as the case may be has –

1. Persistently failed to provide information without any reasonable cause within the period specified,
2. refuse to receive application for information,
3. has not furnished information within the time specified,
4. malafidely denied the request for information
5. knowingly given incorrect incomplete or misleading information,
6. destroyed the information which was the subject of the request,
7. obstructed in any manner in furnishing the information

Then Commission as the case may be shall impose a penalty of Rs. 250/- (Rs. two hundred and fifty rupees) per day till the application is received or information is finished, the total amount shall not exceed Rs. 25000/- (Rs. Twenty five thousand), and shall make recommendation to take disciplinary action under the service rules applicable to him.

The CIC or SIC as case shall be given reasonable opportunity of being heard before any penalty is imposed on PIO.

MISCELLANEOUS

Protection of action taken in good faith

Sec. 21 bars the institution of legal proceedings against any person for things done in good faith under the Act.

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under.

Act to have overriding effect

Sec. 22 seeks to make the legislation overriding in character so that the scheme is not subverted through the operation of other enactment.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Bar of jurisdiction of Courts.

Sec. 23 seeks to bar the jurisdiction of the subordinate Courts.

No Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

Act not to apply to certain organizations

Sec. 24 seeks to exempt certain intelligence and security organizations from the purview of the legislation but information pertaining to allegation of corruption, shall, without prejudice to the exemption, be provided.

(1) This Act shall not apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organizations to that Government. Provided that the information pertaining to the allegations of corruption and human right violations shall not be excluded under this section. In such matters the information shall be provided within the 48 days

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organization established by that Government or omitting there from any organization already specified therein and on the publication of such notification, such organization shall be deemed to be included in or, as the case may be, omitted from the Schedule. Provided the information pertaining to the allegations of corruption and human right violations shall not be excluded by such amendments.

(3) Every notification issued under this section shall be laid before each House of Parliament.

Monitoring and reporting

Sec. 25 provides for preparation of an annual report by the Commission and laying of such report by the Central Government before each House of Parliament.

(l) The Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Central Government.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates –

(a) The number of requests made to each public authority;

(b) The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) The number of appeals referred to the Commission for review, the nature of the appeals and the outcome of the appeals;

(d) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act

(e) The amount of charges collected by each public authority under this Act;

(f) Any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) Recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government may, as soon as practicable after the end of each year, cause a copy of the report of the Commission as mentioned earlier to be laid before each House of Parliament.

(5) If it appears to the Commission that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

Central Government to prepare programmes u/s. 26

The appropriate Government may, to the extent of availability of financial and other resources,-

(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

The appropriate Government shall, if necessary, update and publish the guidelines referred to in subsection (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include-

1) the objects of this Act;
2) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (I) of section 5;
3) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;
4) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;
5) the assistance available from the Central Information Commission or State Infom1ation Commission, as the case may be;
6) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;
7) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
8) the notices regarding fees to be paid in relation to requests for access to an information; and
9) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

Power to make rule by appropriate Government u/s. 27

The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the cost of the medium or print cost price of the materials to be disseminated under subsection (4) of section 4;
(b) the fee payable under sub-section (I) of section 6;
(c) the fee payable under sub-sections (]) and (5) of section 7;
(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under 13 (6) and section 16 (3);
(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and
(f) any other matter which is required to be, or may be, prescribed.

Power to make rule by competent authority u/s. 28

The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

1) the cost of the medium or print cost price of the materials to be disseminated under subsection (4) of section 4;
2) the fee payable under sub-section (1) of section 6;
3) the fee payable under sub-section (1) of section 7; and
4) any other matter which is required to be, or may be, prescribed

Laying of rules u/s. 29

Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

Power to remove difficulties u/s. 30

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty. Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act. Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

THE RIGHT TO INFORMATION (AMENDMENT) ACT, 2019

The Right to Information (Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of State for Personnel, Public Grievances and Pensions, Mr. Jitendra Singh, on July 19, 2019.

It become Act on 22nd July 2019 after passing this Bill by Lok Sabha.

This seeks to amend the Right to Information Act, 2005 with following Key features.

Term of Information Commissioners

Under the Act, Chief Information Commissioner (CIC) and Information Commissioners (ICs) are appointed at the national and state level to implement the provisions of the Act.

The Act states that the CIC and other ICs (appointed at the central and state level) will hold office for a term of five years.

The Act removed this provision and states that the central government will notify the term of office for the CIC and the ICs.

Determination of salary

The Act states that the salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively. Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.

The Act amended these provisions to state that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.

