ADMINISTRATIVE LAW

Dr. Tarun

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Preface

Administrative law serves as the cornerstone of the legal framework governing the activities of administrative agencies within a government. It provides a set of rules and procedures that govern the exercise of administrative powers, ensuring accountability, fairness, and transparency in governmental decision-making processes.

Administrative law addresses the delegation of authority from the legislative branch to administrative agencies, defining the scope of agency powers and the limitations on their exercise. This includes the authority to make regulations, issue orders, adjudicate disputes, and enforce laws within specific domains.

Administrative agencies often exercise discretion in carrying out their functions, making decisions based on policy considerations, technical expertise, and statutory mandates. Administrative law establishes standards and guidelines for the exercise of discretion, ensuring that agency actions are reasonable, non-arbitrary, and consistent with the public interest.

Procedural fairness is a central tenet of administrative law, requiring agencies to follow fair and transparent procedures when making decisions that affect individuals' rights and interests. This includes providing notice and an opportunity to be heard, ensuring impartiality in decision-making, and allowing for judicial review of administrative actions.

Administrative law governs the process of rulemaking, whereby administrative agencies promulgate regulations to implement statutory mandates and address policy objectives. This process involves public notice, comment, and review, ensuring that regulations are informed by stakeholder input and subject to democratic accountability.

Administrative agencies often act in a quasi-judicial capacity, adjudicating disputes and resolving legal controversies through administrative hearings and proceedings. Administrative law establishes procedural safeguards to protect the rights of parties, ensure due process, and facilitate the fair and efficient resolution of disputes.

Judicial review is a critical component of administrative law, allowing courts to review the legality and constitutionality of administrative actions, decisions, and regulations. Courts assess whether agencies have acted within their statutory authority, complied with procedural requirements, and respected constitutional principles.

Administrative law provides mechanisms for enforcing administrative decisions and securing remedies for aggrieved parties. This may include administrative enforcement actions, civil penalties, injunctive relief, and judicial remedies such as mandamus, certiorari, and habeas corpus to compel or challenge agency actions.

In this book, we explore the fundamental principles and practices of administrative law, providing insight into the regulation of governmental agencies and their interactions with citizens.

–Author

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Introduction

Administrative law is the division of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law.

Administrative law deals with the decision-making of such administrative units of government as tribunals, boards or commissions that are part of a national regulatory scheme in such areas as police law, international trade, manufacturing, the environment, taxation, broadcasting, immigration and transport.

Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more government agencies to regulate the social, economic and political spheres of human interaction.

Civil law countries often have specialized administrative courts that review these decisions.

DEFINITION, NATURE AND SCOPE OF ADMINISTRATIVE LAW

For the smooth functioning of a democratic country, there should be a society based on fairness, reasonableness and justness. Administrative law strives to develop a rule of law. It regulates the relationships between citizens and government & protects the common man from arbitrary decisions of officials. It consists of all executive actions, its programmes & policies; all administrative aspects of parliament & judiciary; all actions of state like actors (agency & instrumentality of the state); all actions of non-state actors (private entities) exercising public functions. It is the branch of public law which ensures the

working of government at both central and state levels and also deals with the organizations and powers of administrative and quasi- administrative bodies. It is judge-made law in general which ensures public welfare by providing guidelines.

Administrative law is basically a law which regulates the actions of administrative authorities or agencies. Administrative law tries to develop a relation between the public and government by regulating itself as the time required. Administrative law as per the Indian perspective it is almost judge-made law it is because of its changes by the court case by case in the form of guidelines. It contains all aspects of administrative actions as it can work as legislative as it has delegated powers given through legislature but in limits, it can also work as executive as it enforces the law or implements the law, it comes in the role of the judiciary when there is need to make quick decisions but there can be judicial review of that actions if there is contrary in that decision. Administrative law regulates all these actions and ensures remedies against the arbitrary actions of administrative agencies.

Administrative law may be identified on the four basics stone:

1. Checking constructive or abusive of the powers of the administrative authorities
2. Ensuring citizens a just and fair solution or determination of disputes
3. Protect from unauthorized curtailing of rights of the citizens
4. Accountability of the powers.

Ensuring the protection of citizens over the arbitrary actions of the administration and also focuses on the judicial review of the actions or decisions taken by the administration to fulfill that protection against the actions of the administration are main objects of the administrative law.

DEFINITIONS OF ADMINISTRATIVE LAW

Administrative law is a law related to administration and can be defined as the law which governs the activities of the administrative agencies of the government including actions like rulemaking, adjudication, or the enforcement of a particular agenda.

Many scholars state different definitions of Administrative law in their views:

According to K.C. Devis, Administrative law is a law which is related to powers and procedures of administrative agencies, including specially the law related to judicial review of administrative actions.

According to Ivor Jennings, Administrative law is relating to the administration which helps in the determination of the organization, powers and duties of the administrative authorities.

According to F.J. Port, Administrative law consists of all legal rules which have ultimate objects to fulfill the public law, it touches legislature and judiciary too and also there are rules which govern judicial actions such as issuing writs brought by or against the administrative person, rules that permit the administrative body to exercise judicial powers and practical application of the law.

According to Austin, Administrative law is to determine the ends to and the modes in which the sovereign powers shall be exercised. It shall be directly or by the subordinates.

According to Prof. H.W.R. Wade, Administrative law is the law which controls the powers of the government.

According to Dicey, Administrative law denotes that part of the nation's legal system which determines the legal status and liabilities of all states offices which defines the rights and liabilities of private individuals in their dealing with their public officials and which specifies the procedure by which these rights and liabilities are enforced.

According to Indian Law Institute, Administrative law is a law relating to the power of administration. It also includes the procedure of how to exercise the powers, limits of those powers, the way in which the powers are kept in those limits followed by the officials and the remedies available to the public when their rights have encroached.

According to C.K.Takwani, Administrative law is the branch of constitutional law which deals with the powers and procedures of the administrative authorities.

Now we can define administrative law as the law which is a part of the public law of a nation which deals with the administration, it also includes the procedure which is going to be followed by the authorities under administrative law which deals with the procedure which discuss how to exercise the powers, limitation on the powers, how powers are enforced on the public and also the remedies for the public when their rights encroached. Administrative law defines the relationship between the public and the government and protects from arbitrary actions which are unfair without any reasonable reason to the public.

NATURE OF ADMINISTRATIVE LAW

Administrative law is the branch of public law which defines the relation between individuals and state. But it is not a law in a true sense like other laws such as property law or labour law. It is also not like private law which deals with relations of individual inter se. it is a law to administer the administrative authorities and check them from making any arbitrary decisions. Administrative law deals with the organization, powers and duties of the administrative authorities and also the procedure followed by the officials while exercising the powers. Administrative law is limited to the law which limits the power of administrative authorities while exercising the powers. It also provides remedies in the favour of the public when the rights of the public encroached.

In India, administrative law is almost judge made law. Thus it suffers from more facilities and benefits because of judicial lawmaking. Judiciary interprets law according to the need of time and issues guidelines for such. It affects administrative law and makes it more strong and beneficial. It is a branch of the constitution that regulates all three branches *i.e.*, legislative, executive and judiciary in the same way administrative regulates all administrative authorities and protects them from corrupt practices. Its main purpose is to focus on the

judicial review of administrative actions. In this way, there is protection from the arbitrary actions of the administrative actions. Administrative actions can be legislative, executive or judiciary. Administrative can do all of three actions when which is required to do so. By delegation legislation administrative has the power to make law when it comes to implementation of administrative acts as an executive and when it comes to making quick decisions then the administrative can act as the judiciary. The nature of administrative law changes according to the need.

SCOPE OF ADMINISTRATIVE LAW

Scope means an area of study or the variety of subjects that are being discussed or considered. As administrative law is almost judge-made law so it changes according to societal needs but in the guidance of the basic principles so the scope of this law is wider in comparison to other laws. Administrative law determines the powers and duties of the organization and the administrative authorities. The scope of administrative law is wide enough because, with the requirement of time, Administrative Law incorporates and culls out new rules and regulations.

The concept of administrative law is founded on the following:

1. Principles of natural justice and for rulemaking
2. Notion of the Rule of law
3. Law conferred power to administration as per Article 13 of the Indian Constitution
4. Accountability of powers, no power is absolute or uncontrolled
5. There should be a reasonable restriction on the regulations of such powers
6. The power of the court to issues writs
7. Opinions of public and mass media.

As administrative law incorporates new rules and regulations as per the requirement of time, so its scope is wide enough to incorporate all such rules and regulations. In general, it is a judge made law so it varies according to societal needs.

The scope of the administrative law is wide as it can act as all three branches of the government. It can make law, implement the law and can also take decisions whenever required. But the review of the decision can be taken and on the basis of that review, the court can issue guidelines if there is any contradiction in that decision.

Administrative law is to administer & protect the public from the arbitrary actions of the administrative authorities. For a democratic country, there should be a strong and honest administration system. Administrative law provides that strength by making laws for administrative authorities. Administrative law makes the working of the administration system more clear and more smooth. How to exercise powers, limits of those powers, how to keep those powers in limits while exercising such powers, procedures followed by the officials all these

things are in administrative law. There are also remedies for the public when their rights are seized. It does not like substantive law which is beyond the understanding of lawyers it is a law which is dictated by the judges and especially focusing on the judicial review of the administrative actions. It is limited to the law concerning powers and procedures of administrative and quasi-administrative agencies.

IN COMMON LAW COUNTRIES

Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common law doctrines that establish standards for proper rulemaking.

Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by a court of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decisions is different from an administrative appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in an administrative appeal the correctness of the decision itself will be examined, usually by a higher body in the agency. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is *ultra vires*. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is unreasonable (under Canadian law, following the rejection of the "Patently Unreasonable" standard by the Supreme Court in Dunsmuir v New Brunswick), *Wednesbury* unreasonable (under British law), or arbitrary and capricious (under U.S., Administrative Procedure Act and New York State law). Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts, namely legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royal prerogative writs of English law, such as the writ of mandamus and the writ of certiorari.

In certain common law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary.

UNITED STATES

In the United States, many government agencies are organized under the executive branch of government, although a few are part of the judicial or legislative branches.

In the federal government, the executive branch, led by the president, controls the federal executive departments, which are led by secretaries who are members of the United States Cabinet.

The many independent agencies of the United States government created by statutes enacted by Congress exist outside of the federal executive departments but are still part of the executive branch.

Congress has also created some special judicial bodies known as Article I tribunals to handle some areas of administrative law.

The actions of executive agencies and independent agencies are the main focus of American administrative law. In response to the rapid creation of new independent agencies in the early twentieth century, Congress enacted the Administrative Procedure Act (APA) in 1946. Many of the independent agencies operate as miniature versions of the tripartite federal government, with the authority to "legislate", "adjudicate" (through administrative hearings), and to "execute" administrative goals (through agency enforcement personnel). Because the United States Constitution sets no limits on this tripartite authority of administrative agencies, Congress enacted the APA to establish fair administrative law procedures to comply with the constitutional requirements of due process.

Agency procedures are drawn from four sources of authority: the APA, organic statutes, agency rules, and informal agency practice. It is important to note, though, that agencies can only act within their congressionally delegated authority, and must comply with the requirements of the APA.

At state level the first version of the Model State Administrative Procedure Act was promulgated and published in 1946 by the Uniform Law Commission (ULC), in which year the Federal Administrative Procedure Act was drafted. It is incorporated basic principles with only enough elaboration of detail to support essential features, therefore it is a "model", and not a "uniform", act. A model act is needed because state administrative law in the states is not uniform, and there are a variety of approaches used in the various states. Later it was modified in 1961 and 1981.

The present version is the 2010 Model State Administrative Procedure Act (MSAPA) which maintains the continuity with earlier ones. The reason of the revision is that, in the past two decades state legislatures, dissatisfied with agency rule-making and adjudication, have enacted statutes that modify administrative adjudication and rule-making procedure.

The American Bar Association's official journal concerning administrative law is the *Administrative Law Review*, a quarterly publication that is managed and edited by students at the Washington College of Law.

HISTORICAL DEVELOPMENT

Stephen Breyer, a U.S., Supreme Court Justice since 1994, divides the history of administrative law in the United States into six discrete periods, in his book, *Administrative Law & Regulatory Policy* (3d Ed., 1992):

- English antecedents & the American experience to 1875
- *1875 – 1930:* The rise of regulation & the traditional model of administrative law
- *1930 - 1945:* The New Deal
- *1945 – 1965:* The Administrative Procedure Act & the maturation of the traditional model of administrative law
- *1965 – 1985:* Critique and transformation of the administrative process
- *1985 – ?:* Retreat or consolidation

AGRICULTURE

The agricultural sector is one of the most heavily regulated sectors in the U.S., economy, as it is regulated in various ways at the international, federal, state, and local levels. Consequently, administrative law is a significant component of the discipline of agricultural law. The United States Department of Agriculture and its myriad agencies such as the Agricultural Marketing Service are the primary sources of regulatory activity, although other administrative bodies such as the Environmental Protection Agency play a significant regulatory role as well.

ADMINISTRATIVE LAW - EVOLUTION, NATURE AND SCOPE

Development of Administrative law is the most significant and outstanding development of the 20th century. It however, does not mean that there was no Administrative Law before this century. It was in existence even during the time of King Shivaji's period and Mughal period.

In the 20th century the role and the function of the state has undergone a radical change. The Government functions have been increased tremendously. Today, the State is not merely a Police State, to exercise sovereign functions only. The traditional functions of the State is to protect the life and the property of the citizens from external aggression, war and internal disturbance but in a progressive democratic State it has to ensure social security and social welfare for a common man.

The State has become the welfare State. Today, the state has entered into each and every aspect of our life. State improves slums, looks after health and morals of the people, it improves education to children. It exercises control over production, manufacture and distribution of essential commodities, regulate the industrial relations, tries to achieve equality for all and ensures equal pay for equal work. All these developments in a State have widen the scope and the ambit of Administrative Law.

Administrative Law is basically a law relating to administrative operation of Government. It deals with the powers and duties of Administrative Authorities, the procedure followed by them in exercising the power and discharging the duties and the remedies available to an aggrieved person when his rights are affected by any administrative action.

DEFINITIONS

1. *According to Sir Ivor Jennings a famous jurist defined Administrative Law as:* "The law relating to administration. It determines the organisation, powers and duties of administrative authorities."
2. *According to M. P. Jain Administrative Law is:* "Administrative law deals with the structure, powers and functions of the organs of administration; the limits of their powers; the methods and procedures followed by them in exercising their powers and functions; the methods by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed in their operation."

NATURE AND SCOPE OF ADMINISTRATIVE LAW

Administrative Law deals with the powers of administrative authorities, the manner in which the powers are exercised and the remedies which are available to the aggrieved persons, when those powers are abused by these authorities.

As discussed above the administrative process has come to stay and it has to be accepted as a necessary evil in all progressive societies, particularly in a welfare state, where many schemes for the progress of society are prepared and administered by the government. The execution and implementation of this programme may adversely affect the rights of citizens. The actual problem is to reconcile social welfare with the rights of individual subjects.

The main object of the study of administrative law is to unravel the way in which these administrative authorities could be kept within their limits so that the discretionary powers may not be turned into arbitrary powers.

Administrative Law deals with following matters:

1. Who are administrative authorities?
2. What powers are exercised by those authorities?
3. What limits should be exercised while using powers?
4. Procedure to be followed while using the powers?
5. What are remedies available if the rights are affected?

SCOPE OF ADMINISTRATIVE LAW IS AS UNDER

According to Friedman scope of Administrative Law is:

1. It deals with law making powers of administrative authorities under common law and various statutes;
2. Judicial and quasi-judicial powers of administrative authorities *i.e.*, court and tribunal to deal with problems and remedies;

3. Executive powers of administration *i.e.*, concentration of powers;
4. Powers of the courts to supervise the administrative authorities;
5. Legal liability of public servant.

Administrative Law is a branch of public law which deals with the relationship of the individual with the administrative authorities. Administrative Law deals with the organization and powers of administrative and quasi-administrative agencies, procedure for exercise of those power and control over those powers. It deals with the study of existing principles and also the development of certain new principles which the administrative and quasi-administrative agencies must follow while exercising the powers in relation to individuals that is principle of natural justice, and fairness. The study of administrative law is not an end in itself but it means to an end. The main object of study of administrative law is the reconciliation of power with liberty of the individual. Administrative law is not a branch of philosophy of law but of sociology of law.

IN CIVIL LAW COUNTRIES

Unlike most common law jurisdictions, most civil law jurisdictions have specialized courts or sections to deal with administrative cases that as a rule apply procedural rules that are specifically designed for such cases and distinct from those applied in private law proceedings, such as contract or tort claims.

