

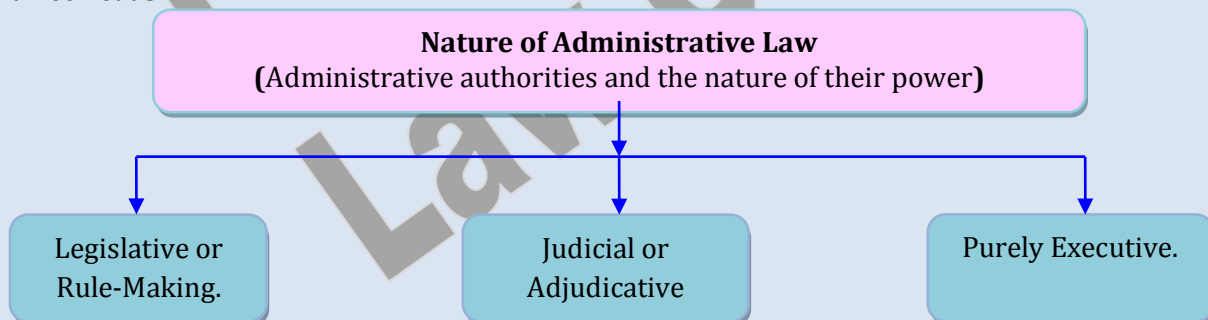
**ADMINISTRATIVE LAW**

**I) Administrative Law-Meaning** – Sir Ivor Jonning defines Administrative Law as the Law relating to administration. It determines the organization, powers and duties of administrative authorities.

According to Dr. F.J. Port-“Administrative law is made up of all these legal rules either formally expressed by statute or implied in the prerogative-which have as their ultimate object the fulfillment of public law. It touches first the legislature, in that the formally expressed rules are usually laid down by that body; it touches judiciary, in that (a) there are rules which govern the judicial action that may be brought by or against administrative person, (b) administrative bodies are sometimes permitted to exercise judicial powers: thirdly, it is of course essentially concerned with the practical application of Law.”

The Administrative law deals with composition and powers of different organs of administration, the procedure with the administrative authorities shall adopt in the exercise of their powers and the various modes of control including particularly judicial control over the different kinds of powers exercised by the administrative authorities. In short the administrative law deals with the powers, particularly quasi-judicial and quasi-legislative of administrative authorities along with their executive powers and their control.

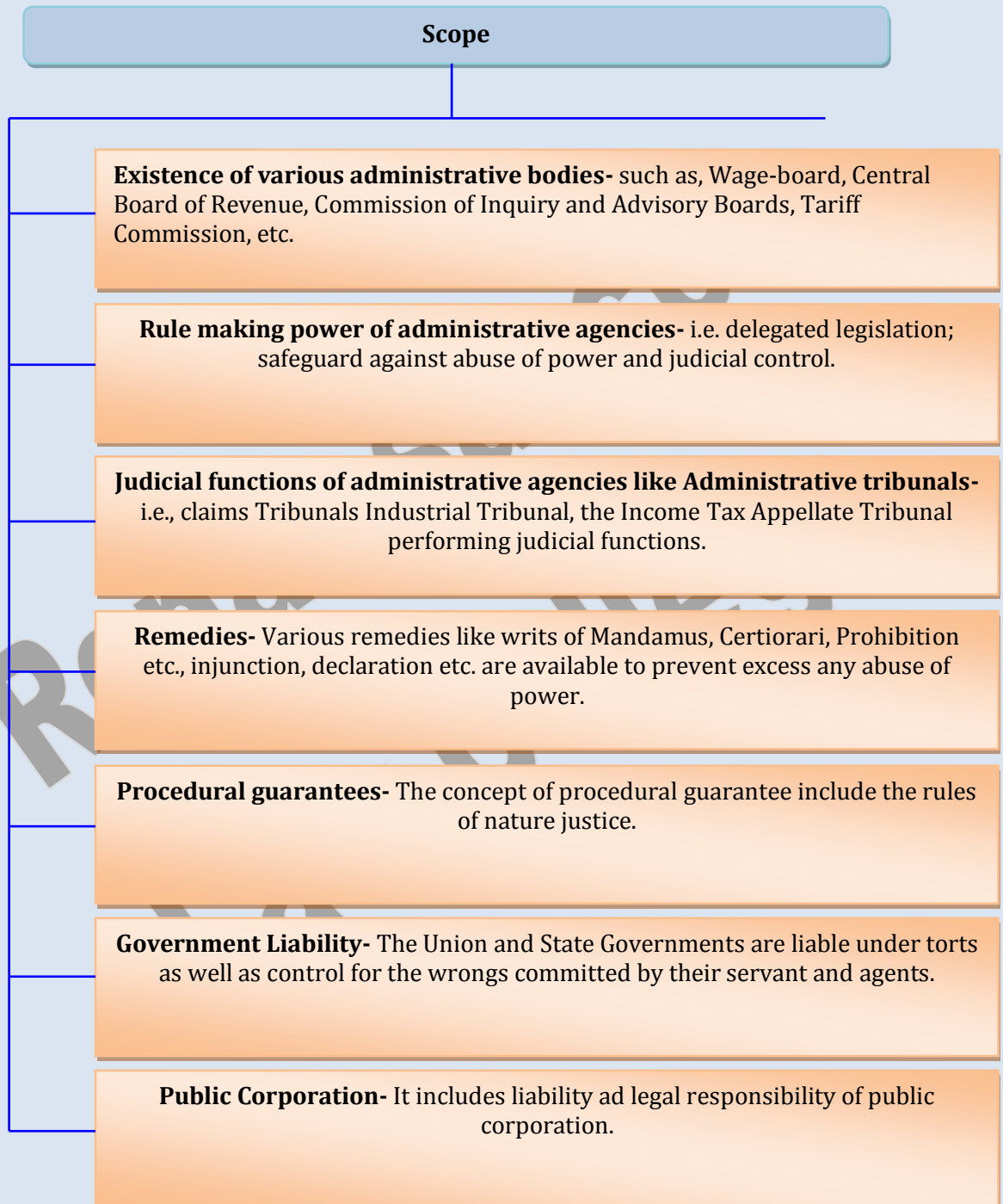
**II) Nature and Scope of Administrative Law-** Nature - Administrative law is study of multifarious powers of administrative authorities and the nature of their power can be studies under the following three heads-



Freiedmann, while dealing with the nature and scope of Administrative law says that Administrative law includes the law relating to-

- (i) The legislative powers of the administration, both at common law and under statute;
- (ii) The administrative powers of the administration, both at common law and under a vast many of statutes;
- (iii) The judicial and quasi-judicial powers of administration, all of them statutory;
- (iv) The legal liability of Public authorities;
- (v) The power of the ordinary courts of supervise the administrative authorities.

**III) Scope** - The province of Administrative law consists of the following-

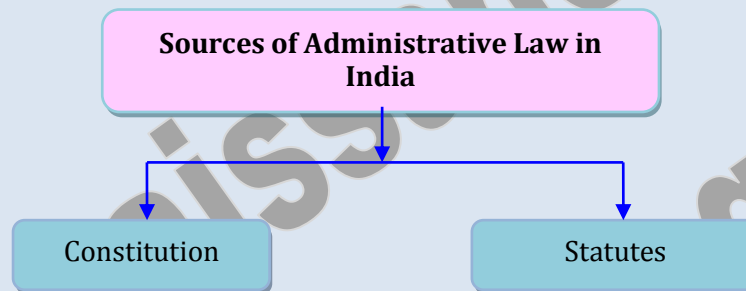


**IV) Growth of Administrative law in India-** In India a system of both administrative legislation and adjudication were in existence from very early time. But in early British India, executive had the overriding powers in the matter of administration of justice During the British rule in India, the executive was invested with such wide powers to make rules as a modern democratic legislature cannot even imagine. In that period though the court had ample powers to set aside an administrative action,

yet paid great respect and attention to their decisions. Judicial relief was available only when the administrative remedies were exhausted.

The Law Commission in its XI Vth Report has traced the reasons for the growth of administrative law in the following words-  
“Society in the 20th century has become exceedingly complex and governmental functions have multiplied. The change in the scope and character of the Government from negative to positive, that is, from the laissez faire to the public service state has resulted in the concentration of considerable power in the hands of the executive branch of Government.

**V) Sources of Administrative Law in India**



**VI) Is Administrative law inconsistent with Rule of Law?** - Administrative law is not inconsistent with rules of law. Administrative law checks and controls the discretionary powers of administrative authorities.

The administrative law and rule of law are not opposed to each other but on the other hand go parallel with a common objective of achieving an orderly government.

**VII) Droit Administratif-** Droit Administrative can be defined as a body of rules which determines the organization and the duties of public administration and which regulate the relations of administration with the citizens of the State.

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**DOCTRINE OF SEPARATION OF POWERS**

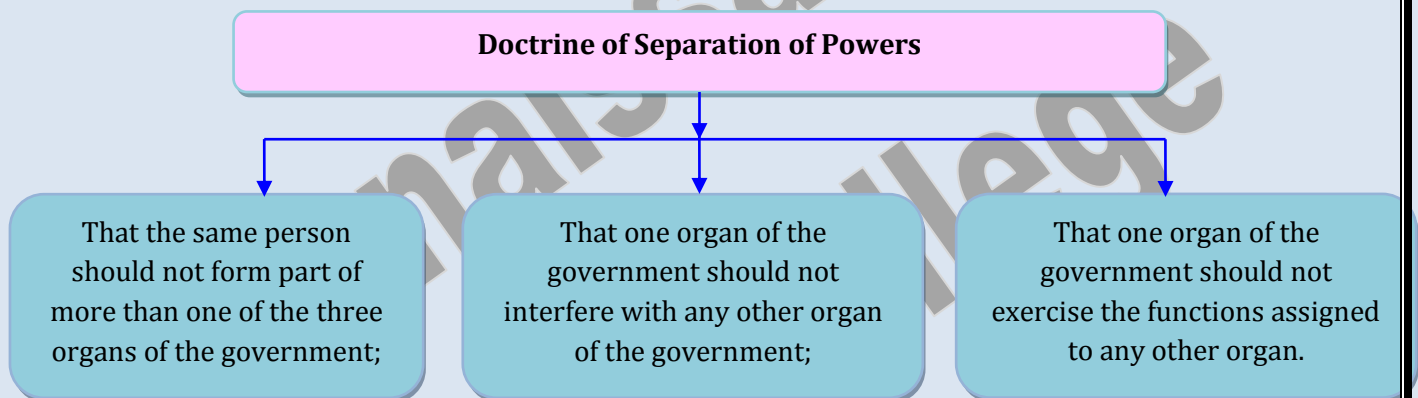
**I) Doctrine of Separation of Powers-** The doctrine of separation of power can be traced to Aristotle. But it was formulated for the first time by the French jurist. Montes Eviu.

In India, we have three organs to function properly as below -

- i) Executive = to implement the law
- ii) Judiciary = to interpret the law
- iii) Legislature = to make the law

Separation of power means all this three organs should not interfere in the working of each other.

According to Wade and Phillips the theory of separation of powers signifies the following three different things;



**II) Doctrine of Separation in India-** In India, the doctrine of separation cannot claim any historical background. The doctrine of separation of powers has also not been accorded a constitutional status. In the constituent Assembly, Prof. K. T. Shah, who was a member of the Constituent Assembly made a proposal to incorporate the doctrine of separation of powers into the constitution, but the Assembly did not accept it.