Deductions in salary

The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.

Previous government service includes service under: (i) the central government, (ii) state government, (iii) corporation established under a central or state law, and (iv) government company owned or controlled by the central or state government.

The Act removed these provisions.

Criticism against this Amendment

This Amendment will affect RTI tremendously due to following reasons –

1) This amended arrogates the power of appointment and the term as well as the salary of SCIC and SIC to the Central government — which nullifies the independence of the state legislatures.
2) The CIC and the ICs will serve at the pleasure of the government — raising the possibility that they would be more interested in ensuring the longevity of their tenures rather than serving the citizens' interests.
3) The new amendment gives the government the power to fix tenures, it's not clear whether an incumbent seen as pliable or 'friendly' to the Centre may get to serve more than one term.
4) If the tenure of the CIC, IC, SCIC and SIC are to be fixed by the Centre, it may follow that their removal from office may also be dependent on the Centre — whereas removal only by the President — only after an enquiry by the Supreme Court finds reason for their dismissal from office totally neglected.
5) The salary of the CIC and the ICs which are currently benchmarked with the salary of the Chief Election Commissioner (CEC) and the Election Commissioners respectively, which in turn are benchmarked with the salary of a Supreme Court judge, amount to Rs 2.50 lakh, along with a monthly allowance of Rs 34,000 per month — plus the usual perks like rent free furnished

accommodation and 200 litres of fuel every month. The amended Act gives the government to fix the salary, which could be lower — given that the Information Commission is a statutory body unlike the EC which is a constitutional body.

However, the current incumbents' salaries will not be affected by the amendment.

IMPORTANT CASES ON RTI ACT, 2005

1) RBI can't Deny Information under RTI claiming Fiduciary Relationship

Reserve Bank of India v. Jayantilal Mistry (Supreme Court, 2015)

The issue before the Court in this case was whether the Reserve Bank of India as well as other banks can deny information sought by the public on the ground of economic interest commercial confidence, fiduciary relationship with other Bank on the one hand and the public interest on the other, and if not, to what extent can information be provided by the banks under the right to Information Act, 2005? Answering the question in the negative, the Court held that the RBI was to act in the interest of the public at large for it is the statutory duty of the Reserve Bank to comply with the provisions of the Right to Information Act, 2005. The Court rejected the argument that information could be withheld in view of the fiduciary relationship with other banks and held that the RBI does not place itself in a fiduciary relationship with the Financial institutions because, the reports of the inspections, statements of the bank, information related to the business obtained by the RBI are not under the pretext of confidence or trust.

Since, RTI Act is enacted to empower the common people, the test to determine limits of Section 8 of RTI Act is whether giving information to the general public would be detrimental to the economy.

2) RTI can't be Denied on the Ground that Information sought is Irrelevant

Adesh Kumar v. Union of India (Delhi High Court, 2014)

In the case, the Petitioner was aggrieved by denial of information under the RTI Act by the concerned Public Information Officer in the case.

FIR had been lodged against the Petitioner during his tenure of service and subsequently, a charge sheet, against the petitioner was submitted. On receipt of charge sheet, the Petitioner applied for information under the RTI Act pertaining to sanction of prosecution against him.

However, the requested information was rejected by the CPIO claiming that there was no obligation to provide the same by virtue of Section 8(1)(h) of the RTI Act.

The Delhi High Court while dismissing the Petitioner's plea in the case stated that impugned provision prohibits furnishing of information which would impede the process of investigation or apprehension or prosecution of offenders.

However, the Court held that merely, citing that the information is exempted under Section 8(1)(h) of the RTI Act would not absolve the public authority from

discharging its onus as required to claim such exemption.

Further, the Delhi High Court in the case has held that whether the information sought by the petitioner is relevant or necessary, is not relevant or germane in the context of the Act, a citizen has a right to information.

3) Whether Particulars of FIR can be Disclosed under RTI Act?

Jiju Lukose v. State of Kerala (Kerala High Court, 2014)

In the case, a public interest litigation (PIL) seeking a direction to upload the copy of the FIR in the website of the police station and to make available copies of the FIR to the accused immediately on registration of the FIR was sought for. The Petitioner had alleged that inspite of the FIR being registered, the petitioner received its copy only after 2 months. Till the petitioner could obtain a copy of the FIR, the petitioner and his family members were in dark about the nature of the allegations levelled against the petitioner.

Petitioner's further contended in the case that in view of the Right to Information Act, 2005 all public officers were under obligation to put all information recorded in the public domain. The FIR which is lodged is to be put on the website of the police station, so that anyone can assess the FIR including a person staying outside the country.