BRAZIL

In Brazil, administrative cases are typically heard either by the Federal Courts (in matters concerning the Federal Union) or by the Public Treasury divisions of State Courts (in matters concerning the States). In 1998, a constitutional reform, led by the government of President Fernando Henrique Cardoso, introduced regulatory agencies as a part of the executive branch. Since 1988, Brazilian administrative law has been strongly influenced by the judicial interpretations of the constitutional principles of public administration (art. 37 of Federal Constitution): legality, impersonality, publicity of administrative acts, morality and efficiency.

FRANCE

In France, most claims against the national or local governments as well as claims against private bodies providing public services are handled by administrative courts, which use the *Conseil d'État* (Council of State) as a court of last resort for both ordinary and special courts. The main administrative courts are the *tribunaux administratifs* and appeal courts are the *cours administratives d'appel*. Special administrative courts include the National Court of Asylum Right as well as military, medical and judicial disciplinary bodies. The French body of administrative law is called "*droit administratif*".

Over the course of their history, France's administrative courts have developed an extensive and coherent case law (*jurisprudence constante*) and legal doctrine

(*principes généraux du droit* and *principes fondamentaux reconnus par les lois de la République*), often before similar concepts were enshrined in constitutional and legal texts. These principes include:

- Right to fair trial (*droit à la défense*), including for internal disciplinary bodies
- Right to challenge any administrative decision before an administrative court (*droit au recours*)
- Equal treatment of public service users (*égalité devant le service public*)
- Equal access to government employment (*égalité d'accès à la fonction publique*) without regard for political opinions
- Freedom of association (*liberté d'association*)
- Right to Entrepreneurship (*Liberté du Commerce et de l'industrie*, lit. freedom of commerce and industry)
- Right to Legal certainty (*Droit à la sécurité juridique*)

French administrative law, which is the founder of Continental administrative law, has a strong influence on administrative laws in several other countries such as Belgium, Greece, Turkey and Tunisia.

GENERAL ADMINISTRATIVE LAW

The general administration law is basically ruled in the administrative procedures law (*Verwaltungsverfahrensgesetz* [VwVfG]). Other legal sources are the Rules of the Administrative Courts (Verwaltungsgerichtsordnung), the social security code (Sozialgesetzbuch [SGB]) and the general fiscal law (Abgabenordnung [AO]).

ADMINISTRATIVE PROCEDURES LAW

The *Verwaltungsverfahrensgesetz* (VwVfG), which was enacted in 1977, regulates the main administrative procedures of the federal government. It serves the purpose to ensure a treatment in accordance with the rule of law by the public authority. Furthermore, it contains the regulations for mass processes and expands the legal protection against the authorities. The VwVfG basically applies for the entire public administrative activities of federal agencies as well as federal state authorities, in case of making federal law. One of the central clause is § 35 VwVfG. It defines the administrative act, the most common form of action in which the public administration occurs against a citizen. The definition in § 35 says, that an administration act is characterized by the following features:

It is an official act of an authority in the field of public law to resolve an individual case with effect to the outside.

§§ 36 – 39, §§ 58 – 59 and § 80 VwV—fG rule the structure and the necessary elements of the administrative act. § 48 and § 49 VwVfG have a high relevance in practice, as well. In these paragraphs, the prerequisites for redemption of an unlawful administration act (§ 48 VwVfG) and withdrawal of a lawful administration act (§ 49 VwVfG), are listed.

OTHER LEGAL SOURCES

Administration procedural law (Verwaltungsgerichtsordnung [VwGO]), which was enacted in 1960, rules the court procedures at the administrative court. The VwGO is divided into five parts, which are the constitution of the courts, action, remedies and retrial, costs and enforcement15 and final clauses and temporary arrangements.

In absence of a rule, the VwGO is supplemented by the code of civil procedure (Zivilprozessordnung [ZPO]) and the judicature act (Gerichtsverfassungsgesetz [GVG]). In addition to the regulation of the administrative procedure, the VwVfG also constitutes the legal protection in administrative law beyond the court procedure. § 68 VwVGO rules the preliminary proceeding, called "Vorverfahren" or "Widerspruchsverfahren", which is a stringent prerequisite for the administrative procedure, if an action for rescission or a writ of mandamus against an authority is aimed. The preliminary proceeding gives each citizen, feeling unlawfully mistreated by an authority, the possibility to object and to force a review of an administrative act without going to court. The prerequisites to open the public law remedy are listed in § 40 I VwGO. Therefore, it is necessary to have the existence of a conflict in public law without any constitutional aspects and no assignment to another jurisdiction.

The social security code (Sozialgesetzbuch [SGB]) and the general fiscal law are less important for the administrative law. They supplement the VwVfG and the VwGO in the fields of taxation and social legislation, such as social welfare or financial support for students (BaFÖG), *etc.*

SPECIAL ADMINISTRATIVE LAW

The special administrative law consists of various laws. Each special sector has its own law. The most important ones are the:

- Town and Country Planning Code (Baugesetzbuch [BauGB])
- Federal Control of Pollution Act (Bundesimmissionsschutzgesetz [BImSchG])
- Industrial Code (Gewerbeordnung [GewO])
- Police Law (Polizei- und Ordnungsrecht)
- Statute Governing Restaurants (Gaststättenrecht [GastG]).

In Germany, the highest administrative court for most matters is the federal administrative court Bundesverwaltungsgericht. There are federal courts with special jurisdiction in the fields of social security law (Bundessozialgericht) and tax law (Bundesfinanzhof).

ITALY

In Italy administrative law is known as "'*Diritto amministrativo*", a branch of public law whose rules govern the organization of the public administration and the activities of the pursuit of the public interest of the public administration and the relationship between this and the citizens. Its genesis is related to the

principle of division of powers of the State. The administrative power, originally called "executive", is to organize resources and people whose function is devolved to achieve the public interest objectives as defined by the law.

Netherlands

In the Netherlands administrative law provisions are usually contained in the various laws about public services and regulations. There is however also a single General Administrative Law Act ("Algemene wet bestuursrecht" or Awb), which is a rather good sample of procedural laws in Europe. It applies both to the making of administrative decisions and the judicial review of these decisions in courts. Another act about judicial procedures in general is the *Algemene termijnenwet* (General time provisions act), with general provisions about time schedules in procedures.

On the basis of the Awb, citizens can oppose a decision ('besluit') made by an administrative agency ('bestuursorgaan') within the administration and apply for judicial review in courts if unsuccessful. Before going to court, citizens must usually first object to the decision with the administrative body who made it. This is called "bezwaar". This procedure allows for the administrative body to correct possible mistakes themselves and is used to filter cases before going to court. Sometimes, instead of bezwaar, a different system is used called "administratief beroep" (administrative appeal). The difference with bezwaar is that administratief beroep is filed with a different administrative body, usually a higher ranking one, than the administrative body that made the primary decision. Administratief beroep is available only if the law on which the primary decision is based specifically provides for it. An example involves objecting to a traffic ticket with the district attorney ("officier van justitie"), after which the decision can be appealed in court.

Unlike France or Germany, there are no special administrative courts of first instance in the Netherlands, but regular courts have an administrative "chamber" which specializes in administrative appeals. The courts of appeal in administrative cases however are specialized depending on the case, but most administrative appeals end up in the judicial section of the Council of State (Raad van State).

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Role of Writs in Administrative Law

CONCEPT OF WRITS IN INDIA

Social and Economic Justice is the signature tune of the Indian Constitution. It guarantees, fundamental rights which cannot be ordinarily derogated from, in protecting these right, the Constitution has provided for writ remedies enforceable by the High Court and the Supreme Court. An important dimension of these remedies is the award of compensation as part of the relief that can be granted to the affected person. This arises from the fact that not only does the state have a legal duty in protecting the rights guaranteed, but also a social duty to compensate the affected, when the state violates these rights. On the other side, There has been tremendous expansion in the administrative process. This is natural in a welfare state as a welfare state is basically an administrative state. So my article deals with the Concept of Writs, It's Background and also It's Role In Administrative Action.

The first question arise in our mind while reading the topic is.. Actually, What Is Writ? The answer is here- A Writ is a formal written order issued by a government entity in the name of the sovereign power. In most cases, this government entity is a court. In modern democratic countries, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines, *etc.* Hence the need for a control of the discretionary powers is essential to ensure that 'Rule of Law' exist in all governmental actions. The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the

decisions taken by the authorities are legal, rational, proper, just, fair and reasonable. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions

BIRTH OF WRITS

The origin of writs can be drawn from the English Judicial System and were created with the development of English folk courts to the common law courts. The law of writs has its origin from the orders passed by the King's Bench in England. Writs were issued on a petition presented to the king in council and were considered as a royal order. Writs were a written order issued in the name of the name of the king. However, with different segments writs took various forms and names. The writs were issued by the crown and initially only for the interest of the crown later on it became available for ordinary citizens also. A prescribed fee was charged for it and the filling of these writs were known as Purchase of a Writ.

ORIGINATION IN INDIA

The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High Courts and also gave them power to issue writs as successor to Supreme Court. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under Section 45 of the Specific Relief Act, 1877.

PRINCIPLES OF EXERCISE WRITS JURISDICTION

Writs are meant as prerogative remedies. The writ jurisdictions exercised by the Supreme Court under article 32 and by the high courts under article 226, for the enforcement of fundamental rights are mandatory and not discretionary. But the writ jurisdiction of high courts for 'any other purpose' is discretionary. In that sense the writ jurisdiction of high courts are of a very intrinsic nature. Hence high courts have the great responsibility of exercising this jurisdiction strictly in accordance with judicial considerations and well established principles. When ordinary legal remedies seem inadequate, in exceptional cases, writs are applied.

Habeas Corpus

The meaning of the Latin phrase Habeas Corpus is 'have the body'. According to Article 21, "no person shall be deprived of his life or personal liberty except according to the procedure established by law". The writ of Habeas corpus is in the nature of an order directing a person who has detained another, to produce the latter before the court in order to examine the legality of the detention and to set him free if there is no legal justification for the detention. It is a process by which an individual who has been deprived of his personal liberty can test the validity of the act before a higher court.

The objective of the writ of habeas corpus is to provide for a speedy judicial review of alleged unlawful restraint on liberty. It aims not at the punishment of the wrongdoer but to resume the release of the retinue. The writ of habeas corpus enables the immediate determination of the right of the appellant's freedom. In the writs of habeas corpus, the merits of the case or the moral justification for the imprisonment or detention are irrelevant. In A.D.M. Jabalpur v. Shivakant Shukla, it was observed that "the writ of Habeas Corpus is a process for securing the liberty of the subject by affording an effective means of immediate relief from unlawful or unjustifiable detention whether in prison or private custody. If there is no legal justification for that detention, then the party is ordered to be released."

Certorari

The writ of Certiorari is generally issued against authorities exercising quasi-judicial functions. The Latin word Certiorari means 'to certify'. Certiorari can be defined as a judicial order of the supreme court or by the high courts to an inferior court or to any other authority that exercise judicial, quasi-judicial or administrative functions, to transmit to the court the records of proceedings pending with them for scrutiny and to decide the legality and validity of the order passed by them. Through this writ, the court quashes or declares invalid a decision taken by the concerned authority. Though it was meant as a supervisory jurisdiction over inferior courts originally, these remedy is extended to all authorities who issue similar functions.

The concept of natural justice and the requirement of fairness in actions, the scope of certiorari have been extended even to administrative decisions. An instance showing the certiorari powers was exercised by the Hon'ble Supreme court in A.K.Kraipak v. Union of India, where the selection was challenged on the ground of bias. The Supreme Court delineated the distinction between quasi judicial and administrative authority. The Supreme Court exercising the powers issued the writ of Certiorari for quashing the action. Certiorari is corrective in nature. This writ can be issued to any constitutional, statutory or non statutory body or any person who exercise powers affecting the rights of citizens.

Prohibition

The grounds for issuing the writs of certiorari and prohibition are generally the same. They have many common features too. The writ of prohibition is a judicial order issued to a constitutional, statutory or non statutory body or person if it exceeds its jurisdiction or it tries to exercise a jurisdiction not vested upon them. It is a general remedy for the control of judicial, quasi judicial and administrative decisions affecting the rights of persons.

The writ of Prohibition is issued by the court exercising the power and authorities from continuing the proceedings as basically such authority has no power or jurisdiction to decide the case. Prohibition is an extra ordinary prerogative writ of a preventive nature. The underlying principle is that

'prevention is better than cure.' In East India Commercial Co. Ltd v. Collector of Customs, a writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise.

Mandamus

The writ of mandamus is a judicial remedy in the form of an order from the supreme court or high courts to any inferior court, government or any other public authority to carry out a 'public duty' entrusted upon them either by statute or by common law or to refrain from doing a specific act which that authority is bound to refrain from doing under the law. For the grant of the writ of mandamus there must be a public duty. The superior courts command an authority to perform a public duty or to non perform an act which is against the law. The word meaning in Latin is 'we command'.

The writ of mandamus is issued to any authority which enjoys judicial, quasi judicial or administrative power. The main objective of this writ is to keep the public authorities within the purview of their jurisdiction while performing public duties.

The writ of mandamus can be issued if the public authority vested with power abuses the power or acts mala fide to it. In Halsbury's Laws of England, it is mentioned that, "As a general rule the order will not be granted unless the party complained of has known what it was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal."

Quo Warranto

The word meaning of 'Quo warranto' is 'by what authority'. It is a judicial order against a person who occupies a substantive public office without any legal authority. The person is asked to show by what authority he occupies the position or office. This writ is meant to oust persons, who are not legally qualified, fro substantive public posts.

The writ of Quo warranto is to confirm the right of citizens to hold public offices. In this writ the court or the judiciary reviews the action of the executive with regard to appointments made against statutory provisions, to public offices. It also aims to protect those persons who are deprived of their right to hold a public office.

In University of Mysore v. Govinda Rao,12 the Supreme Court observed that the procedure of quo Warranto confers the jurisdiction and authority on the judiciary to control executive action in making the appointments to public offices against the relevant statutory provisions; it also protects a citizen being deprived of public office to which he may have a right.

CONSTITUTIONAL PROVISIONS

Article 32 and 226 of the constitution of India has designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action to the notice of the court. Safeguard of fundamental rights and assurance of natural justice are the most important components of writ jurisdictions.

Writ jurisdiction is exercised by the Supreme Court and the High courts only. This power is conferred to Supreme Court by article 32 and to high courts by article 226.

- Article 32(1) guarantee a person the right to move the Supreme Court for the enforcement of fundamental rights guaranteed by part III of the constitution.
- Article 32(2) empowers the Supreme Court to issue direction or orders or writs in the nature of Habeas Corpus, Certiorari, Prohibition, mandamus and Quo-warranto for the enforcement of fundamental rights.
- Article 226 empowers the state high courts to issue directions, orders or writs as mentioned above for the enforcement of fundamental rights and for 'any other purpose'. *i.e.*, High courts can exercise the power of writs not only for the enforcement of fundamental rights but also for a 'non fundamental right'

Thus the constitution provides the discretionary remedies on the High Court and the Supreme Court. In the absence of the provisions of such remedies no one can enforce its rights given. Thus wherever there is a right there must be a remedy for it. Thus it should satisfy the maxim, 'ubi jus ibi remedium.' One of the principle makers of the constitution, Dr. Ambedkar has given the prime importance to Article 32 among all other articles from the Indian Constitution. He has referred that, "It is the very soul of the Constitution and the very heart of it, "It is the very soul of the Constitution and the very heart of it."

In Devilal v. STO, it has been marked that, "There can be no doubt that the Fundamental Rights, guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these Fundamental Rights." In Daryao v. State of U.P., it was held that the right to obtain a writ must equally be a fundamental right when a petitioner presents the case. Thus, it cannot merely be considered as an individual's right to move the Supreme Court but it is also the duty and responsibility of the Supreme Court to protect the fundamental rights.

ROLE OF WRITS IN ADMINISTRATION LAW

The administrative law is that branch of law that keeps the government actions within the bounds of law or to put in negatively, it present the enforcement of blatantly bad orders from being derogatory. Administrative law has greatly demarcated the checks, balance and permissible area of an exercise of power,

authority and jurisdiction over administrative actions enforced by any State, Government agencies and instrumentalities defined under Article 12 of the Constitution of India. And the judiciary is dynamically carving the principles and exceptions, while making the judicial review of administrative action.