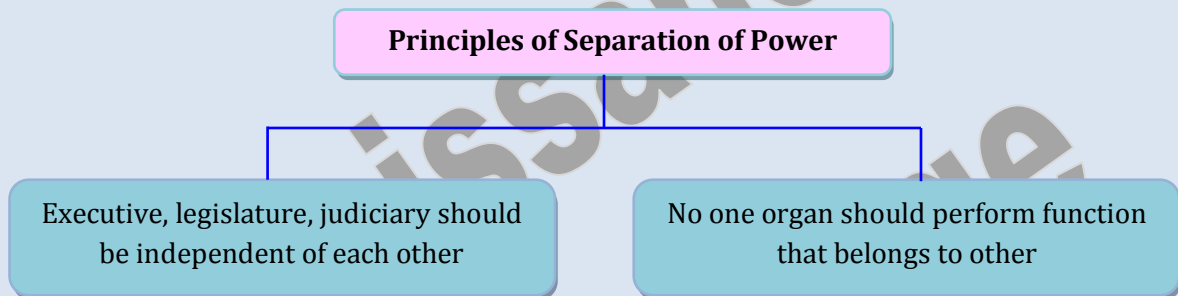
Though, the doctrine of powers, in its absolute, rigidity, is not inferable from the provisions of the constitution, Article 50 of the constitution provides that the state should take steps to separate judiciary from the executive in all the states of the Union. But even then it cannot be said that Art 50 have incorporated the whole doctrine. Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidly but the functions of the differentiated parts or branches of the government have been sufficiently differentiated and consequently it can be very well said that our constitution does not contemplate assumption by one organ or part of the state of functions that essentially belongs to another.

**Example - President of India**

- i) Legislative power → Article 123 (Ordinance), 240 (Peace), 357 (Machinery Failure) of COI.
- ii) Judicial power → Article 103 (Disqualify Member of Parliament) of COI.
- iii) Administrative Power → Executive Head

**III) Modern View-** But now the trend of the Supreme Court regarding the doctrine of separation of powers has been change. In the historic case Kesvanand Bharati Vs. State of Kerala, 1973 the Court changed its view and held that both the supremacy of the constitution and separation of powers are parts of the basis structure of the Indian Constitution.

**IV) Principles of Separation of Power -**



**V) Case Laws -**

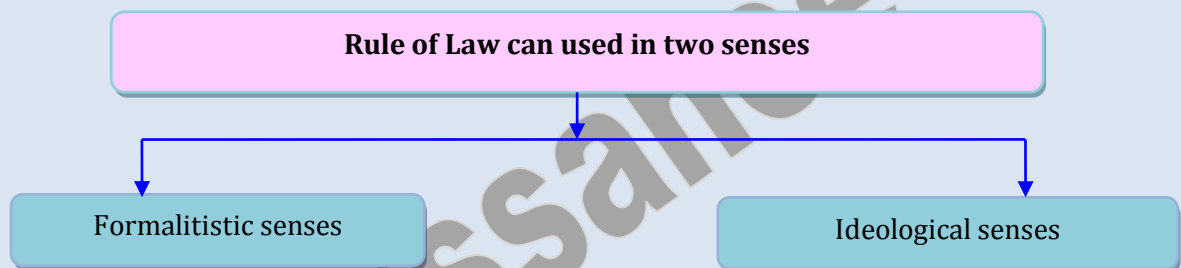
**For reference -**

- i) Delhi Laws Act, 1951
- ii) Rama Javaya Vs. State of Punjab, 1955
- iii) Ramkrishna Dalmiya Vs. Justice Tendulkar, 1959
- iv) Indira Gandhi Vs. Rajnarayan Singh, 1973

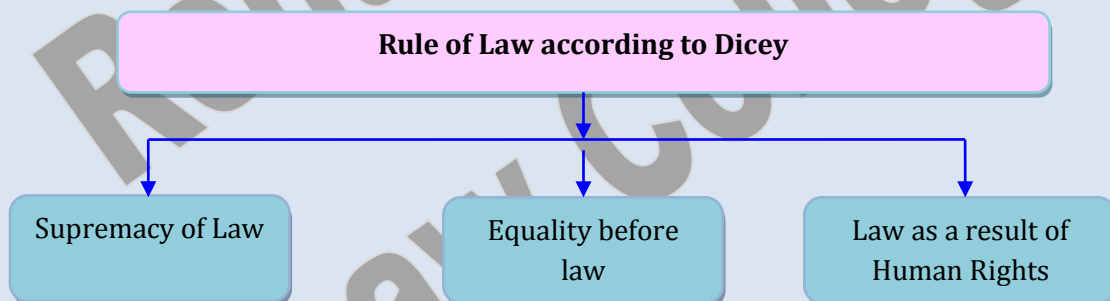
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**RULE OF LAW**

**I) Rule of Law-** The term “The Rule of Law” is derived from the Latin phrase “La legality”, which refers to a government based on principles of law and not of man. In this sense the concept of ‘la legalite’ was opposed to arbitrary powers. Edward Coke originated this concept when he said that the king must be under the God and Law and thus vindicated the supremacy of law over the pretensions of the executive.



When the term Rule of Law is used in formalistic sense, it denotes to an organized power as opposed to a rule by one man. When it is used in ideological sense, it denotes to the regulation of the citizens and the government.



**II) Criticism of Dicey’s View-**

Dicey’s views on Rule of Law have been criticized by the modern writers. It is observed that Dicey misconceived the administrative law in France. He ignored the realities in England and misinterpreted the situation in France. He was also not right when he saw that there is no administrative law in England because even during his time Crown and its servants enjoyed special privileges on the parts of the doctrine that “King can do not wrong.”

Later on Dicey recognized his mistake by observing that there exists in England a vast body of administrative law.

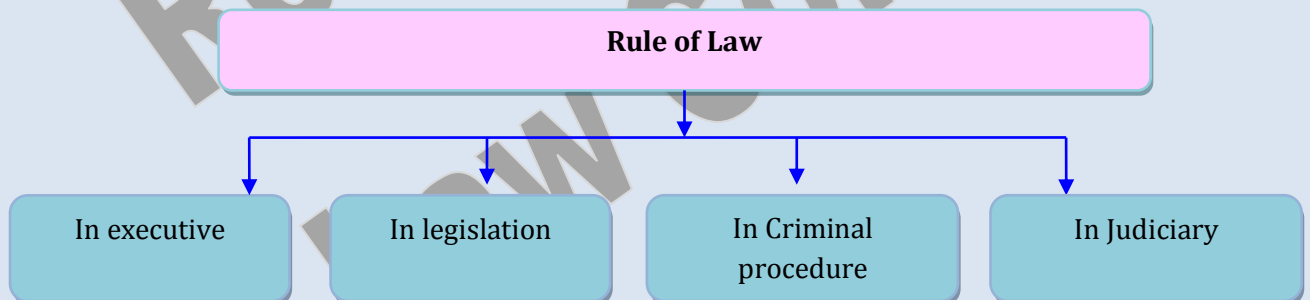
**III) Rule of Law in India-** (1) **In Kesavanand Bharati Vs State of Kerala**, the view was that the Rule of Law is a basic intent of the 'Constitution apart from democracy.

(2) **In Indra Gandhi Vs RAJ Narain. Mathew. J. observed:** "The rule of law postulates the pervasiveness of the spirit of law that throughout the whole range of government is the sense of excluding arbitrary official action in the sphere..... The provisions of the Constitution were enacted with a view to ensure the rule of law.

**IV) Modern concept of Rule of Law is formulated by International Commission of Jurists-**

The concept of Rule of Law formulated by International Commission of Jurists may be regarded as modern concept because it is in consonance with the need of Rule of Law in a modern welfare society. This concept is also known as Delhi Declaration 1959. It was later on confirmed as Lagos in 1961. The commission divided itself into certain working committees.

**V) Conclusion-** The above discussion clearly shows that the recent judgments of the Highest Court of India as well as High Courts exhibit a new approach to the concept o rule of law by emphasizing the fair play and justice in every walk of administrative action and access to judicial remedies for all including socially and economically weaker sections of the society.



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## DELEGATED LEGISLATION

**I) Delegated Legislation-** Austin says, "There can be no law without a legislative act." But when the Legislature, under the pressure of work delegates the legislative power, it results in delegated legislation.

'Delegate legislation' is used in two senses. In one sense delegated legislation means the exercise of the power of rule making, delegated to the executive by the legislature. In the second sense, it means the output of the exercise of that power, viz. rule, regulations, orders, ordinances etc. The expression is used were in both senses. Where the emphasis is on the limits of constitutionality of exercise of such power, the term is used in the first sense : where the emphasis is on the output of the concrete rules the term is employed in the second sense.

In simple words, delegated legislation refers to all law making by the authorities other than the legislature i.e., the Central Government, the State Government, Central Board of Revenue and the other administrative bodies and is generally expressed as statutory rules and orders, regulations, by-laws, scheme directions or notifications etc.

### **II) Nature and Scope of Delegated Legislation-**

Now-a day, the Parliament passes only a skeleton and the rest of the parts is left on the administrative agencies to provide through the rule making power delegated to them. For example the Import and Export (Control) Act, 1947 contains only eight sections and delegates the whole power to the administrative agency to regulate to the whole mechanism of import and exports.

**III) Extent of Delegated Legislature Powers-** An executive authority can be authorized to modify either existing or future laws but not in any essential feature, while exerting its delegated legislative powers. Exactly, what constitutes an essential feature cannot be enunciated in general terms. But this much is clear that it cannot include a change of policy. When a Legislature is given plenary powers to legislate on a particular subject there must also be an implied power to make law incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power in include in the grant of the power. The primary duty of law-making has to be discharged by the legislature itself, but delegation may be restored to as a subsidiary on an ancillary measure.

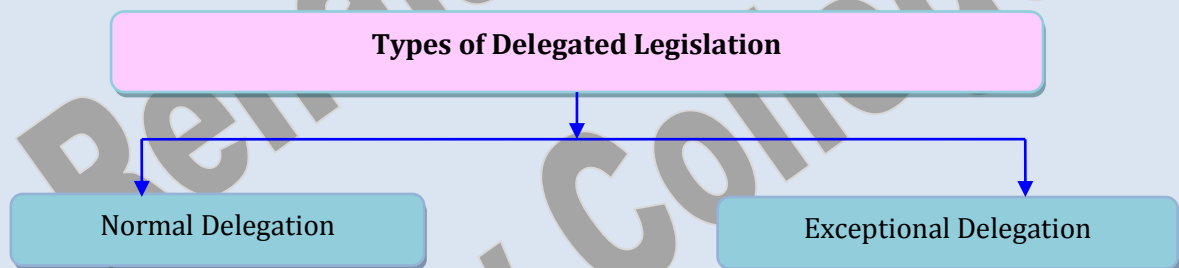
**IV) Growth History of Delegated Legislation-** The Statute of proclamation, 1539 which was repealed in 1547 was perhaps the most striking piece of legislation effected by a Parliament. Under it Henry VIII was given wide power to legislative by proclamation. The next instance was Statute of Sewers in 1531 where Legislative powers were delegated to the Commissioner of Sewers, who was empowered to make drainage scheme and levy rates on land owners. These were outstanding early examples of a technique which the Parliament has always felt able to use.



But it was not the realm of delegation and such were the rare instances and it was not until eighteenth century that we have significant development in the realm of delegation. As Maitland says, “The period before 16th century was the period of private laws a period when Parliament legislated in such detail that many of its measures would today be matters of administrative instructions.”

