Administrative Laws

Lesson 4

KEY CONCEPTS

■ Sources of Administrative Law ■ Rule of Law ■ Principle of Natural Justice ■ Regulations ■ Rules ■ Notifications

Learning Objectives

To understand:

- Administrative Law as a Branch of Public Law
- The necessity of Administrative Laws
- Origin and process of development of Administrative Laws
- Rule of law and its applicability
- The extent of discretion
- Principles of Natural Justice
- Responsibility of the government and contracts with government

Lesson Outline

- Introduction – Conceptual Analysis
- Need for Administrative Law
- Sources of Administrative Law
- Administrative Discretion
- Judicial Review & Other Remedies
- Principles of Natural Justice
- Liability of the Government, Public Corporation
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings and References

Administrative law determines the organisation, power and duties of the administrative authorities.

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

REGULATORY FRAMEWORK

- Constitution of India
- Delegated Legislations
- Judicial Precedents

INTRODUCTION – CONCEPTUAL ANALYSIS

Administrative law is that branch of public law that deals with powers, functions and responsibilities of various organs of the state. It controls the executive branch and makes sure that it deals fairly with the public. There is no single universal definition of 'administrative law' because it means different things to different theorists

A subset of public law is administrative law. It establishes the administrative and quasi-judicial authorities' organisational framework and power structure in order to enforce the law. It establishes a control system by which administrative agencies maintain their boundaries and is primarily concerned with official actions and processes.

Kenneth Culp Davis

He was a leading an American legal scholar on administrative law. He defines it as the law concerning the powers and procedures of administrative agencies, including especially the law governing the judicial review of administrative action. An administrative agency, according to him, is a government authority, other than a court and other than a legislative body, which affects the rights of private parties either through adjudication or rule-making. He further adds that apart from judicial review, the manner in which public officials handle business unrelated to adjudication or rule-making is not a part of administrative law. The formulation of administrative agency in this definition is restrictive as it seeks to exclude agencies having administrative authority pure and simple and not having adjudicative or legislative functions. This definition also does not cover purely discretionary functions which may be called (administrative) of administrative agencies not falling within the category of legislative or quasi-judicial.

Albert Venn Dicey

He was the great British constitutional scholar. According to him administrative law relates to that portion of a nation's legal system which determines the legal status and liabilities of all state officials, which defines the rights and liabilities of private individuals in their dealings with public officials, and which specifies the procedure by which those rights and liabilities are enforced. Dicey's formulation focuses on one aspect of administrative law, i.e., judicial control over public officials. This definition is narrow as it leaves out of consideration many aspects of administrative law, e.g., Public Corporations would not be covered under this definition because, strictly speaking, they are not state officials.

Ivor Jennings

He defined administrative law as the law relating to administration. It determines the organization, powers and duties of administrative authorities. This formulation is too broad and general as it does not differentiate between administrative and constitutional law. It excludes the manner of exercise of powers and duties.

Administrative law is the by-product of ever increasing functions of the Governments. States are no longer police states, limited to maintaining internal order and protecting from external threats. These, no doubt continue to

be the basic functions but a state that is limited to this traditional role will de-legitimize itself. With the rise of political consciousness, the citizens of a state are no longer satisfied with the state's provisioning of traditional services. The modern state is, therefore, striving to be a welfare state. It has taken the task to improve social and economic condition of its people. It involves undertaking a large number of complex tasks. Development produces great economic and social changes and creates challenges in the field of health, education, pollution, inequality etc. These complex problems cannot be solved except with the growth of administration. States have also taken over a number of functions, which were previously left to private enterprise. All this has led to the origin and the growth of administrative law.

NEED AND SOURCES OF ADMINISTRATIVE LAW

Need for Administrative Law

The modern state has three organs- legislative, executive and judiciary. Traditionally, the legislature was tasked with the making of laws, the executive with the implementation of the laws and judiciary with the administration of justice and settlement of disputes. However, this traditional demarcation of role has been found wanting in meeting the challenges of present era. The legislature is unable to come up with the required quality and quantity of legislations because of limitations of time, the technical nature of legislation and the rigidity of their enactments. The traditional administration of justice through judiciary is technical, expensive and dilatory. The states have empowered their executive (administrative) branch to fill in the gaps of legislature and judiciary. This has led to an all pervasive presence of administration in the life of a modern citizen. In such a context, a study of administrative law assumes great significance.

The ambit of administration is wide and embraces following elements within its ambit:-

1. It makes policies.
2. It executes, administers and adjudicates the law.
3. It exercises legislative powers and issues rules, bye- laws and orders of a general nature.

The ever-increasing administrative functions have created a vast new complex of relations between the administration and the citizen. The modern administration is present everywhere in the daily life of an individual and it has assumed a tremendous capacity to affect their rights and liberties.

Since the whole purpose of bestowing the administration with larger powers is to ensure a better life for the people, it is necessary to keep a check on the administration, consistent with efficiency, in such a way that it does not violate the rights of the individual. There is an age-old conflict between individual liberty and government control. There must be a constant vigil to ensure that a proper balance be evolved between private interest and government which represents public interest. It is the demand of prudence that when large powers are conferred on administrative organs, effective control-mechanism be also evolved so as to ensure that the officers do not use their powers in an undue manner or for an unwarranted purpose. It is the task of administrative law to ensure that the governmental functions are exercised according to law and legal principles and rules of reason and justice.

The goal of administrative law is to ensure that the individual is not at receiving end of state's administrative power and in cases where the individual is aggrieved by any action of the administration, he or she can get it redressed. There is no antithesis between an effective government and controlling the exercise of administrative powers. Administrative powers are exercised by thousands of officials and affect millions of people. Administrative efficiency cannot be the end-all of administrative powers and the interests of people must be at the centre of any conferment of administrative power. If exercised properly, the vast powers of the administration may lead to the welfare state; but, if abused, they may lead to administrative despotism and a totalitarian state.

A careful and systematic study and development of administrative law becomes a desideratum as administrative law is an instrument of control on the exercise of administrative powers.

***Example*:**

There are many areas of law where economic stakes of the public are involved. In these areas, offenders find new ways of non-compliances to gain unjust enrichment. Therefore, it is very difficult for Parliament to provide a comprehensive law covering all the aspects due to paucity of time and the dynamic nature of these laws.

So, the parliament delegates the power to legislate to the executive branch of government. Power of Government to make rules under the Companies Act, 2013 and power of Securities Exchange Board of India to make regulations under SEBI Act, 1992 may be seen as good examples of delegated legislation i.e. is administrative law.

Sources of Administrative Law

There are four principal sources of administrative law in India. They are as under -

1. ***Constitution of India*:** It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the Parliament has power to make laws. Similar powers are provided to States under Article 62. Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity. The Constitution also envisages tribunals, public sector and government liability which are important aspects of administrative law.

   Example: Article 318 of the Constitution of India empowers the President (Union Public service Commission) and Governor (State Public service commission) to make regulations with respect to the number of members or staff of the Commission(s) and their conditions of service.

2. ***Acts/ Statutes*:** Acts passed by the Central and State Governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.

