

# **ADMINISTRATIVE LAW**

**M. S. RAMA RAO B.Sc., M.A., M.L.**  
**Class-room live lectures edited, enlarged  
and updated**

*Msrlawbooks*

# ADMINISTRATIVE LAW

## SYLLABUS

1. Administrative Law-Definition, Scope, Historical development.  
French Droit Administratif & Conseil d'Etat.
2. Rule of Law.
3. (1) Franks Committee Report.  
(2) Donoughmore Committee Report.  
(3) Henry VIII Clause.  
(4) New Despotism.
4. Separation of Powers.
5. Judicial Quasi Judicial & Administrative functions
6. (1) 'Delegatus non potest Delegare' - Non delegable functions  
should not be delegated.  
(2) Delegable functions.  
(3) Subordinate Legislation-meaning & scope.  
(4) Doctrine of Ultra Vires.- Substantive & procedural  
(5) Conditional Legislation.
7. Purely Administrative functions or discretion - Scope-
8. Principles of Natural Justice.  
(1) Nemo debet esse iudex in propria causa.  
(2) 'Audi alterem Partem'.
9. Ombudsman- Lokpal & Lokayukta.
10. Administrative Tribunals- Composition powers - functions.
11. Public Corporations- General features- Powers, functions-  
Legislative & Judicial Controls over public Corporations.

12. Commission of enquiry- Constitution powers, functions and Jurisdiction- Status-
13. Liability of the state for tortious and contractual obligations
  - Act of State doctrine
  - Judicial Control of Administrative actions.
  - (1) Writ of Prohibition.
  - (2) Writ of Certiorari.
  - (3) Writ of Habeas Corpus.
  - (4) Writ of Mandamus. .
  - (5) Writ of Quo Warranto.
15. Public Interest Litigation. & Locus standi Rule.

## QUESTION BANK

1. (a) What is Administrative Law. Sketch briefly its development in England & India.
- (b) What is 'Draft Administratiff' ? Explain the Composition, Powers & Jurisdiction of Conseie d'etat.
2. D i scuss 'Rule of Law'.
3. Write a note on : 1. Frank's Committee Report
  2. Dohoughmore Committee Report
  3. Henry VIII Clause
  4. New Despotism
  5. Locus Standi
  6. Crown or State Privilege
  7. Act of State
  8. Finality Clause
  9. Consumer Protection Act
4. Write an essay on 'Separation of powers' with reference to

U.S., U.K. & Indian adaptations.

5. Distinguish quasi-judicial from judicial & purely Administrative functions.
  - 1 Discuss 'Delegatus non potest delegare' and refer to non-delegable functions.
  - 2 What are 'Delegable functions'.
  - 3 What is Subordinate Legislation ? Explain its process of generation.
  - 4 Discuss the doctrine of Ultra Vires with reference to Administrative actions

5 Write a note on 'Conditional legislation'

7. Discuss 'Purely administrative functions' OR Administrative discretion with cases.

Explain the scope of the principles of Natural Justice.

  - 1 Nemo debet esse iudex in propria Causa.

Audi alteram Partem. Refer to cases.
  9. Write an essay on ' Ombudsman'.
  10. What are Administrative Tribunals ?

Explain their General Pattern of Composition, Powers & functions.

Explain any one Administrative Tribunal you are familiar.

11. What are public Corporations ?

Explain their status powers & functions. How are they subject to Legislative & Judicial Controls.
12. Explain the Composition, Powers and jurisdiction of
  - 'Commission of Enquiry'.
13. Explain the scope & operation, with reference to Administrative actions:

1 Writ of Prohibition.

2 Writ of Certiorari

- 3 Writ of Habeas Corpus 4 Writ of Mandamus
- 5 Writ of Quo Warranto.
- 14. Examine how far state is liable for contractual and Tortious obligations.
- 15. Explain with leading cases, the scope of public interest litigation.
- 16. Examine the scope of "Administrative discretion", with Cases.

## CONTENTS

<b>Chapters</b>	<b>Pages</b>
<b>1. Administrative law</b>	
1. Definition	1
2. Nature and scope	2
3. Reasons for growth and development	3
4. Historical sketch: England, U.S.A, India. Modern system.	5
<b>2. French system</b>	<b>7</b>
<b>3. Rule of law</b>	<b>9</b>
<b>4. Preliminary Topics</b>	
1. Franks Committee Report.	12
2. New Despotism.	13
3. Donoughmore com. Report.	13
4. Henry VIII Clause	14
<b>5. Separation of Powers</b>	<b>17</b>

<b>6. Functions: Judicial, Quasi and Administrative</b>	<b>20</b>
1. Functions.	20
2. Quasi & Administrative.	22
<b>7. Delegation</b>	
1. Doctrine of delegated Legislation.	24
2. Delegable Functions.	29
3. Subordinate Legislation	29
<b>8. Judicial control of Del. Legislation</b>	
1. Doctrine of Ultra vires (procedural & Substantive)	33
2. Conditional Legislation	37
<b>9. Purely Adm. Function</b>	
1. Definition	39
2. Judicial control	40
<b>10. Natural Justice</b>	
1. Principles	42
2. Doctrine of BIAS	43
3. Audi Alteram partem	46
<b>11. Ombudsman</b>	52
<b>12. Administrative Tribunals</b>	55
1. Meaning, origin, development necessity & Reasons essential features	55
2. 42nd Amendment and CAT	58
<b>13. Public Corporation</b>	
1. Definition	60
2. Features	60
3. Parliamentary Control	62
4. Judicial Control	62
<b>14. Commission of Enquiry</b>	<b>64</b>
<b>15. Judicial Control of Adm. action</b>	

1.	Writ of Prohibition	66
2.	Writ of Certiorari	67
3.	Writ of Habeas Corpus	70
4.	Writ of Mandamus	72
5.	Writ of Quo Warranto	74
<b>16.</b>	<b>Administrative Discretion</b>	<b>77</b>
<b>17.</b>	<b>Liability of State:</b>	
1.	Contractual liability	82
2.	Tortuous liability	85
<b>18.</b>	<b>Public Interest litigation</b>	<b>89</b>
<b>19.</b>	<b>Miscellaneous:</b>	
1.	Locus standi rule	93
2.	States Privilege	94
3.	Finality Clause (Bar of court's Jurisdiction)	96
4.	Act of State	97
5.	Consumer Protection Act	98



**CHAPTER 1**  
**ADMINISTRATIVE LAW – DEFINITION- SCOPE AND DEVELOPMENT**

**Ch. 1.1. Definition :•**

Administrative law deals with law relating to administration. It is the basic foundation of administration. To Holland and Maitland administrative law is part of Constitutional law. The general Principles relating to the organisation, powers and functions of "the organs of the State, namely Legislative, Executive and Judicial) and their relationship are, inter alia, dealt with, in the Constitution.

Administrative law determines the organisation powers and functions of the Administrative authorities. (Wade & Philips). It includes the matters relating to civil services, public departments, -public corporations, local authorities and other statutory bodies exercising quasi-Judicial functions and the law governing Judicial review of administrative actions. ject

As Jennings rightly points out ,the subject matter of administrative law is "Public Administration".

**Garner's definition is specific. Administrative law is**

i) a study of institutions and administrative process ,ii) the sources of governmental legal powers, iii) provisions or methods to deal with persons, grievances & appropriate remedies, iv) the public corporations and v) administration of local government & general principles applicable to local authorities.

**Ch. 1.2 : Nature & Scope :**

Administrative law mainly deals with the powers & duties of administrative authorities, and the various remedies available to affected persons. Under welfare state, there is a tremendous increase in state activities in keeping with the technological & scientific developments. As Roland says "**before the days of the Automobile,there was no need for policeman to direct traffic**", because there was no traffic!

With the increase in State activities, grew the necessity to exercise powers: the administrative & executive powers were enlarged, delegated legislation also developed in the form of rules, regulations bye-laws, notifications etc. Administrative Tribunals started exercising Judicial functions to resolve disputes.

The Administrative authorities are empowered with discretionary powers. If these are properly used, there will be the welfare state,. If abused there will be totalitarian state (Lord Dennings).

Hence, administrative law defines and demarcates these

powers and also provides for remedies to the affected persons, when there is abuse.

This exercise of considerable power, is the main cause for growth of administrative law. The trend is to reconcile freedom & Justice of persons, with the necessities of implementing social & economic policies.

In this regard, liberty & personal freedoms are to be safeguarded within the frame work of the constitution of India.

In this context, Judicial review of administrative action, prevention of mis-use or abuse of power and provisions for suitable remedies form the basic principles of administrative law.

It is true to say with Bernard Schwartz, that "**the goal of administrative law is to ensure that the individual and the state are placed on a plane of equality before the Bar of Justice**".

### **Ch. 1.3. Reasons for growth and, development:**

Many reasons account for the sudden growth of administrative law. The main reasons are :-

i) The age-old laissez faire, gave way to a positive policy under welfare state to perform many duties & functions by the state.

ii) Legislative processes were rigid and could not be changed, *except* by amendment by the Legislature. Under delegated legislation executive started making rules, regulations, bye-laws etc, thus it gave flexibility.

iii) As judicial system was extensive, slow, complex and over burdened the speedy methods of disposal of disputes got recognition as people found them to be quick, in-expensive and useful. This led to the constitution and working of a large number of Tribunals and quasi judicial bodies.

iv)The evolving system of administrative law was more "functional" It was not theoretical or technical or

legalistic and hence administrative authorities could solve complex problems.

v) The administrative bodies or authorities started taking preventive measure in suitable circumstances, e.g. in licensing, fixing of minimum wages, rate fixing etc. Thus, it was better for Authorities to take measures to prevent adulteration of food, rather than allowing adulteration by the wrong-doer, to be sued later by the affected-persons.

vi) Authorities took effective step to enforce the measures and suspend, or cancel licenses, or in suitable cases destroy articles i.e. narcotic drugs etc, of course following principles of natural Justice.

These were the main reasons that gave impetus to administrative law to grow fast, especially during the present century.

#### **Ch : 1.4. Historical sketch of the growth of Administrative Law:**

##### **i) England:**

According to Dicey "In England, we know nothing of administrative law and we wish to know nothing about it".

Though Dicey had much disregard, Maitland and others were of the view that administrative discretion and administrative justice had already made their way in to England.

Of course, Dicey changed his view, and, later admitted that Parliament had conferred quasi-Judicial authority on administrative bodies and hence, there was administrative law-operating.

##### **Dicey :**

Explain the French "Droit Administratif (Administrative law) and, compared it, with the "Rule of Law Concept" of England. In his masterpiece "Introduction to the study of the Law of the constitution" "he gave a brilliant exposition to the concept of Rule of Law' and contrasted that with the Administrative Law of France, and in this exercise administrative Law' became insignificant. Robson's book on Justice and Adm. law port's book on" Administrative Law", made the study of this subject more interesting in England.

Apart from these developments Lord Hewert's book '**New Despotism**' exposed the dangers of delegated legislation and forced the British Govt. to appoint the Donoghmore committee which suggested inter alia, to set up a select Committee on statutory Instruments. This committee published its report in 1932.

**Allens** book '**Law & Order**' (1945) was a critical appraisal of the executive exercise of power. Besides, statutory Instruments Act (1946) and the Crown Proceedings Act 1947 gave the individual, better protection against the arbitrariness of the Executive.

Abuse of executive power is another aspect. The "Crichel Down" affair, forced the Govt, to appoint the Franks committee in 1955, and, on the basis of this "The Tribunals and Inquiries Act" was passed in 1958. This deals **with the procedures to be followed by every administrative body or agency.**

##### **ii) U.S.A. :-**

Though the origin of administrative law in the USA can be traced 1789, still it is with the passing of the commerce Act" of 1877, that it took a definite shape.

Authoritative writings like Franks Comparative Administrative law (1911), Fraud's Case book on Administrative law gave much impetus.

A special Committee appointed in 1933, Report of Roscoe Pound (1933) & Attorney General's Committee Report 1939, paved the way for the enactment of Administrative Procedures Act 1946. The rules

and the procedures provided for in this Act, should invariably followed by all administrative agencies and bodies, as otherwise the act of the agency will be quashed as ultra vires by the courts in the U.S.

### iii) India :-

Historically it may be possible to trace the existence of and the application of Administrative law to ancient India, and to the concept of Dharma. The king and the administrators followed Dharma which was more comprehensive than Rule of law. During the period of the East India Company and later under British regime many Acts, were made to increase governmental power. The modern system started with Stage Carriage Act 1861, under which the system of granting license was initiated.

Then followed a series of enactments to enlarge the powers of the Executive, authorities : Bombay Fort Trust Act (1879), The Opium Act (1878), The Explosives Act 1884 The Arms Act (1878) The Dramatic public performance Act 1876. Companies Act 1850 etc.

The era of judicial control started with the establishment of Supreme Court at Calcutta, Bombay, & Madras. Many enactments in the field of health, Labour, Public safety, and morality, Transportation and communication, Defence of India., etc, were made in the present century until 1947 when India became Independent.

### Modern system :-

The modern system of Administrative Law started with the inauguration of the Constitution of India, and, the establishment of the Supreme Court at New-Delhi- The philosophy of welfare state envisaged in the constitution, **ushered in, new dimensions of growth in the social, economic and political fields.**

The ownership and control of material resources of the society should be so distributed as best to sub- serve the common

good of the community and the economic distribution should not result in concentration of wealth in the hands of a few individuals (Art 39 of the constitution), became the objective of Welfare State.

Since independence, a large number of enactments have been made:

New administrative Agencies and bodies have been brought into existence In addition a **number of Administrative Tribunals have been established.**

Provisions are made in the Constitution (Act 32 & 226) empowering the Supreme Court and the High Courts in India to **issue writs, as-Constitutional remedies.**

This is the effective part of Judicial control of administrative action in India.

The recognition of Public Interest Litigation (PIL) by the Supreme Court in the **judges Transfer case (1981), Bandhana-Mukthi-Morcha case (1984), Hawala case etc added a new dimension and since then PIL is gaining** ground, as a process of participative Justice.

Administrative Law in India has grown considerably during these decades in the fields of delegated legislation. Rule of Law. Administrative Tribunals, Judicial control of administrative actions and remedies, Liability of the Government, Public Corporation.- Ombudsman

Of course Lokpal Bill for **decades** has remained a Bill, and even in 2012 it may not see the light of the day.!

A strong political will is required to bring the Lokpal as a powerful institutional Authority to deal with corruption, and the Lokpal Bill 2011 ,now before the Parliament defines a Lokpal

‘As from the commencement of this Act, there shall be established, for the purpose of making inquiries in respect of complaints made under this Act, **an institution to be called the “Lokpal”.**

**The objective is stated thus:**

**to provide for the establishment of the institution of Lokpal to inquire into allegations of**

**corruption against certain public functionaries and for matters connected therewith or incidental thereto.**

It is gratifying to note in many States in India, Lokyukta Institution is effectively and efficiently operating and the credit goes to all those officers who have honestly and sincerely discharging their functions.

With all these developments, Administrative law has grown considerably & is recognised as an independent branch for study and

is distinguished from Constitutional Law.

## CHAPTER 2

### FRENCH SYSTEM

#### Ch: 2. French Droit Administratif:

1) French Administrative Law had some peculiar features, alien to English system of Rule of law, as enunciated by Dicey. It was Dicey who made a reference to the French system in his masterpiece. "Introduction to the study of the constitution" in 1885. He had focused his attention on two peculiarities of the French system :

(1) The Govt's special rights & privileges against the individual's rights; and

(2) Under separation of powers, it had kept the Government officials free from the Jurisdiction of the courts. The weight was in favour of administration-. The rules of procedure followed by the courts were not followed by the Tribunals. Viewed from Dicey's angle there was no protection to the ordinary citizen, in French system.

#### ii) Conseil d' etat.

This is the Council of state (This was founded by Napoleon in 1799) It is the supreme Administrative court of Appeal. It has certain subordinates administrative courts called 'Conseil de prefecture' (Courts of the prefects). They are adjudicatory and consultative bodies.