The Courts have constantly tried to protect the liberties of the people and assume powers under the Constitution for judicial review of administrative actions. The discretionary powers have to be curbed, if they are misused or abused, it is the essence of justice. The socio- politics instrument need not cry, if the courts do justice and perform the substantial role. That is the essence of justice. The welfare state has to discharge its duty fairly without any arbitrary and discriminatory treatment of the people in the country. If such powers come to the notice of the Courts, the courts have raised the arms consistently with the Rule Of Law. Today, the Government is the provider of social services, new form of poverty like jobs, quotas, licences, *etc.* The dispenser of special services cannot therefore act arbitrarily. Courts laid the standard of reasonableness in Government act

ORIGIN OF WRITS

The origin of writs can be drawn from the English Judicial system and were created with the development of English folk courts-moots to the common law courts. The law of writs has its origin from the orders passed by the King's Bench in England. Writs were issued on a petition presented to the king in council and were considered as a royal order. Writs were a written order issued in the name of the king which acted as groundwork for the subsequent proceedings. However, with different segments writs took various forms and names. The writs were issued by the crown and in the interest of the crown but with the passage of time it became available for ordinary citizens also. However a prescribed fee was charged for it and the filing of these writs were known as Purchase of a writ.

HISTORICAL BACKGROUND

The origin of writs in India goes back to the Regulating Act, 1773 under which Supreme Court was established at Calcutta. The charter also established other High courts and these High Courts had analogous power to issue writs as successor to the Supreme Court. The other courts which were established subsequently did not enjoy this power. The writ jurisdiction of these courts was limited to their original civil jurisdiction which they enjoyed under section 45 of the Specific Relief Act, 1877.

WRITS

Certiorari

Certiorari is a Latin term being in the passive form of the word 'Certiorare' meaning to inform. It was a royal demand for information. Certiorari can be

described as one of the most valuable and efficient remedies. Certiorari is one of the five prerogative writs adopted by the Indian Constitution under Article 226 which would be enforced against the decisions of the authority exercising judicial or quasi judicial powers. Such powers are exercised when the authorities have failed to exercise the jurisdiction though vested in it or failed to exercise the jurisdiction though vested on him or to correct the apparent error on the face of record or there is violation of the principle of natural justice. An instance showing the certiorari powers was exercised by the Hon'ble Supreme court in A.K.Kraipak v. Union of India, where the selection was challenged on the ground of bias. The Supreme Court delineated the distinction between quasi judicial and administrative authority. The Supreme Court exercising the powers issued the writ of Certiorari for quashing the action.

Prohibition

The writ of Prohibition is issued by the court exercising the power and authorities from continuing the proceedings as basically such authority has no power or jurisdiction to decide the case. Prohibition is an extra ordinary prerogative writ of a preventive nature. The underlying principle is that 'prevention is better than cure.' In East India Commercial Co. Ltd v. Collector of Customs, a writ of prohibition is an order directed to an inferior Tribunal forbidding it from continuing with a proceeding therein on the ground that the proceeding is without or in excess of jurisdiction or contrary to the laws of the land, statutory or otherwise.

Mandamus

Mandamus is a judicial remedy which is in the form of an order from a superior court to any Government agency, court or public authority to do or forbear from doing any specific act which that body is obliged to do under the law. The writ of mandamus is issued whenever the public authorities fail to perform the statutory duties confirmed on them. Such writ is issued to perform the duties as provided by the state under the statute or forbear or restrain from doing any specific act. The first case reported on the writ of mandamus was the Middletone case in 1573 wherein a citizen's franchise was restored. The writ of mandamus can be issued if the public authority vested with power abuses the power or acts mala fide to it. In Halsbury's Laws of England, it is mentioned that,

As a general rule the order will not be granted unless the party complained of has known what it was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce and that that demand was met by a refusal.

Quo Warranto

Quo Warranto means by what warrant or authority. Quo Warranto writ is issued against the person of public who occupies the public seat without any

qualification for the appointment. It is issued to restrain the authority or candidate from discharging the functions of public office. In University of Mysore v. Govinda Rao,12 the Supreme Court observed that the procedure of quo Warrato confers the jurisdiction and authority on the judiciary to control executive action in making the appointments to public offices against the relevant statutory provisions; it also protects a citizen being deprived of public office to which he may have a right.

Habeas Corpus

The Latin term Habeas Corpus means 'have the body'. The incalculable value of habeas corpus is that it enables the immediate determination of the right of the appellant's freedom.

The writ of Habeas Corpus is a process for securing liberty to the party for illegal and unjustifiable detention. It objects for providing a prompt and effective remedy against illegal restraints. The writ of Habeas Corpus can be filled by any person on behalf of person detained or by the detained person himself. It is a judicial order issued by Supreme Court or High Court through which a person confined may secure his release. The writ of Habeas Corpus can be filed by any person on behalf of the other person.

In Icchu Devi v. Union of India, the Supreme Court held that in a case of writ of Habeas corpus there are no strict observances of the rules of burden of proof. Even a post card by any pro bono publico is satisfactory to galvanize the court into examining the legality of detention.

In A.D.M. Jabalpur v. Shivakant Shukla, it was observed that the writ of Habeas Corpus is a process for securing the liberty of the subject by affording an effective means of immediate relief from unlawful or unjustifiable detention whether in prison or private custody. By it the High Court and the judges of that court at the instance of a subject aggrieved command the production of that subject and inquire into the cause of his imprisonment. If there is no legal justification for that detention, then the party is ordered to be released.

CONSTITUTIONAL PROVISIONS

The makers of the Constitution have adopted the English remedies in the Constitution under Articles 32 and 226. There has been specifically made provisions in the Constitution which empowers the Supreme Court and High Courts to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. The fundamental rights which are inalienable sacrosanct in nature and character which were conceived in national and public interest could be illusory if there is no constitutional machinery provided for its enforcement.

Unless such constitutional remedies for its enforcement is not provided the rights guaranteed by part III of the Constitution cannot be ever implemented by the citizens. Article 32 contained in Part III is itself a fundamental right given to the person under the Constitution. Similarly Article 226 of the Constitution is

conferred on the High Courts to exercise its prerogative writs which can be issued against any person or body of person including the government. The distinction between the two remedies is very negligible. The remedy under Article 32 is confined to enforcement of fundamental rights whereas Article 226 is available not only against the enforcement of fundamental rights but also for any other purpose. Thus the constitution provides the discretionary remedies on the High Court and the Supreme Court. In the absence of the provisions of such remedies no one can enforce its rights given. Thus wherever there is a right there must be a remedy for it. Thus it should satisfy the maxim, 'ubi jus ibi remedium.'

One of the principle makers of the constitution, Dr. Ambedkar has given the prime importance to Article 32 among all other articles from the Indian Constitution. He has referred that, It is the very soul of the Constitution and the very heart of it.

In Devilal v. STO, it has been marked that,

There can be no doubt that the Fundamental Rights, guaranteed to the citizens are a significant feature of our Constitution and the High Courts under Article 226 are bound to protect these Fundamental Rights.

Justice Subbarao in the case of Basheshwar Nath v. Commissioner, Income Tax, stated that,

A large majority of people are socially poor educationally backward and politically yet not conscious of their rights, cannot be pitted against the state or the institution or they cannot be put on equal status with the state or large organisations.

The people are requires to be protected from themselves. It is therefore the duty of the court to protect their rights and interests. Fundamental rights are therefore transcendental in nature and created and enacted in national and public interest and therefore they cannot be waived.

In Daryao v. State of U.P., it was held that the right to obtain a writ must equally be a fundamental right when a petitioner presents the case. Thus, it cannot merely be considered as an individual's right to move the Supreme Court but it is also the duty and responsibility of the Supreme Court to protect the fundamental rights.

ROLE OF WRITS IN ADMINISTRATIVE ACTIONS

Now as far as the role of the writs is concerned, let us go by illustration over the cases on discretion. Conferment of discretionary powers has been accepted as necessary phenomena of modern administrative and constitutional machinery. Law making agency legislates the law on any subject to serve the public interest and while making law, it has become indispensable to provide for discretionary powers that are subject to judicial review. The rider is that the Donnie of the discretionary power has to exercise the discretion in good faith and for the purpose for which it is granted and subject to limitations prescribed under the Act. The Courts have retained their jurisdiction to test the Statute on the ground of

reasonableness. Mostly, the courts review on two counts; firstly whether the statute is substantively valid piece of legislation and, secondly whether the statute provides procedural safeguards. If these two tests are not found, the law is declared ultra vires and void of Article 14 of the Constitution. Beside this, Courts control the discretionary powers of the executive government being exercised after the statutes have come to exist.

Once they come into existence, it becomes the duty of the Executive Government to regulate the powers within limitations prescribed to achieve the object of the Statute. The discretionary powers entrusted to the different executives of the Government play substantial role in administrative decision making and immediately the settled principles of administrative law trap the exercise of powers. If these discretionary powers are not properly exercised, or there is abuse and misuse of powers by the executives or they take into account irrelevant consideration for that they are not entitled to take or simply misdirect them in applying the proper provision of law, the discretionary exercise of powers is void.

Judicial review is excluded when it is found that executives maintain the standard of reasonableness in their decisions. Errors are often crept in either because they would maintain pure administrative spirit as opposed to judicial flavour or that they influence their decisions by some irrelevant considerations or that sometimes, the authorities may themselves misdirect in law or that they may not apply their mind to the facts and circumstances of the cases. Besides, this aspect, they may act in derogation of fundamental principles of natural justice by not conforming to the standard or reasons and justice or that they do not just truly appreciate the existence or non existence of circumstances that may entitle them to exercise the discretion.

The Executive have to reach their decisions by taking into account relevant considerations. They should not refuse to consider relevant matter nor should they take into account considerations that are wholly irrelevant or extraneous. They should not misdirect themselves on a point of law. Only such a decision will be lawful.

The courts have power to see that the Executive acts lawfully. They cannot avoid scrutiny by courts by failing to give reasons. If they give reasons and they are not good reasons, the court can direct them to reconsider the matter in the light of relevant matters though the propriety adequacy or satisfactory character of these reasons may not be open to judicial scrutiny. Even if the Executive considers it inexpedient to exercise their powers they should state their reasons and there must be material to show that they have considered all the relevant facts.

The role of writs is also sensibly laid down in a famous Padfield's case:

In England in earlier days the Courts usually refused to interfere where the Government or the concerned officer passed what was called a non-speaking order, that is, an order which on the face of it did not specify the reasons for the orders. Where a speaking order was passed the Courts proceeded to consider whether the reasons given for the order or decision were relevant reasons. Where

there was a non-speaking order they used to say that it was like the face of the Sphinx in the sense that it was incurable and therefore hold that they could not consider the question of the validity of the order. Even in England the Courts have travelled very far since those days. They no longer find the face of the Sphinx inscrutable.

TYPES OF WRITS

What is Writ?

Writs are a written order from the Supreme Court or High Court that commands constitutional remedies for Indian Citizens against the violation of their fundamental rights.

Article 32 in the Indian Constitution deals with constitutional remedies that an Indian citizen can seek from the Supreme Court of India and High Court against the violation of his/her fundamental rights. The same article gives the Supreme Court power to issue writs for the enforcement of rights whereas the High Court has the same power under Article 226.

TYPES OF WRITS IN INDIA

The Supreme Court of India is the defender of the fundamental rights of the citizens. For that, it has original and wide powers. It issues five kinds of writs for enforcing the fundamental rights of the citizens.

The five types of writs are:

1. Habeas Corpus
2. Mandamus
3. Prohibition
4. Certiorari
5. Quo-Warranto.

HABEAS CORPUS

The Latin meaning of the word 'Habeas Corpus' is 'To have the body of.' This writ is used to enforce the fundamental right of individual liberty against unlawful detention. Through Habeas Corpus, Supreme Court/High Court orders one person who has arrested another person to bring the body of the latter before the court.

Facts about Habeas Corpus in India:

- The Supreme Court or High Court can issue this writ against both private and public authorities.
- Habeas Corpus can not be issued in the following cases:
  - — When detention is lawful
  - — When the proceeding is for contempt of a legislature or a court
  - — Detention is by a competent court
  - — Detention is outside the jurisdiction of the court

Mandamus

The literal meaning of this writ is 'We command.' This writ is used by the court to order the public official who has failed to perform his duty or refused to do his duty, to resume his work.

Besides public officials, Mandamus can be issued against any public body, a corporation, an inferior court, a tribunal, or government for the same purpose.

Facts about Mandamus in India:

- Unlike Habeas Corpus, Mandamus cannot be issued against a private individual
- *Mandamus can not be issued in the following cases:*
  - — To enforce departmental instruction that does not possess statutory force
  - — To order someone to work when the kind of work is discretionary and not mandatory
  - — To enforce a contractual obligation
  - — Mandamus can't be issued against the Indian President or State Governors
  - — Against the Chief Justice of a High Court acting in a judicial capacity

Prohibition

The literal meaning of 'Prohibition' is 'To forbid.' A court that is higher in position issues a Prohibition writ against a court that is lower in position to prevent the latter from exceeding its jurisdiction or usurping a jurisdiction that it does not possess. It directs inactivity.

Facts about Prohibition in India:

- Writ of Prohibition can only be issued against judicial and quasi-judicial authorities.
- It can't be issued against administrative authorities, legislative bodies and private individuals or bodies.

Certiorari

The literal meaning of the writ of 'Certiorari' is 'To be certified' or 'To be informed.'

This writ is issued by a court higher in authority to a lower court or tribunal ordering them either to transfer a case pending with them to itself or quash their order in a case. It is issued on the grounds of an excess of jurisdiction or lack of jurisdiction or error of law. It not only prevents but also cures for the mistakes in the judiciary.

Facts about Certiorari in India:

- *Pre-1991:* The writ of Certiorari used to be issued only against judicial and quasi-judicial authorities and not against administrative authorities
- *Post-1991:* The Supreme Court ruled that the certiorari can be issued even against administrative authorities affecting the rights of individuals
- It cannot be issued against legislative bodies and private individuals or bodies.

Quo-Warranto

The literal meaning of the writ of 'Quo-Warranto' is 'By what authority or warrant.' Supreme Court or High Court issue this writ to prevent illegal usurpation of a public office by a person. Through this writ, the court enquires into the legality of a claim of a person to a public office

Facts about Quo-Warranto in India:

- Quo-Warranto can be issued only when the substantive public office of a permanent character created by a statute or by the Constitution is involved
- It can't be issued against private or ministerial office

General Facts about Writs in India:

- Article 32 also empowers Parliament to authorize any other court to issue these writs
- Before 1950, only the High Courts of Calcutta, Bombay and Madras had the power to issue the writs
- Article 226 empowers all the High Courts of India to issue the writs
- Writs of India are borrowed from English law where they are known as 'Prerogative writs'

WRITS IN THE INDIAN CONSTITUTION

A writ petition can be termed as a formal written order issued by a judicial authority who possesses the authority to do so. The meaning of the word 'Writs' means command in writing in the name of the Court. It is a legal document issued by the court that orders a person or entity to perform a specific act or to cease performing a specific action or deed. In India, writs are issued by the Supreme Court under Article 32 of the Constitution of India and by the High Court under Article 226 of the Constitution of India.

MEANING OF WRIT

Fundamentally, a writ is a formal written order issued by anybody, executive or judicial, authorised to do so. In modern times, this body is generally judicial. Therefore, a writ can be understood as a formal written order issued by a Court having authority to issue such an order. Orders, warrants, directions, summons, *etc.*, are all essentially writs. A writ petition is an application filed before the competent Court requesting it to issue a specific writ.

WRITS UNDER INDIAN CONSTITUTION

Fundamental Rights are contained in Part III of the Indian Constitution including the right to equality, right to life and liberty, *etc.* Merely providing for Fundamental Rights is not sufficient. It is essential that these Fundamental Rights are protected and enforced as well. To protect Fundamental Rights the Indian Constitution, under Articles 32 and 226, provides the right to approach the Supreme Court or High Court, respectively, to any person whose Fundamental

Right has been violated. At the same time, the two articles give the right to the highest courts of the country to issue writs in order to enforce Fundamental Rights.

KINDS OF WRITS

Articles 32 and 226 specifically provide for five kinds of writs. These writs are issued in different circumstances and have different implications. They are:

Habeas Corpus

'Habeas Corpus' literally means "to have a body of". This writ is used to release a person who has been unlawfully detained or imprisoned. By virtue of this writ, the Court directs the person so detained to be brought before it to examine the legality of his detention. If the Court concludes that the detention was unlawful, then it directs the person to be released immediately. Circumstances of unlawful detention are:

- The detention was not done in accordance with the procedure laid down. For instance, the person was not produced before a Magistrate within 24 hours of his arrest.
- The person was arrested when he did not violate any law.
- An arrest was made under a law that is unconstitutional.

This writ ensures swift judicial review of the alleged unlawful detention of the prisoner and immediate determination of his right to freedom. However, Habeas corpus cannot be granted where a person has been arrested under an order from a competent court and when prima facie the order does not appear to be wholly illegal or without jurisdiction.