   Example: Insolvency and Bankruptcy Board of India is empowered to make regulations under Insolvency and Bankruptcy Code, 2016.

3. ***Ordinances, Administrative directions, Notifications Circulars,*:** Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. Ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.

   Example: *Ordinance* – President of India promulgated The Criminal Law (Amendment) Ordinance, 2013.

   Notifications – State Government may notify the rates of Minimum Wages for that particular state.

4. ***Judicial decisions*:** Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortuous acts of Governments servants lay down administrative laws which guide their future conduct.

   Example: Article 141 provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

Rule of Law

Rule of Law was developed by British Jurist A.V. Dicey. He derived this term from French Principle *'La principle de legalite'* which means the principle of legality. It states that the government should be governed by Rule of Law instead of Rule of Individual. Any dictator, monarch or one particular person should not govern the functioning of any nation. Each country should follow legality of law.

Dicey was highly influenced by the French concept of administrative law' (*droit administratif*) or the 'administrative tribunals' (*tribunaux administratifs*). According to this, a citizen's lawsuit against a public servant for a wrongdoing done in that capacity will be handled by a special court rather than a regular court of law. *Droit administratif* contains a regulation that was created by the judges of the administrative court rather than laws and rules created by the French parliament.

Three major principles given by Dicey in his book "Rule of Law" are –

1. ***Supremacy of law*:** It means that ordinary or regular laws shall remain supreme. Supremacy here means absolute and pre-dominance of regular laws as against arbitrary or wide discretionary powers.
2. ***Equality before the law***: According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. He states that there should be equality between people. According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. It provides that all are equal before law and everyone will be subjected to the same law.
3. ***The predominance of a legal spirit***: Legal Spirit refers to the judicial precedents upon any dispute raised by any individual. The judgment given in any case will be the legal spirit of that particular case. It basically refers to the law as set by the precedents that have evolved over time.

Few jurists have criticized his rule of law theory being not clear between administrative discretion with arbitrary discretion, emphasising on equality before law and feels that specific tribunals should not exist, opposition between ordinary courts and special courts, failed to recognise the need of specific laws and bodies etc.

Rule of Law in India the evolution of Rule of Law in India can be traced to British concept

The evolution of Rule of Law in India can be traced to British concept but the modern concept of Rule of Law was introduced, only after the drafting of Constitution of India. Constitution of India laid the very foundation of rule of law in India and is the essence of it. Rule of Law is embedded in Constitution under multiple parts, important aspects are as under:

1. ***Preamble*** – the Preamble to the Constitution of India upholds the basic structure of the Constitution. It talks about the justice, equality, liberty and dignity to all individuals. All of these aspects ensure Rule of Law in the country.
2. ***Part III*- Fundamental Rights** – These are the rights and fundamental or core of the Constitution of India. They imply a duty on the state towards ensuring the welfare of its citizens. It helps to keep a check on the actions of administrative authorities and legislature.
3. ***Part IV*- Directive Principles of State Policy (DPSP)** – These are the basic guidelines to be followed by all especially the government of India to ensure smooth functioning of the country. They are not enforceable by court of law. Few examples of Laws made under DPSP includes law relating to wages, labor laws etc.

Judicial Aspect

Rule of Law in India has evolved with time. It can be understood with the help of given cases hereafter.

CASE LAW

State of Madhya Pradesh and Ors. vs. Thakur Bharat Singh (23.01.1967 - SC) : AIR 1967 SC 1170

The Supreme Court in this case, held that section 3 of Madhya Pradesh Public Security Act, 1959 is unconstitutional on grounds that it vest wide discretionary powers to the District Magistrate without any proper safeguards over such powers. It was observed that -

"Our federal structure is founded on certain fundamental principles : (1) the sovereignty of the people with limited Government authority i.e. the Government must be conducted in accordance with the will of the majority of the people....the official agencies of the executive Government possess only such powers as have been conferred upon them by the people; (2) There is distribution of powers between the three organs of the State - legislative, executive and judicial - each organ having some check direct or indirect on the other; and (3) the rule of law which includes judicial review of arbitrary executive actions. We have adopted under our Constitution not the continental system but the British system under which the rule of law prevails. Every Act done by the Government or by its officers must, if it is to operate to the prejudice of any person, be supported by some legislative authority."

Kesavananda Bharati Sripadagalvaru and Ors. vs. State of Kerala and Anr. (1973) 4 SCC 225

The most critical case in Indian Judicial history with respect to the evolution of Rule of Law in India was Kesavananda Bharati case. This case changed the entire notion of doctrine of basic structure. A constitutional bench, consisting of 13 judges stated that Rule of law is the part of basic structure of the constitution of India. They observed -

"That Article 31C subverts seven essential features of the Constitution, and destroys ten Fundamental Rights, which are vital for the survival of democracy, the rule of law and integrity and unity of the Republic.

An amendment must be confined in its scope to an alteration or improvement of that which is already contained in the Constitution and cannot change its basic structure, include new grants of power to the Federal Government, nor relinquish to the State those which already have been granted to it"

ADMINISTRATIVE DISCRETION

It means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims and fancies. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.

The government cannot function without the exercise of some discretion by its officials. It is necessary because it is humanly impossible to lay down a rule for every conceivable eventuality that may arise in day-to-day affairs of the government. It is, however, equally true that discretion is prone to abuse. Therefore there needs to be a system in place to ensure that administrative discretion is exercised in the right manner.

Administration has become a highly complicated job needing a good deal of flexibility apart from technical knowledge, expertise and know-how. Freedom to choose from various alternatives allows the administration to fashion its best response to various situations. If a certain rule is found to be unsuitable in practice, the administration can change, amend or abrogate it without much delay. Even if the administration is dealing with a problem on a case to case basis it can change its approach according to the exigency of situation and the demands of justice.

Example

Mr. A approaches RTO office for confirmation of his driving license. It is the administrative discretion of RTO office to issue him his driving license after observing performance in driving tests.

JUDICIAL REVIEW AND OTHER REMEDIES

Judiciary has played a key role in imposing restrictions on administrative discretion and has from time to time directed the law makers to formulate the necessary guidelines and rules to maintain the conduct of administrative officers.

Any country which claims to have a rule of law cannot have a government authority which has no checks on its power. Administrative organs have wide powers and their exercise of discretion can be vitiated by a number of factors. Therefore, the government must also provide for proper redressal mechanism. For India, it is of special significance because of the proclaimed objectives of Indian polity to build a socialistic pattern of society that has led to huge proliferation of administrative agencies and processes

In India the modes of judicial control of administrative action can be conveniently grouped into three heads:

(A) *Constitutional*

The Constitution of India is supreme and all the organs of the state derive their existence from it. Indian Constitution expressly provides for judicial review. Consequently, an Act passed by the legislature is required to be in conformity with the requirements of the Constitution and it is for the judiciary to decide whether or not that Act is in conformity with the Constitutional requirements. If it is found in violation of the Constitutional provisions the Court has to declare it unconstitutional and therefore, void. The limits laid down by the Constitution may be express or implied. Articles 13, 245 and 246, etc., provide the express limits of the Constitution.