#### Composition :-

It has executive officials as presiding officers: They are selected by competitive examinations and are given special training. The conseil de etat decides its jurisdiction, and procedures are laid down by it in the form of doctrines. It is also an adviser to the Govt. It has developed a spirit of independence. It has powers to execute its judgements directly. According to the Reform of 1900, an aggrieved

citizen who receives no relief from Govt., may go in appeal to the Conseil d'Etat. Its independence and Jurisdiction are evident from a recent case. Andre Canol was convicted by a Military Court. On application by the accused, the Conseil d'Etat held that there was a departure from the criminal code. The President De Gaulle tried to interfere but in vain. Today in France there are five sections. Four Administrative and one among Judicial, operating. Each is headed by a President.

**iii) Jurisdiction :-**

The lower tribunals have jurisdiction over :-

- a) Disputes between citizen & Govt. departments
- b) Matters of appointment promotion and disciplinary, action of Government officials and all administrative matters.

It has no Jurisdiction over Magistrates and prosecutors.

2. The conseil d'Etat has revisional Jurisdiction over the lower tribunals in respect of errors of law, abuse of power mala fides, failure to observe the principles of natural justice etc. It may strike down the orders of the Govt- officials.

In Barel's case (1954), Minister's order not to allow certain candidate to take the examination was quashed by the conseil-d'Etat.

**iv) Assesment:**

To the French citizens the conseil d'Etat is a bulwark against the violation of their rights. It has provided security to the citizens.

**v) Appeal :**

There is no appeal from the highest conseil to any court.

**vi) Conclusion :**

The conseil d'Etat is a unique institution: Its independence and jurisdiction account for its success. It protects the right of the citizens against abuse or excess of administrative powers etc.,

## CHAPTER 3

### RULE OF LAW

Rule of law is a dynamic concept and is one of the essentials of a constitution based on Democracy. **It heralds the "Supremacy of Law"** and is opposed to the **Rules of man**.

Bracton in the 13th century had said " Even the Rulers are subject to law', Fortseque uses this rule to justify that tax could not be imposed without "law made by the Parliament". It was **Chief Justice Coke who originated it in England**.

The modern concept of rule of law was expounded by Dicey and his exposition has three importance factors:

#### i) **The rule against arbitrariness :-**

This means that Administrative officers should not exercise their powers arbitrarily and even an act of an officer must have some basis in the "Act" of the legislature or the rule authorizing him to do it. Hence, the Executive officer should exercise only those powers which are authorized by legislature.

This is what Dicey meant when he said that the rule of law is in operation. Further, it should be noted that no discriminatory power should be given to the executive officials by Act or by rules.

Ultimately all the powers are to be controlled by the Constitution. This is the effective part of the rule of law. **Administrative powers are limited by legislation. But the Parliament itself is controlled by the people.**

#### ii) **Equality:**

The second part of the rule of law is that among equals law should be equal and should be equally administered. It means that the like should be treated alike.

To Dicey, this is '**equality before the law**' He declared that "no one should be made to suffer in body or goods except for a distinct breach of law.

It also means that "all persons must be amendable to the ordinary jurisdiction of the court".

Rule of law contains the guiding principles to the administrators. They should exercise their powers without making discrimination between persons and persons in society. If they exercise this power arbitrarily or by making discrimination, then, it should be controlled or corrected by **Judicial scrutiny**.



In India the Supreme Court and the High Courts have powers to issue writs in the nature of Habeus corpus., Mandamus, quo warranto, prohibition and certiorari Arts. 32 & 226

Rule of law according to Dicey does not accept the French "droit-administratif", as, it makes special provisions and provides for special treatment to the Government officials who exercise their power in the colour of their office.

In India, **the courts have held that such exercise of power by the Govt officials –Central and States- is subject to Judicial scrutiny.**

Administration of Justice has the rule of law as its basic foundation.

It means **Justice should be available to all.** It should be equal and should not favour any particular individual in the society.

It also means ‘ No-individual shall be given preference on the grounds of his religion, race, caste, place of birth, political influence etc. Hence, Justice under the rule of law **is free from discrimination and bias.**

### iii) Common Law Rights:

According to Dicey, the third limb of the rule of law is that the Constitution of England is the consequence of the common law right of the individuals, and hence **common law is the source of the freedom of the people.**

If the rights are based on a document like the Constitution, by amending the constitution, by the Parliament, the rights can be abrogated or denied.

In A.D.M. Jabalpur V. Shukla our Supreme Court erred in holding that Art 21 of the Constitution was suspended & hence., there was no remedy by writ under an emergency. **This was corrected by the 44th Amendment & hence habeas corpus cannot be suspended even in emergency.**

The Supreme Court held that Rule of law is the basic structure of the constitution and, cannot be amended under Act, 368 of the constitution.(Minerva Mill's Case), Rule of law 'is explained in

Indira Gandhi V. Raj Narain

& Keshavananda Baharathi's case

In Miss Veena Seth V, State of Bihar, the Supreme

Court extended Rule of Law to the poor, the downtrodden, the ignorant, the illiterate-against exploitation.

The rule of law aims at protecting the individual his life, liberty and property.

**State & Rule of law :**

Director of Rations was prosecuted by Corporation of Calcutta as he had not taken out license for storing etc. The question before the Supreme Court was whether the state was bound by its statute. Held: State not bound by statute. [Dir. of Rationing V. Corpn of Calcutta I960].

This was **overruled** by Supreme Court in Supt of legal affairs W. B V. Corpn of Calcutta, under "Rule of law", State was held bound to take out license etc. The English concept of Royal prerogative is not applicable in India.

**Entinck V. Corrington** : U. K case

D had entered P's house by breaking open the doors, and had seized certain papers. The court awarded compensation to P as D had entered and seized papers. D's defence that his act was authorised by the Secretary of State was rejected by the House of Lords. It upheld the Supremacy of Law and held that the Secretary of State had no statutory authority & hence had no power to issue a warrant for search.

Thus, rule of law as the basic principle of Administrative law in England, USA, India etc.,

**CHAPTER 4**

**PRILIMINARY TOPICS**

**Ch. 4.1 Franks Committee**

**Report:**

The origin of this Report can be traced to the landmark case called the Crichel Down case.

In this case land was compulsorily acquired by paying compensation by Air ministry in 1939 to use it as a Bombing range. After the II world war the owners asked the Govt, for

release of the land to them but in vain. A public enquiry was conducted & a report was published in 1954. It said that the department had not properly treated the owners of Crinchel Down-land. (The officials had committed certain blunders. Then the concerned Minister resigned. Another committee was appointed by the Prime Minister, and then the land was returned at market value, to the owners.

In 1955 the Franks committee was appointed by the Lord Chancellor to enquire into the administrative proceedings. It made certain recommendations relating to the constitution & working of administration tribunals in England.

**The main recommendations were :**

1. The Chairman of Adm. Tribunal should be appointed by the Lord Chancellor., The Chairman should have legal qualifications.
2. Hearings should be in public, legal representation should always be allowed (Audi alteram partam)
3. Tribunals should have powers to take evidence on oath\*
4. It recommended for the appointment of a Council over the tribunals to supervise the work of Adm. Tribunals.
5. It suggested that tribunals should observe principles of natural Justice and give out reasons for the award or decision. .  
Appeal should be allowed to the court.,

On the basis of these recommendations **the Tribunals & Enquires Act 1958** was passed. This has provided for the Council of Tribunals. There is an appeal to the High court from the decision of the Tribunals.

**Ch. 4.2 'New Despotism'.**

This is a valuable book written by Lord Hewart, Lord Chancellor of England, in 1929. By a slow but continuous process, the Parliament in England was delegating its legislative functions to the subordinate authorities, so much so the concept of Rule of law had been sufficiently eroded. Lord Hewart strongly criticised this tendency in his book 'The New Despotism'. Herein he elaborately wrote how the executive is armed with certain powers which were purely the legislative functions of the Parliament. These powers could easily escape the scrutiny or the supervision of both the Parliament and the Judiciary.

This book had its tremendous impact in as much as, a powerful public opinion against such development was engendered & Parliament was constrained to appoint a commission, in 1929, under the

chairmanship of Donoughmore. It was charged with the duty to deal with the various aspects of delegated legislation and also to suggest ways and means to control.

The committee made very valuable suggestions., and also-specified the limits within which Parliament may delegate its powers.

#### **Ch. 4.3 Donoughmore Committee Report :-**

The Rule of law as propounded by Dicey was the rock-bed of British legal system. But, this suffered a set-back as administering authorities were conferred with the powers to make rules under the concept of sub-legislative powers.

This was criticised by Carr in 1921 in his book 'Delegated Legislation'. These Administrative bodies had been invested with

Judicial powers. This was the administrative Justice criticised by Robson in his book 'Justice & Administrative Law (1928). In 1929 Lord Hewart published his 'New Despotism, wherein he exposed the excess of delegation of legislative powers to ministers and other administrative authorities.

All these resulted in the British Govt. appointing a Committee which was headed by Donoughmore,. The report was published in 1932. It dealt, inter alia, with delegated legislation.

According to the Report, delegation is necessary because:

1. The legislature (Parliament) has. much pressure of work on its time.
2. The legislators lack the technical knowledge required by modern legislation.
3. Complexities & Contingencies in the law are to be specially dealt with.
4. Amendment of legislation is to be avoided.

Further it was observed that the truth was that Parliament must provide guidelines and also scrutinise the work of the delegatee to

whom the power to legislate is delegated otherwise there is the danger that "the servant would be turned the master."

#### **These are :-**

- 1) The limits of legislation must be precisely defined in clear language.
- 2) The Parliament must set up standing committees charged with the duty to scrutinise the work of the delegatee.
- 3) Henry the VIII clause-(blanket powers to executive

bodies., to change when necessary) must be avoided.

#### Ch: 4.4. Henry VIII clause :

The general rule is that the legislature itself should discharge its primary legislative functions and should not delegate them to other bodies.

But, in some enactments provisions are made to delgate certain powers to the executive. The delegation here is broad & without restriction. For example. The National Insurance Act 1911, mentions the powers of the Insurance commissioners. It also provides that they may do anything that they thought necessary and expedient in case of any difficulty in implementing the provisions. 'To that extent may make modifications, wherever necessary'.

This blanket power is nicknamed Henry VIII Clause. The executive is the delegatee and if power is granted to modify the provisions themselves, there is to that extent an indirect abdication of legislative functions in favour of Executive.

A review of English Constitutional history shows how the king Henry VIII was asserting his powers in an authoritarian manner & how he was 'modifying' the provisions to suit his conveniences. Hence whenever such powers are exercised by executive, it is styled Henry VIII powers.

Modern legislative Acts, generally provide for two types of such removal of difficulties. One is to empower the executive to remove difficulties, consistent with the parent Act. This is to adjust minor difficulties & is not- objectionable e.g. Sn. 128 State Reorganisation Act. 1956.

However, the second type is very wide and even to **modify the parent Act**. This may be for a limited purpose. It is here that Henry VIII. King of England, became authoritarian. He was a despot under law.

What he did was he extended this power to an extraordinary degree by constitutional means, to further his personal ends^ Of course he was not acting unconstitutionally.

In India, though the circumstances are different, the executive may don on itself more powers..

W. B. Electricity Board V. Ghosh, the Regulation of removal of permanent employee with 3 months notice or pay in lieu thereof was held arbitrary & void, such a Henry VIII clause has no place, the Supreme Court held.

Other cases :

(1) Jalan Trading Co.,

(2) Gammon India Ltd., V Union of India.

Further in Central Inland water Transport Co. V. Ganguly, the Rule in question Sn. 9(1) was declared by Supreme Court as void as it was a Henry VIII clause.

## CHAPTER 5

### SEPERATION OF POWERS

#### Ch: 5. Separation of powers :-

The theory of separation of powers was enunciated by Montesquieu in his book. **The Spirit of the laws** (De L' esprit de lois) (1748).

He made a scientific division of the powers of the State as Legislative Executive & Judicial powers. He maintained:

‘These three must be vested in three distinct & different authorities, if the **Liberty of the individual** is to be guaranteed’.

Having thus laid the foundation he pointed out that there was no liberty when the legislature & executive powers were in one Authority, (legislator should not be the executive) Again there is no liberty if judiciary is not separated from the legislative & Executive functions. If the Judicial & Legislative powers are joined the liberty

would be subjected to arbitrary control, (Judge would be the legislator), if it is joined with Executive the judge might behave with oppression & violence. There would be an end of everything, if all the powers are in one Authority.

This theory gained currency, as it was based on the protection of individual liberty. The aim is, not to create absolute barriers but to impose mutual restraints in the exercise of powers by the three organs of the state- Parliament, Executive & Judiciary.

**United States: (U.S.) :-**

The U.S. Constitution incorporated this theory with modifications under "checks & balances." **Madison** stated that the accumulation of all the three powers in one authority was the '**very definition of tyranny**'.

In the U.S. Constitution, Articles I, II and III vest the Legislative, Executive & Judicial powers in the congress, the President & the Supreme Court respectively. Of course, these are subjects to "checks & balances".

In its practical application, the theory means that the organic powers vested in one, should not be exercised by others.

The U.S. Supreme court put it succinctly when it said, in **Springier V. Phillipine Island**, that the powers conferred on the legislature should not be exercised by the executive or the Judiciary unless otherwise provided for or incidental thereto.

The president exercised the power of "Veto" over Bills passed

by Congress : Congress has powers to impeach the President, senate has the executive power to ratify treaties; congress may delegate certain of its powers to administrative authorities, etc., these are examples to show that the doctrine has undergone modifications. Hence, a rigid application of this theory is not to be found in the U.S. or in any constitution as that would make it impossible to run the Government.

**England :**

According to Garner, there is 'no sharing-out' of power in England and as such 'Separation of powers' has no place in its strict sense. There are in England the three Authorities : Parliament, Executive and the Judiciary. But, there is no exclusive province to any specific authority, e.g. The Lord Chancellor, is the head of the Judiciary, chairman of the Upper House, and a prominent member of the Cabinet (though not necessarily). The court exercises legislative-powers when it is making the rules of procedure. Ministers make the subordinate legislation and also exercise quasi-Judicial powers. The

House of Commons has the power to investigate and punish for breaches of the privileges of the House. Hence, the theory has no direct application in England.

## **INDIA:**

' The Constitution has vested the Executive power in the president (or the Governor). There is no such vesting in the legislature or the Executive.

Act 51 enjoins separation of the Judiciary from the Executive. The supreme court in re Delhi Law Act case" opined that the essence of modern separation of powers was found in the concept of constitutional limitations and trust.

e.g. (i) Ordinance making power of the president (Act 123), (ii)

Judiciary making its own Rules of procedure

(iii) A Minister sitting as chairman of a Board to hear petitions.

(iv) Delegations of legislative power to subordinate law making bodies etc. In Ram Jawaya V. St. of Punjab the supreme court held that no organ of the state should exercise functions that essentially belong to the other.

**In Keshavananda Bharathi's** case the court held that separation of powers was part of the basic structure of constitution & even under Act 368, it cannot be amended. Thus Parliament should respect & preserve the courts: Courts should not enter into political problems : such mutual checks and balances have become the core of separation of powers in modern constitution.

**The sum & substance is that the essential functions of the legislature, Executive, and the Judiciary should not be exercised by the others.**

## **CHAPTER 6**

### **Functions-Judicial, Quasi Judicial and Administrative**

#### **Ch : 6.1. Judicial, Quasi Judicial & purely Administrative functions:**

These concepts are separate and distinct in Administrative law. The distinction was ably drawn by the Committee on 'Ministers Powers' .

#### **1. Judicial functions :**

This presupposes the existence of a 'LIS' (dispute) between the two parties plaintiff and defendant or petitioner and Respondent. It contains the following ingredients:-

i) The case is presented by the parties.



ii) Questions of fact are decided on evidence adduced by the parties and argument thereon.

iii) Questions of law are decided on submission made by the parties.'

iv) The Judiciary strictly follows the procedures, decides and disposes of the entire matter in issue with findings and by applying the law. There is a ruling on the disputed question of law.

## 2. **Quasi Judicial Functions :-**

Quasi means "not exactly" therefore it is not an exact Judicial-function. It has some of the trappings of the courts.