This writ can be filed by the detained person himself or his relatives or friends on his behalf. It can be issued against both public authorities and individuals.

In Sunil Batra v. Delhi Administration (1980 AIR 1579) case, an application was made to the Supreme Court through a letter written by a co-convict on the maltreatment of the prisoners. This letter was taken up by the Supreme Court and it issued the writ of habeas corpus stating that this writ can not only be used against illegal arrest of the prisoner but also for his protection against any maltreatment or inhuman behaviour by the detaining authorities.

In Kanu Sanyal v. District Magistrate Darjeeling & Ors. (1974 AIR 510) case, the Supreme Court held that rather than focusing on the defined meaning of Habeas Corpus, *i.e.*, produce the body, there should be a focus on the examination of the legality of the detention by looking at the facts and circumstances of the case. It stated that this writ is a procedural writ and not a substantive writ. This case dealt with the nature and scope of the writ of habeas corpus.

Mandamus

'Mandamus' means 'we command'. It is issued by the Court to direct a public authority to perform the legal duties which it has not or refused to perform. It

can be issued by the Court against a public official, public corporation, tribunal, inferior court or the government. It cannot be issued against a private individual or body, the President or Governors of States or against a working Chief Justices. Further, it cannot be issued in the following circumstances:

- The duty in question is discretionary and not mandatory.
- For the performance of a non-statutory function.
- Performance of the duty involves rights of purely private nature.
- Where such direction involves violation of any law.
- Where there is any other remedy available under the law.

The writ of mandamus is issued for keeping the public authorities within their jurisdiction while exercising public functions. The object of mandamus is the prevention of disorder emanating from failure of justice that is required to be granted in all cases where there is no specific remedy established in law. It cannot be issued when the government or public official has no duty to perform under the law.

A writ petition seeking mandamus must be filed by a person in good faith and who has an interest in the performance of the duty by the public authority. The person seeking mandamus must have a legal right to do so and also must have demanded the performance of the duty and it is refused by the authority.

In All India Tea Trading Co. v. S.D.O. (AIR 1962 Ass 20) case, the Land Acquisition Officer erroneously refused to pay the interest on compensation amount. A writ of mandamus was issued against the Land Acquisition Officer directing him to reconsider the application for the payment of interest.

In Suganmal v. State of M.P. (AIR 1965 SC 1740) case, the petitioner (person who files the writ petition) filed for issuing a writ of mandamus to direct the respondent (opposite party in the writ) for refunding tax. The Supreme Court held that where an assessment order was set aside and the rules concerned did not provide for refund of tax levied, a writ of mandamus cannot be issued. The proper remedy is filing a suit for claiming the refund.

Quo Warranto

'Quo Warranto' means 'by what warrant'. Through this writ, the Court calls upon a person holding a public office to show under what authority he holds that office. If it is found that the person is not entitled to hold that office, he may be ousted from it. Its objective is to prevent a person from holding an office he is not entitled to, therefore preventing usurpation of any public office. It cannot be issued with respect to a private office.

The writ can be issued only when the following conditions are fulfilled:

- The public office is wrongfully assumed by the private person.
- The office was created by the constitution or law and the person holding the office is not qualified to hold the office under the constitution or law.
- The term of the public office must be of a permanent nature.
- The nature of duties arising from the office must be public.

In Kumar Padma Padam Prasad v. Union of India (AIR 1992 SC 1213) case, Mr K.N. Srivastava was appointed as a Judge of the Gauhati High Court by the President of India by a warrant of appointment under his seal. A petition was filed for issuing a writ of quo-warranto contending that Mr K.N. Srivastava was not qualified for the office. It was held by the Supreme Court that since Mr K.N. Srivastava was not qualified, quo warranto could be issued and accordingly the appointment of Mr K.N. Srivastava was quashed.

In the case of Jamalpur Arya Samaj Sabha v. Dr D Rama (AIR 1954 Pat. 297) case, the petitioner filed an application for issuing the writ of Quo Warranto against the Working Committee of Bihar Raj Arya Samaj Pratinidhi Sabha, which was a private body. The High Court of Patna refused to issue the writ of Quo Warranto because it was not a public office.

Certiorari

'Certiorari' means to 'certify'. Certiorari is a curative writ. When the Court is of the opinion that a lower court or a tribunal has passed an order which is beyond its powers or committed an error of law then, through the writ of certiorari, it may transfer the case to itself or quash the order passed by the lower court or tribunal. A writ of certiorari is issued by the Supreme Court or High Court to the subordinate courts or tribunal in the following circumstances:

- When a subordinate court acts without jurisdiction or by assuming jurisdiction where it does not exist, or
- When the subordinate court acts in excess of its jurisdiction by way of overstepping or crossing the limits of jurisdiction, or
- When a subordinate court acts in flagrant disregard of law or rules of procedure, or
- When a subordinate court acts in violation of principles of natural justice where there is no procedure specified.

Prohibition

A writ of prohibition is issued by a Court to prohibit the lower courts, tribunals and other quasi-judicial authorities from doing something beyond their authority. It is issued to direct inactivity and thus differs from mandamus which directs activity.

It is issued when the lower court or tribunal acts without or in excess of jurisdiction or in violation of rules of natural justice or in contravention of fundamental rights. It can also be issued when a lower court or tribunal acts under a law that is itself ultra vires.

The difference between the writ of certiorari and prohibition is that they are issued at different stages of proceedings of the case. The writ of certiorari is issued after the case is heard and decided. It is issued to quash the decision or order of the lower court when the lower court passed an order without or in excess of jurisdiction. Whereas, the writ of prohibition is issued prohibiting the proceedings in the lower court which acts without or in excess of jurisdiction while the case is pending before it.

WHO CAN FILE A WRIT PETITION?

A writ petition can be filed by any person whose Fundamental Rights have been infringed by the State. Under a Public Interest Litigation, any public-spirited person may file a writ petition in the interest of the general public even if his own Fundamental Right has not been infringed.

Where can a writ Petition be Filed?

Under Article 32, a writ petition can be filed in the Supreme Court. The Supreme Court can issue a writ only if the petitioner can prove that his Fundamental Right has been infringed. It is important to note that the right to approach the Supreme Court in case of a violation of a Fundamental Right is in itself a Fundamental Right since it is contained in Part III of the Constitution.

Under Article 226, a writ petition can be filed before any High Court within whose jurisdiction the cause of action arises, either wholly or in part. It is immaterial if the authority against whom the writ petition is filed is within the territory or not. The power of the High Court to issue a writ is much wider than that of the Supreme Court.

The High Court may grant a writ for the enforcement of fundamental rights or for any other purpose such as violation of any statutory duties by a statutory authority. Thus, a writ petition filed before a Supreme Court can be filed against a private person too. Where a fundamental right has been infringed, either the Supreme Court or the High Court can be resorted to.

It is not necessary to go to the High Court first and only thereafter approach the Supreme Court. However, if a writ petition is filed directly in the Supreme Court, the petitioner has to establish why the High Court was not approached first.

3

Evolution and Scope of Administrative Law

INTRODUCTION

Administrative law is a dynamic and multifaceted field of law that has evolved over time to regulate the activities of administrative agencies and ensure accountability, fairness, and efficiency in governmental decision-making processes. This comprehensive body of law encompasses a wide range of legal principles, doctrines, and procedures that govern the exercise of administrative powers and the interactions between administrative agencies, individuals, and other branches of government. In this essay, we will explore the evolution and scope of administrative law, tracing its historical development, examining its key components, and analyzing its contemporary significance in modern legal systems.

HISTORICAL DEVELOPMENT

The roots of administrative law can be traced back to ancient civilizations, where rulers and officials exercised administrative powers to govern societies and regulate public affairs. In ancient Egypt, for example, pharaohs appointed administrators to oversee public works, taxation, and law enforcement, laying the groundwork for early administrative practices. Similarly, in ancient Rome, magistrates and governors administered justice, managed public resources, and supervised local governance, establishing rudimentary administrative structures and procedures.

The emergence of administrative law as a distinct legal discipline can be attributed to the growth of centralized government and the expansion of state power during the medieval and early modern periods. In medieval Europe, monarchs and feudal lords established administrative institutions, such as royal councils, chanceries, and courts, to administer justice, collect taxes, and regulate trade. These institutions developed administrative procedures and rules to govern their operations, laying the foundation for modern administrative law principles.

The rise of the administrative state in the 19th and 20th centuries marked a significant milestone in the evolution of administrative law. With the advent of industrialization, urbanization, and modernization, governments assumed new responsibilities in areas such as public health, education, social welfare, and economic regulation. This led to the proliferation of administrative agencies tasked with implementing and enforcing laws, regulations, and policies in various sectors of the economy and society.

SCOPE AND COMPONENTS

Administrative law encompasses a broad spectrum of legal doctrines, principles, and procedures that govern the activities of administrative agencies. Key components of administrative law include:

Delegation of Authority: Administrative law addresses the delegation of legislative and executive powers from the legislative and executive branches of government to administrative agencies. Delegation enables agencies to make rules, issue orders, adjudicate disputes, and enforce laws within their areas of jurisdiction, subject to statutory and constitutional constraints.

Rulemaking and Regulations: Administrative agencies engage in rulemaking to promulgate regulations that implement and interpret statutes enacted by the legislature. Rulemaking involves notice and comment procedures, public hearings, and review by the agency and other stakeholders. Administrative regulations have the force and effect of law and are binding on individuals and entities subject to agency jurisdiction.

Administrative Discretion: Administrative agencies exercise discretion in carrying out their functions, making decisions based on policy considerations, technical expertise, and statutory mandates. Administrative discretion allows agencies to adapt to changing circumstances, respond to complex problems, and achieve regulatory objectives efficiently.

Administrative Adjudication: Administrative agencies act in a quasi-judicial capacity when adjudicating disputes and resolving legal controversies through administrative hearings and proceedings. Administrative adjudication involves applying legal principles, evaluating evidence, and rendering decisions that affect the rights and interests of parties involved.

Judicial Review: Judicial review is a cornerstone of administrative law, allowing courts to review the legality and constitutionality of administrative actions, decisions, and regulations. Courts assess whether agencies have acted within their statutory authority, complied with procedural requirements, and respected constitutional principles.

Administrative Procedure: Administrative law governs the procedures followed by administrative agencies when making rules, conducting hearings, rendering decisions, and issuing orders. Administrative procedures ensure fairness, transparency, and accountability in agency actions, providing opportunities for public participation, due process, and judicial review.

Administrative Enforcement: Administrative agencies enforce laws, regulations, and orders through various enforcement mechanisms, such as inspections, investigations, sanctions, and penalties. Administrative enforcement promotes compliance with regulatory requirements, deters misconduct, and protects public health, safety, and welfare.

CONTEMPORARY SIGNIFICANCE

Administrative law plays a critical role in modern legal systems by regulating the activities of administrative agencies and ensuring the rule of law, democratic governance, and public accountability. In democratic societies, administrative agencies exercise delegated powers on behalf of the people and are accountable to elected officials, the judiciary, and the public. Administrative law helps balance competing interests and values, reconcile conflicts, and promote the public interest in complex and diverse societies. It provides mechanisms for resolving disputes, protecting individual rights, and advancing collective goals through reasoned decision-making, impartial adjudication, and effective enforcement.

Administrative law also reflects broader societal trends and challenges, such as globalization, technological innovation, and environmental sustainability. As administrative agencies grapple with increasingly complex and interconnected issues, administrative law evolves to address emerging challenges, adapt to new contexts, and safeguard democratic values and principles.

In conclusion, administrative law is a vital component of modern legal systems, regulating the activities of administrative agencies and ensuring accountability, fairness, and efficiency in governmental decision-making processes. The evolution and scope of administrative law reflect historical developments, institutional changes, and societal trends, shaping the relationship between the state and its citizens and advancing the rule of law and democratic governance. As administrative agencies continue to play a central role in addressing contemporary challenges and advancing public interests, administrative law will remain essential for promoting good governance, protecting individual rights, and fostering social and economic development in the 21st century.

NATURE, SCOPE AND DEVELOPMENT OF ADMINISTRATIVE LAW

As one begins to study the specifics of a particular branch of law it becomes important to know why and how the said branch of law came about.

Administrative law is a judge-made law which evolved over time. It is not a codified law. The need for it arose with the increase in administrative actions and its discretionary powers.

Rule of Law and Administrative Law

The concept of 'rule of law' is that the State should be governed by principles of law and not of men. Administrative laws ensures that 'rule of law' prevails despite the presence of discretionary powers vested in the administrators. Administrative law developed to restrict the arbitrary exercise of powers by subordinating it to well-defined law.

Separation of Powers and its Relevance

'Separation of power' is one of the basics on which the State machinery works. However, with the increase in administrative actions/powers, it is seen that the doctrine cannot be practised with rigidity.

Every organ of the State is dependent on the other for smooth functioning, thus, the doctrine of separation of power cannot be exercised by placing the organs of the State in watertight compartments. There has to be a flexible approach while ensuring that no organ encroaches upon the functions of another.

The Relationship between Constitutional Law and Administrative Law

As every law of the State must satisfy the Constitutional benchmark, it is essential to know the relationship between the Constitutional law and the Administrative law of the State. Constitutional law is the genus and administrative law its species, hence the judge-made law must comply with the constitutional provisions.

Administrative law is a branch of public law that governs the activities of administrative agencies of government. It encompasses a wide range of legal principles, doctrines, and procedures that regulate the exercise of administrative powers and ensure accountability, fairness, and efficiency in governmental decision-making processes.

Administrative law plays a crucial role in modern legal systems by balancing the need for effective governance with the protection of individual rights and interests. In this comprehensive essay, we will explore the nature, scope, and development of administrative law, tracing its historical roots, examining its key components, and analyzing its contemporary significance in the context of global legal systems.

LEGISLATIVE FUNCTIONS OF ADMINISTRATION

Delegated Legislation and its Constitutionality

The Administrative authorities are delegated the power to legislate by the Legislature. Administrative law examines whether the power so delegated to the administrative authorities is permissible within the constitutional definition or not.

Control Mechanism

As the administrative authorities are given the discretionary powers to legislate delegated legislation; administrative law puts in place a control mechanism which keeps a check on the power so exercised by the authorities through:

- Parliamentary control of delegated legislation,
- Judicial control of delegated legislation,
- Procedural control of delegated legislation.

Sub-delegation

When administrative authorities further delegate the power delegated to them it is called sub-delegation. However, such sub-delegation is allowed only when the Act delegating the power to the administrative authorities allows it. Administrative law ensures that sub-delegation of power is as per the law and that such a provision (of sub-delegation) does not make the administrator lethargic.

The legislative functions of administration play a crucial role in the governance of modern societies, shaping laws, regulations, and policies that impact the lives of citizens and organizations. This comprehensive essay explores the legislative functions of administration, examining their nature, scope, and significance in the context of contemporary governance.

Legislative functions refer to the activities undertaken by administrative agencies to develop, draft, and promulgate laws, regulations, and policies that address societal needs, promote public welfare, and achieve policy objectives. These functions are integral to the legislative process, complementing the role of elected legislatures in enacting statutes and ordinances.

The legislative functions of administration encompass several key activities, including:

Rulemaking: Administrative agencies engage in rulemaking to promulgate regulations that implement and interpret statutes enacted by the legislature. Rulemaking involves a systematic process of drafting, reviewing, and publishing rules that specify the requirements, standards, and procedures governing various activities and industries. Rulemaking ensures clarity, consistency, and predictability in regulatory requirements, providing stakeholders with guidance on compliance and enforcement.

Policy Development: Administrative agencies develop policies to address emerging issues, respond to societal needs, and achieve policy objectives in areas such as public health, environmental protection, education, and economic development. Policy development involves conducting research, analyzing data, consulting stakeholders, and formulating strategies to address complex challenges and promote public welfare. Policies may take the form of guidelines, directives, action plans, or initiatives aimed at influencing behaviour, allocating resources, and achieving desired outcomes.

Legislative Drafting: Administrative agencies draft legislative proposals, bills, ordinances, and resolutions for consideration by elected legislatures. Legislative drafting requires expertise in legal interpretation, statutory construction, and drafting techniques to ensure clarity, precision, and consistency in the language and structure of proposed laws.

Drafting legislative proposals involves collaboration with legislators, stakeholders, and legal experts to articulate policy goals, address legal concerns, and secure support for legislative initiatives.

Public Consultation: Administrative agencies engage in public consultation to solicit input, feedback, and comments from stakeholders, interest groups, and the general public on proposed laws, regulations, and policies. Public consultation promotes transparency, accountability, and participatory governance by providing opportunities for stakeholders to contribute to the legislative process, express their views, and influence decision-making. Consultation mechanisms may include public hearings, workshops, surveys, and online forums designed to facilitate meaningful engagement and dialogue.