Judicial Review

The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

It is the power of the both Supreme and High Court to determine the validity of the legislature and executive actions of the government. Constitution is considered as Supreme law and all other laws follows from it. Public authorities are bound by supreme law, i.e., Constitution and are bound to act in good faith.

The doctrine of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for judicial review. Judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. It is concerned not with the decision but with the decision making process.

The power of judicial review controls not only the legislative but also the executive or administrative act. The Court scrutinizes the executive act for determining the issue as to whether it is within the scope of authority or power conferred on the authority exercising the power. Where the act of executive or administration is found *ultra vires* the Constitution or the relevant Act, it is declared as such and, therefore, void. The Courts attitude appears to be stiffer in respect of discretionary powers of the executive or administrative authorities. The Court is not against the vesting of discretionary power in the executive, but it expects that there would be proper guidelines for the exercise of power. The Court interferes when the uncontrolled and unguided discretion is vested in the executive or administrative authorities or the repository of the power abuses its discretion.

CASE LAWS

Airport Authority of India vs. Centre for Aviation Policy, Safety and Research and Ors. (30.09.2022 - SC) : CIVIL APPEAL NOS. 6615-6616 OF 2022

In this case, the Supreme Court observed that the Court has erred in interfering with the administration/policy decision of the tender making authority in exercise of powers Under Article 226 of the Constitution of India even deciding it on merits. The Court observed that -

"as per the settled position of law, setting of terms and conditions of invitation to tender are within the ambit of the administration/policy decision of the tender making authority and as such are not open to judicial scrutiny unless they are arbitrary, discriminatory or mala fide. In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted"

S. Pratap Singh vs. The State of Punjab: AIR1964SC72

In this case Supreme Court summarised the power of judicial review by stating that -

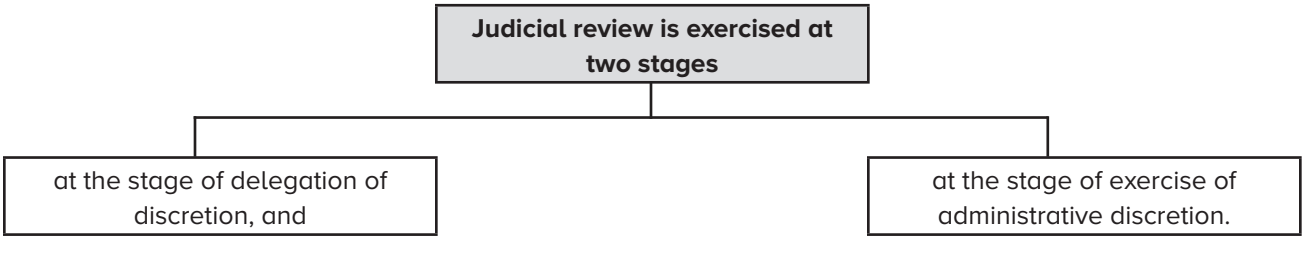
"The Court is not an appellate forum where the correctness of an order of Government could be canvassed and, indeed, it has no jurisdiction to substitute its own view as to the necessity or desirability of initiating disciplinary proceedings, for the entirety of the power, jurisdiction and discretion in that regard is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has acted in mala fide for satisfying a private or personal grudge of the authority against the officer. If the act is in excess of the power granted or is an abuse or misuse of power, the matter is capable of interference and rectification by the Court."

Hind Construction and Engineering Co. Ltd. vs. Their Workmen: AIR1965SC917

In this case the Supreme Court held that the action taken by the employer was unreasonable, unjust and disproportionate. Court observed that -

"The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate, regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice."

Stages of Judicial Review



(i) Judicial review at the stage of delegation of discretion

Any law can be challenged on the ground that it is violative of the Constitution and therefore laws conferring administrative discretion can thus also be challenged under the Constitution. In the case of delegated legislation the Constitutional courts have often been satisfied with vague or broad statements

of policy, but usually it has not been so in the cases where administrative discretion has been conferred in matters relating to fundamental rights.

The courts exercise control over delegation of discretionary powers to the administration by adjudicating upon the constitutionality of the law under which such powers are delegated with reference to the fundamental rights enunciated in Part III of the Indian Constitution. Therefore, if the law confers vague and wide discretionary power on any administrative authority, it may be declared *ultra vires* Article 14, Article 19 and other provisions of the Constitution.

In certain situations, the statute though does not give discretionary power to the administrative authority to take action, may still give discretionary power to frame rules and regulations affecting the rights of citizens. The court can control the bestowing of such discretion on the ground of excessive delegation.

The fundamental rights thus provide a basis to the judiciary in India to control administrative discretion to a large extent. There have been a number of cases in which a law, conferring discretionary powers, has been held violative of a fundamental right.

Administrative Discretion and Article 14

Article 14 of the Constitution of India provides for equality before law. It prevents arbitrary discretion being vested in the executive. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. Right to equality affords protection not only against discretionary laws passed by legislature but also prevents arbitrary discretion being vested in the executive. Often executive or administrative officer of government is given wide discretionary power.

In a number of cases, the statute has been challenged on the ground that it conferred on an administrative authority wide discretionary powers of selecting persons or objects discriminately and therefore, it violated Article 14.

The Court in determining the question of validity of such statute examines whether the statute has laid down any principle or policy for the guidance of the exercise of discretion by the government in the matter of selection or classification. The Court will not tolerate the delegation of uncontrolled power in the hands of executive to such an extent as to enable it to discriminate.

CASE LAW

State of West Bengal v. Anwar Ali, AIR 1952 SC 75

In this case, it was held that in so far as the Act empowered the Government to have cases or class of offences tried by special courts, it violated Article 14 of the Constitution. The court further held the Act invalid as it laid down "no yardstick or measure for the grouping either of persons or of cases or of offences" so as to distinguish them from others outside the purview of the Act. Moreover, the necessity of "speedier trial" was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

Administrative Discretion and Article 19

Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms under the authority of law. The reasonableness of the restrictions is open to judicial review. These freedoms can also be afflicted by administrative discretion.

A number of cases have come up involving the question of validity of law conferring discretion on the

executive to restrict the right under Article19(1)(b) and 19(1)(e) (the right to assemble peacefully and without arms and the right to reside and settle in any part of the territory of India). The government has conferred powers on the executive through a number of laws to extern a person from a particular area in the interest of peace and safety.

In a large number of cases, the question as to how much discretion can be conferred on the executive to control and regulate trade and business has been raised. The general principle laid down is that the power conferred on the executive should not be arbitrary, and that it should not be left entirely to the discretion of any authority to do anything it likes without any check or control by any higher authority. Where the Act provides some general principles to guide the exercise of discretion and thus saves it from being arbitrary and unbridled, the court will uphold it, but where the executive has been granted unfettered power to interfere with the freedom of property or trade and business, the court will strike down such provision of law.