The authority will not have observed all the attributes of Judicial decision stated above. It will however observe items (i) & (ii) above some times item (iii) but never item (iv). It is not bound by rules of procedure (C.P.C. Evidence Act etc.,)

However, it is essential and basic that the Quasi Judicial Authority should follow the principles of Natural Justice. These are :-

i) 'Memo debit esse Judex in propria causa' (Nemo Judex in causa) No one should be a Judge in his own cause

ii) Audi alteram partem (Hear other party)

Further the decision must be objective in character.

### **Examples:**

i) Dismissal or Removal of a Govt. Servant

ii) Dismissal of a student for alleged copying in the Exam.

iii) cancelling a licence

iv) Deprivation of citizenship.

v) Impounding passport or refusing to renew, etc. 3.

### **Purely Administrative Functions.**

#### **Essential Features are :-**

i) A Judicial approach need not be followed.

ii) The act is based on policy, expediency and discretion

iii) The decision may be subjective.

iv) The officer need not follow the Quasi-Judicial procedure, But when it is provided for under a statue or when the rights of persons are affected, Principles of natural Justice should be followed by him.

v) He may affect the rights of individual, but he cannot decide with finality, Hence, courts may determine.

vi) The officer need not weigh the evidence and arguments placed before him.

vii) When an officer resolves to act in a particular way, at his discretion it is an Administrative decision.

Though this distinction is broadly correct, it is often the case that the courts do consider the socio-economic policy, political philosophy, expediency, etc., The Tribunals decide just like the Judiciary with impartiality. Similarly, the administration, applies the law to the facts and, decide with impartiality, in its discretion.

**Examples:**

1. Day to day administrative orders issued by the officers in the Departments.
2. Order under COFEPOSA
3. Externment order.  
Order issuing a licence or permit

**Leading cases : Supreme Court.**

- a) Ram jawayya V. St. of punjab. 1955.
- b) Khushal Das Advani's Case. 1950.
- c) Board of Education V. Rice
- d) Gallapalli Nageswara Rao Vs. state of A. P.
- e) Kraipak V. Union of India. 1969
- f) Radheshyam V. st. of/M.P. 1959.
- g) Ridge V. Baldwin. 1964.
- h) Maneka Gandhi V. Union 1978
- i) State of Orissa V. Binapam Dei 1967.

**Ch. 6.2 Distinction between quasi-judicial & Administrative functions :**

Refer to quasi-judicial functions and administrative functions Ch 6.1. and also the examples & cases.

**Recent Developments:**

The Supreme Court observed in Kraipak case, that the distinction is thin, and is almost obliterated "**What was considered as administrative power some years back is now considered as quasi judicial" it has held.**

There is a radical change in the approach.

The duty to act judicially is the essence of quasi judicial author-

ity. But, this arises in various circumstances & it would be impossible to define in clear terms.

Of course, if a statute provides that an administrative authority should act judicially, it is judicial and it should be so followed. What if the statute is silent ? The House of Lords held in Ridge V. Baldwin that even if the statute is silent, a duty to act judicially was imperative, if the rights of the subjects are affected.

The Supreme Court followed this in **State of Orissa V. Binapani Dei** and held that duty to act judicially would arise from the very nature of the function. It held "If there is power to decide & determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power". **This was followed in Menaka Gandhi's case.**

Thus, the exercise to draw a line between quasi-judicial & administrative is purely academic. If the right of a person is affected, as a result of the order of the official, it is essentially judicial and he should follow the Principles of Natural Justice.

## CHAPTER 7 DELEGATION

### Ch 7-1 Doctrine of Delegated Legislation

#### . i) Meaning :

The maxim delegatus non-portest delegare means a delegated power should not be re-delegated. The Parliament is the Delegated authority of the people i.e, to declare what the law shall be. This power is to be exercised only by the Parliament and should not be delegated to the executive or any other authority.

Parliament cannot create a parallel legislature to destroy its legislative power. Though this is true in principle, in reality delegation has been resorted to in U.K., U.S.A., India etc.

Delegated Legislation is generally understood to be the "legislation" made by any authority other than the Parliament or state legislature, but this duty entrusted by the "Act" passed by the Parliament or State legislature to the said authority. This is the subordinate authority which makes "subordinate legislation" within the limits prescribed by the parent Act.

E.g : Payment of Bonus Act enables "Central Govt", to exempt certain establishments on certain considerations.

The Minimum wages Act has enabled the central Govt to add any other establishment to the schedule, to apply the Act.

The exercise of this by Govt is delegated legislative authority and is valid under delegated legislation.

Apart from this, delegated legislation also means the rules, regulations, Bye laws, orders etc, made by subordinate Authority.

Thus, the parent Act is made by the Parliament or State legislature, and a subordinate authority makes delegated legislation.

(ii) **Necessity** : The necessity for this delegation may be accounted for as follows:

1. The bulk of modern legislation is so great that the Parliament has neither the time or energy, not the desire, to go into details. The Parent Act is made by it called skeleton & the details are filled in by the appropriate subordinate legislative body- which gives flesh and

blood to the skeleton law. (Child legislation).

2. Laws requiring technical details are best attended by leaving them to the experts.

3. There are many advantages in the 'sub-laws' as the authority may make modifications, depending on the contingencies, of course, within the frame-work of the Parliament's Law. This has relieved the Parliament of making law each time a change is required.

4. The Committee on Minister's powers succinctly described:

'The truth is that if Parliament were not willing to delegate law-making power', Parliament would be unable to pass the kind & quality of legislation which modern public opinion requires'.

5. Amendment by Parliament is slow, and cumbersome.

6. The executive may take quick action in times of emergency or war. Similarly when there is epidemics, floods, economic depression, health hazards etc delegation is essential.

7. Modern complex administrative matters require a dynamic approach.

**iii) Essential functions :**

The Supreme Court has laid down that essential functions entrusted to the Parliament should not be delegated. It has laid down judicial tests to find out what are essential functions or powers which are non-delegable. If a non delegable function is delegated, that delegation is bad and ultra vires the Constitution.

**iv) Non-delegable functions of the Parliament (or State Legislature):**

**These are :-**

a) It is the essential duty of the Parliament to lay down the legislative policy of the Government. Hence, this Policy making should not be delegated to any other authority, like the executive.

b) To effect any amendment to an Act, is the essential duty of the Parliament. The Executive Authority should not be allowed to change the Act.

c) To declare the offence under a penal law is the essential function of the Parliament.

d) To declare punishment, penalties etc., is the essential function of the Legislature.

e) To impose a tax, fee, in an essential function in (Art 265)

f) When tribunals are constituted specifying the jurisdiction and powers is the essential duty of the Parliament.

g) To repeal a law or to provide exemptions is an essential function of the Parliament.

(h) Giving an Act, retrospective effect is an essential function.

(i) Legislature cannot provide for Henry VIII clause to enable executive to make law in the guise of "removing difficulties" (W.B. Electricity Board V. Ghosh)

### **Leading Cases:**

#### **1. Panama Refining Co. V. Ryan. (Hot oil Case) 1934.**

Congress in the U.S. authorised the movement of oil in Inter-State Commerce, if it is produced by the State in excess of the fixed quota. Held, there were no standards, guide-lines laid down by the Congress and there was no definite policy. Hence, this delegation was *bad*.

#### **2. Yarkus V. U.S.**

During World War II, the Price Administration Dept, was authorised to fix prices as per the policy of the Govt. Held, this was valid as the Legislature had given sufficient guide lines and standards to decide the prices.

#### **3. In re Delhi Laws Act Case.**

Part 'C' State (Laws) Act 1950: was made by Parliament. It gave the Central Govt. the power to extend any of the existing laws of Part A State to part C State. Further, even future laws made in part A state, could be extended to part. C States. If the Govt. so desires it may modify or repeal any corresponding law existing in Part 'C' state.

Held, that power which enabled the Executive Govt. to repeal the existing Part 'C' States law was *ultra vires*.

Held, modification power should not be extended to change the policy it self or change the essential features of the Act.

Thus, delegation is valid, but strictly limited.

#### **4. Shama Rao Vs. Pondicherry. 1967**

The Pondichery Sales Tax Act was made. It authorised to apply

the Madras Sales Tax Act, after due notification. The Madras legislature effected certain amendments. The Pondichery law stated that the Madras S.T. Act was applicable as and when amended. This was challenged. Held, the delegation by Pondicherry was excessive and therefore ultra vires. The Major Act and the Amendment were both void.

Actually there was abdication of authority by the Pondicherry legislature, therefore its Act was bad.

This was followed in *Brijsunder V Dist. judge.* (1989).

#### **5. Hamdard Dawakhana Vs. Union. 1960**

In this case, the Drugs and Magic Remedies Act provided that no advertisement must be made which recommends the use of certain drugs which are calculated to be used to cure venereal diseases, improving sexual potency... and any other disease or condition which may be specified by the central Govt.

Held, this was excessive delegation as 'any other' has no control or guidelines. Hence, the delegation was unguided or uncontrolled.

#### **6. In Jalan Trading Co. V. Mazdoor Sabha.**

The Payment of Bonus Act provided that: 'If any difficulty or doubt arises, the Central Govt. may make such provision as is necessary for removal of that difficulty or doubt & the order of the Central Govt. was final'.

The Supreme Court held that 'clearing doubts' is primarily a legislative power & should not be delegated to the executive. It was an unchartered delegation & hence void.

**7. In Devi Das V. St. of Punjab, the Punjab General Sales Tax Act** provided that the State Govt. may fix the rates of Sales Tax. This was held to be void as in excess of delegation. Hence, power to fix rate of tax should not be delegated..

#### **Recent developments :**

In **Gwalior Rayon Silk mfg co V. Asst. Commr** it was challenged before the supreme court, that the central sales Tax Act, Sri. 8(2) b, had not fixed the rate of tax, but adopted the concerned states rates applicable, if the tax on sale or purchase was above 10% and that there was no legislative policy. The court rejected this contention, and, upheld the section.

The Tax Dept's argument that Parliament's power to repeal was sufficient control, & no policy need be stated, was rejected by the court.

The court held that the Parliament should state the legislative policy, standard or principle for the guidance of the delegatee. Sn 8(2) (b) was upheld on the ground that it was made to prevent

evasion of payment of tax. What is prohibited is abdication of power to subordinate body or authority. There was no abdication & hence valid.

The above decision was reiterated by the supreme court in Kerala state electricity Board V. Indian Aluminium Co.

### **Ch. 7-2 Delegable Functions.**

This is also called permissible delegation.

i) Power to extend the duration of a statute is delegable, if the Act has so provided.

ii) The Parliament may allow the executive, at its discretion to adopt an existing statute and apply that to a new area without modifying the Policy of the Act. (Conditional Legislation). R V Burah.

iii) When the legislature lays down definite standards and policy to be applied in Administration, the power to exempt persons or items within those limits is permissible.

iv) To fix a date called "appointed day" for the commencement of Statute is delegable, to the executive. The Govt. may by notification in the official gazette announce the date of commencement. The Act comes into operation on & from that date.

Sir Cecil says: here the legislature has provided the gun & target, the Govt. only presses the trigger. The delegation is valid.

v) Parliament may leave it to the subordinate agency to fill in the details to carry out the policy of the act. Here the ancillary functions are delegated e.g. All India services Act 1951, enables the central Govt. to frame rules to regulate conditions of service.

### **Ch 7-3 Subordinate Legislation.**

1. Parliament or State Legislature under its 'Act', may empower a subordinate authority (named in the Act), to fill in the details. Such a law made by the authority is subordinate Legislation, (also sometimes called delegated legislation or Quasi-legislation or child legislation.)

The different kinds of such legislation are : Rules, Regulations, Orders Notification, Bye laws, Standing Orders, Schemes etc.

#### **2. Procedure :**

The Parliament in its 'Rules of Procedure & Conduct of



Business of the House of the people', has constituted a 'Committee on Subordinate Legislation' charged with the duty to scrutinise and report (Rule 317) to the House whether the delegated powers have been exercised within the frame work of concerned Act.

This states that 'Rules, Regulations' etc. must be laid before the House. These must be published in the official Gazette. The Committee scrutinizes & reports. Thereupon it is formally passed by the House. Framed by C B D T.

### **3. Kinds :**

#### **i) Rules :**

These are framed by the concerned statutory authority named in the Act. e.g. Income Tax Rules.

#### **ii) Orders :**

The Govt. is empowered to issue the orders according to the Parent Act.

#### **iii) Regulations :**

These are generally made by such autonomous statutory authorities like Universities, public corporations etc.

#### **iv) Notification :**

It is a statutory instrument under which the Govt. heralds its power to make rules or exercise some power under a Statute (Act), e.g. : Defence of India Act provided as follows: The Central Govt. may by notification etc.

#### **vi) Standing Orders :**

These are made by an Industrial establishment dealing with the conditions of service agreed to by employer and workers. But, these are to be certified by the prescribed authority (i.e, Commissioner) for their validity.

#### **vii) Rules made by the Courts:**

The Supreme Court Rules 1950, the High Court Rules & the Rules of Practice (for Lower courts). These are made by the Courts. (These are also subject to Ultra Vires Doctrine).

#### **viii) Schemes:**

These are the ways & means to implement certain measures e.g. Bonus schemes.

It may be in any other area as a Scheme under Motor Vehicles Act to take over or nationalize certain routes etc.

#### 4. **Legislative Control.**

Parliament has power to control the subordinate law making Agency.

In fact, Parliament has not only the right but it is under a duty to see that its delegatee, carries out what is entrusted to it. It is for this reason that procedural safeguards are provided:

- a) The primary condition is that it must be laid before the Parliament, for a prescribed time.
- b) Scrutinising Committee must consider & approve & report to the Parliament.
- c) Where affected persons or groups are to be consulted it is mandatory & must be consulted.
- d) Publication of the Rules etc. in the Official Gazettee is a must.

#### 5. (i) **Laying on the table of the Houses :**

This brings to the knowledge of the Parliament, what the rules as framed by the executive are. Further, the legislators get an opportunity to examine and propose changes, if need be .

##### **The procedure in India is generally :-**

- i) Rules should be laid as soon as possible on the table of each House for 30 days
- ii) Modification, may be made by each House if found necessary.
- iii) Publication in official gazette.

According to the Supreme court the publication is essential.

##### **(Harla V. State.) 5(ii) Scrutiny Committee:**

The Lok Sabha Committee on subordinate Legislation and the Rajya Sabha Committee on subordinate Legislation in Parliament are charged with the duty to study and scrutimse all subordinate legislation and Report to the Houses whether the powers are properly exercised.

These two bodies act as **watch-dogs which bark and arouse their master** (House) **from slumber** when they find that there is an invasion on legislative power.

These two are evidently vigorous and independent bodies, and, their working is very satisfactory, thus preventing usurpation of power of Parliament.

**CHAPTER 8**  
**JUDICIAL CONTROL OF DELEGATED**  
**LEGISLATION**

**Ch 8.1: Doctrine of Ultra Vires.**

**1. Meaning :**

Ultra Vires means "beyond powers".

If the subordinate legislative Authority goes beyond the powers conferred by the enabling Act, such an exercise of power is Ultra Vires & void.

This applies to all Authorities exercising Governmental functions including the subordinate legislative bodies or Authorities which make rules, regulations, Bye laws, Orders etc

The doctrine of Ultra Vires was expounded by Dicey. According to him, the Subordinate Legislation may be declared by the courts as 'beyond the powers' of the Parent Act i.e., the enabling Act. This is the Judicial control over Subordinate Legislation.

**This is of two kinds :**

- i) Procedural Ultra Vires, ii)  
Substantive Ultra Vires.

**2. Procedural Ultra Vires:**

- a) Publication is essential & mandatory.

Hence, if there is no publication in the Official Gazettee as required under the Act, the Subordinate Legislation becomes Ultra Vires.

- b) When previous sanction for making the Rules etc. or where there is provision in the parent Act, to follow a particular procedure, that must be followed.

- c) When power is vested in one authority by the Parent Act, further delegation is Ultra Vires.

- d) If consultative requirement, or, public enquiry is prescribed by the Parent Act, it must be followed strictly and effectively. It should not be a sham consultation of affected parties.