Regulatory Impact Assessment: Administrative agencies conduct regulatory impact assessments to evaluate the potential effects of proposed regulations on the economy, society, and the environment. Regulatory impact assessments analyze the costs, benefits, risks, and unintended consequences of regulatory proposals, helping policymakers make informed decisions about regulatory alternatives, trade-offs, and priorities. Impact assessments may involve economic analysis, risk assessment, stakeholder consultation, and environmental impact assessment to assess the potential effects of regulations on different sectors and stakeholders.

Compliance Monitoring and Enforcement: Administrative agencies monitor compliance with laws, regulations, and policies through enforcement actions, inspections, audits, and sanctions. Compliance monitoring ensures that individuals, organizations, and governments adhere to legal requirements, standards, and obligations, promoting accountability, fairness, and the rule of law. Enforcement mechanisms may include fines, penalties, injunctions, and other measures to deter misconduct, address violations, and uphold regulatory standards.

The legislative functions of administration are essential for effective governance, as they enable governments to develop and implement laws, regulations, and policies that address societal needs, promote public welfare, and achieve policy objectives. These functions complement the role of elected legislatures in enacting statutes and ordinances, providing administrative agencies with the authority, expertise, and flexibility to respond to evolving challenges and opportunities.

Legislative functions facilitate the development of coherent and consistent regulatory frameworks that protect public health, safety, and welfare, while also fostering economic growth, innovation, and competitiveness. By engaging in rulemaking, policy development, legislative drafting, public consultation,

regulatory impact assessment, and compliance monitoring, administrative agencies play a vital role in shaping laws and regulations that govern various aspects of society, including healthcare, education, transportation, environment, labour, and commerce.

The legislative functions of administration also promote transparency, accountability, and participatory governance by providing opportunities for stakeholders to contribute to the legislative process, express their views, and influence decision-making. Public consultation, regulatory impact assessment, and compliance monitoring enhance the legitimacy and effectiveness of regulatory regimes, fostering public trust, confidence, and cooperation in regulatory governance.

The legislative functions of administration are an essential component of modern governance, enabling governments to develop, implement, and enforce laws, regulations, and policies that promote public welfare, protect individual rights, and advance societal goals. These functions empower administrative agencies to address complex challenges, respond to emerging issues, and adapt to changing circumstances, ensuring that regulatory frameworks remain effective, efficient, and responsive to the needs of society. By engaging in rulemaking, policy development, legislative drafting, public consultation, regulatory impact assessment, and compliance monitoring, administrative agencies contribute to the development of a robust and resilient regulatory infrastructure that supports sustainable development, economic prosperity, and social cohesion.

JUDICIAL FUNCTIONS OF ADMINISTRATION

Need for Devolution of Adjudicatory Authority on Administration

The judiciary of the State could not put in place a mechanism for speedy adjudication, moreover, there was a backlog of cases. Adjudicatory authority was hence devolved upon the administration to resolve the issue. However, it is not an absolute substitute of the judiciary.

Problems of Administrative Decision Making

Though the administration has been given adjudicatory authority to a certain extent, there are lacunas in the administrative adjudication.

For instance, the procedure of a proceeding before an administrative adjudicatory authority is not defined, there is an unsystematic system of appeal, the decisions of the authority are not recorded and vesting of overlapping functions in the same authority are the problem in administrative adjudication.

Nature of Administrative Tribunals

Thereafter, the nature of administrative tribunals is assessed. The Constitution, powers, areas pertaining to which a Tribunal shall adjudicate is defined.

Principles of Natural Justice

Administrative law requires that the administrative adjudicatory authority adjudicates matters applying the principles of natural justice, which are namely-

Rule against bias: That no person should be a judge in one's own case and that justice should not only be done but seen to be done.

- *Audi Alteram Partem: That every person has the right to be heard before a matter is adjudicated in his favour/against him.*
- Speaking order (Reasoned decisions)- That the adjudicating authority must provide the reason behind its decision. This is a newly evolved principle which aims at curbing arbitrariness on part of the adjudicating authority.

JUDICIAL CONTROL OF ADMINISTRATIVE ACTION.

Judicial Review of Administrative Action

The judiciary keeps a check on the other organs of the State through judicial review. The grounds on which this power is exercised on the administrative authority are:

- Abuse of discretion,
- Failure to exercise discretion,
- Illegality, irrationality and procedural impropriety.

Evolution of the Concept of Ombudsman

The concept of Ombudsman evolved to keep a check on the administrative action. An ombudsman is an independent officer of the Legislature who supervises the administration and deals with complaints against maladministration by the administrative authority. It is a check on the administrative bodies by the Legislature.

The judicial functions of administration encompass a range of activities undertaken by administrative agencies to adjudicate disputes, interpret laws and regulations, and enforce legal rights and obligations. While traditionally associated with the judiciary, these functions have become an integral part of administrative agencies' role in modern governance, particularly in areas where specialized expertise and administrative efficiency are needed. In this essay, we will explore the nature, scope, and significance of the judicial functions of administration, highlighting their role in promoting fairness, accountability, and the rule of law in administrative decision-making processes.

ADJUDICATION AND DISPUTE RESOLUTION

One of the primary judicial functions of administration is adjudicating disputes arising from the application or interpretation of laws, regulations, and administrative decisions. Administrative agencies may conduct administrative hearings, proceedings, or tribunals to resolve disputes between individuals,

organizations, and government entities. Adjudicatory functions involve applying legal principles, evaluating evidence, and rendering decisions that affect the rights, interests, and obligations of the parties involved.

Administrative adjudication provides an alternative dispute resolution mechanism that complements traditional judicial proceedings, offering parties a forum to resolve disputes efficiently, informally, and with specialized expertise.

INTERPRETATION OF LAWS AND REGULATIONS

Administrative agencies also perform judicial functions by interpreting laws, regulations, and administrative rules within their areas of jurisdiction. Administrative interpretations provide guidance on the meaning, scope, and application of legal provisions, helping individuals, organizations, and government officials understand their rights and obligations under the law.

Administrative interpretations may take the form of administrative orders, opinions, or decisions issued by agency officials or administrative tribunals. These interpretations carry weight in administrative proceedings and may be subject to judicial review to ensure consistency with statutory mandates and constitutional principles.

ENFORCEMENT OF LEGAL RIGHTS AND OBLIGATIONS

Another aspect of the judicial functions of administration is the enforcement of legal rights and obligations through administrative actions, orders, or remedies. Administrative agencies have the authority to investigate violations of laws, regulations, and administrative rules, impose sanctions or penalties on violators, and enforce compliance with regulatory requirements.

Enforcement actions may include fines, injunctions, license revocations, or other measures to deter misconduct, address violations, and uphold legal standards.

Administrative enforcement ensures that individuals, organizations, and government entities adhere to legal requirements, promote public safety, and protect public welfare.

DUE PROCESS AND PROCEDURAL FAIRNESS

The exercise of judicial functions by administrative agencies is subject to principles of due process and procedural fairness to safeguard the rights and interests of individuals affected by administrative decisions. Due process requires administrative agencies to provide notice, opportunity to be heard, and impartial adjudication in administrative proceedings, ensuring that parties have a meaningful opportunity to present their case, cross-examine witnesses, and challenge adverse decisions.

Procedural fairness enhances the legitimacy and credibility of administrative decisions, promoting public trust, confidence, and acceptance of administrative adjudication.

JUDICIAL REVIEW AND ACCOUNTABILIT

Administrative decisions made in the exercise of judicial functions are subject to judicial review to ensure their legality, reasonableness, and conformity with statutory and constitutional requirements. Courts may review administrative decisions to determine whether agencies have acted within their statutory authority, complied with procedural requirements, and respected fundamental rights and principles. Judicial review promotes accountability, checks administrative excesses, and safeguards the rule of law in administrative decision-making processes. Administrative agencies are accountable to the judiciary, the legislature, and the public for the exercise of their judicial functions, ensuring transparency, accountability, and integrity in administrative adjudication.

The judicial functions of administration are an essential aspect of modern governance, enabling administrative agencies to adjudicate disputes, interpret laws and regulations, and enforce legal rights and obligations in accordance with due process and procedural fairness. These functions complement the role of the judiciary in administering justice, providing specialized expertise, administrative efficiency, and alternative dispute resolution mechanisms in administrative decision-making processes. By performing judicial functions, administrative agencies promote fairness, accountability, and the rule of law in administrative proceedings, enhancing public trust, confidence, and acceptance of administrative adjudication.

THE PROCURATOR SYSTEM

The third system for ensuring administrative legality, called the Procuracy, was founded in Russia by Peter the Great in 1722, who intended it to be the "eye of the tsar." Catherine II issued a directive in 1764 stating that the procurator general and his staff were to supervise the execution of the laws in the provinces, ensure justice, and prevent abuses. This was designated general supervision. In 1864, however, the Procuracy was relieved of its responsibility for supervising administration, its functions being confined to judicial matters, such as acting as public prosecutor in all criminal cases and conducting them on behalf of the government and the law.

The Procuracy was abolished in November 1917 but revived in 1922. The Soviet constitution charged the procurator general with the general duty of supervising the observance of the law by all ministries and institutions subordinate to them as well as by individual officials and citizens. The procurator general was appointed by the Supreme Soviet for five years. He appointed subordinate procurators at all administrative levels, from union republic to district and town.

The functions actually performed by the procurator underwent many fluctuations and vicissitudes after 1922. The role as a public prosecutor continued, but it was exercised mainly to enforce party policies or programmes

on recalcitrant citizens rather than to punish public officers or authorities for breaches of the law. Sometimes the task of general supervision was emphasized; at other times it was abandoned in favour of more urgent tasks, as in World War II. Finally, the position of the Procuracy was laid down in a union law of May 24, 1955, and a decree of the Presidium of the Supreme Soviet made on April 7, 1956.

The procurator was not the president of a court or a tribunal but rather a watchdog of legality. His organization comprised a department for general supervision; a bureau of investigation for the supervision of preliminary inquiries in criminal matters; a department for the supervision of investigations carried out by the KGB (Committee for State Security); departments to supervise criminal and civil proceedings in the courts; a department to supervise prisons, compulsory-labour centres, and the like; and departments for statistics, administration, and research.

General supervision was defined by Soviet writers on administrative law as meaning supervision by the procurators over legality in administration. Procurators were expected to see that the laws were strictly observed, to oppose their violation by anyone whatsoever, to protect the citizens, and to ensure that they fulfilled their duties. The law of May 24, 1955, required the Procuracy to ensure that the regulations or decisions issued by ministries, departments, their subordinate establishments and enterprises, and cooperative and other public organizations strictly conformed to the constitution and laws of the Soviet Union and the republics as well as to the decrees of the Council of Ministers of the Soviet Union and the republics. They were also to ensure strict execution of the laws by officials and citizens. The procurator was concerned solely with the legality of administrative action.

After the mid-1960s a change took place in the role of the procurator from the handling of complaints by citizens against government bodies to the handling of "economic" complaints (*e.g.*, violations such as filing fraudulent plan fulfillment records) and the monitoring of economic performance. The decline in the number of individual citizens' grievances handled by the Procuracy, as well as the economic and coercive purposes for which it was used, make direct analogy between the procurator and an ombudsman misleading.

Since the Procuracy was not a court, it could not make a binding decision. This point was emphasized by Article 58 of the 1977 constitution, giving citizens the right to take complaints against administrative actions to the courts. The normal procedure (apart from cases of dereliction involving a criminal prosecution) was for the procurator to protest against any illegality that he detected or that was brought to his notice or to initiate disciplinary action against an erring official. Every citizen had a right to lodge a complaint with the procurator, and denunciation and exposure of bureaucratic abuses were officially encouraged by the Communist Party. The fact that the Procuracy could not make a binding decision did not necessarily prevent it from being an effective organ for securing administration according to law. Neither the French Conseil

d'État nor the courts in any country can enforce judgments against the central government, but this does not prevent the decisions of the Conseil or declaratory judgments of the courts from being observed almost as a matter of course.

The former Communist regimes of eastern Europe established procuracies based on the Soviet model. In Poland an additional institution to maintain administrative legality was the Supreme Chamber of Control, which was independent of the government and subordinate only to the legislature and the Council of State, a political body quite different from the French model. The functions of the Supreme Chamber of Control involved exercising general supervision over public administration and took into account legality, economy, and opportuneness.

THE OMBUDSMAN

The ombudsman is a part of the system of administrative law for scrutinizing the work of the executive. He is the appointee not of the executive but of the legislature. The ombudsman enjoys a large measure of independence and personal responsibility and is primarily a guardian of correct behaviour. His function is to safeguard the interests of citizens by ensuring administration according to law, discovering instances of maladministration, and eliminating defects in administration. Methods of enforcement include bringing pressure to bear on the responsible authority, publicizing a refusal to rectify injustice or a defective administrative practice, bringing the matter to the attention of the legislature, and instigating a criminal prosecution or disciplinary action.

When Sweden created the office of ombudsman in the constitution of 1809, the holder of that office was occupied with civil affairs and was appointed by the legislature. He was independent of both executive and judiciary and had full powers to inquire into the details of any administrative or executive act and into certain judicial activities if reported to him by individuals as an abuse of rights. He had effective authority to prosecute civil servants and other public officials—including, on occasion, ministers themselves.

The Swedish ombudsman's responsibility now comprises civil affairs, including the judicature, the police, prisons, and the public administration, both central and local, but excluding ministers and the monarch. He can act as a public prosecutor (although he does not often do so); as a receiver of complaints from aggrieved citizens; or as an inspector of such institutions as jails, mental hospitals, homes for delinquent children, and retreats for alcoholics to discover if they are being administered in accordance with the law.

The institution of ombudsman was first adopted in other Scandinavian countries and then—especially from the 1960s—in many countries throughout the world, including New Zealand (1962), the United Kingdom (1967), Israel (1971), Portugal (1976), the Netherlands (1981), and Spain (1981). Australia, the United States, and Canada have ombudsmen at the state or provincial level, and in the United States several cities have municipal ombudsmen. In Britain there is an ombudsman to investigate complaints against local government, the

National Health Service, and administration in Northern Ireland, in addition to the ombudsman operating at the national level. Some specialized ombudsmen have been appointed in the United States to safeguard the rights of prisoners to medical treatment. In Israel the police have an office of public complaints, and there is a military ombudsman; there is also a state controller, who issues annual reports on executive procedures.

There is no doubt about the value of the ombudsman in the states in which the institution has been established. Part of the ombudsman's usefulness lies in his ability to reassure citizens who believe they have been unjustly treated that careful inquiry into their complaints shows their suspicions to be groundless. In most countries the ombudsman has little positive power other than the right to inspect and to demand the fullest information. He may, however, recommend a particular interpretation of, or a particular modification of, the law. He can also recommend that the government pay compensation to a complainant.

ADMINISTRATIVE PROCEDURE

An orderly procedure, besides being efficient, allows responsibility to be fixed on a particular officer or body at each stage of the administrative process. It can safeguard the rights of citizens and protect the executive against the criticism of having acted in an arbitrary manner. It can ensure regularity and consistency in the handling of individual cases. Much depends, however, on the quality and purpose of the procedural requirements. Most countries possess only an uncodified mass of administrative law prescribing procedure. Much of it is to be found in the laws and regulations governing particular functions of government, such as taxation, public health, education, and town planning.

Rules of administrative procedure cover such matters as the setting of administrative machinery in motion; methods for lodging appeals; the rights of interested persons; the time limits that must be observed; the conditions to be satisfied by objectors; and the right of legal representation. The leading treatise on U.S., administrative law devotes many chapters to such procedural topics as rule making, requirement of opportunity to cross-examine and rebut, adjudication procedure, examiners, bias, evidence, official notice, findings, reasons, and opinions.

Some countries have a general code of administrative procedure embodied in legislation. Among them are Austria, Poland, Spain, and the United States.

In common-law systems, the doctrine of natural justice influences administrative procedure in two ways: (1) that a person may not be judge of his own cause, and (2) that a person shall not be dealt with to his material disadvantage, whether of person or property, or removed from or disqualified for office, without being given adequate notice of what is alleged against him and an opportunity to defend himself.

An indirect result of the second principle is the public hearing, widely used by government departments (and in the United States by regulatory commissions) in deciding matters involving individual or corporate rights. In the United

Kingdom a public inquiry is now a common means of handling appeals to the Department of the Environment against the decisions of local authorities in such matters as planning applications and compulsory purchase of land.

In 1957 the Franks Committee was appointed by the British lord chancellor to study administrative tribunals and such procedures as the holding of a public inquiry. The committee declared that the work of administrative tribunals and of public inquiries should be characterized by openness, fairness, and impartiality, and their report applied these aims in great detail. The recommendations of the committee were largely accepted and resulted in the Tribunals and Enquiries Act of 1958.