The growth of modern delegated legislation is usually dated from 1834, when the Poor Law Amendment Act gave to the Poor Law Commissioner, who had no responsibility to Parliament, “power to make rules orders for the management of the Poor.” This power which lasted for a century remained a leading example of delegation which put, not merely execution but also the formulation of policy into executive hands. But this was a small instance of experiment in bureaucratic Government. It did not invoke any criticism until later part in the century. The publication of all delegated legislation in uniform series under the title of Statutory Rules and Orders began in 1890 and in 1895 the Rules Publication Act made provisions of systematic printing, publication and public notice. In 1891, for instance, the Statutory Rules and Orders were more than twice as extensive as the statute enacted by the Parliament. Laissez faire state of 19th century had given place to social welfare state of the First World War Defence of the Realm Act, 1914. Social progress after 1942 complete separation of Powers was not possible, act. 123 Art. 240. Art. 357. Art. 143.

**V) Types of Delegated Legislation-** On the basis of the nature of Delegated Legislation the Committee on Minister’s powers distinguished the following two types of parliamentary delegation:



**VI) Subordinate Legislation**

In subordinate legislation the process consists of discretionary elaboration of rules and regulations. In England the power of the Parliament are supreme as such all the legislation other than those made by British Parliament are recognized as subordinate. Subordinate legislation has its origin in the delegation of the power of Parliament to inferior authorities and are subject to control of the sovereign legislation.

**Types of Subordinate Legislation**

- (i) Colonial Legislation
- (ii) Executive
- (iii) Municipal
- (iv) Judicial
- (v) Autonomous

### **Types of Subordinate Legislation**

- (i) Colonial Legislation- The legislation by the self government bodies like colonies and other dependence of the Crown are regarded as colonial legislation. The legislative powers of such bodies are subject to the control of the Imperial Legislation.
- (ii) Executive- Though the main function of the Executive is to administer, but it has been provided with certain subordinate legislative powers which have been expressly delegated to it by Parliament, or pertain to it by the Common Law Statute.
- (iii) Municipal- Municipal authorities are entrusted by the law with limited and subordinate powers of establishing special for the districts under their control. The special laws so-established by the Municipal authorities are known as: Bye-laws”, and this type of legislation is known as municipal.
- (iv) Judicial- In England the judicature also possesses the like delegated legislative powers. The higher courts are empowered to make rules for the regulation of their own procedure.
- (v) Autonomous- Though the great bulk of enacted laws is promulgated by the State; the autonomous bodies have been entrusted with a power to make bye-laws for its regulation.

**VII) The constitutional limits of Legislative delegation-** There are two constitutional limits of legislative delegation-

#### **The constitutional limits of Legislative delegation**

(i) The power of delegation is subject to certain limitations the legislature cannot delegate essential legislative functions which consist in determining the legislative policy.

The following non-essential functions may be delegated-

- (a) The power to extent the duration of the statutes, having regard to the local conditions.
  - (b) The power to adopt the existing statutes, with the incidental changes in the name, place etc. and to apply them to a new area, without modifying the underlying policy of the statute.
  - (c) The power to promulgate rules if such rules to be laid before the Parliament before they would come into force.
  - (d) The power to select persons on whom the tax is to be laid, to determine the rates for different classes of goods or to amend the schedule of exemptions.
- (ii) the power conferred on an subordinate authority should not suffer from excessive delegation and whether the power so conferred suffer from excessive delegation should be decided with references to the fact whether the delegation has gone beyond the limits of permissible delegation.

### **VIII) Conditional Legislation-**

When an appropriate legislature enacts a law and authorities an outside authority to bring it into force in such area or at such time as it may decide, that is conditional legislation.

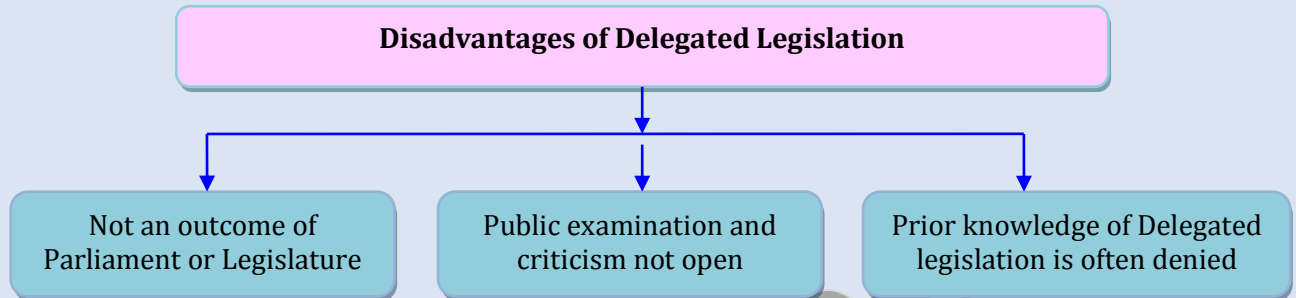
Frequently the legislature enacts a law conditionally leaving it to the Executive to decide as to-

- (i) When will it come into force:
- (ii) The period during which it is to be implemented or suspended : and
- (iii) The place where it should be applied.

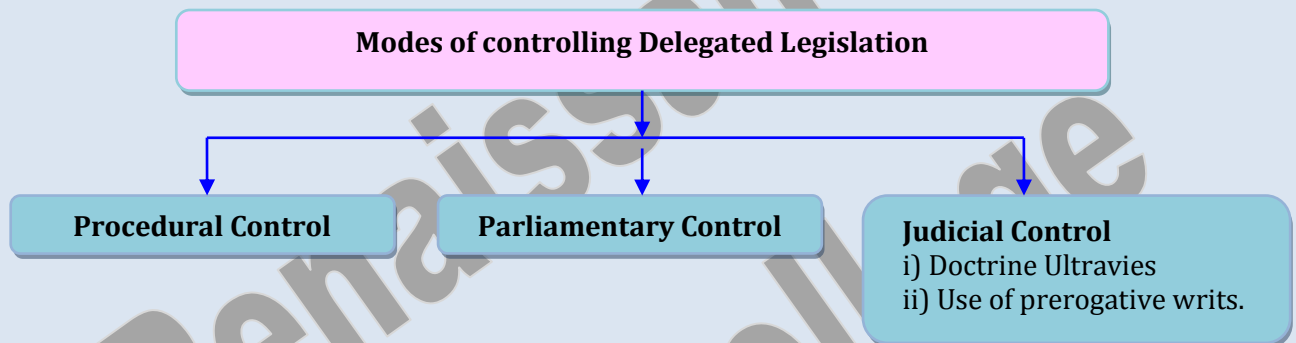
In other words, Conditional Legislation may be defined as a statute that provides control but specifies that they are to go into effect only when a given administrative authority finds the existence of conditions defined in the statute itself. The operation of law follows the fulfillment of the condition. Generally the date of the commencement of an Act may be left entirely to the discretion of the Government and it is laid down that.

“It shall come into force on such date as the Central Government may be notification in the Official Gazette appoint and different dates may be appointed for different provisions of the Act.”

**IX) Disadvantages of Delegated Legislation-**



**X) Modes of controlling Delegated Legislation-**



**Control of Delegate Le legislation by means of Procedure-**

The procedural control mechanism operates in following three components:-

- (i) Prior consultation of interests likely to e affected by delegated legislation.
- (ii) Prior publicity of proposed rules and regulations
- (iii) Post-natal publicity of delegated legislation

**(a) Parliamentary Control over Delegated Legislation**

- (i) By laying the rules on the table of Parliament; and
- (ii) By a Committee of Parliament acrutinishing the rules so laid.

In U.S.A. the control of Congress over delegated is very limited because neither the technique of ‘lying’ is extensively used nor there is any Congressional Committee to scrutiny it.

In England, due to concept of supremacy of Parliament, the control exercised by the Parliament over and administrative rule making is very broad and effective. This Parliamentary control operates though ‘laying’ techniques. Under the provisions of statutory Instruments Act, 1946, all administrative rule making is subject to the control of the Parliament through the Select Committee on statutory Instruments.

In India, the Parliamentary control of delegated legislation follows the same patterns as in England. Like Standing Committee in House of Commons in Britain he further said that such committee would examine delegated legislation and would bring to the notice of Parliament whether delegated legislation has exceeded the original intention of Parliament or has departed from it or has affected any fundamental principle.

- (i) By laying rule on the table of Parliament ; and
- (ii) By a committee of Parliament scrutinizing the rules so made.

**(i) By laying rule on the table of Parliament**

- (a) Laying with no further direction
- (b) Laying subject to annulment
- (c) Laying, Subject to affirmative resolution
- (d) Laying with deferred operation
- (e) Laying with immediate effect but requiring affirmative resolution as a condition for continuance

**(ii) By a committee of Parliament scrutinizing the rules so made**

The main function of these committees is to examine the merits of the executive legislation against which petitions are presented.

**Main functions of Committees** - According to Rule 223, the main functions of the Committee shall be to examine:

- (a) Whether the rules are in accordance with the general objects of the Act;
- (b) Whether the rules contain any matter which could more properly be dealt the Act;
- (c) Whether it contains imposition of tax;
- (d) Whether is directly or bars the jurisdiction of the Court;
- (e) Whether it is retrospective;
- (f) Whether it involves expenditure from the Consolidated Fund;
- (g) Whether there has been unjustified delay in its publication or laying;
- (h) Whether, for any reason, it requires further elucidation.

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**ADMINISTRATIVE DISCRETION**

**I) Administrative Discretion**

According to COKE-Discretion is a science of understanding to discern between falsity and truth, between right and wrong, and not to do according to will not private affection. This power should be exercised independently by the authorities concerned according to their own assessment.

It should be noted that a statute conferring discretion usually uses the words 'adequate', 'advisable', 'appropriate', 'beneficial', 'competent', 'convenient', 'expedient', 'equitable', 'far', 'reasonable', 'prejudicial', to safety an 'security', 'detrimental', 'necessary', 'wholesome', 'public purpose', etc. or other opposite. All these words involve matter of degree.

Again an administrative discretion must not be arbitrary or vague but legal and regular. In England even the refusal of exercising discretionary power, where it imposes a duty to exercise it, gives rise a liability to damages. But in India, there is no such law.

But no doubt, an authority may be compelled in India to exercise his discretion where he has been expressly with such power, through courts.

**II) Administrative Discretion and Fundamental Rights-** Articles 13 to 35 of the constitution of India has guaranteed certain fundamental rights to the people. If the law confers and wide discretionary power on an administrative authority which infringes the fundamental rights guaranteed under the Constitution then such law may be declared ultravires. Articles 32, 226 and 227 of the constitution of India contain strong power to control the administrative authority if they exceed the limit or abuse the powers given to them. The courts have use the fundamental rights as a tool to control to some extent either bestowal of discretionary power on the administration or manner of their exercise.

**Article 14**

Article 14 of Indian Constitution declares that "state shall not deny to any person equality before law and equal protection of the laws throughout the territory of India." Thus this Article speaks about the "equality before law and equal protection of the laws." In addition to this provision the right to equality has been again accepted under Arts 15 and 16. Under Article 15 there is a provision for the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Upon these grounds state shall not impose any liability or disability of any kind. Similarly under article 16 equality of opportunity has been granted to all citizens in the matters of public employment. Equality before law English concept. Equality before law simply prohibits class legislation, it does not prohibit classification. Equal protection clause is part of American Constitution also.