CASE LAW

Dr. Ram Manohar v. State of Delhi, AIR 1950 SC 211,

In this case, the D.M. was empowered under East Punjab Safety Act, 1949, to make an order of externment from an area in case he was satisfied that such an order was necessary to prevent a person from acting in any way prejudicial to public peace and order, the Supreme Court upheld the law conferring such discretion on the executive on the grounds, inter alia, that the law in the instant case was of temporary nature and it gave a right to the externee to receive the grounds of his externment from the executive.

Hari v. Deputy Commissioner of Police, AIR 1956 SC 559,

The Supreme Court upheld the validity of section 57 of the Bombay Police Act authorizing any of the officers specified therein to extern convicted persons from the area of his jurisdiction if he had reasons to believe that they are likely to commit any offence similar to that of which they were convicted. This provision of law, which apparently appears to be a violation of the residence, was upheld by court mainly on the considerations that certain safeguards are available to the externee, i.e., the right of hearing and the right to file an appeal to the State Government against the order.

H.R. Banthis v. Union of India, 1979 1 SCC 166,

The Supreme Court in this case, declared a licensing provision invalid as it conferred an uncontrolled and unguided power on the executive. The Gold (Control) Act, 1968, provided for licensing of dealers in gold ornaments. The Administrator was empowered under the Act to grant or renew licenses having regard to the matters, *inter alia,* the number of dealers existing in a region, anticipated demand, suitability of the applicant and public interest. The Supreme Court held that all these factors were vague and unintelligible. The term 'region' was nowhere defined in the Act. The expression 'anticipated demand' was vague one. The expression 'suitability of the applicant and 'public interest' did not contain any objective standards or norms.

(ii) Judicial review at the stage of exercise of discretion

No law can clothe administrative action with a complete finality even if the law says so, for the courts always examine the ambit and even the mode of its exercise to check its conformity with fundamental rights. The courts in India have developed various formulations to control the exercise of administrative discretion, which can be grouped under two broad heads, as under:

1. Authority has not exercised its discretion properly- 'abuse of discretion'.
2. Authority is deemed not to have exercised its discretion at all- 'non-application of mind."

1. ***Abuse of discretion***

   i. ***Mala fides*:** If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court. Malafide exercise of discretionary power is always bad and taken as abuse of discretion. Malafide (bad faith) may be taken to mean dishonest intention or corrupt motive. In relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. The intention may be to promote another public interest or private interest.

   CASE LAW

   Tata Cellular v. Union of India, AIR 1996 SC 11

   The Supreme Court has held that the right to refuse the lowest or any other tender is always available to the Government but the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

   ii. **Irrelevant considerations:** If a statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the courts. If the administrative authority takes into account factors, circumstances or events wholly irrelevant or extraneous to the purpose mentioned in the statute, then the administrative action is vitiated.

   iii. **Leaving out relevant considerations:** The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.

   iv. **Arbitrary orders:** The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.

   v. **Improper purpose:** The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.

   vi. **Colourable exercise of power:** Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.

   vii. **Non-compliance with procedural requirements and principles of natural justice:** If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed.

   viii. **Exceeding jurisdiction:** The authority is required to exercise the power within the limits of the statute. Consequently, if the authority exceeds this limit, its action will be held to be ultra vires and, therefore, void.

2. ***Non-application of mind***

(i) **Acting under dictation:** Where the authority exercises its discretionary power under the instructions or dictation from superior authority it is taken as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgment and does not apply its mind. For example in *Commissioner of Police* v. *Gordhandas Bhanji, AIR 1952 SC 60*, the Police Commissioner empowered to grant license for construction of cinema theatres, granted the license but later cancelled it on the direction of the Government. The cancellation order was declared bad as the Police Commissioner did not apply his mind and acted under the dictation of the Government.

(ii) **Self-restriction:** If the authority imposes fetters on its discretion by announcing rules of policy to be applied by it rigidly to all cases coming before it for decision, its action or decision will be bad. The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and the authority should not imposes fetters on its discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it.

(iii) **Acting mechanically and without due care:** Non-application of mind to an issue that requires an exercise of discretion on the part of the authority will render the decision bad in law.

(B) Statutory

The method of statutory review can be divided into two parts:

(i) ***Statutory appeals*:** There are some Acts, which provide for an appeal from statutory tribunal to the High Court or Supreme Court on point of law.

> ***Example***
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> Under section 53B of the Competition Act, 2002 the Central Government or the State Government or a local authority or enterprise or any person, aggrieved by any direction, decision or order may prefer an appeal to the National Company Law Appellate Tribunal (NCLAT).
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> Further, under section 53T of the said act, the Central Government or any State Government or the Commission or any statutory authority or any local authority or any enterprise or any person aggrieved by any decision or order of the National Company Law Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order.

(ii) ***Reference to the High Court or statement of case:*** There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court.

> ***Example***
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> Under Section 256 of the Income-tax Act, 1961, where an application is made to the Tribunal by the assessee and the Tribunal refuses to state the case the assessee may apply to the High Court and if the High Court is not satisfied about the correctness of the decision of the Tribunal, it can require the Tribunal to state the case and refer it to the Court.

(C) Ordinary or Equitable

Apart from the remedies as discussed above there are certain ordinary remedies, which are available to person against the administration, the ordinary courts in exercise of the power provide the ordinary remedies under

the ordinary law against the administrative authorities. These remedies are also called equitable remedies and include:

(i) **Injunction**

An injunction is a preventive remedy. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. In India, the law with regard to injunctions has been laid down in the Specific Relief Act, 1963. An action for declaration lies where a jurisdiction has been wrongly exercised or where the authority itself was not properly constituted. Injunction is issued for restraining a person to act contrary to law or in excess of its statutory powers. An injunction can be issued to both administrative and quasi-judicial bodies. Injunction is highly useful remedy to prevent a statutory body from doing an ultra vires act, apart from the cases where it is available against private individuals e.g. to restrain the commission or torts, or breach of contract or breach of statutory duty. Injunction may be prohibitory or mandatory.

(a) ***Prohibitory Injunction*****:** Prohibitory injunction forbids the defendant to do a wrongful act, which would infringe the right of the plaintiff. A prohibitory injunction may be interlocutory or temporary injunction or perpetual injunction.

(1) ***Interlocutory or temporary injunction:*** Temporary injunctions are such as to continue until a specified time or until the further order of the court. (Section 37 for the Specific Relief Act). It is granted as an interim measure to preserve *status quo* until the case is heard and decided. Temporary injunction may be granted at any stage of a suit. Temporary injunctions are regulated by the Civil Procedure Code and are provisional in nature. It does not conclude or determine a right. Besides, a temporary injunction is a mere order. The granting of temporary injunction is a matter of discretion of the court.

(2) ***Perpetual injunction:*** A perpetual injunction is granted at the conclusion of the proceedings and is definitive of the rights of the parties, but it need not be expressed to have perpetual effect, it may be awarded for a fixed period or for a fixed period with leave to apply for an extension or for an indefinite period terminable when conditions imposed on the defendant have been complied with; or its operation may be suspended for a period during which the defendant is given the opportunity to comply with the conditions imposed on him, the plaintiff being given leave to reply at the end of that time.