4

Evolution and Origins of Administrative Law

Administrative law, the legal framework within which public administration is carried out. It derives from the need to create and develop a system of public administration under law, a concept that may be compared with the much older notion of justice under law. Since administration involves the exercise of power by the executive arm of government, administrative law is of constitutional and political, as well as juridical, importance.

There is no universally accepted definition of administrative law, but rationally it may be held to cover the organization, powers, duties, and functions of public authorities of all kinds engaged in administration; their relations with one another and with citizens and nongovernmental bodies; legal methods of controlling public administration; and the rights and liabilities of officials. Administrative law is to a large extent complemented by constitutional law, and the line between them is hard to draw.

The organization of a national legislature, the structure of the courts, the characteristics of a cabinet, and the role of the head of state are generally regarded as matters of constitutional law, whereas the substantive and procedural provisions relating to central and local governments and judicial review of administration are reckoned matters of administrative law.

But some matters, such as the responsibility of ministers, cannot be exclusively assigned to either administrative or constitutional law. Some French and American jurists regard administrative law as including parts of constitutional law.

The law relating to public health, education, housing, and other public services could logically be regarded as part of the corpus of administrative law; but because of its sheer bulk it is usually considered ancillary.

DEFINING PRINCIPLES

One of the principal objects of administrative law is to ensure efficient, economical, and just administration. A system of administrative law that impedes or frustrates administration would clearly be bad, and so, too, would be a system that results in injustice to the individual. But to judge whether administrative law helps or hinders effective administration or works in such a way as to deny justice to the individual involves an examination of the ends that public administration is supposed to serve, as well as the means that it employs.

In this connection only the broadest generalities can be attempted. It can be asserted that all states, irrespective of their economic and political system or of their stage of development, are seeking to achieve a high rate of economic growth and a higher average income per person. They are all pursuing the goals of modernization, urbanization, and industrialization. They are all trying to provide the major social services, especially education and public health, at as high a standard as possible. The level of popular expectation is much higher than in former ages. The government is expected not only to maintain order but also to achieve progress. There is a widespread belief that wise and well-directed government action can abolish poverty, prevent severe unemployment, raise the standard of living of the nation, and bring about rapid social development. People in all countries are far more aware than their forefathers were of the impact of government on their daily lives and of its potential for good and evil.

The growth in the functions of the state is to be found in the more-developed and in the less-developed countries; in both old and new states; in democratic, authoritarian, and totalitarian regimes; and in the mixed economies of the West. The movement is far from having reached its zenith. With each addition to the functions of the state, additional powers have been acquired by the administrative organs concerned, which may be central ministries, local, provincial, or regional governments, or special agencies created for a particular purpose.

THE GROWTH OF ADMINISTRATIVE LAW

ENGLAND

In 1885 Albert Venn Dicey, a British jurist, rejected the whole concept of Administrative law. Hence, the numerous statutory discretionary powers given to the executives and administrative authorities and control exercised over them were all disregarded to be able to form a separate branch of law by the legal thinkers. Until the 20th Century, Administrative law was not accepted as a separate branch of law. It was only later that the existence of Administrative law came to be recognised.

The Lord Donoughmore Committee, in 1929, recommended for better publication and control of subordinate legislation. The principle, King can do no wrong, was abolished and the scope of Administrative law expanded by virtue of the Crown Proceeding Act in 1947 which allowed initiating civil proceedings against the Crown as against any private person.

In 1958, Tribunals and Inquiries Act was passed for better control and supervision of Administrative Decisions.

Breen v Amalgamated Engineering Union [1971] 2 QB 175 was the first case wherein the existence of Administrative law in the United Kingdom was declared.

UNITED STATES OF AMERICA

In the United States of America, the existence of administrative law and its growth was ignored until it grew up to become the fourth branch of the State. By then many legal scholars like Frank Goodnow and Ernst Freund had already authored a few books on Administrative law.

It was in 1933 that a special committee was appointed to determine how judicial control over administrative agencies could be exercised. Thereafter, in 1946 The Administrative Procedure Act was passed which provided for judicial control over administrative actions.

INDIA

The Mauryans and the Guptas of ancient India had a centralised administrative system. It was with the coming of the British that Administrative law in India went through a few changes. Legislations regulating administrative actions were passed in British India.

After independence, India adopted to become a welfare state, which henceforth increased the state activities. As the activities and powers of the Government and administrative authorities increased so did the need for 'Rule of Law' and 'Judicial Review of State actions'. Henceforth, if rules, regulations and orders passed by the administrative authorities were found to be beyond the authorities legislative powers then such orders, rules and regulations were to be declared ultra-vires, unconstitutional, illegal and void.

REASONS FOR GROWTH OF ADMINISTRATIVE LAW

The Concept of a Welfare State

As the States changed their nature from laissez-faire to that of a welfare state, government activities increased and thus the need to regulate the same. Thus, this branch of law developed.

The Inadequacy of Legislature

The legislature has no time to legislate upon the day-to-day ever-changing needs of the society. Even if it does, the lengthy and time-taking legislating

procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented. Thus, the executive is given the power to legislate and use its discretionary powers. Consequently, when powers are given there arises a need to regulate the same.

The Inefficiency of Judiciary

The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. Hence, the need for tribunals arose.

Scope for the Experiment

As administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again.

DIFFERENCE BETWEEN ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

There are significant differences between Administrative law and Constitutional law.

A Constitution is the supreme law of the land. No law is above the constitution and hence must satisfy its provisions and not be in its violation. Administrative law hence is subordinate to constitutional law. In other words, while Constitution is the genus, administrative law is a species.

Constitution deals with the structure of the State and its various organs. Administrative law, on the other hand, deals only with the administration.

While Constitution touches all branches of law and deals with general principles relating to organisation and powers of the various organs of the State; administrative law deals only with the powers and functions of the administrative authorities.

Simply speaking the administrative authorities should first follow the Constitution and then work as per the administrative law.

ADMINISTRATIVE LAW IN INDIA

Administrative law in India attempts to regulate administrative actions by controlling delegated legislation and subjecting administrative discretionary actions to judicial review. It also provides for the constitution of tribunals and their composition.

Delegated Legislation

When the functions of Legislature is entrusted to organs other than the legislature by the legislature itself, the legislation made up by such organ is called Delegated Legislation. Such a power is delegated to the executives/ administrators to resolve the practical issues which they face on a day-to-day basis.

The practice of delegated legislation is not bad however the risk of abuse of power is incidental and hence safeguards are necessary. There are three measures of controlling abuse of power through delegated legislation (as adopted in India).

Parliamentary Control

Parliamentary control is considered as a normal constitutional function because the Executive is responsible to the Parliament.

In the initial stage of parliamentary control, it is made sure that the law provides the extent of delegated power. The second stage of such control involves laying of the Bill before the Parliament.

There are three types of laying-

Simple Laying

In this, the rules and regulations made come into effect as soon as they are laid before the Parliament. It is done to inform the Parliament, the consent of the Parliament with respect to its approval of the rules and regulations made are not required.

Negative Laying

The rules come into force as soon as they are placed before the Parliament but cease to have effect if disapproved by the Parliament.

Affirmative Laying

The rules made shall no effect unless approved by both the Houses of the Parliament.

Procedural Control

Procedural control means the procedures defined in the Parent Act (Act delegating the legislating power) have to be followed by the administrative authority while making the rules. It involves pre-publication of the rules so that the people who would be affected by the proposed rules know it beforehand and can make representations if they are not satisfied.

After pre-publication is done and once all the concerned bodies, persons and authorities have been consulted the rules are to be published in the official gazette so that the public is aware of the existence of the rules.

Judicial Control

The judiciary looks into the following aspects to determine the legal validity of the rules so made using the power so delegated:

1. If the administrative legislation is ultra-vires the Constitution.
2. If the administrative legislation is ultra-vires the Parent Act.
3. If the administrative legislation is arbitrary, unreasonable and discriminatory.
4. If the administrative legislation is malafide.

5. If the administrative legislation encroaches upon the rights of private citizens derived from the common law, in the absence of an express authority in the Parent Act.
6. If the administrative legislation is in conflict with another statute.
7. Power of the legislating authority to legislate the rule.
8. If the administrative legislation is vague.

Judicial Review

Judicial review deals with three aspects:

- Judicial review of legislative action.
- Judicial review of the judicial action.
- Judicial review of administrative action.

When it comes to administrative law judicial review of administrative action becomes a vital part of it.

An administrative authority must have discretionary powers to resolve real-time issues. However, the decisions taken by exercising these discretionary powers must be reasonable. Reasonableness is the 'Rule of Law's' response to the challenge of discretion. It brings discretionary powers closer to 'rule of law' ideas of transparency, consistency and predictability. Through the process of judicial review- administrative action and discretion are checked and controlled.

Judicial review ensures the legality of the administrative action and keeps the administrative authority within its bounds. The Court inquires if the administrative authority acted according to the law. However, the Courts cannot and do not substitute the opinion of the administrative authority with their own.

Courts, in a matter challenging administrative actions, hence look, if there was a failure in the exercise of the power of discretion, if there was an abuse of discretionary power, if there was any illegality and/or procedural impropriety.

Administrative adjudication – Tribunals

Tribunals are constituted for speedier adjudication of disputes and settlement of complaints. In a tribunal, matters are adjudicated by a Bench comprising both judicial and non-judicial members. Tribunals are not, however, a substitute for Courts. In India, there are a number of tribunals which are constituted under the Central Acts. Some of the Tribunals are listed below.

1. *Administrative Tribunal:* Constituted under the Administrative Tribunal Act, 1985.
2. *Industrial Tribunal:* Constituted under the Industrial Dispute Act, 1947.
3. *Railway Rates Tribunal:* Constituted under the Railway Act, 1989.
4. *Claim Tribunal:* Constituted under the Motor Vehicle Act, 1939.
5. *Income Tax Appellate Tribunal:* Constituted under Income Tax Act, 1961.
6. *National Green Tribunal:* Constituted under National Green Tribunal Act, 2010.
7. *Competition Appellate Tribunal:* Constituted under the Competition Act, 2002.

In L. Chandra Kumar v Union of India, the Supreme Court had held that tribunals are the court of first instance in respect of the areas of law for which they were constituted. All the decisions of the Tribunals are, however, subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned tribunal would fall, through an appeal.

Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayuktas Act, 2013 is an anti-corruption Act which provides for the establishment of the institution of Lokpal which would inquire into allegations against public functionaries and matters connecting them.

The Act provides for an investigation into complaints of maladministration. The office of the Lokpal is an equivalent to that of an Ombudsman.

The Act was a result of the massive public protest against corruption under the leadership of Anna Hazare.

The Lokpal is an officer of the Parliament having as his primary function, the duty of acting as an agent for the Parliament for the purpose of safeguarding citizens against the abuse or misuse of administrative power by the executive.

Right to Information Act, 2005

The Act provides for the right to information of citizens to gain access to information under the control of public authorities. The Act promotes transparency and accountability of every public authority.

The Act is essential as it keeps the citizenry informed and holds the Government and its agencies accountable to the governed.

THE COUNCIL OF STATE SYSTEM

THE FRENCH SYSTEM

In France the separation of powers was given a place of honour in the Declaration of the Rights of Man and of the Citizen (1789). In the French view, however, if a court were permitted to review an administrative act or decision, it would contravene the separation of powers as much as if the executive could override the decision of a court. Just as an appeal from a court lies to a higher court, the reasoning goes, so an appeal from an administrative authority should lie to a higher administrative authority. Only thus would the true separation of powers be observed.

Herein lies the explanation of administrative law as a system of law separate from the body of law administered in the courts. A law of August 1790 declared that the judiciary was distinct from and would always remain separated from the executive. It forbade judges, on pain of dismissal, to interfere in any way with the work of administrative bodies. In October 1790 a second law stated that under no circumstances should claims to annul acts of administrative bodies fall within the jurisdiction of the courts. Such claims should be brought before the king as head of the general administration.

The Conseil du Roi of the ancien régime, with its functions as legal adviser and administrative court, is generally considered to be the precursor of the Conseil d'État. The basic structure of the Conseil d'État was laid down by Napoleon, however. Among the functions accorded to it by the constitution of the year VIII (December 1799) was that of adjudicating in conflicts that might arise between the administration and the courts. It was also empowered to adjudicate any matters previously left to the minister's discretion that ought to be the subject of judicial decision. In 1806 a decree created a Judicial Committee of the Conseil to examine applications and report thereon to the General Assembly of the Conseil. These enactments laid the foundation of an administrative jurisdiction that was not clearly established until May 24, 1872, when a law delegated to the Conseil d'État the judicial power to make binding decisions and recognized the Conseil as the court in which claims against the administration should be brought.

The Conseil d'État is and always has been part of the administration. It has for long had the task of giving legal advice to the government on bills, regulations, decrees, and administrative questions. It is this that long led foreign jurists into believing that, when sitting as a court, its decisions would inevitably be biased in favour of the executive.

Nothing could be further from the truth, and today the Conseil is universally recognized as an independent court that provides French citizens with exceptionally good protection against maladministration. Suits that are directed against the French administration are heard in the Section du Contentieux, or Judicial Division, the successor of the Judicial Committee after restructuring in 1872.

The Conseil d'État is the final authority in administrative disputes. Owing to the immense volume of work falling on it, the former prefectural councils, which served as administrative courts subordinate to the Conseil d'État, were transformed in 1953 into administrative tribunals of first instance, and the professional qualifications and career prospects of their members were improved. The great majority of cases go before these tribunals, and the Conseil d'État is the court of first and last instance only in those exceedingly rare cases when it is specially designated for that purpose.

If difficulty or doubt arises as to whether a case falls within the administrative jurisdiction or that of the ordinary courts, the question is resolved by the Tribunal des Conflits.

This is a court specially established for the purpose, consisting of five judges from the Cour de Cassation (the highest civil court) and five from the Conseil d'État. The minister of justice, in his capacity as keeper of the seals (*garde des sceaux*), may sometimes preside and cast a tie-breaking vote.

Several other countries have followed France in establishing councils of state. Among them are Italy, Greece, Belgium, Spain, Turkey, Portugal, and Egypt. It must be stated, however, that in no other country has a council of state acquired such high status, powers, authority, or prestige as in France.

THE GERMAN SYSTEM

Germany traditionally has had no council of state, but it does have a fully articulated system of special administrative courts. In the states, or *Länder*, there are lower administrative courts and superior administrative courts, and for the federation there is the Federal Administrative Court, which acts mainly as a court of appeals from the superior administrative courts in the *Länder* and even from the lower administrative courts in certain circumstances. The Federal Administrative Court serves also as a court of first and last instance in disputes not involving questions of constitutionality between the federation and the *Länder* or between two or more *Länder*; it hears petitions by the federal Cabinet on declarations that an association is prohibited under the Basic Law of the Federal Republic, petitions against the federation in matters concerning the diplomatic or consular service, and cases concerning the business of the Federal Intelligence Service.

A *Land* administrative court possesses jurisdiction concerning the acts of the *Länder* administrative authorities and also complaints against officers of the federal government located in the *Länder*. Some of the highest federal organs are exempt from the *Länder* courts. Few cases go beyond the *Länder* supreme administrative courts.

Recourse to an administrative court is available for public law disputes unless the matter has been assigned to another court by federal legislation. (Public law governs the relationship between the state and executive in the exercise of their governmental authority and the individual—insofar as the relationship is not commercial.) The Administrative Courts Code holds that property claims arising from services for the common good and restitution claims arising from violation of duties under public law shall be heard by the ordinary courts. In other words, the German system is complicated by the rule that only the ordinary civil courts can award damages against an official or the executive arm of government. As a consequence, the distinction between the ordinary courts and the administrative courts depends on the remedy sought and not on the subject matter of the dispute or the nature of the parties. The jurisdiction of the administrative courts in Germany is therefore less comprehensive and clear-cut than in France.

DISTINCTIONS BETWEEN PUBLIC ADMINISTRATION AND PRIVATE ACTION

Activities such as traffic control, fire-protection services, policing, smoke abatement, the construction or repair of highways, the provision of currency, town and country planning, and the collection of customs and excise duties are usually carried out by governments, whose executive organs are assumed to represent the collective will of the community and to be acting for the common good. It is for this reason that they are given powers not normally conferred on private persons. They may be authorized to infringe citizens' property rights and restrict their freedom of action in many different ways, ranging from the

quarantining of infectious persons to the instituting of criminal proceedings for nonpayment of taxes. To take another example, the postal laws of many countries favour the post office at the expense of the customer in a way unknown where common carriers are concerned. Again, a public authority involved in slum clearance or housing construction tends to be in a much stronger legal position than a private developer.