Nainsukhds Vs State of U.P., it was held that a law which provided for election on the basis of separate electorates for members o fdifferent religions and communities was unconstitutional.

**Administrative discretion and Article 19-**

There are seven fundamental rights guaranteed to the citizens of India under Article, 19, which are as follows:

- (a) Freedom of speech and Expression
- (i) Freedom of Assembly

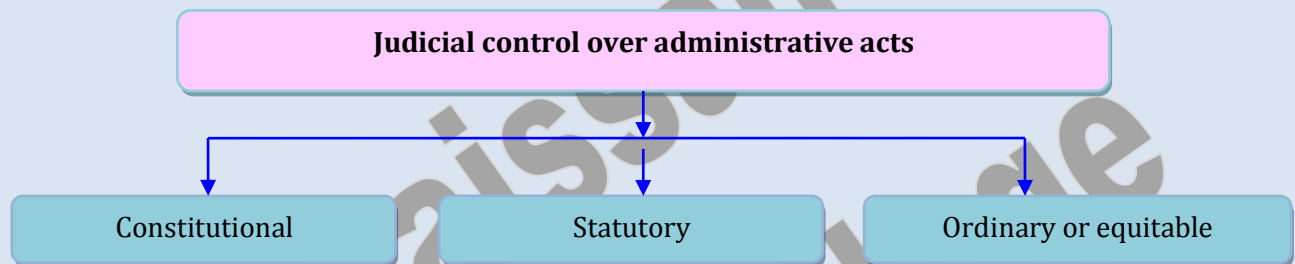
- (iii) Freedom to form Association
- (iv) Freedom of Movement
- (v) Freedom to reside and to settle
- (vi) Freedom to acquire, hold and dispose of property  
(This fundamental right has been omitted by Constitution 44th Amendment Act 1978)
- (vii) Freedom of profession, occupation, trade or business.

The restriction on art- 19 must be constitutionally valid and must satisfy the following two tests:

- (i) The restriction must be for the purpose mentioned in clause 2 to 6 of Article 19.
- (ii) The restriction must be reasonable.

The reasonable restrictions are open to judicial review.

**III) Provisions of Judicial control over administrative acts-** In India, the provisions of judicial can be grouped into following three heads:



**(1) Constitutional-** Article 32, 226, 227 of COI.

**(2) Statutory Review-** There are some acts which provide for an appeal from statutory tribunal to the High-Court on the point of law for example Workmen’s Compensation Act 1923.

**(3) Ordinary or Equitable-** The following are the ordinary or equitable modes to control an administrative discretion.

- (a) Injunction
- (b) Declaration
- (c) Suit for damages.

**(a) Injunction-** A Judicial process by which one who has invaded or is threatening to invade the rights legal or equitable of another, is restrained from continuing or committing such wrongful act. Injunction section 36 to 42 of the Specific Relief Act 1963.

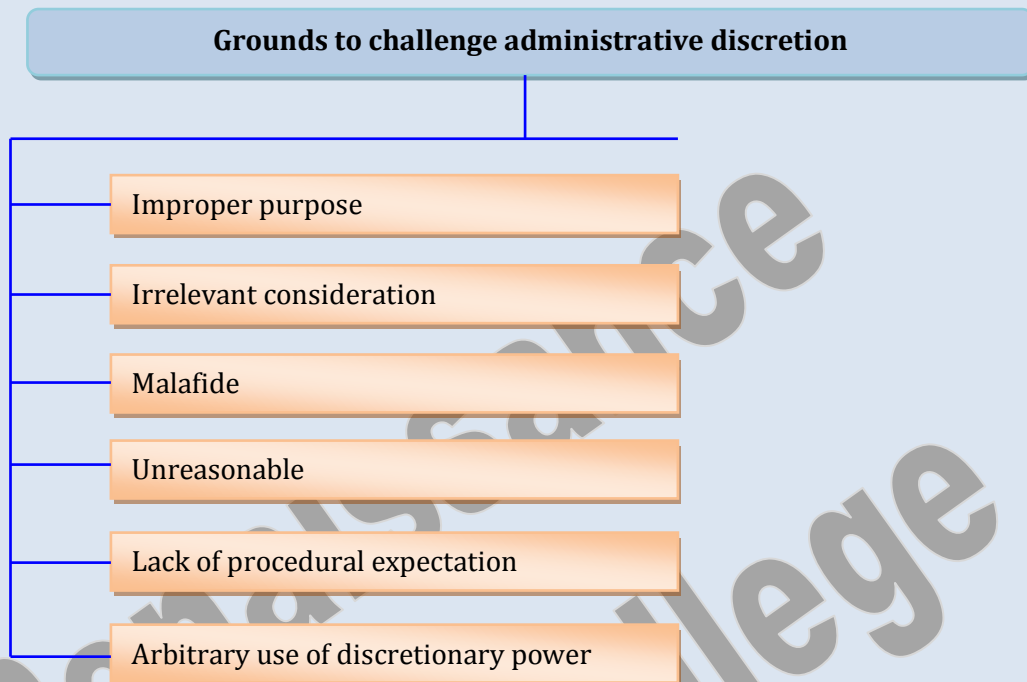
Regulate by the Code of Civil Procedure 1908 (Se 37 of the Specific Relief Act.) refrain from doing, a particular thing until the suit is disposed of or until further orders of the Court. An interlocutory application, preserve the status Quo pending trial and judicial discretion of the court.

**(b) Declaration Action** – A declaratory action denotes a judicial remedy, which conclusively determines the rights and obligations of public and private persons and authorities, without the addition of any coercive decree. It is merely a definition of rights and obligations. It does not prescribe any further relief nor any sanction against the defendant. It simply results in the removal of the existing doubts regarding the legal rights of the plaintiff.

**(c) Suit for damages** – Whenever any wrong is done to an individual by some wrongful negligent acts of the public authorities, such individual may file a suit for damages against such authority> The principles determining the quantum of damages are the same that govern the private individuals.



**IV) Grounds to challenge administrative discretion** - In India, the provisions of judicial can be grouped into following three heads:



**V) Case Laws -**

- For reference -**
- i) RD Shetty Vs. International Airport Authority, 1979
  - ii) Himmatlal Vs. Police Commissioner, Ahmadabad, 1973

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**ADMINISTRATIVE TRIBUNALS**

**I) Administrative Tribunals**

Administrative Tribunals are agencies created by specific enactments to adjudicate upon controversies that may arise in the course of the implementation of the substantive provisions of the relative enactments. Unlike that of the court which is parts of the traditional judicial system of a country, the jurisdiction of administrative tribunal is not general. But specific, the courts, known to Anglo-saxon jurisprudence would entertain suits, ranging for a simple claim for recovery of debt to complicated issues of law and facts, but excluding the vires of legislation. Administrative Tribunals are solely quasi-judicial functions.

It should be noted that an administrative body will be administrative tribunal only when that body is constituted by the state and is vested with some judicial powers of the state. The tribunals are generally given the power of a civil Court enjoyable under the code of Civil Procedure in the matters of summoning witness, compulsory production and discovery and documents, receiving of evidence on oath and on affidavit, issuing commissions etc.

**II) Characteristics of Administrative tribunals-** The following are the characteristics of Administrative tribunals:

**Characteristics of Administrative tribunals**

- (i) That they are established by the executive under the provisions of statute.
- (ii) That though they are required to act judicially, they perform quasi-judicial functions.
- (i) That they are independent and imperial and work without being influenced by the Government.
- (ii) That they have the powers of Civil Courts in certain matters and their proceeding by the considered to be judicial proceedings.
- (iii) That they are required to follow the principles of natural justice in deceiving the cases.
- (iv) That they are not bound to follow the technical rules of the procedure and evidence prescribed by the civil procedure Code and Evidence-Act.
- (v) That they are not courts in proper sense of terms.

**III) Difference between Administrative Tribunal and Court-**

- The main distinction between the court and an administrative tribunal lies in the law policy distinction. Because the court first ascertains facts and applies law to these fast as such the function or a judge is like as solt machine- controlled fact finding and controlled application of

law. On the other hand, an Administrative Tribunal proceeds with a controlled fact finding and an uncontrolled application policy.

- Secondly, there is no uniform procedure which the administrative tribunals are required to follow exercising adjudicatory powers, whereas the Courts follows a uniform, fixed statutory procedure,
- Thirdly, the Court exercises only judicial functions whereas Administrative Tribunals undertake various other administrative functions.
- Fourthly, tribunal is wider than Court. All Courts are tribunals but all tribunals are not courts.

#### **IV) Reason for development Administrative Tribunal**

- (1) The procedure adopted by the Court is very much technical and the approaches of the Courts are highly individualistic and ritualistic.
- (2) Secondly, a litigation before a Courts of Law is time consuming & costly.
- (3) Thirdly, the administrative adjudicatory system came into existence with intent to carry out of the modern governmental plans of public health, education, planning, social security, transport, agriculture, industrialization and national assistance and to provide a system of adjudication which was informal, flexible, cheap and rapid.

#### **V) Growth in India-**

The necessities of modern collectivist socialist state economic programme of the state covering all the aspects of human life, delay in civil proceedings, in the technicality of disputes and growing demand of justice and economic resulted in

was proliferation of powers of administration, regulating human activities in multifarious way which ultimately resulted in the growth of innumerable quasi-judicial bodies. These tribunals are established the law, although its members are appointed by the Government. It decides the matters while acting judicially, free from the technical rules of procedure and evidence of a court of law keeping fully in view the social needs accepted public policy.

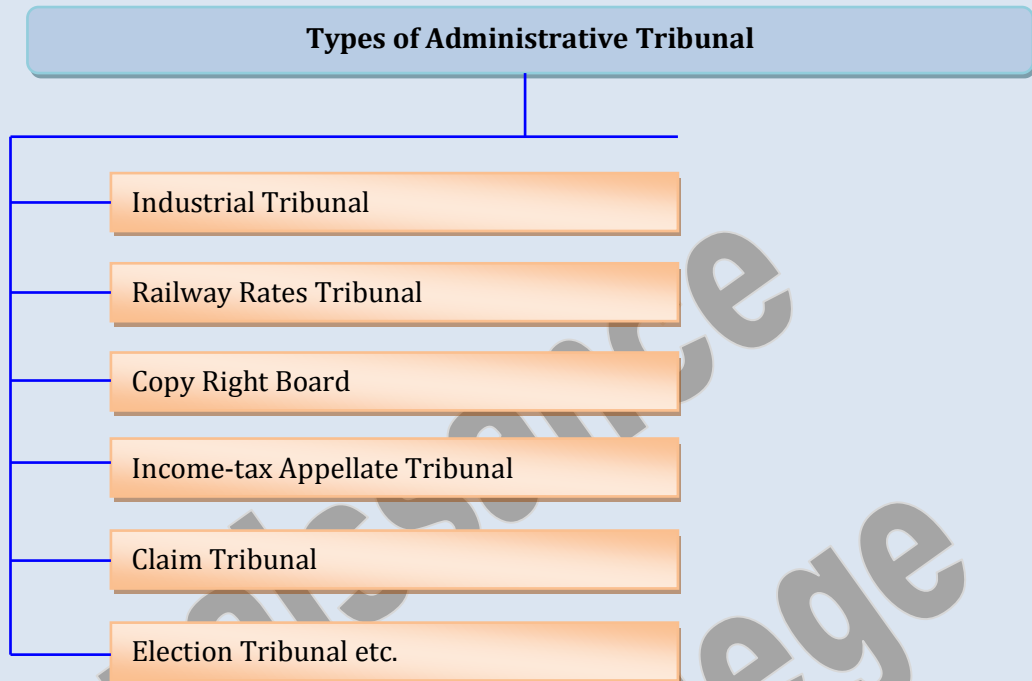
It should be noted that administrative tribunals are constitutionally recognized under Article 32, 136, 226 and 227 of the constitution of India.