(b) ***Mandatory injunction:*** When to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts. The mandatory injunction may be taken as a command to do a particular act to restore things to their former condition or to undo, that which has been done. It prohibits the defendant from continuing with a wrongful act and also imposes duty on him to do a positive act.

(ii) **Declaratory Action**

In some cases where wrong has been done to a person by an administrative act, declaratory judgments may be the appropriate remedy. Declaration may be taken as a judicial order issued by the court declaring rights of the parties without giving any further relief. Thus a declaratory decree declares the rights of the parties. In such a decree there is no sanction, which an ordinary judgment prescribes against the defendant. By declaring the rights of the parties it removes the existing doubts about the rights and secures enjoyment of the rights. It is an equitable remedy. It is a discretionary remedy and cannot be claimed as a matter of right.

(iii) **Action for damages**

If any injury is caused to an individual by wrongful or negligent acts of the Government servant, the aggrieved person can file suit for the recovery of damages from the Government concerned.

PRINCIPLES OF NATURAL JUSTICE

One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system. Natural justice is a concept of Common Law and represents procedural principles developed by judges. Though it enjoys no express constitutional status, it is one of the most important concepts that ensure that people retain their faith in the system of adjudication. Principles of natural justice are not precise rules of unchanging content; their scope varies according to the context. Nevertheless it provides the foundation on which the whole super- structure of judicial control of administrative action is based.

In India, the principles of natural justice are derived from Article *14* and *21* of the Constitution. The courts have always insisted that the administrative agencies must follow a minimum of fair procedure, i.e. principles of natural justice. The concept of natural justice has undergone a tremendous change over a period of time. In the past, it was thought that it included just two rules: (i) rule against bias and (ii) rule of fair hearing. In the course of time many sub-rules were added which are explained as under:

Rule against bias (*nemo judex in causa sua*)

According to this rule no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

(1) ***Pecuniary bias*:** The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication. Thus a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.

CASE LAW

J. Mohapatra and Co. and Ors. vs. State of Orissa and Ors. (10.08.1984 - SC) : 1984 AIR 1572

In this case Odisha government formed an assessment committee to recommend books of certain authors to be sent to government schools. Committee consisted of authors whose books were recommended. The Supreme Court struck down the recommendation stating that one cannot be both a writer and part of recommending committee, stating possibility of bias. Court observed that-

"when a book of an author-member comes up for consideration, the other members would feel themselves embarrassed in frankly discussing its merits. Such author-member may also be a person holding a high official position whom the other members may not want to displease. It can be that the other members may not be influenced by the fact that the book which they are considering for approval was written by one of their members. Whether they were so influenced or not is, however, a matter impossible to determine. It is not, therefore, the actual bias in favour of the author-member that is material but the possibility of such bias. All these considerations require that an author-member should not be a member of any such committee or sub-committee."

(2) ***Personal bias:*** There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.

CASE LAWS

*Mineral Development Ltd. v. State of Bihar, AIR 1960 SC 468***.**

This is the leading case on the matter of personal bias. In this case, the petitioner company was owned by Raja Kamakhya Narain Singh, who was a lessee for 99 years of 3026 villages, situated in Bihar, for purposes of exploiting mica from them. The minister of revenue acting under Bihar Mica Act cancelled his license. The owner of the company Raja Kamakhya Narain Singh, had opposed the minister in general election of 1952 and the minister had filed a criminal case under section 500, Indian Penal Code, against him. The act of cancellation by the Minister was held to be a quasi- judicial act. Since the personal rivalry between the owner of the petitioner's company and the minister concerned was established, the cancellation order became vitiated in law.

*Manek Lal v. Prem Chand, AIR 1957 SC 425***.**

Here the respondent had filed a complaint of professional misconduct against Manek Lal who was an advocate of Rajasthan High Court. The Chief Justice of the High Court appointed Bar Council tribunal to enquire into the alleged misconduct of the petitioner. The tribunal consisted of the Chairman who had earlier represented the respondent in a case. He was a senior advocate and was once the advocate-General of the State. The Supreme Court held the view that even though Chairman had no personal contact with his client and did not remember that he had appeared on his behalf in certain proceedings, and there was no real likelihood of bias, yet he was disqualified to conduct the inquiry on the ground that justice not only be done but must appear to be done to the litigating public. Actual proof of prejudice was not necessary; reasonable ground for assuming the possibility of bias is sufficient.

(3) ***Subject matter bias:*** A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute. To vitiate the decision on the ground of bias as for the subject matter there must be real likelihood of bias. Such bias can be classified into four categories.

(1) Partiality or connection to the issue

(2) Departmental bias

(3) Prior utterances and pre-judgment of issues

(4) Acting under dictation

Rule of fair hearing (*audi alteram partem*):

The second principle of natural justice is *audi alteram partem* (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given opportunity to submit his explanation thereto. Following are the ingredients of the rule of fair hearing:

(1) ***Right to notice:*** Hearing starts with the notice by the authority concerned to the affected person. Consequently, notice may be taken as the starting point of hearing. Unless a person knows the

case against him, he cannot defend himself. Therefore, before the proceedings start, the authority concerned is required to give to the affected person the notice of the case against him. The proceedings started without giving notice to the affected party, would violate the principles of natural justice. The notice is required to be served on the concerned person properly. However, the omission to serve notice would not be fatal if the notice has not been served on the concerned person on account of his own fault.

The notice must give sufficient time to the person concerned to prepare his case. Whether the person concerned has been allowed sufficient time or not depends upon the facts of each case. The notice must be adequate and reasonable. The notice is required to be clear and unambiguous. If it is ambiguous or vague, it will not be treated as reasonable or proper notice. If the notice does not specify the action proposed to be taken, it is taken as vague and therefore, not proper.

CASE LAW

Annamalai Cotton Mills (P) Ltd. vs. The Chairman, Tamilnadu Electricity Board (02.01.1996 - MADHC) : AIR 1996 Mad 364

In this case the court insisted upon the adequacy of the show cause notice with respect to alleged electricity theft without any details such as meter reading, time period, authority taking the action etc. Court observed that –

"where an authority makes an order in exercise of a quasi judicial function, it must record its reasons in support of the order it makes and that every quasi judicial order must be supported by reasons. In the instant case, the 3rd respondent, who passed the impugned order, has not recorded his reasons in support of the order. Therefore, it is clear that the impugned order has been passed in violation of the principles of natural justice and that it is without jurisdiction. The show cause notice is also as vague as any notice can be since it only states that the petitioner's service connection was inspected and theft of energy was reported. The notice itself, therefore, has to be quashed for the reason of vagueness. As no one can be condemned unless he is given full and adequate opportunity of being heard, issue of notice calling upon to show cause is always the first step in that direction. Therefore, the show cause notice as well as the impugned order are bad in law as they both violated the basic principle of natural justice."

(2) ***Right to present case and evidence*****:** The party against whom proceedings have been initiated must be given full opportunity to present his or her case and the evidence in support of it. The reply is usually in the written form and the party is also given an opportunity to present the case orally though it is not mandatory.