If the procedural requirements are not complied with, the subordinate legislation will be void & Ultra Vires. However, courts have drawn a distinction between mandatory (imperative) provision, and, a directory provision. The legislation is Ultra Vires; but if the provision is directory, then substantial compliance is sufficient make

it valid.

### **1. Consultation of interest:**

This helps to check possible misuse of power . The persons to be affected may participate in the rule making process, when they are consulted. Generally the parent Act provides for such consultation.

The Consultation may be varied : It may be official consultation, e.g. Reserve Bank being consulted in making rules under Banking Companies Act, or statutory Bodies e.g. Board under Income Tax Act, or Advisory Body as Mine Board in mines Act.

Consultation makes the process democratic to reach the people in full measure. Otherwise, it may become bureuceratic. Sufficient opportunity should be given by the Govt, with necessary material.

Consultation is mandatory (Banwarilal V. State of Bihar) Hence, without consultation, it would be void.

### **2. Publication :**

Publication of delegated'legislation is an essential requisite; if not published, it would be void & Ultra Vires. The reason is unlike legislation, where it is widely publicised, the delegated legislation is made **in the secret recesses of the chamber of the Govt**, affecting the life liberty & property of individuals. Hence, it is abhorrent to democratic notions.

Hence, the courts have held that publication i.e, Official Gazette publication is the usual method should be adopted.

In Narendra Kumar V. Union, the parliament had made the Essential commodities Act. Sn 3 of it provided that rules made under the Act should be published in the official Gazette. The central Govt, made certain rules, but applied them to issue licenses to acquire non ferrous metals. The supreme court held that as there was no publication it was void.

Hence, publication in the official Gazette or some other reasonable mode is a must. The courts distinguish whether this requirement is mandatory or directory. If directory, substantial compliance is essential, otherwise the rule etc would be Ultra vires and void,

### **Other leading Cases:**

1. Srinivasan V. State of Karaataka 1987.
2. Raza Buland Sugar Co V. Rampur municipality 1965.
3. Govinalal V, Agricultural produce market committee 1975.

### **3. Substantive Ultra Vires:**

The subordinate legislative body or Authority, should not go beyond the policy, principles, purposes or standards prescribed in the

Parent Act. It should also not go beyond the Constitution of India.

**(i) Parent Act & subordinate legislation should be constitutional**

The basic requirement is that the parent Act should be constitutional; if not the Act will be Ultra Vires, and so the rules etc.

In *Chintaman Rao V, State of M.P.*, the Parent Act prohibited manufacture of bidi's by agriculturists during certain seasons. The D.C. Could prohibit such manufacture certain areas by issuing an order.

Held, the Act itself was violative of Art. 19(1) (g) of the Constitution & hence Ultra Vires.

**The second requirement is that the subordinate legislation should not be Ultra Vires the Constitution.**

In *Narendra Kumar V. Union 1960*, the order issued under Sn 3 of the Essential Commodities Act 1955, was challenged, but not the Act. Held, the order should also be constitutional, otherwise it would be void. The order was held void.

ii) Parent Act should not be violated. This is an essential requisite, and, the subordinate legislation should not go beyond its power or authority defined in the parent Act. If it does, it would be Ultra Vires.

In *Mohammad Yasin V. Town Area Committee (1952)*, The Municipalities Act, had empowered the town Area Committee to frame bye-laws to levy heavy fee for use of immovable property of the committee by traders. The committee exceeded its authority & levied fee on wholesale dealers, on any place within the limits of the committee. Held this was Ultra Vires as it applied to any place.

**iii) Retrospective effect:**

In *I.T.O Alleppy V Ponnose*, the Govt. by a notification invested the Tahsildar to recover tax with retrospective effect. Held this was Ultra Vires & void.

**iv) Mala fides, unreasonableness :**

If the rules orders etc made by the body or authority are mala fides, or are unreasonable then they would be quashed as Ultra Vires the parent Act.

The Act made by the Parliament or state legislature, cannot be questioned on the ground of mala fides, but the rule made by the administrative authority may be challenged.

In *Air India V. Nargesh Merza (Air Hostess case 1981)*, that the regulations framed by Air India for termination of an air-hostess on her first pregnancy was held by the supreme court as unreasonable,

arbitrary & hence void.

## **Ch 8-2 Conditional Legislation. 1.**

### **Meaning :**

When the Legislature enacts a law and authorises the Executive authority to bring into force in such areas or at such times as it decides' or to extend the life of the Act, it is generally called 'Conditional Legislation. **This doctrine was invented by privy council, in R V Burah (1878).**

In 1869, the Indian Legislature passed an Act under which it removed Goa Hills from the system of Law & Courts prevailing therein and vested the administration of justice in some officers. These officers were to be appointed by the Lt. Governor of Bengal. It also empowered the Lt. Governor to extend to Gora Hills any other law in force in other places under his control. The Lt. Governor was allowed to fix a date for the commencement of the Act.

The privy Council held the Act as valid. The reason was that the Act had exercised its judgment regarding the place, persons, laws & powers etc. and the Indian legislature having plenary powers had legislated conditionally.

Hence, fixing the date, extending the Act etc. were valid. Burah and others were convicted as extension of law to them was held valid by the Privy Council.

**According to leading authorities Hart, and Cooley, in the united States, the doctrine is applicable.**

The Act or statute provides controls; it does not delegate its legislative powers. But it empowers the executive to bring the Act into operation on fulfilment of certain conditions.

### **The leading cases are:**

1. Field V. Clerk
2. Locke's Appeal.

The position in India is the same.

The Supreme Court in **Tulsipur Super co Ltd V. Area committee** applied this doctrine.

Under Sn.3 of the U.P. Town Areas Act 1914, the Govt issued a notification extending the limits of Tulsipur town to shitalpur village. The sugar factory in shitalpur affected by it challenged this notification. The court held that the Act had provided the conditions, & that extension was valid as delegated legislation.

The other cases are InderSingh V. Rajasthan and state of Bombay. V. NarothamDas.

### **3. Limited Scope:**

In view of extended meaning of delegated legislation, the scope for conditional legislation is very much limited & hardly has a any significance today.

## **CHAPTER 9**

### **PURELY ADMINISTRATIVE FUNCTION**

#### **Ch. 9.1 Definition :**

These are Primarily functions or acts of the administrative authorities and are different from the legislative & judicial functions. The Committee on Ministers Powers defined an Administrative action as an Act based on a decision of Govt's policy.

Any -'authority' or limb of the Govt., other than the legislature and the Judiciary, is an administrative authority.

#### **Authorities :**

According to the Constitution, the 'executive power' is vested in the President [Ar. 53. (1) ] and in the Governor of a state (Ar. 154) and here powers are exercised by a host of their subordinates. Further, there are local & other authorities exercising Governmental functions. All these are Administrative authorities.

#### **Administrative act:**

The Supreme Court in Ram Jawye V. St. of Punjab, defined executive power to mean all the residual Governmental functions that remain after legislative & judicial functions are taken a way. In fact, executive function includes both the determination of the policy and of its implementation. The Supreme Court held that except for incurring expenditure & for affecting private rights, prior legislative sanction is not necessary to undertake every executive or administrative act.

#### **Nature :**

The administrative act may be statutory or non-statutory

Generally, the act disposes of a particular case, enunciates a particular policy, makes inquiries, makes appointments etc., a host of

such acts come within the phrase 'Administrative functions' including issue of licenses, approving of plans etc. (e.g. Factories Act).

In a nutshell purely Administrative act has the following features:

- i) The Judicial approach need not be followed. The officer need not weigh the evidence.
- ii) The Act is based on policy, expediency & discretion, iii) The decision is subjective.

These are different from Quasi-Judicial functions. Whenever the Administrative authority is to exercise its function following a particular procedure to ensure at least a minimum of fairness or justice, it is Quasi-judicial and not purely administrative. This is the dual capacity of the administrators in India:- The same officer exercises administrative and quasi-judicial powers.

Refer Chapter 6 item 3.

**Ch. 9.2 Judicial Control :**

The administrative action is subject to substantive and procedural ultra vires concept and hence, may be declared void by the High Courts & the Supreme Court.

- i) When the acquisition of land was for the purposes of 'building a market', acquisition made for car parking was held bad.
- ii) The order of detention must be for the purpose specified in the Defence of India Act, otherwise, the order is Ultra Vires: Similarly, Procedures, if prescribed, become compulsory and should be followed, or where the authority is to consult some specified body or Board, then consultation is mandatory.

**Cases:**

*1. Franklin V. Minister of the Town & Country planning.*

A local inquiry was conducted in public, the objectors were heard in respect of the formation of stevenage area. Five months later in a speech the Minister had said that he would go ahead with his scheme. The court held that after the report of the inquiry is submitted, further steps taken are administrative & not judicial. Hence, Bias is no bar in administrative action. There must be good faith & an intention to conform to law.

*2. Gallpalli Nageswara Rao V.A.P. (II Phase)*

The Minister for Transport, heard objections & finalised the scheme for Nationalization of bus routes. Held, there was no violation of Bias.

[Also refer Chapter 16 : Administrative discretion. Infra.]



## CHAPTER 10 NATURAL JUSTICE

### Ch 10-1 Principles of Natural Justice.

'Natural Justice' is an expression of English Common Law having its origin in Jus natural (law of Nature.) It involves procedural requirement of fairness. In England it was initially applied to the courts, but later projected from the judicial to the Administrative sphere. It is justice that is simple and elementary, and fair play in action.

In fact, Arthasastra of Kautilya has a reference to natural justice.

In **Ridge V Baldwin**, 1964 the observance of natural justice was made applicable to the entire range of administrative action. This was followed in India in *State of Orissa V. Binapani*, *Kraipak V. Union*, and *Maneka Gandhi V Union*. The purpose of Natural Justice is prevention of miscarriage of justice, and hence is applicable to administrative enquiries. It was held that if there is no specific provision or rule to follow these principles, before taking action against an individual, **the Court would read into the provision** the requirement of natural Justice.

#### **Principles:**

There are two fundamental rules of natural justice to be followed:

#### 1. Nemo debet Esse Judex in propria Causa.

This means that no one should be a judge in his own cause i.e., there should be no Bias.

#### 2. 'Audi Alteram Partem'.

This means 'hear alternate party ' i.e., 'no one should be condemned unheard'.

These two constitute the essence of Natural Justice. **The Rule of law demands that these principles should be followed.**

These apply in all cases where a quasi-judicial tribunal or an administrative authority is determining the rights of the individuals.

### Ch. 10.2 Nemo debet esse judex in propria Causa.

(No one should be a judge in his own cause.) 1. **Dr.**

#### **Bonham's case (1610):**

The leading case that projected this concept into prominence was Dr. Bonham's Case. The Royal College of physicians was empowered to grant Licence to practice medicine. Dr. Bonham did not take out the Licence. He was fined and imprisoned. He filed a suit for false imprisonment. Chief Justice Coke decided in favor of Dr. Bonham, and held that the 'College could not be a judge, in its own cause'. The decision of the College was quashed. Half of the fine so collected was to go to the college itself. Hence Bias was complete.

Absence of Bias is the essence of this doctrine. 'Judges like Caesar's Wife should be above suspicion'. Even a remote interest or Bias is enough.

## 2. Dimes V. Grand Junction canal (1852)

There was a dispute between the land owner and a Company. The case was heard & decided in favour of the Company by the Vice-Chancellor. On appeal, the Lord Chancellor (Lord Cottonham) heard and confirmed the decision. (Lord Cottonham retired). His decision was challenged before the House of Lords on the ground that Lord Cottonham was a shareholder of that company.

Held, no one can suppose that Lord Cottonham could be, in the remotest degree, influenced by the 'interest' he had in this Company. But, no one should be a judge in his own cause is sacred. Hence, his decision was quashed. **This is called legal interest i.e., the judge is in such a position that bias must be presumed.**

**As Lord Hewart, aptly puts 'Justice should not only be done, but should *manifestly and undoubtedly be seen to be done*'.**

## 3. Bias may be of three kinds:

(i) Judge may have bias in the subject - matter or with litigation.  
(Legal interest)

1. Dr. Bonham's case.
2. Dimes Case
3. Gallapalli Nageswara Rao V. A.P. Road Transport Corporation. (I Phase)

In this case, the scheme to nationalise the bus routes was made by the Secretary to the Road Transport Dept., He himself heard the objection of the fleet owners under the Motor Vehicles Act, and recommended for nationalisation of routes.

As Secretary, he was interested in the subject-matter and biased and hence disqualified to hear the Supreme Court held. The order was quashed.

(ii) **Personal Bias:**

This may be due to relationship, personal friendship, professional or employment relationship or personal hostility. The judge should be free from certain obvious and crude forms of interest.

1. In *Cottle V Cottle*, W had filed a divorce petition against her husband H. The chairman of the Bench was the friend of W's family. W told H that she would win the case. The order was in her favour. The court quashed the order of the Chairman.

**2. Maneklal V Prem chand:**

A filed a complaint against M his advocate for misconduct. The disciplinary committee was appointed which conducted an enquiry. The chairman had represented "A" in a case. The Supreme court held that the enquiry was vitiated.

There is substantial likelihood of bias in these cases. The bias here depends not on what actually was done but upon what might appear to be done. (Lord Hewart).

The test is a reasonable apprehension based on factual situation. Whimsical, capricious or vague opinions are not standard to judge bias. "**Justice in fact should be done**" according to Lord Hewart.

**3. Other leading Cases:**

1. Institute of C As V. Ratna. 1986
2. Krishna Bus Service V. St. of Haryana.
3. R. V. Sutherland
4. R. V. Sussex justices.
5. Hindustan petroleum V Yashwant 1991

**iii) The Judge or person should not be a witness in the matter that he is deciding.**

**1. State of U.P. V. Mohammad Nooh.**

The Superintendent of Police got himself examined as a prosecution witness at a proceeding against a constable, in which the S. P. was the enquiring officer. Held, violation of natural justice and therefore the proceedings were quashed.

**2. In Kraipak V. Union** There was selection to the Indian Forest Services, and, a person who was a member of the selection Board was himself a candidate for selection before that Board. The

member was duly selected. The purpose of the rules of Natural Justice is to prevent miscarriage of Justice the Supreme Court said and quashed the selection.

3. In **Raja Ram V. The State** : A Superintendent of Police dismissed a Constable, on the ground that the Constable had sent a telegram against him to the higher officials. This was quashed as the S.P. was a judge in his own cause.

4. **Mohapatra V. St. of Orissa**: A committee had been setup by the Govt for prescribing text books for educational Institutions. Some were authors of books and they had recommended their own books.

Held Bias, & hence bad.

### **Ch 10-3 Audi Alteram Partem :**

**'No man should be condemned unheard'**. This demands a fair hearing because, the persons must know the case he has to meet and he must have adequate opportunity to meet it.

This means any authority or body empowered to decide the question of legal rights, of persons should follow this rule. Otherwise the decision would be quashed as violative of Audi alteram partem.

#### **1. Dr. Bentley's Case: (1723)**

This rule got into prominence with *Dr. Bentley's case* Dr. Bentley was a professor of great eminence. A process was sent to him by the V-C of Cambridge University. He ignored it & remarked that the Vice Chancellor had acted like a fool. The University, deprived him of his degrees. The case was nullified by the Court on the ground that Dr. Bentley was not heard. The judge Fortescue said **'...''Even God himself did not pass sentence upon Adam, before he was called upon to make a defence''**.

Hence, opportunity of being heard is the first rule of civilised jurisprudence as developed by Men & God, and "Right of hearing" is a sine qua non.

#### **Contents of the Concept:**

##### **i) Notice:**

Notice of place, time and the proposition must be given. It must be sufficient clear, specific, unambiguous and understandable by the concerned person. There should be sufficient time to make representation.

##### **ii) Fair hearing:**

Adequate opportunity must be provided for a oral hearing.

Documentary and oral evidence are to be considered, cross-examination must be allowed.

iii) Evidence is to be collected in the presence of both parties. iv) He who hears must decide is a rule though not essential.

v) There should be no malafides or vindictive tendency on the part of the presiding Officer.

vi) Speaking orders should be made giving out reasons for the findings decision.

**ii) Leading cases :- (U.K.)**

1. Dr. Bentley's case: see above para 1.

**2. Ridge V. Baldwin. 1964. Here**

A chief constable was prosecuted for obstructing justice, but was acquitted by the court. The judge passed strictures against the accused in the course of his judgment.