#### **VI) Demerits of Tribunals**

1. The variety of administrative tribunals has grown like mushrooms in the rainy season.
2. No uniform system of appeal against the decisions of tribunals. Medical Council of India, Central Government.
3. The technical rules of Evidence Act do not apply to administrative tribunals.
4. "A court of no appeal has been put in the hands of men who are generally neither qualified lawyers, magistrates nor judges."
5. In India, except in the cases of civil servants, in all disciplinary proceedings the functions of prosecutor and the judges are either combined in one person or in the same department which is in violation of the principles of natural justice.
6. Sometimes, no one knows from where the decision comes. In G. Nageshwara Rao Vs. A.P.S.R.T.C. 1956, case was not heard by the authority from whom he received the communications. This divided responsibility, where one hears and another decides is against the concept of fair hearing.
7. In any disciplinary proceeding the presumption is of guilt rather than innocence.
8. Official or departmental bias is one of most buffering problems of administrative law.
9. The administrative tribunals are not required to give reasons for their decisions.

In India, there is no law to eliminate the dangers inherent in off-the record consultation by an administrative authority.

**VII) Types of Administrative Tribunal**



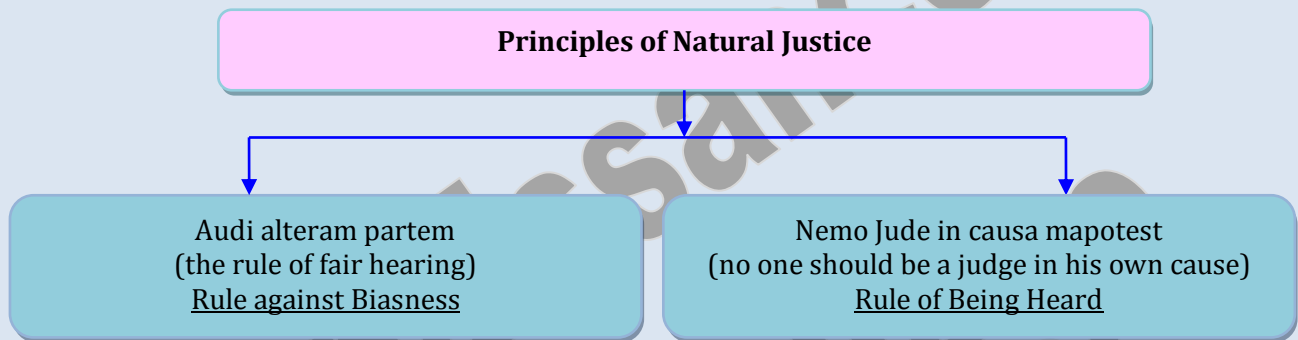
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**PRINCIPLES OF NATURAL JUSTICE**

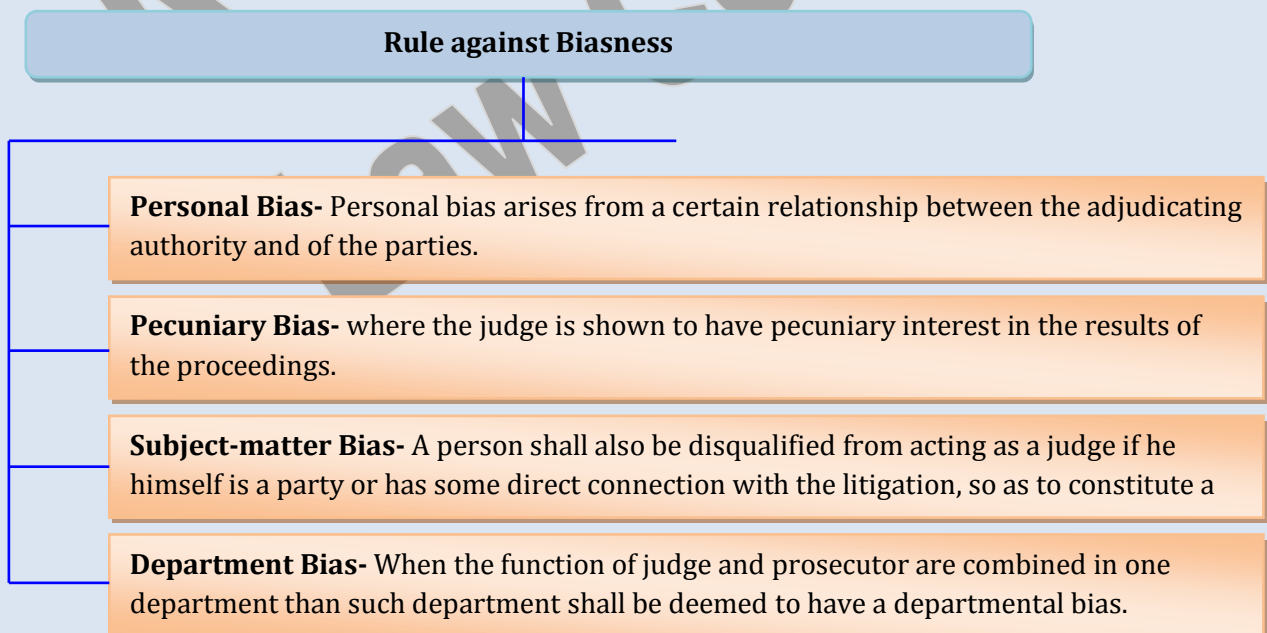
**I) Principles Of Natural Justice -**

“Natural Justice” is a concept of common law and signifies certain fundamental rules of judicial procedure. The branch of principles of Natural Justice will prevent justice from being seen to be done.

“Natural Justice” has been used as referring to the following two important principles:



**II) Rule against Biasness-** Rule against Biasness denotes that an administrative authority acting in a quasi judicial manner must be impartial, fair and free from biasness.



**III) Doctrine of Audi Alteram Partem-** Doctrine of Audi Alterm Paltem is fundamental rule of natural justice which denotes ‘right to be heard’. The doctrine of Audi alteram partem signifies the fact that no man should be condemned unheard. It is said that even Adam and Eve were given the benefit of this by

the Almighty before they punish for disobeying His Command. Since the reason of the rule is that party shall have an adequate opportunity of rebutting the case against him it might be that this notice ought to inform the party of the case which has to meet.

In **Ridge vs. Baldwin**, the appellant was a chief constable. He was dismissed by the Watch Committee under Section 191 (4) of the Municipal Corporation Act, 1882. This decision of dismissal was taken by the Committee in his absences and even without giving him charge sheet. The action was challenged on the ground that the committee passing the order of dismissal, did not observe the principle of natural and the whole action was taken without given him an opportunity of being heard. The Court of appeal dismissed the action and held that the Watch Committee was not bound to follow the principle of natural justice.

#### **IV) Exception to the Rule of Audi Alteram Partem-**

Under the following circumstances the application of the rule of Audi alteram Partem may be excluded wholly or partly-

- (i) Where the functions of an authority concerned have been held not to be Judicial.
- (ii) Where the function of an authority have been held to be policy oriented.
- (iii) Where prompt action, preventive or remedial is needed due to emergency situation.
- (iv) Where the power exercised is disciplinary one, the rule audi alteram Partem does not apply.

Where the process of fair hearing would be prejudicial to public interest the rule alteram partem is excluded. Such situation may cover the cases of Defence or state secrets.

**V) Case- In R. Radha Krishna Vs. Osmania University**, the university cancelled the whole M. B. A. entrance examination because of mass copying. The decision of the university was challenged on the ground that the candidates were not given a hearing. It was held that notice and hearing to all candidates is not possible in this kind of action which is taken as disciplinary measures to solve a problem which has assumed national social proportion.

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**OMBUDSMAN**

**I) Ombudsman-** the increasing discretionary powers of the administration in the modern welfare State affect the day to-day life of the people. This tremendous increase in the discretionary powers of administration has generated the possibilities of misuse of the powers by administration at the same time. The complaints of mal-administration, corruption, nepotism, administrative inefficiency, negligence, bias etc. have increased. It was felt necessary to evolve an adequate and effective mechanism to keep the administration under control. And this search has produced the idea of “Ombudsman” which means a “watch dog of the administration” or “the protector of the little man” This institution of “Ombudsman” was first developed in Sweden in 1809. Later on it was copied by Norway and New Zealand in 1962.

**Unique characteristics of Ombudsman-**

- (i) The Ombudsman is an independent and non-partisan officer of the legislative who supervises the administration.
- (ii) He deals with specific complaints from the public against. Administrative injustice mal-administration, (or may proceed on his own information in similar circumstances).

He has the power to investigate, criticize and report back to the legislature, but not to reserve administrative action.

**II) Position of Ombudsman in India-** In all India Lawyers Conference held in 1962, Sri M.C. Setalvad gave the idea of establishing an institution similar to that of an Ombudsman. In 1966, the Administrative Reforms Commission recommended the office of Lokpal similar to that of the Ombudsman for the following reasons-

- (i) Since a democratic Government is a Government of the people, by the people and for the people, it has an obligation to satisfy the citizen about its functioning and to offer them adequate means for the ventilation and redress of their grievances.
- (ii) The existing institution of judicial review and Parliamentary control are inadequate in view of ever expanding range of Governmental activities, most of which are discretionary.

On the basis of the recommendation made by the Administrative Reform Commission the Lokpal and Lokayukta Bill was prepared by the Government and placed in the Parliament in 1969 but it lapsed owing to dissolution of Lok Sabha.

The Administrative Reforms Commission, which recommended the Office of Lokpal, formulated the following principle;

- (i) Lokpal should be demonstrably independent and impartial.
- (ii) His investigations and proceedings should be conducted in private and should be informal in character.
- (iii) His appointment should, as far as possible, be non political.
- (iv) His status should be equivalent with the highest judicial functions in India.
- (v) He should deal with the matters involving acts of injustice, corruption and favoritism.

The Bill defined misconduct by providing that a public man will be deemed to have committed misconduct if he directly or indirectly allows his position to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favor to himself or to another person or cause harm or undue hardship to another person. It further provided that the public man will be liable to be punished if he is motivated by ‘motives of personal interest’ or if he abuses or attempts to abuse his position to cause harm or undue hardship, to any other person. Even



ex-Ministers and ex-M. Ps. are within the ambit of Lokpal if their misconduct is not more than five-years old.

*Note: Please refer latest Lokpal Bill/Act.*

**III) Appointment of Lokpal-** According to the Lokpal Bill of 1977, the Lokpal is to be appointed by the President in consultation with the Chief Justice of India and the speaker of Lok Sabha and the leader of opposition in the Lok Sabha. He is appointed for five years. He can not be re-appointed for more than next one term nor any employment under the Government be given to him after his term. He can be removed from his office during his term only on the enquiry which is to be held by a sitting or retired Judge of the Supreme Court in the same manner as there is provision for the removal of a Judge under judges (Enquiry) Act, 1968. The enquiry report is to be placed before both the house of the Parliament and each house has to pass an address for his removal by a majority of its total membership and a majority of not less than two-third of its members present and voting.