The result of the distinction between public administration and private action is that administrative law is quite different from private law regulating the actions, interests, and obligations of private persons. Civil servants do not generally serve under a contract of employment but have a special status. Taxes are not debts, nor are they governed by the law relating to the recovery of debts by private persons. In addition, relations between one executive organ and another, and between an executive organ and the public, are usually regulated by compulsory or permissive powers conferred upon the executive organs by the legislature.

The law regulating the internal aspects of administration (*e.g.*, relations between the government and its officials, a local authority and its committees, or a central department and a local authority) differs from that covering external relations (those between the administration and private persons or interests). In practice, internal and external aspects are often linked, and legal provisions of both kinds exist side by side in the same statute. Thus, a law dealing with education may modify the administrative organization of the education service and also regulate the relations between parents and the school authorities.

Another distinction exists between a command addressed by legislation to the citizen, requiring him to act or to refrain from acting in a certain way, and a direction addressed to the administrative authorities. When an administrative act takes the form of an unconditional command addressed to the citizen, a fine or penalty is usually attached for failure to comply. In some countries the enforcement is entrusted to the criminal courts, which can review the administrative act; in others the administrative act itself must be challenged in an administrative court.

THE NEED FOR LEGAL SAFEGUARDS OVER PUBLIC ADMINISTRATION

Statutory directions addressed to the executive authorities may impose absolute duties, or they may confer discretionary powers authorizing a specified action in certain circumstances. Such legislation may give general directions for such activities as factory inspection, slum clearance, or town planning. The statute lays down the conditions under which it is lawful for the administration to act and confers on the authorities the appropriate powers, many of which involve a large element of discretion. Here the executive is not confined merely to carrying out the directions of the legislature; often it also shares in the lawmaking process by being empowered to issue regulations or ordinances dealing with matters not regulated by the statute. This may be regarded either

as part of the ordinary process by which the legislature delegates its powers or as an inevitable feature of modern government, given that many matters are too technical, detailed, or subject to frequent change to be included in the main body of legislation—legislation being less easy to change than regulations.

Whatever the source of the executive's rule-making power, safeguards against misuse are necessary. For instance, the regulation must not exceed the delegated powers; its provisions must conform with the aims of the parent statute; prior consultation with interests likely to be affected should take place whenever practicable; and the regulations must not contravene relevant constitutional rules and legal standards. In some countries regulations are scrutinized by a type of watchdog known as the council of state before they come into force; in others, by the parliamentary assembly; and in yet others, by the ordinary courts.

In most countries the executive arm of government possesses certain powers not derived from legislation, customary law, or a written constitution. In the United Kingdom there are prerogative powers of the crown, nearly all of which are now exercised by ministers and which concern such matters as making treaties, declaring war and peace, pardoning criminals, issuing passports, and conferring honours. In Italy, France, Belgium, and other continental European countries, certain acts concerning the higher interests of the state are recognized as *actes de gouvernement* and are thereby immune from control by any court or administrative tribunal. In the German Empire (1871–1918) the principle that an administrative act carried its own legal validity was accepted at the end of the 19th century by leading jurists. This led to the doctrine that administration was only loosely bound to the law. The doctrine was rejected in the Federal Republic of Germany (1949–90), however, and efforts were made to reduce the area in which the executive was free to act outside administrative law.

BUREAUCRACY AND THE ROLE OF ADMINISTRATIVE LAW

An inevitable consequence of the expansion of governmental functions has been the rise of bureaucracy. The number of officials of all kinds has greatly increased, and so too have the material resources allocated to their activities, while their powers have been enlarged in scope and depth. The rise of bureaucracy has occurred in countries ruled by all types of government, including communist countries, dictatorships and fascist regimes, and political democracies. It is as conspicuous in the former colonial states of Africa and Asia as among the highly developed countries of western Europe or North America. A large, strong, and well-trained civil service is essential in a modern state, irrespective of the political character of its regime or the nature of its economy.

Fear of the maladies that tend to afflict bureaucracy has produced a considerable volume of protest in some countries; and, even in those where opposition to the government or the party in power is not permitted, criticism and exposure of bureaucratic maladministration are generally encouraged.

Bureaucratic maladies are of different kinds. They include an overdevotion of officials to precedent, remoteness from the rest of the community,

inaccessibility, arrogance in dealing with the general public, ineffective organization, waste of labour, procrastination, an excessive sense of self-importance, indifference to the feelings or convenience of citizens, an obsession with the binding authority of departmental decisions, inflexibility, abuse of power, and reluctance to admit error. Many of these defects can be prevented or cured by the application of good management techniques and by the careful training of personnel. A whole range of techniques is available for this purpose, including effective public relations, work-study programmes, organization and management, operational research, and social surveys.

Administrative law is valuable in controlling the bureaucracy. Under liberal-democratic systems of government, political and judicial control of administration are regarded as complementary, but distinct. The former is concerned with questions of policy and the responsibility of the executive for administration and expenditure. The latter is concerned with inquiring into particular cases of complaint. Administrative law does not include the control of policy by ministers or the head of state.

JUDICIAL REVIEW OF ADMINISTRATION

Judicial review of administration is, in a sense, the heart of administrative law. It is certainly the most appropriate method of inquiring into the legal competence of a public authority. The aspects of an official decision or an administrative act that may be scrutinized by the judicial process are the competence of the public authority, the extent of a public authority's legal powers, the adequacy and fairness of the procedure, the evidence considered in arriving at the administrative decision and the motives underlying it, and the nature and scope of the discretionary power. An administrative act or decision can be invalidated on any of these grounds if the reviewing court or tribunal has a sufficiently wide jurisdiction. There is also the question of responsibility for damage caused by the public authority in the performance of its functions. Judicial review is less effective as a method of inquiring into the wisdom, expediency, or reasonableness of administrative acts, and courts and tribunals are unwilling to substitute their own decisions for that of the responsible authority.

Judicial review of administration varies internationally. Sweden and France, for instance, have gone as far as subjecting the exercise of all discretionary powers, other than those relating to foreign affairs and defense, to judicial review and potential limitation. Elsewhere, a preoccupation with procedure results in judicial review deciding only whether the correct procedure was observed rather than examining the substance of the decision.

It is of course impractical to subject every administrative act or decision to investigation, for this would entail unacceptable delay. The complainant must, therefore, always make out a prima facie case that maladministration has occurred.

Judicial review cannot compel the state to act in a particular way because the courts concerned cannot impose sanctions on the government, which itself controls the use of force. Such remedies as an injunction, an order for specific performance, or an order for mandamus will not lie against the central government. These inhibitions, however, are of less practical importance than might be supposed. Nevertheless, nearly all governments (even revolutionary ones) are eager to proclaim the lawfulness of the regime and seldom disregard the decisions of an authorized court or tribunal.

In judicial review of administration at a national level, a country's history, politics, and constitutional theory all play their part. There are, broadly, three major systems: the common-law model; the French, or council of state, model; and the procurator model.

THE COMMON-LAW SYSTEM

Origins

The common-law system originated in England in the Middle Ages. In the 17th century relations between the courts and the executive developed into a constitutional struggle between the Stuart kings and the judges over the judges' right to decide questions affecting the royal power and even to pronounce an independent judgment in cases in which the king had an interest. Francis Bacon, in his essay *Of Judicature* (written in 1612), put forth the royalist point of view when he declared that the judges should be "lions, but yet lions under the throne." "It is a happy thing in a state," he wrote, "when kings and states do often consult with judges; and again, when judges do often consult with the king and state: the one, when there is matter of law intervenient in business of state; the other, when there is some consideration of state intervenient in matter of law." The subordination of the judicature to the royal will was strongly resisted by Chief Justice Sir Edward Coke, Bacon's great rival, who refused to comply with James I's wishes in a number of cases in which the royal prerogative was involved. The King harangued the judges more than once on their duty to respect the royal prerogative and power.

In the constitutional conflict that took place a generation later, the judges and the lawyers made common cause with Parliament against Charles I, and eventually the independence of the judges was established. Henceforth there was to be one system of law to which all would owe obedience. As a result, the executive possessed no inherent powers other than those subject to the rule of law inasmuch as legislation now had to emanate from the crown in Parliament. In addition, the judges were expected to protect the subject against the executive. A more intangible consequence was the belief that "government" and "law" were often thought to be opposed to one another.

The earlier conflict between crown and judges survived to become an antagonism between the legal profession and the executive, particularly the civil service.

These developments established the principle that the executive should never interfere with the judiciary in the exercise of its functions. This was, indeed, almost the only strict application in England of the doctrine of the separation of powers. On the other hand, it was regarded as right and proper that the judiciary should interfere with the executive whenever a minister or a department was shown to have acted illegally. In this way the concept of the rule of law came gradually to be identified with the idea that the judges, in ordinary legal proceedings in the ordinary courts, could pronounce upon the lawfulness of the activities of the executive. Any attempt to divide the seamless web of the law, any suggestion of a distinction between public and private law, appeared destructive of the law's universality and its power to keep the executive within bounds.

The principle that all public authorities are liable to have the lawfulness of their acts and decisions tested in the ordinary courts was applied everywhere the common law prevailed, including the United States, despite the much stricter interpretation given by the Founding Fathers there to the doctrine of the separation of powers—a doctrine embodied in the federal and state constitutions. A complete separation of powers was not considered feasible by the framers of the Constitution, and they therefore introduced checks and balances, whereby each of the three branches of government would be prevented from growing too powerful by the countervailing power of the others. This actually strengthened the power of the courts to review the actions of the executive. Elsewhere in the common-law world, the extended role of the courts in reviewing administration was adopted without any public debate concerning the separation of powers or the need to protect liberty by a system of checks and balances. This absence of an explicitly defined role for courts led, in the early post-World War II years in Britain, to real fears that the courts would be unable or unwilling to question the expanded powers of governmental bodies.

MODIFICATION OF THE COMMON-LAW SYSTEM

The common-law system was extensively modified in the course of the 20th century. Until then it did not correspond to the realities of the situation in Britain because, prior to the Crown Proceedings Act (1947), it was not possible to sue ministers and their departments in tort; government ministers in Britain are considered ministers of the crown, and an ancient legal doctrine holds that "the king can do no wrong." Moreover, the development of state-provided social services has been accompanied by the creation of a large number of administrative tribunals to determine disputes between a government department and a citizen. The jurisdiction of these tribunals is of a specialized and narrowly circumscribed character and relates to such functions as social insurance and social assistance, the National Health Service, rent control, assessment of property for local taxation, the compulsory acquisition of land by public authorities, and the registration of children's homes. Since 1958 a permanent Council on Tribunals appointed by the lord chancellor has exercised a general

supervision over about 40 tribunal systems, but they remain an unsystematic and uncoordinated movement. However, they provide a method of administrative adjudication far cheaper, more informal, and more rapid than that offered by the courts; the members are persons possessing special knowledge and experience of the subject dealt with; they do not have to follow the strict and complex rules of evidence that prevail in the courts; and it is possible to introduce new social standards and moral considerations to guide their decisions. These tribunals have won general approval for the quality and impartiality of their work. An appeal on a question of law lies in most instances from the decision of an administrative tribunal to the High Court of Justice. There is still no comprehensive administrative jurisdiction in Britain permitting judicial review over the whole field of executive action and decision.

In Australia a similar movement took place with the growth of a large number of administrative tribunals that regulate many different spheres of public administration, such as industrial conditions; the award of pensions, allowances, and other state grants; town planning; censorship of films; fair rents; the licensing of occupations calling for special skills or public responsibility; trade, transport, and marketing; the assessment of national taxes, local taxes, or duties; the protection of industrial design, patents, and copyrights; and compensation for interference with private-property rights in the public interest. From 1975 these tribunals were managed by the Administrative Appeals Tribunal.

In the United States the courts review administration much more comprehensively than in Britain. Nevertheless, much adjudication is now performed by public authorities other than the courts of law. The movement towards administrative tribunals began with the Interstate Commerce Act (1887), establishing the Interstate Commerce Commission to regulate railways and other carriers. This law introduced a new type of federal agency, outside the framework of the executive departments and largely independent of the president. Other regulatory commissions followed: the Federal Trade Commission, the Federal Communications Commission, the Securities and Exchange Commission, the National Labour Relations Board, and the Occupational Safety and Health Administration. These bodies have had administrative, legislative, and judicial functions delegated to them by Congress, and the doctrine of the separation of powers can no longer be successfully invoked to challenge the constitutionality of such legislation. The regulatory commissions are often described by American jurists as administrative tribunals.

5

Various Concepts of Administrative Law and Judicial Review

JUDICIAL REVIEW

Judicial Review is the power of judiciary to review any act or orders of the Legislative and Executive wings and to pronounce upon the constitutional validity when challenged by the affected person. While reviewing such enactment, the Supreme Court will examine whether jurisdictional limits have been transgressed. This power is based upon a simple rationale that the constitution is the supreme law of land and any authority, if it ventures to go beyond the limitation laid down by the constitution, will be curbed.

The doctrine of judicial review is a contribution of American constitutional system. This was acquired by the American Supreme Court in Marbury v. Madison case of 1803 when Chief Justice Marshall announcing the verdict remarked that any law violating the constitutional provision is null and void. Since then it got strongly embedded in the constitution and judicial supremacy got established. In India, the Government of India Act, 1935, gave the power of judicial review to the federal Court, but its scope was limited to the extent that it could review only the provisions of the act which provided for distribution of powers between the Union and Provinces. The Constitution provides for distribution of power among states and the centre, separation of powers among governmental organs and Fundamental Rights, which has widened the scope of judicial review.

The constitution does not refer to the concept of judicial review because the framers realized that there were inherent drawbacks of this doctrine. In the first place, it may set at naught the will of the people expressed through the Parliament: Secondly, judicial review inevitably opens the floodgates litigation involving huge expenditure and loss of time and consequent delay in the implementation of government programmes, and, thirdly, the judiciary is responsible to none and is not answerable for consequences of its decisions.

Justice Patanjali Shastli states: "our constitution contains express provision 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 'due process' clause in the Fifth and Fourteenth Amendments". This is especially true as regards the Fundamental Rights as to which this court has been assigned the role of sentinel; while the court naturally attaches great weight to the legislative judgement, it cannot desert its own duty to determine finally the constitutionality of an impugned statute.

There are specific provisions in the constitution which provide for judicial review, though the Supreme Court has enumerated certain rules for applying this doctrine. According to H.M. Seervai, they are:

(1) There is a presemption in favour of constitutionality and a law will not be declared unconstitutional unless the case is free from all doubts and onus to prove that it is unconstitutional lies with the petitioner who has challenged it.
(2) When the validity of law is questioned, it should be upheld to protect parliament sovereignty.
(3) The court will not constitutional questions if a case is capable of being decided on other grounds.
(4) The court will not decide a larger constitutional question when is required by the case before it.
(5) The court will not hear an objection as to the constitutionality of a law by a person whose rights are not affected by it.
(6) A statute cannot be declared unconstitutional merely because it is not consistent with the split of the constitution.
(7) In assessing the constitutionality of a statute the court Is not concerned with the motives-bonafides or malafides-of the legislature but the law must be upheld whatever a court may think of it.
(8) Courts should not pronounce on the validity of an Act or part of an Act which has not been brought into force because till then the question of validity would be merely academic.

The independent India had to go through many controversies leading to institutional rivalry between the legislature and judiciary. Though the power of judicial review had its limitations, it was viewed as a challenge to the supremacy of legislature leading to may constitutional amendments. Dr. Ambedkar had earlier remarked, "The Constituent Assembly In making the constitution has no partisan motive. Beyond securing a good and workable constitution, it has no

axe to grind. In considering the articles of the constitution, it has an eye on getting through a particular measure. The future Parliament, if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the constitution to facilitate the passing of party measures which they have failed to get through in Parliament by reason of some article of the constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none".

But Pandit Nehru, a staunch supporter of parliamentary sovereignty has remarked with a different tone, "No Supreme Court and no judiciary can stand in judgement over the sovereign will of Parliament, representing the will of the entire community…Ultimately, the whole constitution is a creation of Parliament.

By interpretation and amendment, the constitution underwent many vital changes. The process got started with the First Amendment Act, 1951, which abolished the zamindari system. This act was challenged in the Shankari Prasad case on the ground that this has infringed Fundamental Rights. The Court rejected the petition and stated that Parliament is authorized to amend any part of the constitution including the chapter on Fundamental Rights. This was upheld by a majority judgement in the Sqjjan Singh case where the 17th Amendment Act 1964 was challenged on the ground that it violated Fundamental Rights under article 31A. The landmark judgement professing judicial activism came in 1967, when the 1st, 4th and 17th amendments were challenged in the Golaknath case. The court by majority of 6-5 held that Parliament does not possess the authority, to amend the chapter on Fundamental Rights with respect to Article 13(2) embedding the doctrine of judicial review and giving way to due process of law.