The 'Watch Committee' basing on the decision of the court and the strictures, passed by the Judge, dismissed, the Chief Constable. When this was challenged,

The House of Lords held that as no opportunity was given, there was violation of audi alterem partem, Hence, the dismissal order was quashed.

**3. Errington V. Minister of Health. (Jarrow Case)**

Objection to a 'demolition and clearing' order were received at a public enquiry & a report was submitted. Later, the Inspector visited the place again, discussed & collected further evidence from the officials of Jarrow Corporation, behind the back of the objectors. The court held that hearing one side in the absence of the other was violative of Natural Justice & the order of the Minister was quashed, as it was based on evidence collected without hearing the affected persons.

**4. Cooper V. Wandsworth Board. 1863.**

The Act had not stated that notice should be given before taking action to pull down a house. Coopers House was pulled down even without hearing him. The contention that this was an administrative act and no notice called for, was rejected by the Court. The Court said that it would supply the omission. Held, Hearing was a must,

The court ordered for payment of compensation.

**5. Local Board Vs. Arlidge:**

Council issued an order to close down the house which was

unfit for human habitation. A public enquiry was held, but the owner did not attend. Later he complained that there was no fair hearing. Held the plea of the owner was bad. Giving opportunity was essential Arlidge by not appearing, had waived his right.

6. In **Spackman's Case**, the Medical Council struck off Dr. Arlidge's name on the ground, the divorce court had found Dr. Arlidge guilty of adultery with a woman professionally related. The council had not conducted a 'due inquiry' before removing Dr. Arlidge's name. The House of Lords, issued a certiorari to quash the council's decision.

7. **Bagg's case: 1615:**

James Bagg condemned the mayor of Plymouth & said 'You are a knave, I will crack your neck' etc. For his unbecoming conduct, he was deprived of his voting right. Held, as there was no "hearing", the order was bad and was quashed.

iii) Position in the United States:

The Administrative Procedure Act 1946 has provided that the adjudicatory action to be valid should have a hearing where each party is given the opportunity to know the claims of the opponent, to hear the evidence, to cross-examine the witnesses, to make arguments etc. This is the requirement of the due process clause of the Fifth Amendment of the Constitution.

iv) **India:**

The position in India is the same as in U.K. "fair hearing" is a must and the person should not be "hit below the belt" (Krishna Iyer J)

"Oral hearing" is the content of fair play and hence should be provided to the affected person. Full opportunity should be given.

No material or evidence should be used against the affected person without giving an opportunity to him to defend.

**1. In State of Orissa V. Dr. Binapani Dei**, the petitioner had been compulsorily retired on the basis that she had attained 55 years of age. On the facts of the case, the supreme Court held that the order was bad and no opportunity had been given. It held that even if the order was administrative in character, it should follow the principles of natural justice when the order **involved civil consequences**. If the statute or rules are silent, the courts read into it the principles of natural justice, as a "must", to be followed, by the Authorities, the court said.

**2. Board of High School V. Ghaneshyam.**

The respondent were debarred from taking next exam as

penalty for using unfair means in the Exam. The committee gave no opportunity. Held, as the nature of the Committee order was quasi-judicial, it should have followed the principles of Natural Justice. As there was no hearing, the decision of the Committee was quashed.

3. **Olga Tellis V. Bombay num. Corpn 1985** where unauthorised slum dwellers were thrown out by the corporation, the corporation contended that there was no provision to give notice. Supreme court rejected & said that the provision was not a command to the corporation, "not to issue notice". The discretion was held bad.

4. **Maneka Gandhi V. Union (1978)**: The passport of petitioner had been impounded by the Govt. of India "in public interest". No opportunity had been given to her before impounding the passport. Held, this was violative of the right of hearing & held Ultra Vires. Her Fundamental right to go abroad under Art. 21 had been affected, without hearing.

5. **Srilekha Vidyarthi V. St. of U.P. (1991)** The state Govt issued a circular terminating all the Govt. counsel.(pleader's) They could be terminated at any time, without assigning any cause. The supreme court held that the circular was arbitrary & against public policy & hence void.

6. **Board of high School V. Ku. Chitra (1970)** C had taken the examination. The Board later cancelled her exam, on the ground that she had shortage of attendance. The Board had given no hearing. The supreme court held that there was violation of audi alteram partem & hence the cancellation was void.

Cases where hearing was not required:

1. In case of mass copying, in Exams, the courts have held that hearing was not essential.

2. **Hira Nath V. Rajendra medical college**: Some male students had entered nakedly into a girl's hostel compound in the night. 36 lady students reported & on this basis, the male students were charged. The Committee told the charges to them & held them guilty & were expelled from the college. No hearing was allowed.

When challenged, the supreme court held that looking to the facts & circumstances, hearing & cross exam, of girl students etc was not feasible. The order of expulsion was held valid.

**Scope :-1.** The general rule is that the body or authority should make a speaking order, recording reasons in support of the decision taken by it. (**M.P. Industries V. Union**)

This ensures fairness, and minimises arbitrariness. As per the

supreme court (per Bhagavati J), in Maneka Gandhi's case, recording reasons in support of the order etc is a basic requirement of audi alteram partem. Hence, impounding of passport was held bad.

**Sometimes, requiring reasons for the decision is called the third principle of Natural Justice.** This was held so in Raipur development Authority V.Chakamal)

If **relevant grounds** are not disclosed, the appellate court will have no material to test whether the order was just. Appellate authority or court should judge the validity, on the basis of reasons recorded in the order.

In Padifield V. Minister, the minister had the power to refer complaints to the committee. He gave detailed reasons for not referring to committee. When this was challenged, the House of Lords held that the order was questionable whether he had given reasons or not. There were no good reasons & hence the order was quashed.

The courts in India, have applied the same high standards. In Maneka Gandhi's case, not disclosing the grounds for impounding passport was held to be subject to judicial scrutiny. It held "Law cannot permit the exercise of power to keep the reasons undisclosed, if the sole reason for doing so, is to keep the reasons away from judicial scrutiny".



## CHAPTER 11

### OMBUDSMAN

#### LOKPAL and LOKYUKTA

##### Ch 11: Ombudsman:

###### i) Origin:

The origin of this institution can be traced to **Sweden** (1809). Rowat's book on 'Ombudsman' is almost a classic. The necessity of ombudsman is traceable to the deficiencies in parliamentary system of administration like wrong decisions, mal-administration corruption, of public officials etc,

The office of -Ombudsman was established in Finland, Denmark, Norway, U.K. and other States. In U.K. the equivalent office is that of the 'Parliamentary commissioner' established in 1967. The experiment was a success, in these countries.

###### ii) Status & functions:

**He is the people's Watch-dog.** His jurisdiction extends to all actions of the public officials. The present position is that Ombudsman is appointed for 4 years by a Special Committee consisting of Parliamentarians. The main qualifications are his outstanding integrity & proved abilities in his job. He receives complaints, makes the investigation. He has powers to reprimand the blameworthy officials and criticise their conduct in his Report to the Parliament. Frivolous & baseless complaints are rejected by him, with reasons. He has jurisdiction over judges also.

###### iii) Lokpal :

One of the recommendations of the Administrative Reforms Committee there is absolute need, for the establishment of such an office of Ombudsman.....

The equivalent of Ombudsman is Lokpal, In order to meet the grievances of citizens and to provide an easy, quick and in-expensive machinery to meet such grievances, the office of Lokpal is to be established by an Act. by the Parliament, iv) **Lokyukta :**

Lokpal is for the Centre. The Lokyukta is for the States in India. Each State may make law to establish the office of the Lokyukta. Maharastra established such an office in 1977. Karnataka has recently established an office.

###### v) Nature:

1. He should be demonstrably independent and impartial.

2. His appointment should be no-political. His status should empower him to investigate and to proceed directly.
3. His proceedings should not be subject to judicial scrutiny.
4. He should have an independent office with powers not controlled by the executive.

**vi) Appointment:**

He is appointed by the President of India on the advice of the Prime Minister, in consultation with the Chief Justice of India and the Leader of Opposition in Lok Sabha. On appointment he becomes non-partisan. His status and salary are the same as that of the Chief Justice of India.

**vii) Removal:**

The procedure is the same as in the case of the removal of the Judges of the Supreme Court. [Art. 124(4)]. This provides much independence, freedom to act without aspiring for any favours.

**viii) Functions:**

He has the investigating powers to investigate into any action of Minister on receipt of a written complaint or suo motu relating to -  
1. Mis-administration. 2. Undue exercise of power. 3. Corruption. Where corruption is established against the Minister, Lokpal may bring to the notice of the Prime Minister or the Chief Minister and proceed. He submits annual reports.

**ix) Immunity :**

The Lokpal is immune from any suit, prosecution or other proceedings in respect of official acts done in good faith, under the Act.

**1977 to this 2012**  
**LOKPAL Bill is yet to be passed by the**  
**Parliament**  
**.....will it ?**

## CHAPTER 12 ADMINISTRATIVE TRIBUNALS

### Ch. 12.1 Meaning:

Administrative Tribunals are quasi judicial authorities established under an Act of Parliament or of State Legislature charged with the duty to discharge adjudicatory functions. Dicey's Concept of Rule of law is opposed to the establishment of Administrative Tribunals. But Administrative Tribunals have become a necessity in the modern welfare activities of the States & they have come to stay with us.

A Tribunal means the 'Seat of a Judge', Administrative Tribunals therefore, are bodies other than the courts. They simulate the courts and have powers to determine controversies but they are not courts. They have only some of the 'Trappings of the Courts'. They perform hybrid functions - administrative & judicial.

### 2. Origin & development:

The origin of these tribunals can be traced to the French system of Droit Administratif. It was accepted in other continental countries. The Donoughmore Committee suggested two reforms: The tribunals should disclose the reasons & Inspectors report should be published. The Franks committee was constituted to make recommendation in respect of tribunals and their functions. It stated the characteristics, of the Tribunals . Tribunals are cheap non-technical easily accessible, expeditious and have expertise in a particular field.

It recommended

i) for the appointment of a Council over the tribunals to supervise the work of the Administrative Tribunals.

ii) That the Lord Chancellor should be the appointing authority of the Chairman of the tribunals.

iii) It suggested that the tribunals should observe certain principles like public hearing, Representation by lawyers, Principles of Natural Justice etc. The English Tribunals & Enquiries Act 1958 was passed by Parliament broadly, on the basis of these recommendations.

### India :

Though there are a number of Tribunals established in India, there is no 'Conseil Detaf of France or a 'Council over Tribunals' of the British system. Instead the High Courts have jurisdiction over these tribunals under Art. 226 of the Constitution.

A number of Tribunals have been established in India: Income Tax Appellate Tribunal, Labour Tribunal, Land Tribunals, Railway

Rate Tribunals, Rent control Authority, commissioner for Religious Endowments, etc.

### **3. Necessity & Reasons for Growth :-**

(i) The ordinary Courts follow strictly the procedures & the Evidence Act and hence take much time. However tribunals act rapidly with wide discretionary powers, basing their decisions on departmental policy & other factors

ii) Administrative Tribunals with experts on their panel may effectively dispose of technical problems, as they possess technical knowledge in particular fields like labour, Revenues, Excise, wages etc.

iii) Tribunals are less expensive, and procedures are not complex and formalistic as in courts. Courts are generally rigid & have legalistic approach. Tribunals are not bound by strict rules of evidence & procedure codes. They are more pragmatic & realistic in their approach.

iv) Tribunals are not costly, and are easily accessible to the affected persons, eg. sales Tax Appellate Tribunal. Labour Tribunal, Land Appellate Tribunals etc.

v) Courts decide all questions objectively but the tribunal may decide subjectively on departmental policy basis.

### **4. Essential features :**

#### **i) Statutory Origin:**

Every Tribunal should have its base in a Statute made by the Parliament or state Legislature. It cannot be created under a statutory instrument by the executive, or by a resolution.

#### **ii) Composition & Appointment:**

The Statute must specify the Composition & special Qualifications of the personnel to be appointed as Members of the Tribunal, Normally one Presiding Officer, & two Assessors are appointed. Persons with Expertise or specialization in a particular field (with administrative experience) are appointed.

#### **iii) Jurisdiction, Powers & functions:**

1. As the jurisdiction has the tendency to oust the jurisdiction of the Civil Courts, the Statute should specify clearly the nature of jurisdiction, powers and functions.

2. Its powers normally include some of the powers of the Civil Courts in issuing processes, in securing attendance of witness examining them on oath, to compel production of documents etc.

3. Members of the Tribunals are public servants.

iv) Procedure: Though the procedure codes and the Evidence Act is not binding on the Tribunals they should provide for fair hearing or opportunity & no information should be used against a person without giving an opportunity to defend. However, it should not violate rules relating to hearsay or admit documents without proving them. Thus observance of principles of natural justice is a sine qua non. Decisions of the Supreme Court and the High courts one binding on then (E.I.C. Co v. Collector of Customs)

v) Speaking order:

The tribunal should record reasons for its order (Speaking order). This discloses the mind of the Tribunal, and, prevents arbitrariness. This will also enable the appellate court to decide the legality of the order.

vi) Review:

Tribunals have no inherent power to review, their decisions; The reason is that once the order is made, the tribunal becomes functus officio (authority ceases). If is the High court which has powers to correct the errors of the tribunals.

vii) Appeals:

The order of the tribunal, has no "FINALITY" and hence, it may be set aside under reference to the High court.

Certiorari or prohibition writ may be issued under Arts 226 & 227 of the constitution quashing the order of the Tribunal. (Judicial Review).

**Ch. 12.2: 42nd Amendment and Administrative Tribunals.**

The 42nd Constitution Amendment introduced Arts. 323- A & B to enable. Parliament to make law to constitute Administrative-Tribunals to deal with certain disputes.

The law according to it may exclude jurisdiction of all courts except that of the supreme court under Art. 136 (SLP: Special-leave petition) of the Constitution. This means, by law the Jurisdiction of the High Courts, Art 226 & 227, could be excluded.

Exercising this power, the parliament enacted the Administrative-Tribunals Act 1985, which in Sn. 28 excluded the jurisdiction of the High Courts over the Tribunals.

This was challenged before the Supreme Court in:

**Sampath Kumar V. Union 1987.**

**The court held:**

(i) The Tribunal is to be a real substitute of a High

Court, and should be entitled to exercise the powers of the High Court.

This means the Tribunal is to be a De Jure & De facto Substitute.

ii) The Tribunal should have jurisdiction to decide the validity of any statute, rule, regulation, notification etc. as the High court.

iii) If the Tribunal falls short of this requirement, there would be denial of the power of Judicial review which is the basic structure of the Constitution.

In fact, the tribunal is to be an effective institutional mechanism equally efficacious as the High court in the exercise of Judicial review.

Within these parameters, the Ad. Tribunals Act was held valid and Constitutional. The Tribunal should be a worthy successor to a high court in all respects if rule of law is to be upheld.

iv) C A T :

e.g. Central Administrative Tribunal Karnataka to deal with civil servants service matters is one such Tribunal.

## CHAPTER 13

### PUBLIC CORPORATIONS

#### **Ch:13. Corporations:**

##### **1. Definition:**

A Corporation is an aggregate of persons having its existence, rights and duties separate from the members who compose it. It has the powers to make regulations. It has a right to acquire or dispose of property can sue and be sued and. prosecute & be prosecuted. It can enter into contract It has a legal personality and therefore a "person in the eye of law: (Salmond). It is a body corporate with perpetual succession and common seal.

##### **2. Features:**

(i) Public Corporation is established under a statute. The Statute defines the powers and functions, the nature of undertaking the business enterprise and also the administrative functions to be discharged by it. The Corporation is a public authority and the duties imposed are public in nature.

ii) A Corporation may be established for trading activities. It has two features:

1. That of a Government department.
2. That of a business organisation.

Hence it is a hybrid institution. Early Corporations: The First Indian public corporation established in India was the Bombay Port Trust (1879). This was a success. The Calcutta & Madras port Trusts were created later (1905). In 1934, The Reserve Bank of India and in 1935, The Federal Railway Authority were established.