**IV) Qualifications-** The Bills lays down the following negative qualifications:

- (i) He shall not be a member of Parliament or of State Legislature
- (ii) If he is holding office of profit or trust, he shall resign before he takes charge of the office of Lok pal.
- (iii) If he related to any political party he will sever his relations from it.
- (iv) If he attends to a profession he will leave it.
- (v) If he is carrying on any trade or occupation he will break off his relations with its management.

**V) Salary-** The salary, pension and other perquisites of the Lok pal equal to that of the Chief-Justice-of India.

**VI) Functions and Powers of Lok pal-** The Lok pal may investigate any action taken by or with the approval of a Minister or secretary, being action taken in the exercise of his administrative functions, if any case where-

- (a) A written complaint in duly made to the Lok pal by a person who claims to have sustained injustice in consequence of maladministration in connection with such action or who affirms that such action has resulted in favor being unduly shown to any person or his accrual of persona benefit or gain to the Minister or to the secretary, as the ease may be, or
- (b) Information has come to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in the clause.

**VII) Matters not with in the jurisdiction of Lok pal-** The Lok pal shall not conduct an investigation in respect on any of the following matters-

- (a) Action taken in a matter certified by a Union Minister as affecting the relations with foreign states;
- (b) Action taken under the Extradition act 1963 or the Foreigner's Act, 1946;
- (c) Action taken for the purpose of investigating crime or protecting the security of the state;
- (d) Action taken for the determination whether a matter shall go to court or not;
- (e) Action taken in matters which arise out of the terms of contract governing purely commercial relations of the administration with customers or suppliers, except where the complaint alleges harassment or gross delay in meeting contractual obligations,
- (f) Actions taken in respect of appointment, removal etc. or public servants;
- (g) Grant of honors' and awards.

**VIII) Procedure-** Investigation shall be conducted in private and the procedure for conducting an investigation shall be such as the Lok Pal considers appropriate in the circumstances of the case.



For the purpose of any such investigation the Lok pal shall have all the powers of a Civil Courts while trying the suit under the Code of Civil Procedure, in respect of the following matters-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) Discovery and production of documents;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any office.

**Contempt-** The proceeding before the Lok pal shall be deemed to be judicial proceeding. But he shall have no power to punish for contempt.

Even before the introduction of Lok pal Bill, several states in India enacted the Lokayukta Statute. For example Bihar, Orissa, Maharashtra, Rajasthan, Tamilnadu and Uttar Pradesh enacted the Lokayukta States. In 1979, the State of Karnataka has also adopted this institution.

In U.P., the U.P. Lokayukta and Up-Lokayukta Act of 1975 was passed. According to this Act, the Lokayukta shall be appointed by the Governor with the consultation of the Chief Justice of the High-Court and leader of the opposition in the Legislative Assembly. The Up-Lokayukta shall be appointed by the Governor in consultation with Lokayukta. The Up-Lokayukta is subject to the administrative control of Lokayukta.

**Qualification-** The Lokayukta shall be a person who is or has been a judge of the Supreme Court or a High Court. The Lokayukta or Up-Lokayukta should not be a member of any Legislature and also should have no connection with any political party. He shall not any office of profit nor should carry any business or any profession.

**Term-** He shall hold the office for five years unless the resigns earlier or is removed from the office by the Governor on the ground of misconduct or incapacity.

It should be noted he shall be removed from his office subject to the provisions of Art. 311 of the Constitution. An enquiry is to be conducted by a judge of the Supreme Court or of a High-Court and the enquiry report must be approved by at least two-third majority of each house of state legislature.

Lastly the Lokayukta or-Lokayukta may investigate any action taken by-

- (a) Minister or a secretary, or
- (b) Any public servant including a public servant for this purpose by the State Government. The State Government may exclude any complaint involving a grievance or an allegation made against a public servant from the jurisdiction of Lokayukta or Up-Lokayukta.

The Lokayukta and Up-Lokayukta are required to submit annually a consolidate report on the performance of their functions to the Governor.

**Note:** Please refer Latest Lokpal Bill/Act

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**SUITS AGAINST GOVERNMENT**

**I) Contractual Liability of the Government-** Articles 294, 298, 299 and 300 of the constitution of India, deal with the contractual liability of the Government. Art 294 provides for succession by the present Governments of the Union and the states the property, aspects rights liabilities and obligations vested in the former Government. Art. 298 authorizes the Government to enter into contracts for the purpose of carrying out of the functions of the State. Article 299 provides essential formalities which a Government contract must fulfill and Article 300 deals with the procedure and the manner in which suits or proceedings against or by the Government may be instituted.

Clause (1) of Article 299 which contains the essential formalities which a government contract must fulfill provides as under:

“All Contracts made in the exercise of the executive power of the Union or of a state shall be expressed to be made by the President or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorize”.

In *Thawardas pherumal and another vs. Union of India*, 1955 the Hon’ble Supreme Court has observed- “It is well settled that governments can only be bound by contracts that are entered into in a particular way and which are signed by the proper authority.

It should be noted here that a Government contract in order to be valid must also fulfill the requirements of section 10 of the Indian Contract Act which deals with the essentials of a valid contract, beside fulfilling the requirements of Art, 299 (1) of the constitution. Similarly sections 73, 74 of the Indian Contract Act which contain the Principles for determining the quantum of damages also apply.

**II) Application of the doctrine of waiver to the Government contract-**

Since the requirements of Art, 299 are mandatory; these cannot be waived by the Government.

**Privileges of the Government under the Civil Procedure Code and Evidence Act-**  
Under Civil Procedure Code, the privilege available to the Government as compared to an individual is under section 80 of the Civil Procedure Code according to which no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done b such public officer capacity, until the expiration of two months next after notice in writing in the manner provided in the section.

**III) Liability of the Government for Tort-** English law-The immunity of the Crown from any civil Criminal liability is based upon an ancient and fundamental principle of the English Constitution that “The King can do no wrong”. Earlier an action for a personal wrong will not lie against the sovereign. As such the crown cannot be sued for the tortuous acts of its servant.

Indian Law. In India the liability of the Government for the torts of their servants was accepted quite earlier than in England. In *p. & o. Steam Navigation Co. Vs. The Secretary of State for India* it was held that the Government is liable for the tortuous act of its servants.

According to Article 300 of the Indian Constitution, the Government of India and a State Government may sue and be sued in relation to their respective affairs in the like cases as Union of India and the corresponding Provinces or Indian States might sue or be sued if the constitution had not been passed.

In *Kasturi Lal vs. State of U.P.*, the Supreme Court observed-

“If a tortious act is committed by a public servant and it gives a rise to a claim for damages, the question to ask was a tortious act committed by a public servant in discharge of statutory function which are preferable to, and ultimately on based on the delegation of the sovereign powers of the state to such public servant? If the answer affirmative, the action for damages for loss caused by such tortious act will not lie, on the other hand if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damage would lie. The act of public servant committed by him during the course of his employment is, in this category of cases, an act of a servant who might have been employed by a private individual for the same purpose.”

**IV) Case Laws -**

**For reference -**

- i) *New Marine Coal Co. Vs. Union of India*, 1969
- ii) *Mahaveer Auto Stores Vs. Indian Oil Corporation*, 1980

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## JUDICIAL REVIEW

**I) Judicial Review in England-** In England the administrative law is concerned with the actual working of the government machinery and the greater part of it has never come before the courts for interpretation. After the passing of the Administrative of Justice (Miscellaneous Provisions) Act, 1938, does not alter the principles of law upon which prerogative writs were issued.

### **II) Judicial Review in India-**

In India the Courts occupy key position as regards the judicial control of administrative action. Our Constitution guarantees certain fundamental rights enumerated in Articles 13 to 35 of the Constitution. These rights provide a limitation on the legislative and executive powers as well as some effective dimensions of control over administrative discretion.

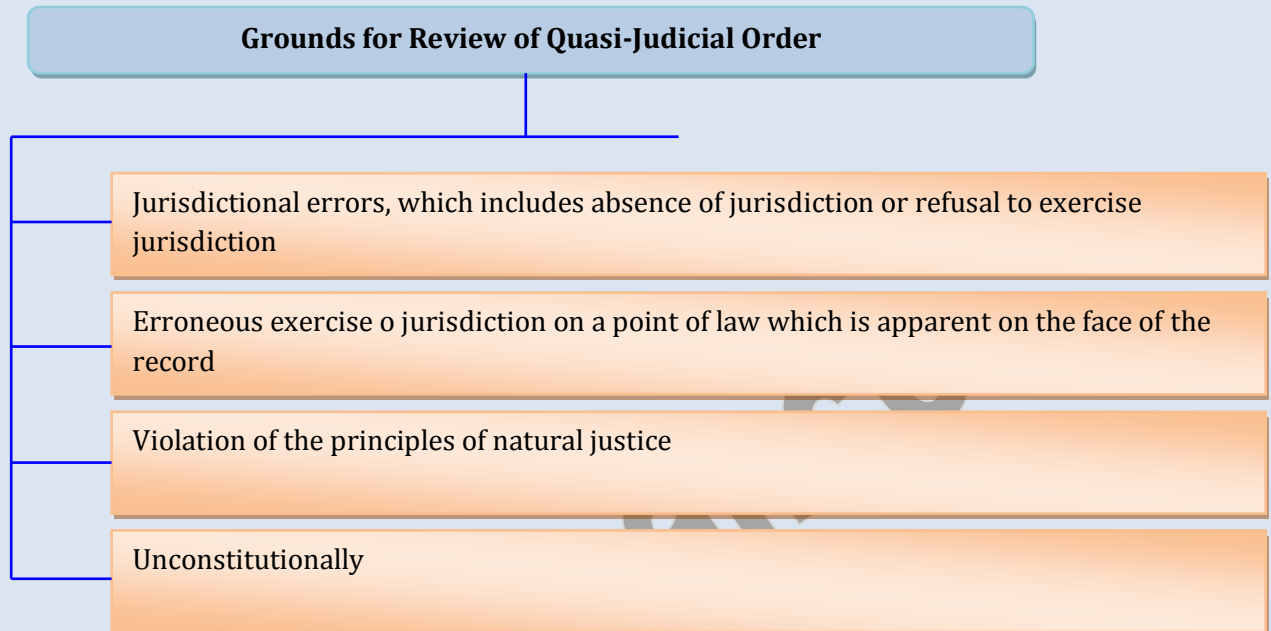
The Constitution of India contains express provisions for judicial review of legislation as to its conformity with the constitution unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under over the widely interpreted “due process” clause in the Fifth and Fourteenth Amendments. If, when the courts in India face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader’s spirit but in discharge of a plainly laid upon them by the Constitution.

In India the Judicial Review of administrative actions falls into three distinct heads-

- (i) Public law review which is exercised through writs (For Detail please refer last preceding chapter).
- (ii) Statutory review which may be either by way of-
  - (a) Statutory appeals; and
  - (b) Reference to the High-Court or statement of case.
- (i) Private Law review which is exercised through suits for damages, injunctions.

Again where the decisions of administrative bodies are purely of administrative nature, the scope of judicial review is limited but it is not so where the decision of quasi-judicial nature. Judicial review of quasi-judicial action of administrative authorities has become of greater importance for the reason that there has been a tremendous increase of judicial functions of administrative authorities.