The CIC in the case held that FIR is a public document, however, where an FIR is covered by the provisions under Section 8(1) of the RTI Act, it need not be disclosed to the citizens till investigation is completed. But it can be claimed by the Informant and the accused as per legal provisions under the Code of Criminal Procedure, 1973 as a matter of legal right.

The provisions in the Code of Criminal Procedure, 1973 are specific to this effect, that is, the supply of copy of FIR to the accused is contemplated only at a stage after proceedings are being initiated on a police report by the competent Magistrate.

That application for copy of the FIR can also be submitted by any person under the 2005 Act. It is however, relevant to note that whether in a particular application police authorities are claiming exemption under 8(1) of the RTI Act is a question which has to be determined by the police authorities by taking appropriate decision by the competent authority. In event no such decision is taken to claim exemption under Section 8 of the 2005 Act, the police authorities are obliged to provide for copy of the FIR on an application under the RTI Act.

4) SC: UPSC Marks can't be Disclosed Mechanically under RTI

Union Public Service Commission Etc. v. Angesh Kumar & ors. (Supreme Court, 2018)

In this recent case, the Supreme Court has made following observations in context of disclosure of civil service examinations marks under the RTI:

That weighing the need for transparency and accountability on the one hand and requirement of optimum use of fiscal resources and confidentiality of sensitive information on the other, information sought with regard to marks in Civil Services Exam

cannot be directed to be furnished mechanically.

That furnishing raw marks will cause problems which would not be in public interest. However, if a case is made out where the Court finds that public interest requires furnishing of information, the Court is certainly entitled to so require in a given fact situation.

That if rules or practice so require, certainly such rule or practice can be enforced.

Other important cases on the issue which were referred by the Bench in the case are as under:

Central Board of Secondary Education and Anr. v. Aditya Bandopadhyay and Ors.– When trying to ensure that the right to information does not conflict with several other public interests (which includes efficient operations of the Governments, preservation of confidentiality of sensitive information, optimum use of limited fiscal resources, etc.), it is difficult to visualise and enumerate all types of information which require to be exempted from disclosure in public interest.

It was also observed in the aforesaid judgment that indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information.

Prashant Ramesh Chakkarwar v. UPSC– This case enumerated the problems in showing evaluated answer books to candidates which inter alia included disclosing answer books would reveal intermediate stages too, including the so-called 'raw marks' which would have negative implications for the integrity of the examination system.

5) CIC: Pension Payment can't be denied for Want of Aadhaar Card

N N Dhumane v. PIO, Department of Posts (CIC, 2018)

The order of CIC in the instant case is a remarkable one as it condemns the act of Department of Posts in denying payment of pension for want of Aadhaar Card. Other key observation made by the CIC in the case was that payment of pension is a matter of life or liberty under the RTI Act and applications relating to payment of Pension shall be disposed by the Public Information Officers within 48 hours.

6) CIC: RTI Information cannot be denied for Lack of Aadhaar Card

Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd. (CIC, 2018)

In this recent case Vishwas Bhamburkar v. PIO, Housing & Urban Development Corporation Ltd. taken up by the Chief Information Commission, Munirka, New Delhi (CIC), the CIC was confronted with two centric issues under the Right to Information Act, 2005. One pertaining to word limit in RTI application and the other relating to denial of information on lack of producing identity proof by the Applicant.

The CIC in the case held that the impugned application was not hit by any exception under the Right to Information Act. That the CPIO in the case raised suspicion about the citizenship of the applicant without explaining why he was suspecting. There was nothing to justify his suspicion. That the CPIO failed to justify the denial of information, as he could not site any clause of exception under Section 8 (exemption from disclosure of information) or Section 9 (grounds for rejection to access in certain cases).

Delhi HC Rejects CIC Order Holding Ministers Public Authorities under RTI Act

Case name: Union of India and Anr. v. Central Information Commission and Anr. (CIC, 2017)

The Petitioner in the case challenged CIC's (Central Information Commission) order, whereby the CIC had declared "the Ministers in the Union Government and all State Governments as 'public authorities' under Section 2(h) of Right to Information Act, 2005.

Delhi High Court's order and observation– The Delhi High Court set aside CIC's order in the case and opined that the directions issued by the CIC in the case was beyond the scope of CIC and in the facts and circumstances of the case, there was no occasion for the CIC to enter upon the question as to whether a Minister is a "public authority" under Section 2(h) of the Act.