#### **Later Corporations:**

**A. Commercial :** State Trading Corporations, Air India, Indian

Airlines, Ashoka Hotel, H.M.T. etc.

**B. Financial :** Reserve Bank of India, State Bank of India, L.I.C. Industrial Finance Corporation etc.

**C. Developmental:** ONGC, F. C. I. Damodar Valley Corporation, River Boards etc.

**D. Service:** E.S.I. Corporation, Housing Board, Hospital Boards, etc.

iii) Appointment: Normally the Govt. appoints the Chairman, the members of the Board, the secretary & the Financial Adviser.

iv) Policy: In all policy matters, the Govt has complete control over the corporations. The trend set after the Mundhra Affair was to interfere in the least.

v) The Corporation has a right to acquire, hold & dispose of property. It can enter into contracts and is liable for breach. It is liable for tort.

vi) The statute is the "charter" of the corporation. It should exercise its rights, powers, functions according to it; otherwise it would be-ultra vires. It has powers to make its own Regulations as per the charter, (statute)

vii) It is autonomous in its day to day management, and, is a "State" within the definition of authorities, of Art. 12 of the Constitution. Hence, High courts & Supreme Court have jurisdiction.

This was decided by the supreme court in Rajasthan State Electricity Board V. Mohanlal. This is confirmed by the supreme court in Sukhdev singh V. Bharatram (1975). Hence Fundamental-rights can be enforced against the public corporations.

**viii) Servants:**

Servants of Public corporations are not civil servants and hence are outside Art. 311 of the Constitution. They are subject to the Rules and Regulations of the corporations. If these rules are not followed and an employee is dismissed, the dismissal would be void; they are entitled to reinstatement (Sukhdev Singh V Bharatram: Here dismissed employees of L.I.C, ONGC & IFC. were held entitled to reinstatement).

**ix) Parliamentary Control:**

A Corporation as a juristic person is subject to legislative control. The Parliament or state legislature may control the activities of a Corporation. Questions may be asked in the Houses on the actual working of a corporation and effective & suitable changes may be introduced for the successful working of a corporation. Committee on public undertakings 1964 is charged with general supervision & comptroller & auditor general is to see whether sound business principles and prudent practices are being followed.

The overall Legislative supervisoin and control in public interest are therefore provided for even though it is an autonomous body.

Govt has the power to appoint and remove the chairman and can therefore effectively control the corporation.

Control in the financial sector is dependent on the Govt's involvement. Budget proposals are to be submitted by corporations for Govt's approval. Audit of accounts is done by the comptroller & Auditor General of India. "Directives" may be issued by the Govt on



all matters of Policy. Govt frames the Rules. But Regulations are made by the Corporations. These should not be against the Rules.

Chagla Commission has recommended a compromise between the Govt. Control & the "Corporations authority" to the effective exercise of day to day administrative functions.

**x) Judicial control:**

A corporation is within the definition of "other authorities" under Art. 12 of the Constitution. As such they are subject to judicial scrutiny under Arts. 226 & 227 by High Courts, and Art. 32- by the Supreme Court.

Judicial control is essential when the rights & liberties of persons are affected. Hence the Courts have jurisdiction over the corporations and have powers to declare the act of corporation as ultra vires., where such acts are beyond powers. The corporations are liable for breach of a contractual obligations.

The Theory of separate juristic person of a corporation caused great hardship to the employees as well as to third parties, by the acts of the Government, through the corporations Hence, the court may tear the veil of the corporation to know "its real nature", to provide a suitable remedy. Leading Cases:

J.I.R. Vs. Sunil Kumar.

Hindusthan Antibiotics V. Its workmen.

If the regulations or actions of the corporation are illegal, unreasonable or arbitrary, the courts declare them as ultra vires Art. 14 of the constitution. Hence while granting jobs, largess, Govt-contracts, tenders, granting of licences, issue of quotas, the corporation should act according to law & the Constitution.

The courts broad parameters are fairness in administration reasonable management of public business and bona fides.



## CHAPTER 14

### COMMISSION OF INQUIRY

Ch. 14: The Commission of Inquiry Act 1952 is an enabling Act under which the central Govt. or the state Govt. may set up a 'Commission of Inquiry'.

#### **1. Procedure:**

A resolution should be passed in the Lok Sabha or the Legislative Assembly of the State for the setting up of a commission Inquiry. The appointment is made by notification in the official Gazette. The purpose of Inquiry, the time within which the commission must complete and submit its Report of the inquiry, must be specified. Normally a one man commission is appointed

Order of appointment of commission may be challenged before the High court under Art. 226. The grounds are mala fides, violation of Article 14 (equality) of the constitution, violation of conditions of commission of Enquiry Act. E.g Sn. 3-1 are not fulfilled i.e. that the matter is not of public importance etc.

#### **Purpose:-**

According to the Act, it must be a matter of public importance. The objective is

- (i) To ascertain facts & make legislation if acquired
- (ii) To make administrative inquiry & to take appropriate action on individuals,
- (iii) To eradicate the evil or mischief in future.

#### **Examples:**

The Chagla commission to inquire into the Mundra Affairs  
Tandolkar Commission to enquire into Dalmia Affairs: Ayyangar Commission to enquire the conduct of Bakhi Gulam Ahamed, Shah Com-

mission to inquire into emergency excesses, etc. **Status:**

The Commission is not a Court, tribunal or a Quasi judicial body. Its primary function is to inquire into facts & record its finding & to submit its report to the Govt. It is only an administrative body and is not bound by the C.P.C or the Evidence Act. The only condition is that inquiry must be fair & impartial.

Procedure & powers : It may regulate its own procedure and decide the nature of its sitting (Public or Private). The Commission may exercise the powers of a civil court regarding summoning of witness, production of documents receiving evidence on affidavits etc. Any other powers may be notified by the Govt. appointing the Commission.

**Other powers:**

It may i) Collect all relevant materials.

ii) record its finding on facts which are investigated by it.

iii) may state its views & opinions, iv) may make its recommendations as to what future action may be taken etc.

**Report:**

The Commission may submit its interim report: it closes its sittings when it submits its Final Report within the time notified (or extended from time to time). But with the submission of the Final Report, the Commission is terminated, ie, it becomes "functus officio".

Action may be initiated against persons, on the basis of the Report.

**CHAPTER 15**  
**JUDICIAL CONTROL OF ADMINISTRATIVE**  
**ACTION**

**Ch 15-1 Writ of prohibition:**

It is a judicial writ, (an order), issued by the Superior court to the inferior court, preventing it from exercising a jurisdiction which is not legally vested in it: or which it is continuing its proceedings against the law of the land. (Halsbury)

The object of the writ is prevention ie prevention is better than cure. It restrains the lower court, tribunal or Authority from proceeding further in excess of its jurisdiction. It brings **masterly inactivity**, to it. It shall close the case forthwith.

**Grounds:**

- i) In India, the supreme court (Art. 32) the High courts (Art. 226) are empowered to issue the writ of prohibition to the Lower court, Tribunal or Authority, if it proceeds to act
- (i) Without or in excess of jurisdiction ii) In violation of the principles of Natural justice, iii) Under a law which is itself ultra vires, iv) In violation of Fundamental Rights.

**Leading cases:**

**1. Rex Vs. Electricity Commissioner:**

The Electricity Act, provided for the appointment of commissioners. They made a scheme for some districts. They commenced a local enquiry. Certain companies affected by the scheme, claimed for the issue of a prohibition. The court issued the writ & stopped forthwith the proceedings of the enquiry body, as the commissioner had no jurisdiction.

**2. R. V. Local Govt. Board:**

The lower authority proceeded to try summarily a charge which was not for trial under the concerned statute. Prohibition was issued.

**3. Mathura prasad V. St. of. punjab.**

An item was exempted from payment of tax, but the taxing authority proposed to assess on such a commodity, in the turn over of the assessee. A writ of prohibition was issued.

4. Levy of a licence fee without authority was restrained by issuing a writ of prohibition *abdul kadhira V. st. of. Kerala.*

In *Bidi supply Co. V. Union*, prohibition was issued to I.T. assessment proceedings when there was a transfer order from one

office to another as this was arbitrary and against Art. 14 of the Constitution.

**Limits:**

- i) It is not issued to purely administrative acts of the Executive
- ii) Mere errors or irregularities are not the grounds for writ of prohibition when the lower court or tribunal has acted within its jurisdiction.
- iii) It is issued only if the proceedings are pending in the lower court, tribunal or authority.

**Ch:15-2 Writ of Certiorari:**

1. Certiorari means 'to certify' It was a High prerogative writ issued by the superior courts to the interior courts in England. Later these were extended to Tribunals and other executive authorities who exercised quasi-judicial functions.

In India only the Supreme court & the High courts are invested with the writ jurisdiction under Art. 32 & Art. 226 of the constitution respectively.

The object of the writ of certiorari is to see that the inferior authorities properly exercise their jurisdiction. The courts will interfere to quash, a quasi-judicial order which is either without jurisdiction or against the principles of Natural justice.

(The writ of prohibition is issued if the case is 'pending' in the lower court or tribunal) If the case has already been decided, certiorari may be issued to quash the decision of the lower court or tribunal.

**2. Conditions:**

- i) The *Lower* court or tribunal or authority must be under a duty to act judicially such an act must affect the rights of the individuals.
- ii) There must be want of or excess of jurisdiction (Error of Jurisdiction)-
- iii) Contravention of the principles of Natural justice, iv) To correct an error apparent on the face of the record.

**3. Leading cases:**

**Province of Bombay Vs. Keshaldas Advani.**

The Govt. of Bombay requisitioned the house of K, a tenant, & allotted it to A, under Bombay Land Acquisition Act. K applied for certiorari The supreme court held that if the certiorari is to be

issued, the lower authority must be exercising quasi-judicial functions. The Act had not provided for such an authority.

This decision is no longer good law as in *State of Orissa V Binapani Dev* the supreme court has held, a duty to act judicially is implied when the act is affecting the rights of persons, and hence if the Act is silent, the court will read into it fair procedure of Natural Justice in such cases.

**ii) Jurisdiction:**

*R. V. Minister of transport.* The minister passed an order revoking a licence though he had no such power under the Act. Certiorari was issued.

**i) Natural justice:**

**1. Local Govt. Board Vs. Arlidge:**

The Housing & Town planning Act 1909, had authorised to issue an order to close a dwelling house if it appeared to them to be unfit for human habitation. There was an enquiry, its report was not given to A. there was no oral hearing. A was given an order. He appealed to the Courts, Held, that there was no violation of Natural justice merely because there was no oral hearing or the enquiry authority report was not disclosed to A.

**2. Ridge Vs. Baldwin:**

A chief constable was tried in a case of conspiracy to obstruct justice but was acquitted. The court made some remarks against him in the judgement. On the basis of this the department took action and dismissed him from service. No enquiry was conducted. Held, the order was ultra vires.

**3. Gallapalli Nageswara Rao's Case I phase:**

Certiorari was issued. The secretary to the Govt was biased and the hearing the objections by him for nationalisation of bus routes was violative of the principles of Natural justice.

**iv) Error apparent on the face of the record:**

**1. Rex Vs. Northumberland Compensation:**

'A' was working in a Hospital. The National Health service Act was passed & under it he lost his job. Under the Act, he was entitled to claim compensation on the basis of his total service including his previous service under District council. The tribunal computed compensation on the basis of his service in the Hospital, but it ignored his claim for service under District council. Held, this was a error of the tribunal on the face of the record. The court issued

certiorari.



**Hari Vishnu V. Ahmed:**

Election Tribunal decided an election petition ignoring one of the Election Rules. The consequence was that even those votes which were invalid were counted as valid. The Supreme court held that this was an error on the face of the record. Certiorari was issued to quash the decision.

**Ch. 15-3 Writ of Habeas corpus: (To have the body)**

**1. Meaning :**

It is in the nature of a call to the detaining authority to produce the detainee before the court, in order to let the court know on what grounds the detainee has been detained. If there are no legal grounds for detention the detainee should be released. The writ may be addressed to any body or authority who has detained. The origin is in Magna Carta 1215.

It is a great constitutional right and the first security of civil liberty.

According to Blackstone, the writ provides for a swift & imperative remedy in all cases of illegal restraint or confinement. The earliest instance was in First Edward's period in England.

**2. Jurisdiction:**

The supreme court under Art. 32 is empowered to issue the writ of Habeas corpus for enforcement of Fundamental Right: (Eg: Art 21 & 22)

The High courts are empowered to, issue the writ for the enforcement of fundamental right and any other right.

Any person who has been detained or his next friend may move the writ of Habeas corpus. The burden is on the detainee to prove that the detention is without legal authority or with mala fides or in excess of authority.

**i) Grounds:**

The burden is on the detainee to prove that the detention is:

- a. Without legal authority or
- b. With mala fides or
- c. In excess of authority.
- d. Grounds are vague, irrelevant etc.

**iv) Petition:**

The writ petition to the High court or supreme court for habeas corpus should be accompanied by an affidavit stating the facts & circumstances. If the Divisional Bench is satisfied that there is a prima facie case for granting the prayer of release, it issues a rule nisi to the state (Detaining authority). It may grant interim "bail" to the detainee.

On hearing the parties, if the court, is of the opinion that the detention is not justified, it issues orders to release the petitioner forthwith. (But, if it is justified, it discharges the rule nisi)

v) **Leading Cases:**

1. Danel's case (1627)
2. Rakesh Kaushik V. B. L.
3. H. Khatun V. Home Secretary Bihar.
4. Motilal V. State of Bihar.
5. Liversidge V. Anderson.
6. In re Halley.

vi) **Emergency & Habeas Corpus:**

In Makhan Singh V. State of Punjab, it was held that if a person is detained under Defence of India Act, he could not be released for violation of Fundamental Rights.

However if the order was with mala fides or invalid he could be released under Arts 21 & 22 of the constitution. However, in A.D. M. Jabalpur V. Shukla (1976), (Habeas corpus case) The supreme court, held that during emergency the Fundamental Rights were suspended, and hence the remedy i.e., habeas corpus was not available. Detainee has no locus standi it held. This was an unfortunate decision. Khanna J. wrote a powerful dissentient.

vii) **44th Amendment:**

According to 44th Amendment, even during National Emergency, Arts. 21 & 22 cannot be suspended. Hence this supersedes the Habeas corpus case. The position now compares well with England, where even during I & II World Wars, Habeas corpus was not suspended. (**Liversidge V. Anderson**, and, in re Halley).

viii) **Widened scope:**

Writ may be issued in cases of preventive detention, illegal custody of wife, children, contempt of the House, under trial prisoners, detentions by private persons, etc.

**Ch.15.4. Writ of Mandamus : 1.**

**Meaning:**

Literally it means "**we Command**" It originated in England. It

is a peremptory order issued by the High Court or Supreme Court in India. It demands masterly activity on the authority or body or person to whom it is addressed. It commands him to perform some public legal duty when the doing of a duty had been wilfully refused. When the performance cannot be enforced by any other means, the writ of mandamus may be sought after, as a Judicial remedy, as it is effectual, convenient and beneficial.

. It is available in all cases, where there is specific right but not a specific legal remedy. It is the right arm of the Court. Magna Carta (1215) stated: Crown was bound neither to deny Justice to any body, not to deny anybody right to Justice. Middleton's case of 1573 is the first reported case in England.

The objective is that Justice may be done ie, to remedy defects of Justice, or, failure of Justice. Hence an extra-ordinay remedy.lt is a popular remedy as well.

## **2. To whom Issued:**

It is issued to: President of India, Courts, Tribunals, Speaker of the House, Govt-(State or central), local Authorities, municipalities, City corporations, Panchayats, Universities, Taxing or Election-Authorities, Public officals, other authorities (Art. 12) Also to UPSC, Chief Justice, passport, or Revenue Authorities etc.

Exception: It is not issued to private parties.

## **3. Conditions :-**

To issue a mandamus, the Supreme Court or the High Court should be satisfied, that:

1. The Petitioner has a specific legal right.
2. The Respondent State or Authority has a legal duty.
3. Writ is made in good faith.
4. The respondent has refused relief (ie. there should demand & refusal.)
5. There is no other efficacious, alternate relief.