**III) Grounds for Review of Quasi-Judicial Order-** The quasi-judicial orders of an administrative authority can be reviewed on the following grounds



**IV) Exclusion of judicial Review-** It should be noted that judicial review of an administrative action may be excluded by legislation. An administrative action cannot be reviewed judicially-

- (a) Where the statutes provide such administrative act or decision as final or, conclusive;
- (b) Where the same result is sought to be achieved more directly, by a negative provision barring particular remedies or providing that such administrative action or decision shall not be liable to be questioned in any court or in any legal proceeding.

**V) Express Bar or exclusion of Jurisdiction of courts-**

- (i) Where the tribunal was not properly constituted;
- (ii) Where the tribunal has abused its power under the state by acting in violation of its provisions
- (iii) Where the statute providing the finality clause is itself unconstitutional-Rayala Sena construction vs. Dy. C. T. O.
- (iv) Where the tribunal has acted in excess of its jurisdiction conferred upon it under the statute or where it was ostensibly failed to exercise a potent jurisdiction.
- (v) Where the tribunal has based its decision partly on conjures, surmises and suspicious-
- (vi) Where the tribunal gave a decision of fat by considering material which is irrelevant to the enquiry or by considering material which is party relevant and partly irrelevant-Dhirajlal Girdhari Lal vs. Commissioner of Income Tax, Bombay
- (vii) Where the decision is given in violation of the principles of natural justice causing substantial and grave injustice to parties.

**VI) Case Laws -**

**For reference -**

**In Corporation of Calcutta vs. Calcutta Tramways** it has been held that where a statute which contained a finality clause, imposed an unreasonable restriction upon the fundamental right guaranteed under Article 19 (1) (g), then such statute will be struck down.

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**PUBLIC CORPORATION**

**I) Public Corporation-**

“The public corporation is a hybrid organism, showing some of the features of a Government department and some of the features of a business company, and standing outside the ordinary frame work of Central or Local Government”.

**According to GARNER:**

“The modern public corporation is a compromise between nationalization and private enterprise; the institution is essentially an instrument devised of administering some particular enterprise in the public interest.

The public corporation are Semi-Government autonomous bodies, primarily concerned with managerial, commercial and industrial enterprises and run various public utilities which the state does not choose to run departmentally as it normal Government function.

**II) Essential Features of public Corporation-** The essential features of a public corporation may be summarized as under-

**Essential Features of public Corporation**

- (i) Statutory public corporation is created by a statute which lays down its rights, duties and obligation. Any act of such public corporation out side the authorized area of operation shall be ultravires and cannot bind the corporation. Such ultravires acts cannot be ratified.
- (ii) It is wholly owned by the state
- (iii) It has a separate legal entity and such it can use or be used, enter into contract or acquire property in its own name.
- (iv) Public corporation is largely autonomous in finance and management except for appropriation to provide capital or to cover losses. It has funds o its own and is authorized to use and re-use its revenue.
- (v) A public corporation is generally exempted from most regulatory and prohibiting statutes applicable to expenditure of public funds.
- (vi) It is ordinarily not to the budget, according and audit lams and procedures applicable to non-corporate agencies.
- (vii) A Statutory public corporation is a ‘state’ within the definition of the term in Article 12 of the constitution and such, it is subject to the writ jurisdiction of the Supreme Court and High Courts under Articles 32 and 226 of the constitution.
- (viii) In majority of the cases, the employees of public corporations are not civil servants. They are appointed and remunerated under the terms and conditions which the corporation determines itself.
- (ix) A public corporation however, is not a citizen within the meaning of Part II of the constitution and as such cannot claim the fundamental rights given in Article 19 of the constitution – **State Trading Corporation of India Vs. C.T.O.**  
Public corporation can not enjoy the privilege of the Government to withhold the document.



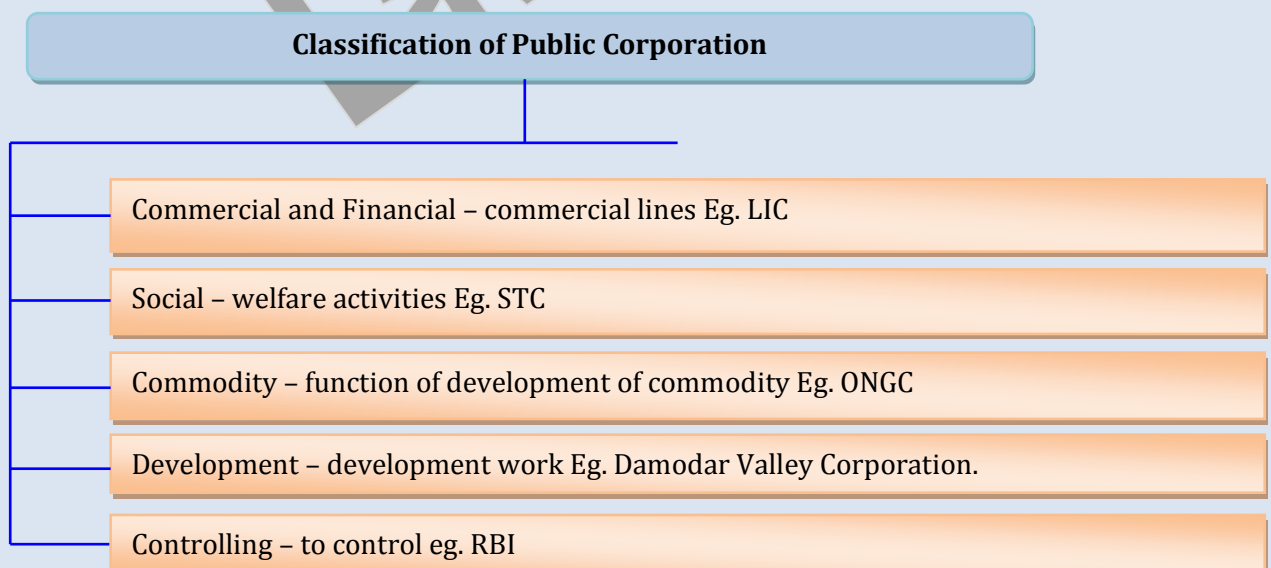
**III) Common Features of public corporation-** The following are the common features of the constitution of public corporations, though every public corporation is different in matters of its constitution.

- (i) The public corporations are identical in their constitution. Each has a governing body, established by a constituent statute, consisting of a chairman and a defined number of members.
- (ii) The public corporations are largely autonomous in finance and management. They have their own separate accounts, which are audited by qualified auditors. The audit reports are published annually together with the general report to the activities of the corporation.
- (iii) Some public corporations are expressly required by their constituent statutes to act for and on behalf of the crown; other can act only on the directions of a specific minister.

In India, the public corporations were set up after independence and have been given constitutional recognition.

**IV) Constitutional Position of Public Corporations-** The Constitution of India recognizes the public corporations. Article 19 (6) of the constitution. Subclass (2) of Article 19 (6) provides that the state can make law relating to the carrying on the state or by corporation, owned or controlled by the state, of any Trade, business, industry of service, whether to the exclusion, complete or partial, of citizens or otherwise.

**V) Classification of Public Corporation-** Though, no exact classification is provided, the statutory public corporations may be classified as under:





### VI) Parliament Control –

The Parliamentary Control is implied in statutory corporation as they owe their origin and continued existence to a statute passed by the Parliament. The initial control is exercised at the time when the bill proposing the creation of a statutory corporation is introduced for discussion in the House. The following process has been adopted for controlling the corporation:

**(i) Legislation-** The Parliamentary control begins with the very Act of Legislation which brings the corporation into existence.

**(ii) Laying of rules and regulation-** The parliament supervises the statutory corporations through the process of laying of rules and regulations on the Table of Houses as some of the Acts bringing up the public corporations provide that the rules made under these Acts are to be laid before the Parliament.

**(iii) Question-** Under rule 32 of the rules procedure of the Lok Sabha the first hour of every sitting shall be available for the question-answer, unless the speaker directs otherwise. In this period the Member of the Parliament may question regarding the state of affairs of any statutory corporation.

**(iv) Resolution-** Discussion of the matters relating to public corporation may occur through the medium of resolutions in the Parliament.

**(v) Motions-** Motions provide the general form of discussion of matters related to a public corporation.

**(vi) Parliamentary Committee-** The Parliament constituted the committee on public undertaking in 1964. Prior to the establishment of Parliamentary Committee, the Estimates Committee and the Public Accounts Committee were looking after the public undertaking's affairs. It should be noted that a Minister cannot be a member of this Parliamentary committee.

### VII) Government Control-

The general Government control over the working of the public Corporation is highly desirable to ensure the affairs of the statutory corporations are being conducted in the best interest of the society. The Government control over a public undertaking may be conducted through any or combination of the following devices:

- (i) By appointing the Governing Board and Managers of a public undertaking;
- (ii) By issuing general policy directions
- (iii) By issuing specific direction to the public undertaking.
- (iv) By participating in management as member of the Governing Board.

By instituting inquiries into the working of the corporation under certain circumstances.

### VIII) Judicial Control-

As stated above, a statutory corporation is a 'State' within the meaning of Article 12 of the constitution of India and such it is subject to writ jurisdiction of the Supreme Court under Article 32 and of the High-Court under Article 226 of the Constitution.

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**CONSTITUTIONAL REMEDIES**

**I) Constitutional Remedies available against an Administrative action-** Article 32, 136, 226 and 227 of Indian constitution provide strong powers to the Courts to control the administrative authorities if they exceed their limit to do what they should do, omit or abuse the powers given to them.

Art, 32 and 226 of the constitution provide remedies by way of writs. Under Article 32 (2) the Supreme Court of India is empowered to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, certiorari, mandamus, prohibition and quo-warranto which may be appropriate. The five writs specifically mentioned in Article 32 (2) are known as prerogative writs in English law.

**Article 32-** Article 32 provides a “guaranteed” remedy for the enforcement of those rights, and this remedial right is itself made a fundamental right by being included in Part III. Where there is no question of the enforcement of a fundamental right, Article 32 has no application.

**Article 136-** Under Article 136 of the constitution, the Supreme Court is empowered to grant special leave to appeal against an order or determination of not only court of law but also of tribunal.

**Article 226-** Under Article 226, the High-Court are empowered to issue directions, orders or writs including writs in the nature of habeas Corpus, mandamus, prohibition certiorari and quowarrato for the enforcement of any of the rights conferred by Part III of the constitution or for any other purpose.

**Article 227-** Article 227 gives powers of superintendence over all courts and tribunal by the High-Court thought the territories in relation to which they exercise jurisdiction

**II) Difference between Article 226 and Article 32**

Article 226	Article 32
<ol style="list-style-type: none"> <li>Under this Article Court may issue writs.</li> <li>Article 226 is not fundamental right.</li> <li>During emergency the President of India cannot suspend this Article.</li> <li>No doubt under Article 226 High Court may issue writs. But this jurisdiction is discretionary in nature therefore reedy may be refused also.</li> <li>High Courts no doubt grant or issue writs even for the enforcement of fundamental right yet it is not obligatory for them.</li> <li>High Courts may take into consideration of the existence of other adequate legal remedy and decline to issue a writ if there exist other adequate legal remedy.</li> </ol>	<ol style="list-style-type: none"> <li>Under Article 32 Supreme Court may issue writs.</li> <li>Article 32 is itself a fundamental right.</li> <li>Since Article 32 itself is a fundamental right therefore President of India ay Suspend it.</li> <li>Article 32 itself is a fundamental right and constitution has granted a fundamental right to move to Supreme Court in case of breach of fundamental right.</li> <li>In case of breach of fundamental right a person may invoke jurisdiction of Supreme Court as a matter of right.</li> <li>The Supreme Court can not, on the ground of the existence of an adequate legal remedy, decline to entertain a petition under Article 32 for the right to move the Supreme Court for the enforcement of the rights conferred by Part III of the Courts is itself a guaranteed right.</li> </ol>

### **III) Types of writs**

#### **i) Habeas corpus**

**Habeas corpus** is a latin term and it develop out of the prerogative writ of *absubjiciendum* which literally means to have the body” and by which the people could secure their release from illegal.