7) No RTI Query Can Lie With Regard to Judicial Decisions (Delhi High Court, 2017)

The Registrar, Supreme Court of India v. R S Misra

In the instant case, the Delhi High Court has rendered an in-depth analysis of RTI applications against any decision passed by the Supreme Court. The Court has also ruled that RTI Act does not prevail over the Supreme Court Rules (SCR).

Two Years Wait for RTI Response is Flagrant Violation of RTI Act (CIC, 2017)

In this case of October 2017, the CIC took a strong note of delay in RTI response by the concerned Department. The CIC remarked as under:

Commission takes grave exception to the flagrant violation of the RTI Act by the CPIOs of Cantonment Board, Jabalpur and the ignorance of the present CPIO about the pending RTI Applications from the tenure of her predecessor. It is incumbent upon the present CPIO to deal with all such pending RTI Applications and not wait for the Commission to issue notice of hearing to provide reply to RTI Applicants.

8) Information can't be denied on the Ground that File is missing

Shahzad Singh v. Department of Posts (CIC, 2018)

In the case, the CIC noted that the Respondent Department's claim that concerned files were are not traceable proves the fact they had it in their possession, which binds them to provide the information by searching the same. The Commission also observed that frequent reference to 'missing files' as an excuse to deny the information is a major threat to transparency, accountability

and also major reason for violation of Right to Information Act, 2005. Millions of RTI applications might have been rejected by PIOs on this ground during the last 11 years of RTI regime.

With "missing files excuse" being around, it will be futile to talk about implementation of Right to Information Act, 2005. The claim of 'missing files' indicates possibility of deliberate destruction of records to hide the corruption, fraud or immoral practices of public servants, which is a crime under Indian Penal Code.

Other cases on the issue:

Om Prakash v. GNCTD

In the case, CIC noted that prima facie, public authority cannot deny the right of the appellant to get an alternative plot, by putting forward an excuse of missing the file. The defense of missing file cannot be accepted even under the Right to Information Act, 2005. The CIC also noted that if the file is really not traceable, it reflects the inefficient and pathetic management of files by the Public Authority. If the file could not be traced in spite of best efforts, it is the duty of the respondent authority to reconstruct the file or develop a mechanism to address the issue raised by the appellant.

Union of India vs. Vishwas Bhamburkar

In this case, the Delhi High Court regarding the plea of the Respondent authority of record being not traceable, has observed that Right to Information Act, 2005 is a progressive legislation aimed at providing the citizens access to the information which before the said Act came into force could not be claimed as a matter of right.

It was also opined that even in the case where it was found that the desired information though available in the record of the government at some point of time, could not be traced despite best efforts made in this regard, the department concerned must necessarily fix the responsibility for the loss of the record and take appropriate departmental action against the officers/officials responsible for loss of the record. Unless such a course of action is adopted, it would be possible for any department/office, to deny the information which otherwise is not exempted from disclosure, wherever said department/office finds it inconvenient to bring such information into public domain, and that in turn, would necessarily defeat the very objective behind enactment of the Right to Information Act, 2005.

9) IT Returns is "Personal Information", not under the Purview of RTI Act

Girish Ramchandra Deshpande vs. Central Information Commission & ors. (Supreme Court, 2012)

In this case, the Apex Court had held that the details disclosed by a person in his income tax returns are "personal information" which stand exempted from disclosure under clause (j) of Section 8(1) of the RTI Act, unless involves a larger public interest and the Central Public Information Officer or the State Public Information Officer or the Appellate Authority is satisfied that the larger public interest justifies the disclosure of such information.

Other cases on the issue:

Milap Choraria v. CBDT

In this case, the CIC had held that Income Tax Returns have been rightly held to be 'personal information' exempted from disclosure under clause (j) of Section 8(1) of the RTI Act by the CPIO and the Appellate Authority; and the appellant herein has not been able to establish that a larger public interest would be served by disclosure of this information.

10) Bar Councils Liable to Provide Information under RTI Act

Harinder Dhingra Vs. Bar Associations, Rewari Faridabad, Punchkula (CIC, 2016)

In the case, the Appellant sought information regarding the number of complaints against the advocates, how many cases were disposed of, number of advocates who had violated the provisions of Advocates Act.

The CIC in the case held that the Bar Council is a statutory body constituted under Advocates Act, 1961 to protect the ethical standards of Advocates and admonish the members for misconduct. The information about this core function of Bar Council cannot be denied to the appellant as it does not attract any exemption under the RTI Act.

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