## **4. Grounds for issue :**

- 1) Protection of fundamental rights.
- 2) To compel a court to exercise its Jurisdiction.
- 3) To direct a public official or Authority or Govt, not to act if the law declared by the court is ultra vires.
- 4) Issued against abuse of power, mala fide exercise of power, non-application of mind or exercise of power, violating principles of natural Justice.

5) To compel Govt or public official to perform duty imposed by a statute.

**1. Laxman Popat Bihari v. St of. Gujrat**, the pension of petitioner was not released even on the "endless infructuous enquiries" for 15 years after retirement of the civil servant, Held, abuse of power, Mandamus was issued to stop enquiries, and, order was issued to pay the pension, with arrears.

**Venkatraman V. St of Madras:** ( To enforce a fundamental Right) A communal G.O. of Madras Govt was quashed as ultra vires Art 16 of the constitution, and the court issued a mandamus to consider the petitioner for the magistrate's job on merit, without looking to the ultra vires G.O.

**3. Somnath V. St of. Rajasthan;** the court issued a mandamus to the municipality restraining it from collecting "Taxes" as it had no jurisdiction.

**4. Salonath Tea Co.V. Supt of Taxes**, an order of assessment of taxes, was declared bad. But dept, refused to refund taxes already paid. Mandamus was issued, to pay.

**5. Menaka Gandhi v. union :** Right to go abroad was a fundamental right under Art.21 of the Constitution, and, hence impounding passport without hearing the party was bad, and a mandamus could be issued.

**6. Privy purse case :** A mandamus was issued to the President of India by the supreme court, not to give effect to the presidential order abolishing privy purse.

**7. Sawyer's case**, the American supreme court issued to the President of U.S. not to enforce "steel seizure" order.

## **Ch: 15.5 Writ of Quo Warranto :**

### **Meaning :**

Means **by what Authority?** This writ was issued in England to privilege belonging to the state. The object was to enquire by what persons who usurped or claimed any office, franchise liberty or authority such claim is made.

The court enquires:

"On what authority you are holding this office?"

It decides who had the right to the office etc., If the answer is not satisfactory the court will oust the usurper by issuing this writ:

### **2. Conditions :**

i) The office must be statutory or constitutional

- ii) It must be a substantive one.
- iii) It should be a public office.
- iv) The holder should be the occupier and user of the office.

The basis of the writ is to see that by an unlawful claim, a person does not usurp a public office. The writ is discretionary, and, the court may refuse to issue if there is an alternative remedy. This writ is a very powerful instrument against usurpation of public office.

**3. Statutory offices: The examples are :**

Prime minister (Rao V. Indira Gandhi), Chief Minister, Advocate General Speaker of the House, M.P., M.L.A., Mayor of corporation, - Chief Justice ( Lokhpal V Ray) etc.

**3. Who can move ?**

The affected officer, or any person, with **bona fide intention** in public interest may challenge. He need not be an aspirant for the office.

**Cases:**

- 1. Advocates may question the appointment of an Advocate General,
- 2. Bar Council member may question the appointment of chief justice
- 3. Kodanda Raman's case : He questioned the validity of Shah commission.

**4. Reddy V. St. of A.P. :** Osmania University Vice-Chancellor was terminated by amending the University Act by reducing from 5 years tenure to 3 years Held, the amended law was not applicabe to him, but to the new incumbent. Quo warranto was issued.

**5. Uni of Mysore V. Govinda Rao :** G who was a reader in English petitioned for a Quo warranto writ against Sri Anniah Gowda. The supreme court held that as per law the University could prescribe the qualifications, and these were fulfilled by sri Anniah Gowda. Hence, quo warranto was not issued against the University.

**4. De facto doctrine :**

This means it is the **dejure** officer who should exercises his powers and issues orders. But, when a **defacto** officer exercise his powers, before he is ousted by the court under a quo warranto, his actions, decisions or exercise of power would be considered as valid on grounds of policy and necessity.

G. Rangaraju V. St. of. A.P. the supreme court quashed the appointment of a sessions judge But, he had disposed of a number of cases as defacto sessions judge. Held, his decisions were valid.

## CHAPTER 16

### ADMINISTRATIVE DISCRETION

#### Ch.16: Administrative Discretion: I

##### .Meaning :

Rule of law demands that Govt. should be of laws and not of men. However, in the Govt. vast administrative machinery, officers, while discharging their functions should invariably have "discretions" to exercise their powers effectively. These administrative functions are general and varied (Refer: Ch. 6 Item 3) .

Administrative discretion means the "determination" reached by the Authority, on facts (ascertained by it), on consideration of available evidence, and on the basis of policy, efficiency & expediency of the Department.

##### 2. Judicial review :

The general rule is that the courts will not interfere with the exercise of discretion, by administrative authorities (Ranjit Thakur V. Union) However, they do interfere in public interest, when there is abuse or lack of jurisdiction. According to the Courts, the "discretion" should be fair honest, based on reason & justice & should not be arbitrary, or unjust fanciful or exercised with mala fides.

"Judicial Review" is also the basic structure of the constitution. (Minerva Mills V Union of India 1980).

In the recent landmark cases in England : (i) Anismatic Ltd V. Foreign Compensation Commission; and (ii) Tameside case, the House of Lords has widened the scope of Judicial review of administrative discretion.

##### 3. Scope:

The scope of judicial review of administrative discretion is very extensive, it not only deals with abuse or excess of discretion, but

extends to all areas of failure to exercise discretion e.g. non application of mind, deciding under dictation, etc, Broadly, the review may be dealt with under the following heads.

##### (i) Abuse of or in excess of discretion:

(a) It is essential that the authority should exercise its powers within the limits of the status or Rules, otherwise it would be *ultra vires* on the ground of abuse or excess of jurisdiction.

### **Classical instances:**

Dr. Markose an authority on Administrative Law, has a pointed reference to say, there is Abuse of power when the mode of exercising valid power is unreasonable or improper. He quotes an example :

**"If a new & sharp axe presented by Father Washington ie, Congress, to young George (Statutory authority), to cut timber from father's compound, is, tried on the father favorite apple tree, there is a clear abuse of power !.**

**Another classical example is : Red haired teacher dismissed, because she has red hair ! This is unreasonable, based on irrelevant considerations, bad faith, colorable exercise of power -" all run into one another"**

### **In A.G.V. Fulham corporation,**

the statute had empowered the corporation to run bath houses & wash houses for the benefit of the public. The corporation opened a public laundry. This was held excess of jurisdiction & hence Ultra Vires.

### **ii) Mala fides :**

The authority should act with bona fides ie, in good faith properly and lawfully. Mala fide means malice ill-will, corrupt motive, vengeance or fraudulent intention. This may take many forms & may be express or implied. There may be malice in fact or malice in law.

The exercise of power with malafides vitiates the proceedings & hence would be void.

### **a) Malice in fact or factual malafides :**

This means the action taken is based on some personal vengeance or motive or ill will: or with dishonest intention.

**Shivraj Patil V mahesh madhaw:** Here, the maharashtra chief minister's daughter's M.D. marks card had been tampered to her advantage, at the behest of the C.M. This was evident from circumstances. Commenting on the deplorable decline of moral values at high levels, the supreme court quashed the result of M.D. exam of the daughter of C.M.

In Express Newspaper V. Union, the union Govts notice, issued to Sri. Ram Goenka chairman of Express Newspaper, of re-



entry by Govt by terminating lease of land given to him was held to be mala fides & politically motivated. & hence void.

**Additional cases :**

**State of Punjab V. Gurdial Singh**, the chief minister had engineered with vengeance & ill will to acquire lands: Held mala fides.  
Zanida Bai V. St. of M.P.

**b) Malice in law :**

According to the Supreme court, if power is exercised without just or reasonable cause or alien or different from the purpose of the statute, it would be malice in law & void.

State of Haryana V. Bhajanlal, it was held that prosecution against the C.M. of the state under the provision of prevention of corruption Act was without any malice & hence proceedings were not quashed

**Cases:**

Mun.Council (sydney) V. Campbell,  
Pratap Singh V. St. of Punjab.

**iii) Fraud on state or colorable exercise of power**

When power is exercised under "Color" or guise of legality but, in reality the purpose of the statute is different, it amounts to "colorable" exercise of power.

1. Somavanti V. St. of Punjab (1963)
2. Vora V. St. of Maharastra.

**3. Bangalore medical Trust V. Muddappa**

Here, land preserved for Public Park was allotted at the instance of CM to a private nursing home. Supreme Court held this was "colourable" & quashed the order of allotment.

**iv) Unreasonableness :**

This includes many things. Taking into consideration irrelevant facts, omitting relevant facts, exercising power for a collateral purpose etc.

e.g. "fixing wages as it may think fit" in the statute does not mean the authority may fix Rs 3 per day . It should mean "reasonably think fit".

**Hence, if the decision of the authority is "perverse", "outrageous" or so absurd that the person "must have taken leave of his senses" (Lord Scarman in Nottinghamshire case), it**

### **is void & Ultra Vires.**

The House of Lords in the recent **TAMESIDE** case ruled that if the statute says "if the minister is satisfied" it means "if reasonably satisfied "; that means that though subjective satisfaction of the authority is to be based, it should not be on some personal opinion but should be on objective grounds from which reasonableness could be inferred." This is a landmark decision on judicial control.

### **V. Non exercise of discretion :**

The administrative authority may fail to exercise discretion by non application of mind, or, by deciding on the dictates of others, or by sub delegating this power to another. In all these circumstances, the decision is Ultra Vires.

a) The authority should apply his mind to the facts & circumstances of the case on hand. If he acts mechanically, without a sense of responsibility, there is failure of exercise of discretion.

**Jagannath V. St. of Orissa**, There was non application of mind of Home minister when the detention order was based on two grounds, the first one or the second. His order was quashed.

### **Leading case :**

#### **Barium chemicals Ltd. V. Company law**

**Board** : Central Govt. Could issue an order of Investigation, under the Companies Act. on ground of fraud. Govt issued order but No circumstances had been stated, on which opinion was formed. Order was quashed.

b) If the authority vested with power under a statute simply acts under the dictators, of a superior authority, he has not taken his own decision, as required by the statute, and hence his decision is bad.

In **Com. of Police V. Govardhandas** the commissioner. had granted a licence to construct a theatre. But, under the directions of the State Government, he cancelled it.

The Supreme Court quashed the cancellation order.



# CHAPTER 17

## LIABILITY OF STATE

### Ch: 17.1. Contractual Liability of State.

#### 1. Origin and development:

In England the concept "The King can do no wrong" had its sway: All the Courts in England were under the Crown and hence he could not be sued. After the passing of the Crown proceedings Act 1947 by the Parliament, the Ministers and Government would be liable for contractual (and tortuous) obligations.

In India the East India Company was held liable in **Mudalay V. Morton**. The Government of India Act 1935 had expressly made Government liable for contractual violations under Sn.175(3) This is reproduced in Art 299(1) of the Constitution.

#### 2. Government liability in Contracts:

##### (i) Power or Authority to contract:

Art.298: The Executive power of the Union or of State extends to carrying on any trade or business and to the acquisition, holding and disposing of property and also to the making of contracts for any purpose.

However, the Government will be liable only if the contact is within the scope of Art 299(1)

##### Art 299(1) prescribes certain essential requirements: -

(i) The contract made in exercise of executive power, must be expressed to be made by the President or the Governor as the case may be.

(ii) The contract is to be executed by persons and in such manner as the President or Governor directs or authorities.

(iii) The contract is to be executed on behalf of the President or Governor.

#### 2. Essentials :

##### (i) The contract by the President or Governor :-

Though the contract should be in writing and to be executed as per Art 299(1) the courts have held that writing is not essential in all circumstances.

In **Chatturbhuj V. Parashram**, the Supreme Court held that a contract could be oral, or may be by correspondence; in an emergency, a contract may be made by Government, without following the "ponderous legal document couched in a particular form".

A contact made by correspondence was upheld in **Union V.**

Rallia Ram.(Tender case).

**ii) Contract by authorized person:**

The contract should be signed by the officer of the Government, who is duly authorised by the President or Governor. If not so authorised, the contract is not enforceable.

In Union V. N.K.(P) Ltd, the Director had been authorised to enter into contract, but the secretary had signed on behalf, of the President of India. Held, **there was no authority and hence invalid.**

In Bhikaji Jaipuria V. Union,

a contract had been made by a firm with Railways for supply of food grains. When the same was supplied the Railways refused to take delivery. The plea of the Government that the Railway Divisional Superintendent had no authority to sign as per rules, was rejected by the Supreme Court. Power may be granted, otherwise than by rules, it held.

**3. Name of President or Governor :-**

It is essential that the Government contract should be made by the officer in the name of the President or Governor. It is generally expressed in agreements as "on behalf of If this is not done:, the contract is invalid.

**Karamshi V.St of Bombay**, Here Government agreed ivith Karamshi for supply of water to his "Cane farm". There were two letters but no contract as required by Art.299(l).Held: contract invalid.

D.G .Factory V. St of Rajasthan, the I.G.Phad signed but it was not "on behalf of Governor". Held Contract invalid.

**3. Objective:**

The objective of Art:299(l )is to safeguard the Government and not to saddle the Government with obligations, which are made by unauthorised officers or in excess of authority. Saving public funds is essential. Hence, if the contract is invalid, the Government cannot later ratify and make it valid.(Malamchand V. St. of.M.P) **The reason is that when there was no contract "at all", the question of ratification does not arise.**

**4. Unjust enrichment:**

From the interpretation of Art 299(1) by the Courts it is evident that the contract will be declared invalid by the Courts, if any one of the three essentials is not complied with but this may prove harsh and unjust in genuine cases. Hence, the courts have applied the doctrine of "unjust enrichment" in such circumstances, in the interest of Justice.

This is in **Sn.70 of the contract Act** (quasi contractual liability). Hence, if the contract comes within the scope of Sn.70 the affected party is entitled to claim compensation from the Government. The Government cannot derive a benefit or retain money of the other party and claim immunity by saying that the contract is invalid and hence it is not liable. In such circumstances the courts will award, compensation to the affected party to prevent unjust enrichment of the state at the cost of the aggrieved party.

The conditions to be fulfilled for unjust enrichment are:

- (i) The person should lawfully do or deliver something *to the other*.
- (ii) He should not have done it gratuitously (ie not done freely)
- (iii) The other party should have enjoyed or derived benefit thereof.

**The leading cases are:**

(i) **St. of W.B.V. B.K. Mondal**

(ii) Mahavir Auto Store's case.

In **St. of W.B.V.Mondal**, a Government officer ordered for construction of a building for the Government office as per the rules of the Dept. The contractor completed the building. Government officer took possession and began using it. But, no payment was made. The Government argued that as the contract was not according to Art 299(1), it was "no contract". The Supreme Court held that there was no contract.

However, it held that the Government was liable to pay compensation, under Sn.70 of the contract Act ie., for unjust enrichment. Thus, if the contracts fails under Art.299(1) the courts with a view to preventing injustice have provided the remedy under Sn.70 of the Contract Act.

**Ch:18.2. Tortious liability of State:**

**1. Origin and development:**

The English maxim "The King can do no wrong" had its sway in England. But, the Crown was made liable since the Crown proceedings Act 1947, for tortious and contractual obligations. In India, during the time of the East India Company, the Company was held liable for the tortious acts of its servants. (P&O Steam Navigation Co V. Sec of State).

**2. Under the Constitution:**

**Art 294(b) provides** that the Union or State Government is

liable for any act arising out of any contract or otherwise. Here,

otherwise includes tortious liability. How far Union or State is liable is **made clear in Art.300(l)**

According to this, extent of liability is the same as that of the Dominion of India and the Provinces, before the commencement of the Constitution. Hence, the State is liable for tortious acts of its servants. However, if the state function is Sovereign, it is not liable. Hence liable for non-Sovereign functions.

**Leading cases:**

**1. Peninsular and Oriental Steam Navigation C.V.Secretary of State(1861):**

A servant of P. was traveling in a coach through the Government's dockyard. Due to the negligence of D's servants, a heavy piece of iron carried by them fell and the horse of the coach was injured. P sued D. It was held that the maintenance of the dockyard was a non sovereign function, and hence, the secretary of State was liable.