The writ can be issued on the application either-

- (a) Of the prisoner himself, or
- (b) Of any person on his behalf, or
- (c) Where the prisoner cannot act, then on the application of any person who believes him to be unlawfully imprisoned.

**Who can apply for the writ of Habeas Corpus-** The writ of habeas corpus can be made either by the person detained or any other person provided that he is not an utter stranger, but is at least a friend or relative of the imprisoned person.

**Grounds of the writ of Habeas Corpus-**As stated above, the writ of habeas corpus is a process by which a person who is confined without established procedure of law may secure a release from his confinement. The following grounds to seek a remedy by way of habeas corpus-

- (i) The person must be confined;
- (ii) petition for writ of habeas corpus may be filed either by the detinue or any person who is not a stranger but is a friend or relative of the person detained
- (iii) That the detention was malafide or for collateral purpose.
- (iv) That the order is defective e.g. misdescription of detinue failure to mention place of detention etc.
- (v) That the detainer has not applied his mind in passing the order of detention.
- (vi) That the ground supplied to the detinue was vague and indefinite.
- (vii) That the detention is illegal.
- (viii) That there was delay in furnishing ground.
- (ix) That there was delay in considering the Representation.
- (x) That orders of Detention is irregular.

#### **Refusal of the writ of Habeas Corpus**

- (i) Where the prisoner is detained outside the jurisdiction of the High-Court to which the application is made, the court will refuse the writ of habeas corpus.
- (ii) Where the effect of granting the writ would be to review the judgment of a Court which is open or which shows jurisdiction on its face.
- (iii) When the detention is found legal on the relevant date, the court refused to issue the writ of habeas corpus. *Jagannath Hisra and other Vs. State of Orissa*.
- (iv) Where the Court is of the opinion that the order of issuing writ defeat the ends of justice.

**Circumstance in which the writ of habeas does not lie-** The writ of habeas corpus will not lie in the following circumstances:

- (i) The writ of habeas corpus does lie where arrest and detention not giving grounds, is confirmed by remand order of the Magistrate in case falling under section 9 of the Punjab Security of State act.
- (ii) When a person is committed to jail custody by a competent court by an order which *pria facie* not appear to be without jurisdiction or wholly illegal.

- (iii) When all the issue of the fact can be tricks in other proceedings, the writ of habeas corpus will not lie.
- (iv) Where a person has been convicted by a duly constitute tribunal, a writ of habeas corpus will not lie for questioning the validity of such conviction.
- (v) Where a person convicted or in execution under legal process including person in execution of a legal sentence after conviction on indictment in the usual course.
- (vi) Where a person undergoing a sentence of imprisoned imposed on him by a competent court, the writ of habeas corpus will not lie.
- (vii) Where the physical restraint is put upon a person under law, no habeas corpus will lie.
- (viii) Where the petithen has been filed is seeking others available remedy.

**Statutory bar to writ of habeas corpus-** Article 21 is the sole repository of rights to life and personal liberty against the state. And Art 22 provides a right of protection against illegal arrest and detention. But the President of India can issue a proclamation of emergency under Article 359 of the constitution and suspend of the fundamental rights. And when fundamental rights have been suspended, the writ of habeas corpus for the enforcement of such right is also not maintainable. When the fundamental rights were suspended under the Presidential order, no writ habeas corpus will lie.

**Limitations on the issue of habeas Corpus-** The following are the limitations on the issue o habeas corpus-

- (i) The habeas corpus cannot be use as a device to evade the ordinary law for the review revision or appeal of a judgment under which a person is imprisoned.
- (ii) That the application should be in a proper manner.
- (iii) That generally whenever there is an adequate alternative restraint remedy, habeas corpus should not be given.
- (iv) That for the issue o habeas corpus, the wrongful restraint must exist at the when the court has to make the rule absolute for its issue.

### **(ii) Writ of Mandamus-**

Mandamus is an order issued by the king's Bench Division of compel the performance of a public duty.

**Against whom the writ of mandamus can issue-** Writ of Mandamus can be issue to or against any person holding a public office, a corporation on or an interior.

**Who can apply for writ of Mandamus-** No one can ask for a mandamus without a legal right. The legal right must be one which is judicially enforceable and legally protected. And a person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from a dong something –**Mani Subrat Jain Vs. State of Haryana 1977.**

**Grounds of the Mandamus-** The writ of mandamus can be issued on the following grounds:

- (i) That the petitioner must have a legal right.
- (ii) That such right must exist on the date of the petition.
- (iii) That such a legal right of the petitioner has been infringed.
- (iv) That the infringement of such legal right has been owing to non- performance of the corresponding duty by the public authority.
- (v) That the petitioner has demanded the performance of the legal duty by the public authority and the authority has refused to act.

- (vi) That there has been no effective alternative legal remedy. And the alternative remedy need not be a statutory remedy.
- (vii) The duty imposed on the public authority must be mandatory and not discretionary.
- (viii) Where there has been abuse of power.
- (ix) Violation of statutory provisions.
- (x) Malafide exercise of power.

**Grounds on which Mandamus may be refuse-**

- (a) That the act against which mandamus is sought has been completed and the writ, if issued, will be infractions.
- (b) That the petition is premature-**E.I. Commercial Co. Vs. Collector 1957.**
- (c) When it appears that it would be futile in its result. The court will refuse the writ were no benefit could arise from granting it.
- (d) Where there is suppression or misstatement of material facts in the petition. **Ibrahim vs. High-Court Commissioner 1951.**
- (e) Where there is an alternative remedy which is adequate to meet the needs of the case.
- (f) Where there is a long delay on the part of the petitioner in applying for mandamus.
- (g) Where the petition is filed to get the contract enforced by a public servant independently of any statutory duty or obligation to the petitioner.
- (h) Where the petition is filed to seek directions for the Tribunal to decide in first instance a mixed question of law and fact.
- (i) Writ of mandamus is refused in respect of exercise of administrative functions.
- (j) Mandamus would not issue for correcting mere errors of law.
- (k) Writ of Mandamus will not issue to compel a person to institute legal proceedings- **Nagpur Glass Works Vs. State of M.P. 1955.**

Mandamus will also not lie against the Governor of a State directing hi to recall nomination to the Legislate Council, and forbear from giving to the nominations.

**Against whom a writ of Mandamus cannot lie**-Normally a writ of mandamus cannot issue against a private individual.

Secondly, it will lie for the inference in the internal administration of the authority.

Thirdly, against the educational body, for the decision taken by the unfair means committee of the University after giving opportunity of hearing the examinee, the writ of mandamus will not issue.

**(iii) Writ of Certiorari**

**Definition and Nature of the writ of Certiorari**-Certiorari is an order or command issued by the High-Court to an inferior court or body exercising judicial or quasi-judicial functions to transit the records of a cause or matter pending before them the High-Court in order that its legality may be investigated and if the order of an inferior court is found to be without jurisdiction or against the principle of natural justice, it is quashed.

It enables a Superior Court, a court of record, to correct the orders and the decisions of inferior courts and inferior Tribunals discharging judicial functions.

**Against whom the writ of certiorari be issued**-It is well settled that writ of certiorari be issued against-

- (i) Any judicial or quasi-judicial authority acting in judicial manner;
- (ii) Any other authority which performs judicial functions and acts in a judicial manner.



**The person who can apply for the writ of certiorari-** In **Charanjit Lal Vs. Union of India**, it has been that an application for the issue of writ Article 32 or 226 can only be made by the aggrieved party and not by a stranger.

**Necessary conditions for the issue of the writ of certiorari-**Writ of certiorari is issued when anybody or person-

- (a) Having legal authority,
- (b) To determine questions effecting rights or subjects,
- (c) Having duty to act judicially, either
  - (i) Acts in excess of its legal jurisdiction; or
  - (ii) Commits an error apparent on the face of the record or
  - (iii) Acts in violation of the principles of natural justice.

**Grounds of writ of Certiorari-**The writ of certiorari can be issued on the following grounds:

- (a) That the impugned order is vitiated by error of want of jurisdiction, which includes-
  - (i) Excess of jurisdiction
  - (ii) Abuse of jurisdiction
  - (iii) Absence of jurisdiction.
- (b) That there was an error of law apparent on the face of the record and
- (c) That there had been a violation of principles of natural justice.

**Grounds of refusal of the writ of certiorari-**The writ of certiorari may be refused on the following grounds:

- (i) Where alternative remedy not availed.
- (ii) Futile writ-Where the writ is futile, it will be refused.

#### **(iv) The writ of Prohibition**

In the words of Prof. A.T. Markos:

“Prohibition is a judicial writ issued from a superior jurisdiction to an ecclesiastical or similar tribunal or an inferior temporal court including under the latter description, administrative authorities having a duty imposed on them to proceed judicially to prevent those tribunal from continuing their proceeding in excess of or abuse of their jurisdiction in violation of the rule of natural justice or in contravention of the laws of the land.

The writ of prohibition lies only when the inferior court or tribunal has not made a decision were as the writ of certiorari lies when the court or tribunal has made a decision.

#### **Grounds for the writ of Prohibition**

- (i) Absence of jurisdiction or excess of jurisdiction
- (ii) Violation of the Principles of Natural justice.
- (iii) Infringement of the Fundamental Rights.
- (iv) Contravention of the law of the land
- (v) Fraud.

**Against whom the right of Prohibition lies-** The writ of Prohibition, like certiorari lies only against the judicial and quasi judicial authorities. A writ of Prohibition can issue only in a case in which certiorari can be issued. In other words he writ of Prohibition lies against-

- (i) Judicial authorities; or
- (ii) Quasi-judicial; or
- (iii) Statutory body having judicial powers.

**(v) The writ of Quo-warranto**

The quo-warranto proceedings affords judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show what right he holds the said office, franchise or liberty. If the inquiry leads to the finding that the holder of the office has not valid title to it, the issue of the writ of quo-warranto ousts him from the office.

**Who can apply for the writ of quo-warranto** –information in the nature of quo-warranto would lie even at the instance of a relation who is not personally interested in the matter nor affected by the illegal assumption of the office by the opposite party.

**Condition when the writ of quo-warranto will not lie**–As state above, the writ of quo-warranto is discretionary in nature, the petitioner is not necessarily entitled to the issue of a writ. The writ of quo-warranto will not lie in the following cases;

- (i) The writ of quo-warranto will not lie in respect of an office of a private nature.
- (ii) Where there is acquiescence on the part of the petitioner, the writ of quo-warranto will not lie
- (iii) When the office is abolished, no information in the nature of quo-warranto will lie.
- (iv) Where it will be vexatious, the High-Court shall in 'its' discretion refuse to issue a writ of quo-warranto –**Bari Nath Vs. State of U.P.1965.**
- (v) When the application for quo-warranto is a belated one 1964.
- (vi) The writ of quo-warranto may also be refused if there is an adequate alternative remedy.
- (vii) Where it will be futile.
- (viii) The writ of quo-warranto will not lie in case of mere irregularity.

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