(3) ***Right to rebut adverse evidence*****:** For the hearing to be fair the adjudicating authority is not only required to disclose to the person concerned the evidence or material to be taken against him but also to provide an opportunity to rebut the evidence or material.

(i) ***Cross-examination*****:** Examination of a witness by the adverse party is called cross-examination. The main aim of cross-examination is the detection of falsehood in the testimony of the witness. The rules of natural justice say that evidence may not be read against a party unless the same has been subjected to cross-examination or at least an opportunity has been given for cross-examination.

CASE LAW

S.C. Girotra vs. United Commercial Bank (UCO Bank) and Ors. (18.02.1994 - SC) : 1995 Supp (3) SCC 212

In this case, bank dismissed the petitioner on the basis of a committee report. Report was prepared by an enquiry officer. The petitioner claimed that he was not given the opportunity to cross examine enquiry offer. Court held that, denial of such opportunity is in violation of principle of natural justice, since he was not given the opportunity to cross examine the officer it was stated that the:

"It is also clear that no opportunity was given to the appellant to cross-examine either the makers of that report, Mr. ..... and Mr ..... or the officers who had granted such certificates which formed evidence to prove the charges which led to the order of dismissal passed by the disciplinary authority, even though those persons were examined for the purpose of proving the documents relating to them. In our opinion, the grievance made by the appellant that refusal of permission to cross-examine these witnesses was denial of reasonable opportunity of defence to the appellant, is justified."

(ii) ***Legal Representation*:** Ordinarily the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. However, in certain situations denial of the right to legal representation amounts to violation of natural justice. Thus where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record or the prosecution is conducted by legally trained persons, the denial of legal representation will amount to violation of natural justice because in such conditions the party may not be able to meet the case effectively and therefore he must be given the opportunity to engage professional assistance to make his right to be heard meaningful.

CASE LAWS

Nandini Satpathy vs. P.L. Dani and Ors. (07.04.1978 - SC) : 1978 AIR 1025

The Supreme Court in this case stated that the accused must be allowed the legal representative during custodial interrogation and police must wait for reasonable time for arrival of such representative. If not allowed, it would not only be violative of Article 22(1) of Constitution of India but also against the principle of natural justice. It was observed that -

"The right to consult an advocate of his choice shall not be denied to any person who is arrested. This does not mean that persons who are not under arrest or custody can be denied that right. The spirit and sense of Article 22(1) is that it is fundamental to' the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation."

Suresh Koshy George vs. University of Kerala and Ors. (15.07.1968 - SC) : 1969 AIR 198

In this case a committee was appointed to inquire about the alleged malpractice by petitioner during examination. Committee gave a show cause notice to petitioner to represent his case but was not given inquiry report. Court held that there was no breach of principle of natural justice. It observed that -

"the officer appointed to inquire was an impartial person; he cannot be said to have been biased against the appellant; the charge against the appellant was made known to him before

the commencement of the inquiry; the witnesses who gave evidence against him were examined in his presence and he was allowed to cross-examine them and lastly he was given every opportunity to present his case before the Inquiry Officer. Hence we see no merit in the contention that there was any breach of the principles of natural justice"

(4) Disclosure of evidence: A party must be given full opportunity to explain every material that is sought to be relied upon against him. Unless all the material (e.g. reports, statements, documents, evidence) on which the proceeding is based is disclosed to the party, he cannot defend himself properly.

(5) Speaking orders: Reasoned decision may be taken to mean a decision which contains reason in its support. When the adjudicatory bodies give reasons in support of their decisions, the decisions are treated as reasoned decision. It is also called speaking order. In such condition the order speaks for itself or it tells its own story. Reasoned decision introduces a check on the administrative powers because the decisions need to be based on cogent reasons. It excludes or at least minimizes arbitrariness. It has been asserted that a part of the principle of natural justice is that a party is entitled to know the reason for the decision apart from the decision itself. Reason based judgments and orders allow the party affected by it to go into the merits of the decision and if not satisfied, exercise his right to appeal against the judgment/ order. In the absence of reasons, he might not be able to effectively challenge the order.

CASE LAWS

Canara Bank and Ors. vs. Debasis Das and Ors. (12.03.2003 - SC) : [(2003) 4 SCC 557].

The Supreme Court in this case held that Natural Justice rules are not codified, written but can be traced backed in statues especially in Constitution. In this case, it was observed that

"Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

Sunil Batra v. Delhi Administration AIR 1980 SC 1579,

The Supreme Court while interpreting section 56 of the Prisons Act, 1894, observed that there is an implied duty on the jail superintendent to give reasons for putting bar fetters on a prisoner to avoid invalidity of that provision under Article 21 of the Constitution. Thus, the Supreme Court laid the foundation of a sound administrative process requiring the adjudicatory authorities to substantiate their order with reasons.

Exceptions to Natural Justice

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances.

1. ***Statutory Exclusion*:** The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the

test of constitutional provision. Even if there is no provision under the statute for observance of the principle of natural justice, courts may read the requirement of natural justice for sustaining the law as constitutional.

2. ***Emergency*:** In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed. Thus, the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality and any delay in administrative order because of pre-decisional hearing before the action may cause injury to the public interest and public safety. However, the determination of the situation requiring the exclusion of the rules of natural justice by the administrative authorities is not final and the court may review such determination.

CASE LAWS

Maneka Gandhi v. Union of India AIR 1978 SC 597

In this case the Supreme Court observed that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to the person concerned. In the case, it has also been held that "public interest" is a justiciable issue and the determination of administrative authority on it is not final.

3. ***Interim disciplinary action*:** The rules of natural justice are not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.

CASE LAWS

Abhay Kumar v. K. Srinivasan AIR 1981 Delhi 381

In this case an order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in such case.

4. ***Academic evaluation*:** Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded. The Supreme Court has made it clear that if the competent academic authority assess the work of a student over the period of time and thereafter declare his work unsatisfactory the rule of natural justice may be excluded but this exclusion does not apply in the case of disciplinary matters.

5. ***Impracticability:*** Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

CASE LAWS

P. Radhakrishna v. Osmania University, AIR 1974 AP 283,

In this case, the entire M.B.A. entrance examination was cancelled on the ground of mass copying. The court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination.

Effect of Failure of Natural Justice

When an authority required to observe natural justice in making an order fails to do so, should the order made by it be regarded as void or voidable?

Generally speaking, a voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed. On the other hand, a void order is no order at all from its inception; it is a nullity and *void ab initio*.

In most cases a person affected by such an order cannot be sure whether the order is really valid or not until the court decided the matter. Therefore, the affected person cannot just ignore the order treating it as a nullity. He has to go to a court for an authoritative determination as to the nature of the order is void. For example, an order challenged as a nullity for failure of natural justice gives rise to the following crucial question: Was the authority required to follow natural justice?

Usually, a violable order cannot be challenged in collateral proceedings. It has to be set aside by the court in separate proceedings for the purpose. Suppose, a person is prosecuted criminally for infringing an order. He cannot then plead that the order is voidable. He can raise such a plea if the order is void. In India, by and large, the judicial thinking has been that a quasi-judicial order made without following natural justice is void and nullity.