**2. Rup Ram V. State of Punjab:**

P. a motor cyclist was seriously injured when the driver of a P.W.D truck dashed against him. It was held that the Government was liable. The Government's argument that at the time of the accident, the driver was carrying materials for the construction of a bridge and that this was a Sovereign function and hence, the State was not liable was rejected by the court.

**3. State of Rajasthan V. Mrs.Vidyavati:**

Vidyavati's husband died of an accident caused by the Government driver who was driving negligently the Government jeep from the garage to the office. Vidyavati sued the Government, for compensation. Held, state liable.

**4. Kasturilal. V. State of U.P.**

A was arrested on suspicion of having stolen gold. Gold so seized from him, was deposited in police Malkhana. A was acquitted. In the meanwhile, the Head Constable had stolen the gold and escaped to Pakistan. A sued the Govt. for the return of the gold or for compensation. Gajendragadkar J held, that the State was not liable.

**Reasons:**

- i) The Police Officers were within their statutory powers.
- ii) The Authority of the police in keeping the property(gold) was a 'Sovereign function'.



**Held, Government not liable for the act done in the exercise of sovereign function.**

**Comment:**

This decision is not satisfactory as the concept of Sovereign function is extended beyond limits. The Supreme Court itself has suggested that the remedy is to make a suitable law to give-protection to individuals in such cases. **No such law has been made so far.**

**5. Basavva V. St.of Mysore(1977)**

In a case of theft, property worth Rs;10,000/-was recovered and kept in police custody. This was stolen from custody. The Supreme Court held that payment should be made to the owner, who had claimed the property.

**6. State of Gujrath V Memon Mohamed.**

Customs Authorities seized certain items, on the ground that the goods were smuggled.Against the seizure order, the party had made an appeal.When this appeal was pending the goods were disposed of under the order of a magistrate.

But, later the appeal was allowed, and seizure order was set aside, and, the authorities were directed to return the goods.

Held, by the Supreme Court, that the Government was a "bailee", and hence was bound to return the goods.

**4 .Sovereign and non-Sovereign functions:**

The distinctions between these two drawn by courts, in Kasturiala's case has become thin, and, in many cases after that decision the Supreme Court has held that the State was liable. Hence, the Ratio of Kasturilal's case is very much limited and the State is liable for tortious obligations.

## CHAPTER 18

### PUBLIC INTEREST LITIGATION

#### Ch.18: Public Interest Litigation I.

##### ORIGIN:

The Origin of PIL may be traced to **the United States**. The Council for public interest law stated in 1967 that legal services have failed to provide any remedy to some segments of the population, who have significant interests. Such groups included the poor, the consumers, the environmentalists, the minorities etc. Hence, these were allowed representation before the Courts in the U.S.

In the United Kingdom, Lord Denning was responsible for PIL's remarkable development

(Leading cases: A.G.V. Independent Broadcasting Authority; and: Reg V. Greater London Council)

In India, it is the Supreme Court that has given an impetus to PIL in the **Asiad case & Transfer of Judges case**.

Since then a number of cases have been decided by it. The High Courts have also followed the same lines of the Supreme Court, and today the PIL is a recognized mode of Securing relief, **which otherwise would not have been available**.

##### 2. Nature and Object:

Public Interest Litigation is considered as "participative Justice". It is to vindicate the rights of many persons, even of masses, the poor, etc. **as Rule of law demands that Justice should be available to all**.

PIL is a co-operative or collaborative effort of public spirited persons, to enforce through courts, the legal and constitutional rights of large sections of society, against the State or its authorities.

The general litigation is called "adversary system", but in PIL the Govt or its Authority is always the Respondent.

The Court ensures implementation-of the legislative and executive socio economic programmers of the State, to benefit the have-nots, the handicapped and the weaker sections of the Society. Also **ensures enforcement of their fundamental Rights**.

**The Courts are assertive and creative in their approach. When they pass an order in PIL the objective is to enforce the Constitution and the law.**

### 3. Powers and Functions of Court

The Courts have assumed jurisdiction in PIL cases, as time had come to assert that the courts are also for the poor and the struggling masses half-clad and half-fed. Social Justice is the signature tune of our Constitution. In this regard, JPIL is an effective instrument of social Justice and has changed, in \ recent years, the entire theatre of law, holding better prospects for the future.

Regarding procedure there is much flexibility. If need be, the court may ignore the technical rules of procedure.

**Hence a "letter to the Chief Justice may be treated as writ petition.**

Courts have not insisted on regular writ petitions; being filed when public spirited persons move the court:

- i) to protect under trail prisoners languishing in Jails without trail.
- ii) to protect inmates of protective Home in Agra.
- iii) to protect Harijan workers employed in road construction in Ajmeer etc.

### 4. Leading cases:

#### 1. Transfer of Judges (S.P.Gupta V. Union)

The Court held that the petitioners as lawyers, had sufficient interest to challenge the "circular" issued by the Home Ministry **for the appointment and transfer of Judges.**

#### 2. Asiad Case

(People union for Democratic rights V.union) public spirited Organisations, filed a writ petition under Art32 piloting the cause of construction-workers of Asiad houses, on the ground of violation of the various labour laws.

**The court held that PIL writ was maintainable. It held that non-payment of minimum wage was "forced labour" coming under Art 23 of the Constitution.**

**3. State of H.P.V. U.R.Sharma.** Letter addressed to Chief Justice of the High Court by some poor Harijans stating that an access road to hilly area sanctioned in 1972, had not been taken up even in 1980 causing great hardship. The Court considered the letter

as writ petition. **This was upheld by the Supreme Court.**

**4 Ratlam municipality V Vardichand:-** Some residents of Ratlam moved the Sub Divisional Magistrate under Sn.133 of Cr.P.C. for an order of abatement of Nuisance and order for construction of drainage etc. The order was issued.

This was challenge by the municipality before the Supreme Court .The Court rejected the municipality plea that residents had no locus stand. **It directed to provide sanitation drainage within a fixed period.**

**4. Bangalore Medical Trust V Muddappa:-** A piece of land had been earmarked for "Public Park" under the Development plan of the City of Bangalore Improvement Act 1945.

But at the instance of the Chief Minister, the B.D.A. allotted the land to a private trust to construct a nursing home.

Residents filed a writ under Art 226 of the Constitution. The petition was allowed. The B.D.A. appealed to the Supreme Court.

**Dismissing it, the court held that it had jurisdiction under PIL. The allotment was held invalid and ultra vires.**

#### **5. Notable cases:**

6. Veena Sethi V. St of U.P.(there was illegal detention of persons for over 2 to 3 decades)

7. K.Pahadiya V. St of Bihar (under-trial juveniles were kept in prison for over 8 years without trial)

8. Karti V. St of Bihar.(Bhagalpur Blinding case Police has blinded accused persons as punishment-) order was issued to rehabilitate them)

#### **9. Sheela Barsi V .Union.-**

Physically & mentally handicapped children kept in jail

10. **Mehta V Union-** (poisonous gas in factories-danger to people .etc)

11. **Wadhwa V.St. Bihar.-**(Issue of over 100 ordinances by Governer-could be challenged under PIL.)

#### **6. Conclusion :-**

PIL at best serves as just one more weapon of the Social activists and public spirited persons, in their continuous and arduous task of espousing the cause of millions ,with the well-intentioned fight for justice through

courts. However P.I.L cannot be stretched too far. **It is not an end all and a cure-all of the ills of our Society.**

## CHAPTER 19

### MISCELLANEOUS

#### Ch:19.1: Locus stand!: 1.

##### Meaning:

Locus Standi means "**place for standing**". Hence it means the legal capacity to challenge or question an act or decision, by a party before the court. ie, it answers the question who may apply or file a suit or a petition. The court strictly speaking entertains only .if he is an aggrieved or interested person. But this is very much liberalized & widened.

##### 1. Scope:

In the United States the strict rule of "standing" is liberalized and the court entertains if the person is within the "zone of interests protected by statute or Constitution". (Falset V Cohen)

. In England ,the strict rule has undergone a change due to the **dynamic activism of Lord Denning. The person will be heard, if he has "sufficient interest". "I always like to hear, what he has to say"-says Lord Denning.**

In India also the scope is very much widened, and hence the rule that the person should be an "aggrieved person" is no longer applicable. Since the leading case of "Transfer of Judges"(Gupta V. union), **the scope of Locus Standi is windened by the Supreme Court.**

(i) In Habeas Corpus petitions, the court permits any other person, (next friend) to move the court. Even letter by the detinue to the Chief Justice, was itself **considered by the Supreme Court as a Writ petition.**

(ii) Tax payers or fee payers may challenge the illegal action of the Authority e.g. granting of cinema licence, liquor-shop licence- can be questioned by rate payer.

. I

(iii) In "quo warranto" ,any person in the public may challenge usurpation of public office. Lawyers may question order of transfer of Judges, appointment of Advocate General etc.

iv) When the State or Public Authority has failed to carry out an obligation provided in a Statute, any person to prevent "Public injury"-may move the court.

e.g.Ratlam Mun.Council V Vardichand. Here the petitioner was held to have Locus Standi to question the municipality which had failed to construct drainage.

v) **Public Interest litigation:**

This has added a new dimension to the Judicial activism. The Courts in public interest entertain petitions and provide relief, going beyond the bounds of Locus Standi.

In keeping with the socio-economic changes, the courts have used P.I.L. as a device to entertain petitions in public interest.

**The leading cases are:**

1. Transfer of Judges case
2. Bandhua Mukhi Morcha V Union  
S.Wadhwa V St. of Bihar
4. Fertiliser Corporation V Union
5. Mehta M.C. V Union

Thus traditional locus standi rule no longer holds the field. It has been widened to meet the challenges of the modern society in all areas socio-economic, scientific, technological, environmental etc.

**Ch:19.2 State's Privilege (Crown's Privilege)**

**Meaning:**

The general rule is: "**Souls Populist suprema lex**" (Public interest is Supreme law). On the basis of this, the Crown may refuse to disclose documents or answer questions, if such disclosure or answer was injurious to "Public Interest".

In **Duncan v Camell** a widow had claimed damages for death of her husband due to negligence of Government contracts when a submarine tank had killed 99 persons. Certain documents were summoned but the minister claimed "crown's privilege". **The court upheld the privilege.**

**This was overruled, by the House of Lords in Conway V Rimmer.**

A constable had sued the prosecutor for malicious prosecution, and, certain documents were claimed by the minister to be under privilege. The Court rejected the plea.

**Hence, the dangerous executive power of "privileges" is subject to Judicial scrutiny.**

**India:**

Though Crown's privilege is not acceptable in India, the Executive or State privilege is stated in Sn 123 of the Evidence Act.

It states that evidence from unpublished official records relating to any affairs of the State should not be given by any person, except with the permission of the Head of the Department. Such person may give or withhold such permission "as he thinks fit".

**Leading cases:**

1. Judges transfer case.
2. State of U.P V Raj narain.
3. State of Punjab V. Sukhdev Singh.
4. Reliance Petrochemicals V. Indian Express.

**Scope:**

The concept of "**right to know**", is based on democratic principle that people should know what the Govt is doing. Hence disclosure by the State must be the rule, and, non disclosure or privilege should be an exception. This was considered as part of the concept of "right to live" under Art 21 of the Constitution(Reliance petrochemicals case).

As per Sn.123 the Head of the Department may "as he thinks fit" allow or refuse disclosure of documents. Is this power, given to him, absolute? The courts have held that under Sn.162 Evidence Act, it is the Court which may decide finally. The objection by Govt, on grounds of privilege, may be disallowed by court and it may call for records. But, if the documents relate to the secret affairs of State, the court in public interest will not call for disclosure. Further whether the refusal by Head of the Department was in public interest or not, is decided by the court by examining the documents. The final decision would always be with the court.

According to Gajeridragadakar C.J. the sole and the only test which should determine the decision of the Head of the Department is injury to public interest and nothing else.

**Ch:19.3: Finality clause (Bar of Courts Jurisdiction)**

Statutes sometime provide for finality clause ie, the orders made by administrative authorities or tribunals are "final". Question is whether such a clause excludes the jurisdiction of the courts?.

eg. (i) Order of Rent Controller is appealable to Rent Tribunal under Delhi Rent Control act. The tribunal's order is final according to the Act.

(ii) order of App. Assistant Commissioner of Income-tax when



appealed to I.T. Tribunal, the order of the tribunal is "final".

The word "final" is interpreted by the courts to mean "final under the Act", and no appeal is allowed. This does not, however, mean ouster of jurisdiction of High Court under Art:226 & 227, and of Supreme Court under Art 32 of the Constitution.

Final means "statutory finality". Hence judicial review is not excluded. The ouster provision may be indirect by providing no appeal, or it may be direct where it states that the Courts Jurisdiction is barred.

e.g. question of fact are final so far as Income Tax Tribunal is concerned.

**Judicial Review:** Even if there is a direct ouster clause, the courts interfere, if the order is:

1. Violative of principles of Natural Justice.
2. Without evidence.
3. Issued in excess of Jurisdiction.
4. Abuse of power etc.

**Rule of interpretation:** Followed by the Courts is that exclusion should not be readily inferred. Judicial review by High Courts and Supreme Court is always available. It is the basic Rule of law-which cannot be taken away.

**Leading Cases:**

1. Radha Krishna v. Ludhiana Union.
2. Dhulabhai V. State.

#### **Ch:19.4: Act of State**

This is an exercise of power by the Executive, as a matter of policy, in its relation with another state or aliens. In such a circumstance, the State claims immunity from the Jurisdiction of the Court, to decide. Such an act of the representative of the State may have the authority of the State or the State may ratify such an act.

#### **Secretary of State V.Kamachi Bai Saheba.**

The Raja of Tanjore, an independent sovereign, died leaving no male heirs. The East India Company declared that as there were no male heirs, the Raj lapsed to the British Government. The widow Kamachi Bai sued the company.

The Privy Council held that it was an 'Act of State' and hence, there was immunity. Hence, she failed.

**Buron V Denman:** P sued D, the captain of the British

Navy for releasing the slaves and for burning the slave camps belonging to P. This act of D was ratified by the British Government. Held this was an act of State, and hence, P failed.

Exception: There is one exception. There is no act of State of a sovereign State against and its own subjects.

### **19.5 : Consumer Protection Act (CPA) Salient**

#### **Features:**

Public awareness of their rights and the necessity for quick and cheap relief, resulted in a movement towards consumer protection-Parliament has enacted the C. P. A. in 1986 to provide for better protection of consumers and for reliefs through consumer councils. There is no court fee.

#### **Forums:**

There is a three-tier system.

The District Forum has jurisdiction for claims upto 5 lakhs;

The State Commission, from 5 to 20 lakhs.

The National Commission, above 20 lakhs.

The case should be filed as early as possible but not later than 2 years.

#### **Complaint:**

The aggrieved person should file his complaint, detailing all the facts & explaining how the opposite party is liable to you, and, how he has failed to address in spite of approaching him giving notice etc. The relief claimed should be stated. An affidavit should be filed with the Complaint. The affidavit is sworn to before the assistant registrar of the Consumer forum.

The name & address of the opposite party should be given in the complaint.

In **Lucknow Development Authority V M.K. Gupta**, the Supreme Court has held that delay in allotment of flats, wrongful cancellation of allotment, delay in refund of deposit etc. would amount to deficiency in Service.

#### **Cause of action:**

1. There should be defect loss or damage due to unfair trade practice of trader ie, opposite party.

#### **Unfair trade practice means:**

Giving of misleading guarantees, or warranties, making of bargain sales, or "Contest"- sales, Lottery system sales. Selling

reconditioned goods as brand new is unfair Practice.

**2. Deficiency in services:**

When specific services do not fulfill their obligations, a complaint may be filed.

Dry cleaner, or tailor damaging your clothes; supplying defective items for domestic purpose - Stove, heater etc.- Similarly public Utility Services are also answerable.

**Consumer:**

The Complainant should be a Consumer as per the Act. A buyer of goods for value, a person who gets services on payment is a Consumer.

Hence, a person who receives a gift, or free services is not a consumer for the purpose of the Act.

For false & frivolous complaints, the forum may impose a penalty on the complainant.

**THE END**