CASE LAWS

Nawabkhan v. Gujarat. 1974 AIR 1471

In this case, Section 56 of the Bombay Police Act, 1951 is talked about. It empowers the Police Commissioner to extern any undesirable person on certain grounds set out therein. An order passed by the Commissioner on the petitioner was disobeyed by him and he was prosecuted for this in a criminal court. During the pendency of his case, on a writ petition filed by the petitioner, the High Court quashed the internment order on the ground of failure of natural justice. The trial court then acquitted the appellant. The government appealed against the acquittal and the High Court convicted him for disobeying the order. The High Court took the position that the order in question was not void *ab initio*; the appellant had disobeyed the order much earlier than date it was infringed by him; the High Court's own decision invalidating the order in question was not retroactive and did not render it a nullity from its inception but it was invalidate only from the date the court declared it to be so by its judgment.

However, the matter came in appeal before the Supreme Court, which approached the matter from a different angle. The order of internment affected a fundamental right (Article 19) of the appellant in a manner which was not reasonable. The order was thus illegal and unconstitutional and hence void. The court ruled definitively that an order infringing a constitutionally guaranteed right made without hearing the party affected, where hearing was required, would be void *ab initio* and ineffectual to bind the parties from the very beginning and a person cannot be convicted for non-observance of such an order. The Supreme Court held that where hearing is obligated by statute which affects the fundamental right of a citizen, the duty to give the hearing sound in constitutional requirement and failure to comply with such a duty is fatal.

Question: One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. Choose the most suitable option relating to said principle.

Options:

(A) Principle of Bias
(B) Principle of Natural Justice
(C) Principle of Administrative Justice
(D) Principle of Pecuniary Bias

Answer: (B)

LIABILITY OF THE GOVERNMENT, PUBLIC CORPORATION

The liability of the government can either be contractual or tortious.

Liability of State or Government in Contract

The Constitution of India allows the central and the state governments to enter into contracts under Article 299 of the Constitution of India. According to its provisions a contract with the Government of the Union or state will be valid and binding only if the following conditions are followed:

1. The contract with the Government must be made in the name of the President or the Governor, as the case may be.
2. The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

Article 299 (2) of the Constitution makes it clear that neither the President nor the Governor shall be personally liable in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India. Subject to the provisions of Article 299 (1), the other provisions of the general law of contract apply even to the Government contract.

The Supreme Court has made it clear that the provisions of Article 299 (1) are mandatory and therefore the contract made in contravention thereof is void and therefore cannot be ratified and cannot be enforced even by invoking the doctrine of estoppel.

According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. Therefore if the agreement with the Government is void as the requirement of Article 299(1) have not been complied, the party receiving the advantage under such agreement is bound to restore it or to make compensation for it to the person from whom he has received it.

Effect of a valid contract with Government

As soon as a contract is executed with the Government in accordance with Article 299, the whole law of contract as contained in the Indian Contract Act, 1872 comes into operation. In India, the remedy for the breach of a contract with Government is simply a suit for damages.

Earlier the writ of *mandamus* could not be issued for the enforcement of contractual obligations but the Supreme Court in its pronouncement in *Gujarat State Financial Corporation v. Lotus Hotels, 1983 3 SCC 379*, has taken a new stand and held that the writ of *mandamus* can be issued against the Government or its instrumentality for the enforcement of contractual obligations. The Court ruled that it cannot be contended that the Government can commit breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages and cannot compel specific performance of the contract through *mandamus*.

In the case of *Shrilekha Vidyarathi v. State of U.P., 1991 SCC 212,* the Supreme Court has made it clear that the

State has to act justly, fairly and reasonably even in contractual field. In the case of contractual actions of the State the public element is always present so as to attract Article 14. State acts for public good and in public interest and its public character does not change merely because the statutory or contractual rights are also available to the other party. The court has held that the State action is public in nature and therefore it is open to the judicial review even if it pertains to the contractual field. Thus the contractual action of the state may be questioned as arbitrary in proceedings under Article 32 or 226 of the Constitution. It is to be noted that the provisions of sections 73, 74 and 75 of the Indian Contract Act, 1872 dealing with the determination of the quantum of damages in the case of breach of contract also applies in the case of Government contract.

Quasi-Contractual Liability

According to section 70 of the Indian Contracts Act, 1872, where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered. If the requirements of section 70 of the Indian Contract Act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State. Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract or restitution. Section 70 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is a liability, which arise on equitable grounds even though express agreement or contract may not be proved.

Suit against State in Torts

A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the only remedy for which is damages. The essential requirement for the tort is beach of duty towards people in general. Although tort is a civil wrong, yet it would be wrong to think that all civil wrongs are torts. A civil wrong which arises out of the breach of contact cannot be put in the category of tort as it is different from a civil wrong arising out of the breach of duty towards public in general.

When the responsibility of the act of one person falls on another person, it is called vicarious liability. For example, when the servant of a person harms another person through his act, we held the servant as well as his master liable for the act done by the servant. Similarly, sometimes the State is held vicariously liable for the torts committed by its servants in the exercise of their duty. The State would of course not be liable if the acts done were necessary for protection life or property. Acts such as judicial or *quasi-judicial* decisions done in good faith would not invite any liability. There are specific statutory provisions which protect the administrative authorities from liability. Such protection, however, would not extend to malicious acts. The burden of proving that an act was malicious would lie on the person who assails the administrative action. The principles of law of torts would apply in the determination of what is a tort and all the defenses available to the respondent in a suit for tort would be available to the public servant also.

Damages

It may happen that a public servant may be negligent in exercise of his duty. It may, however, be difficult to recover compensation from him. From the point of view of the aggrieved person, compensation is more important than punishment. Therefore, like all other employers the State must be made vicariously liable for the wrongful acts of its servants.

The Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of personal liberty. Hence, they are coming forward

with the pronouncements holding the Government liable for damages even in those cases where the plea of sovereign function could have negatived the governmental liability. One such pronouncement came in the case of *Rudal Shah v. State of Bihar, AIR 1983 SC 1036.* Here the petitioner was detained illegally in the prison for over fourteen years after his acquittal in a full dressed trial. The court awarded Rs. 30,000 as damages to the petitioner.

In *Bhim Singh v. State of J&K, AIR 1986 SC 494***,** where the petitioner, a member of Legislative Assembly was arrested while he was on his way to Srinagar to attend Legislative Assembly in gross violation of his constitutional rights under Articles 21 and 22(2) of the Constitution, the court awarded monetary compensation of Rs. 50,000 by way of exemplary costs to the petitioner.

Another landmark case namely*, C. Ramkonda Reddy v. State, AIR 1989 AP 235*, has been decided by the Andhra Pradesh, in which State plea of sovereign function was turned down and damages were awarded despite its being a case of exercise of sovereign function.

In *Saheli a Women's Resource Center v. Commissioner of Police, Delhi, AIR 1990 SC 513,* where the death of nine years old boy took place on account of unwarranted atrocious beating and assault by a police officer in New Delhi, the State Government was directed by the court to pay Rs. 75,000 as compensation to the mother of victim.

In *Lucknow Development Authority v. M.K. Gupta, 1994 1 SCC 245,* the Supreme Court observed that where public servant by *malafide*, oppressive and capricious acts in discharging official duty causes injustice, harassment and agony to common man and renders the State or its instrumentality liable to pay damages to the person aggrieved from public fund, the State or its instrumentality is duly bound to recover the amount of compensation so paid from the public servant concerned.

Liability of the Public Servant

Liability of the State must be distinguished from the liability of individual officers of the State. So far as the liability of individual officers is concerned, if they have acted outside the scope of their powers or have acted illegally, they are liable to same extent as any other private citizen would be. The ordinary law of contact or torts or criminal law governs that liability. An officer acting in discharge of his duty without bias or *malafides* could not be held personally liable for the loss caused to other person. However, such acts have to be done in pursuance of his official duty and they must not be *ultra vires* his powers. Where a public servant is required to be protected for acts done in the course of his duty, special statutory provisions are made for protecting him from liability.

The term 'Statutory Corporation' (or Public Corporation) refers to such organisations which are incorporated under the special Acts of the Parliament/State Legislative Assemblies. Its management pattern, its powers and functions, the area of activity, rules and regulations for its employees and its relationship with government departments, etc. are specified in the concerned Act. It may be noted that more than one corporation can also be established under the same Act. State Electricity Boards and State Financial Corporation fall in this category.

Examples of Public Corporation

Life Insurance Corporation, Food Corporation of India (FCI), Oil and Natural Gas Corporation (ONGC), Air India, State Bank of India, Reserve Bank of India, Employees State Insurance Corporation, Central Warehousing Corporation, Damodar Valley Corporation, National Textile Corporation, Industrial Finance Corporation of India (IFCI), Tourism Corporation of India, Minerals and Metals Trading Corporation (MMTC) etc are some of the examples of Public Corporations.

The main features of Statutory Corporations are as follows:

- It is incorporated under a special Act of Parliament or state legislative Assembly
- It is an autonomous body and is free from government control in respect of its internal management. However, it is accountable to the Parliament or the state legislature
- It has a separate legal existence
- It is managed by Board of Directors, which is composed of Individuals who are trained and experienced in business management. The members of board of Directors are nominated by the government
- It is supposed to be self-sufficient in financial matters. However, in case of necessity it may take loan and/or seek assistance from the government
- The employees of the enterprises are recruited as per their own requirements by following the terms and conditions of recruitment decided by the Board

The principal benefits of the Public Corporation as an organizational device are its freedom from government regulations and controls and its high degree of operating and financial flexibility. In this form, there is a balance between the autonomy and flexibility enjoyed by private enterprise and the responsibility to the public as represented by elected members and legislators. However, this form, in its turn, has given rise to other problems, namely the difficulty of reconciling autonomy of the corporation with public accountability.

The public corporation (statutory corporation) is a body having an entity separate and independent from the Government. It is not a department or organ of the Government. Consequently, its employees are not regarded as Government servants and therefore they are not entitled to the protection of Article 311 of the Constitution. It is to be also noted that a public corporation is included within the meaning of 'State' under Article12 and therefore the fundamental rights can be enforced against it. Public corporations are included with the meaning of 'other authorities' and therefore it is subject to the writ jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution.

For the validity of the corporation contract, the requirements of a valid contract laid down in Article 299 are not required to be complied with. On principles of vicarious liability, corporation is liable to pay damages for wrong done by their officers or servants. They are liable even for tort requiring a mental element as an ingredient, e.g. malicious prosecution. In India, local authorities like Municipalities and District Boards have been held responsible for the tort committed by their servants or officers.

LESSON ROUND-UP

- Administrative law is that branch of law that deals with powers, functions and responsibilities of various organs of the State. There is no single universal definition of 'administrative law' because it means different things to different theorists.
- The ambit of administration is wide and embraces following things within its ambit:-
  - It makes policies
  - It executes and administers the law
  - It adjudicates
  - It exercises legislative power and issues a plethora of rules, bye- laws and orders of a general nature.
- Dicey gave the principle of Rule of Law and stated that the government should be ruled by rule of law instead of rule of individuals. Law of land is the fundamental.
- Four principal sources of administrative law in India are: (a) Constitution of India (b) Acts/ Statutes (c) Ordinances, Administrative directions, Notifications and Circulars (d) Judicial decisions.
- In India the modes of judicial control of administrative are grouped into three heads (a) Constitutional (b) Statutory (c) Ordinary or Equitable.
- One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system. Natural justice is a concept of Common Law and represents procedural principles developed by judges. In India, the principles of natural justice are derived from Article 14 and 21 of the Constitution.
- The liability of the government can either be contractual or tortious.

GLOSSARY

Administrative Discretion: The freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims.

Rule of Law: Everyone should be governed by rule of law instead of rule of individuals. Everyone stands equivalent in front of law.

Arbitrary orders: The order which are at whims and fancies of the adjudicatory authority.

Colourable exercise of power: Where the discretionary power is exercised ostensibly but in reality for some other purpose.

Natural Justice: Natural justice is a concept of Common Law and represents procedural principles developed by judges. It supports the statement "Justice must not only be done but also seen to be done".

***Nemo judex in causa sua*:** No one can be a judge in his own case.

TEST YOURSELF

(*These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation*)

1. What are the four principal sources of administrative law in India?
2. Briefly enumerate the various modes of judicial control of administrative action in India.
3. Write a short note on:
   (i) Judicial relief at the stage of delegation of discretion.
   (ii) Judicial relief at the stage of exercise of administrative discretion.
4. The liability of the government can either be contractual or tortious. Discuss.
5. The liability of the State is vicarious for the wrongful acts of its servants. Comment.
6. Write short note on 'Constitution' as a source of Administrative Law.
7. Distinguish between 'Tortious Liability' and 'Contractual Liability' of a State.
8. Where does Rule of Law embedded under the Constitution of India?
9. An Accountant, an employee of public corporation was prosecuted for offences under Section 161 IPC and Section 5(2) of the Prevention of Corruption Act, 1947 and was ultimately convicted and sentenced. This was upheld by the High Court in appeal. The appellant contended that the entire proceedings before the trial court as also the High Court are liable to be set aside as there was no valid sanction within the meaning of Section 6 of the Prevention of Corruption Act, 1947 with the consequence that the trial court had no jurisdiction to take cognizance of these offences. This contention is challenged by the State of Gujarat, who has contended that there was proper and valid sanction granted within the meaning of the Act. In this case, it was observed by the court that *that* while exercising the power of judicial review the Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made particularly as the Court does not have the expertise to correct the administrative decision.

   Discuss the above situation with the help of case *Mansukhlal Vithaldas Chauhan v. State of Gujarat, AIR 1997 SC 3400*

LIST OF FURTHER READINGS

- I.P. Massey, Administrative Law (7th ed., 2008)
- S.N. Jain, Administrative Tribunals in India (1977)
- A.V. Dicey, Law of the Constitution (1885)
- Lectures on Administrative Law by C.K. Takwani

OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- https://www.icsi.edu/cs-journal/