In fear of non-implementation of its social legislations, the Parliament through an ordinance in 1969 nationalized 14 banks under Banking Companies (Acquisition and Transfer of Undertakings) Ordinance. This Act was challenged by R. C. Cooper on the ground that it violated Article 14 and 31(2). Once again in 1970, the President by an executive order abolished-the institution of ruler's privy purses. This was challenged by Madhav Rao Scindia. Both these ordinances were declared unconstitutional by the court.

In response to these setbacks the Parliament framed the Constitution (Twenty Fourth) Amendment Act, 1971, and due amendments were made in articles 13 and 368 to provide the authority to Parliament to amend any part of the constitution. By the (Twenty-Fifth) Amendment Act, 1971, Article 31 was amended to remove obstacles laid down by the court in the Bank Nationalization case. Further, the Tewenty-Sixth Amendment Act, 1971, was made to abolish the institution of rulers privy purses. The government defended its action by stating that these were necessary amendments which would transform socioeconomic structures of the society.

In the Keshvanand Bharati case, the constitutional validity of the twenty-fourth, twenty-fifth and twenty-ninth amendments-came up for judicial review.

The court by limiting the power of amendment, held that Parliament does not possess the authority to amend the basic structure of the constitution though the concept of basic structure was not explained. The Supreme Court was moved to review its decision but the bench was abruptly dissolved by the chief justice. In 1975, the Thirty-Ninth Amendment Act, relating to electoral matter, was challenged in the historic election case. The court dismissed the petition and it was held that they had adhered to the theory of basic structure.

The 42nd amendment of the constitution placed limitations upon the exercise of the power of judicial review. They were:

(1) The power of centre was increased by transferring certain provisions from State List to the Concurrent List.
(2) The power of the Supreme Court and High Courts were curtailed. With respect to Article 14, 19 and 31, Parliament can make any law to implement Directive Principles of State Policy.
(3) The powers of the Supreme Court was further curtailed by stating that no amendment of this constitution made or purporting to have been made under this article shall be called in question in any court on any ground.
(4) The validity of central law was to be decided by the Supreme Court (Art. 141A) and not by High Courts (Art. 228A) and subsequently the validity of the state law could be decided only by High Courts.
(5) The power of issuing writs for implementation of Fundamental Rights were curtailed to the effect that these writs will not be issued unless substantial injury has taken place and also if alternative remedy is provided under any law;
(6) Minimum seven judges of the Supreme Court should sit for the purposes of determining constitutional validity of central law and it cannot be declared unconstitutional unless two-thirds majority of judges decide and for the High Court there had to be five judges to determine the constitutional validity of a law.
(7) Further, the appointment procedure of High Court were dealt extensively.
(8) It was also stated that the decisions of any administrative tribunals can be questioned or challenged only in the Supreme Court under Article 323B.

The subsequent amendments, the 43rd and 44th amendments, did restore the lost glory of judiciary and the threat of judicial supremacy got lessened, the judiciary was forced to look into the democratic values of the constitution and interpret them more generously.

The 44th amendment:

(1) Deleted Right to Property from the chapter as Fundamental Rights and placed it under article 300A.
(2) Fundamental Rights were to be duly protected.
(3) The powers of judiciary were partially restored by repealing article 131A and 226A and restored the power of judicial review to the courts.

In the Minerva Mills case the court struck a balance between Fundamental Rights and Directive Principles of State Policy by placing Article 39B and C above the chapter on Fundamental Rights. It was further held by Justice Bhagwati that, "It is for the judiciary to uphold the constitutional values and, to enforce constitutional limitations". The court has also been called upon to exercise its power of judicial review in cases relating to presidential rejection of clemency for sentence of death. The court has upheld the decisions of the President. Justice Krishna Iyer, spoke of judicial review in the following words, "No power in the republic is irresponsible or irresponsive, the people in the last resort being the repositories and beneficiaries of public power. But two constitutional limitations exist in our constitutional system. The court cannot intervene everywhere as an omniscient, omnipotent or omnipresent being. And when the constitution has empowered the nation's executive, excluding by implication judicial review it is presumptuous this court to be a super power unlimited. The second limitation conditions all public power, whether a court oversees it or not. That trust consists in the plurality of public authorities. All power, howsoever, majestic and dignified weilding it, shall be exercised in good faith with intelligent and informed care and honestly for public well being".

Further he held that the magnificent concept of judicial review is at its best when kept within the framework of broad principles of public policy and tested by the intentionability of the statute. The working of the Supreme Court during the first three decades can be described as an arena of struggle between the legislature and the judiciary in relation to Fundamental Rights and power of amendment. The Maneka Gandhi case gave new impetus to the concept of liberty. During this period the court adopted a strategy of coordination enhancing the glory of the institution and practised self-restraint. Many political observers and jurists have held that judiciary will always avoid a confrontation between popular sovereignty and independent judiciary.

The institutional rivalry dominated the Indian political process and judiciary till 1980s and the advocates of parliamentary sovereignty blamed the judiciary for non--implementation of their programmes aimed at weaker sections of the society-the poor and distressed. This led to the outflow of new ideas and dimensions in the minds of the socially progressive judges like Justice Krishna Iyer and Justice P.N. Bhagwati. They led the movement to protect the socially oppressed with programmes like legal aid as provided in article 39A of the constitution inserted by the 42nd amendment and institutions like Lok Adalat and public interest litigation. This added a new dimension in an already existing jurisdiction and power of the judiciary.

LOK ADALAT

Lok Adalat is a voluntary agency. It settles disputes' between the parties outside the courts with the hip of public spirited lawyers and like-minded citizens. It was established by Legal Services and Authorities Act, 1987. It has been given the widest possible jurisdiction and it and take up and any matter, pending

in any court including the apex court. The Lok Adalat is guided by legal principles including principles of justice, equality and fair play. The judicial officers of the area and other such members possessing such qualifications conduct the affairs of Lok Adalat. It is being urged by many that Lok Adalat has therapeutic role to fulfil in aid of justice. So the legal system must encourage the government and voluntary agencies should reach out to aid them and the parties must trust them so that it can share the burden of accumulated litigation of the courts.

TYPES OF JUDICIAL REVIEW

The judicial review in India can be classified under the following categories:

Primary and secondary review: The doctrine of primary review is applicable in relation to the statutes, statutory rules, or any order, which has force of statute. The secondary review is applicable inter alia in relation to the action in a case where the executive is guilty of acting arbitrarily. In such a case Article 14 of the Constitution of India would be attracted. In relation to other administrative actions, as for example punishment in a departmental proceeding, the doctrine of proportionality is equated with Wednesbury's unreasonable.

Direct and indirect review: This w is most important and frequently used by the courts in India while judging the constitutionality of various statutes. In the "direct review" the court overrides or annuls an "enactment" or act of "executive" on the ground that it is inconsistent with the Constitution. In the "indirect review", while considering constitutionality of a statute, the court interprets the statutory language in such a manner that the element of unconstitutionality attached with it is eliminated and the statute survive the attack of unconstitutionality. This may be done in the following two manners:

(a) *Reading down:* An effective tool in the hands of judiciary, to test the validity of legislation, is to invoke the principle of "reading down". The rule of reading down a provision of the law is now well established and recognised. It is a rule of harmonious construction in a different name. It is resorted to smoothen the crudities or ironing the creases found in a statute to make it workable. In the garb of reading down, however, it is not open to read words or expressions not found in it and thus venture into a kind of judicial legislation. The rule of reading down is to be used for the limited purpose of making a particular provision workable and to bring it in harmony with other provisions of the statute. It is to be used keeping in view the scheme of the statute and to fulfill its purposes. In B.R.Enterprises v State of U.P the Supreme Court observed: "First attempt should be made by the courts to uphold the charged provisions and not to invalidate it merely because one of the possible interpretation leads to such a result, howsoever attractive it may be. Thus, where there are two possible interpretations, one invalidating the law and the other upholding, the latter should be adopted. For this, the courts have been endeavouring, sometimes to give restrictive or expansive meaning keeping in view the nature of

the legislation. Cumulatively, it is to sub serve the object of the legislation. Old golden rule is of respecting the wisdom of the legislature, that they are aware of the law and would never have intended for an invalid legislation. This also keeps the courts within their track and checks. Yet inspite of this, if the impugned legislation cannot be saved, the courts shall not hesitate to strike it down. Here the courts have to play a cautious role of weeding out the wild from the crop, of course, without infringing the Constitution. The principle of reading down, however, will not be available where the plain and literal meaning from a bare reading of any impugned of any impugned provision clearly shows that it confers arbitrary or unbridled power"

(b) *Severability:* The doctrine of severability separates the unconstitutional part and keeps the statute alive. If, however, the offensive portion cannot be separated then the entire statute has to be struck down as unconstitutional. It is further trite that the law although may be constitutional when enacted but with passage of time the same may be held to be unconstitutional in view of the changed situation. These changed circumstances may also create a vacuum in the legal system, which has to be suitably filled up by the legislature. If the legislature fails to meet the need of the hour, the courts may interfere and fill-in the vacuum by giving proper directions. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These directions may also include a direction to severe the offending portion of the statute which was originally constitutional to keep it alive.

The Constitution of India envisages separation of power between the three organs of the Constitution so that the working of the constitution may not be hampered or jeopardised. This thin and fine line of distinction should never be ignored and transgressed upon by any of the organ of the Constitution, including the judiciary. This rigid perception and practice can be given a go by in cases of "abdication of duties" by one of the organ of the Constitution. Thus, the judiciary can interfere if there is an abdication of duties by the legislature or the executive. For instance, if the legislature delegates its essential and constitutional functions to the executives, it would amount to "excessive delegation" and hence abdication of the legislative functions by the legislature. In such cases, the theory of separation of powers would not come in the way of judiciary while exercising the power of judicial review. Thus, the judicial review powers of the Constitutional Courts in India are very wide and flexible in nature.

JUDICIARY AND JUDICIAL REVIEW OF INDIA

The Judiciary of India is an independent body and is separate from the Executive and Legislative bodies of the Indian Government.

The judicial system of India is stratified into various levels. At the apex is the Supreme Court, which is followed by High Courts at the state level, District Courts at the district level and Lok Adalats at the Village and Panchayat Level.

The judiciary of India takes care of maintenance of law and order in the country along with solving problems related to civil and criminal offences. The judiciary system that is followed in India is based on the British Legal System that was prevalent in the country during pre-independence era. Very few amendments have been made in the judicial system of the country.

SUPREME COURT IN INDIA

The Supreme Court is the highest judicial body in India. The Supreme Court came into power on 28th January 1950; just two days after the Constitution of India came to effect. In the initial stages, it had its office in a part of the Parliament House. The Supreme Court is endowed with many duties and responsibilities. The biggest responsibility is that it is the highest court of appeal and is also the protector of the Constitution in the country.

The Chief Justice of India and 25 other judges make up the Supreme Court of India. The appointments are done directly by the President of India.

There are certain criteria that have to be fulfilled by the advocates to become a judge of the Supreme Court. Being a citizen of India is one of the most important criteria. Apart from this, the person has to have an experience of minimum five years as a judge in the High Court or any other two courts one after another. He should also be a prominent jurist as per the President of the country, so that he can take up responsibilities well. The Chief Justice is also consulted at the time of appointment of the judges in the Supreme Court.

The Judges of the Supreme Court are free to exercise their power as and when required.

The process of removal of the Supreme Court judges is quite an interesting but lengthy process. An order from the President is mandatory in case of removal of the judges. A two-thirds majority has to be obtained from both the houses for the removal of the judges.

The jurisdiction of the Supreme Court is divided into original jurisdiction, advisory jurisdiction and appellate jurisdiction. Original jurisdiction is required when there is a dispute between the Government and the states of India or any one state of India. The Supreme Court can also enforce fundamental Rights according to the Article 32 of the Constitution of India.

The appellate jurisdiction is mentioned in Articles 132(1), 133(1) or 134 of the Constitution. The decision of the High Court can be questioned in the Supreme Court of the country. One can appeal to the Supreme Court, if he or she is not satisfied with the decision of the High Court. The Supreme Court has the provision of accepting or rejecting the case at its own discretion. There are also provisions of pardoning criminals and canceling their lifetime imprisonment or death sentence by the Supreme Court.

Apart from the original and appellate jurisdiction of the Supreme Court, there is an advisory jurisdiction that needs special mention. There are many cases that are directly referred by the President of India and the Supreme Court has to look into those matters.

This provision is mentioned in Article 143 of the Indian Constitution. The Supreme Court in India acts as an independent body and is free from any outer control. The contempt of law court in India is a punishable offence and the Supreme Court takes care of this immaculately.

PROLOGUE

Administrative law deals with the legal control of the government and related administrative powers. On the other hand, judicial review is a process under which executive or legislative actions are subject to review by the judiciary.

ADMINISTRATIVE LAW

Administrative law is the law relating to the control of governmental power. The primary objective of administrative law is to limit the powers of the government to protect citizens against their abuse. In other words, we can define administrative law as the body of rules, regulations, orders, and decisions created by the administrative agencies of government.

According to Ivor Jennings, Administrative law is the law relating to the administration. It determines the organization, powers, and duties of the administrative authorities.

According to K.C Davis, Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative actions.

NATURE OF ADMINISTRATIVE LAW

Administrative law deals with the powers of administrative authorities, the exercise of such powers remedies for aggrieved persons by such law, *etc.* The administrative process is considered necessary evil in all progressive and developing societies, particularly in a welfare State. Such a process may affect the right of citizens of the country. It has been observed by Lord Denning that Proper exercise of the new powers of the executive lead to the welfare state, but if abused they lead to the totalitarian State.

SCOPE OF ADMINISTRATIVE LAW

Administrative law deals with the following aspects:

1. Who are administrative authorities?
2. The powers exercised by such authorities.
3. Limitations of such powers exercised by such authorities.
4. Procedure for using administrative powers.

According to Friedman, the scope of administrative law is as under:

1. It deals with law-making powers of administrative authorities under common law and various statutes.
2. Judicial and quasi-judicial powers of administrative authorities *i.e.*, Court and Tribunal to deal with problems and remedies (Article 136 and 227 of the Constitution of India).

3. Executive power of administration *i.e.*, concentration of power.
4. Power of the court to supervise administrative authorities.
5. Legal liability of public servant.

According to M.C Jain, the scope of administrative law includes:

Delegated legislation, indispensability, permissibility and constitutionality, modes of delegation, procedural formality required to be observed by an administrative agency, safeguard against abuse of power and judicial control.

In respect of judicial functions, it covers the judicial function of administrative agencies, Administrative Tribunal, procedural guarantee, the finality of the decision, the jurisdiction of the Supreme Court and the High Court over the administrative agencies and Tribunals.

It also includes immunities of administrative agencies and bodies from suits and remedies available against the Union of India and the State instrumentalities.

ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

1. A Constitution is the supreme law of the country. No law is above the Constitution of India and hence, every law must satisfy its provisions and not be in its violation. So, administrative law is subordinate to constitutional law. In another word, while Constitution is the genus, administrative law is a species.
2. Constitution deals with the structure of the State and its various organs, whereas administrative law deals only with the administration of the State.
3. While Constitution touches all branches of law and deals with general principles relating to organization and powers of the various organs of the State, administrative law deals only with the powers and functions of the administrative authorities.

In a nutshell, the administrative authorities should follow the Constitution first and then work as per the administrative law.

ADMINISTRATIVE LAW IN INDIA

Administrative law in India meant to regulate administrative actions by controlling delegated legislation and subjecting administrative discretionary actions to judicial review. It also provides for the Constitution of Tribunals and their composition.

DELEGATED LEGISLATION

When the functions of the legislature are entrusted to organs other than the legislature by the legislature itself, the legislation made up by such organ is called delegated legislation. Such power is delegated to the executives or administrators to resolve the practical issues which they have to face on a day-to-day basis. The practice of delegated legislation is not bad, however, the risk of abuse of power is incidental and hence, safeguards are mandatory. There are three measures to control abuse of power with the help of delegated legislation as adopted in India, which are as follows:

PARLIAMENTARY CONTROL

Parliamentary control is considered as a normal constitutional function because the executives are responsible for the Parliament. At the initial stage of Parliamentary control, it is made sure that the law provides the extent of delegated power. The second stage of such control involves laying of the Bill before the Parliament.

There are three types of laying:

1. *Simple Laying:* In simple laying, the rules and regulations come into effect as soon as they are laid down before the Parliament. It is laid down to inform the Parliament, but the consent of the Parliament with respect to its approval for the rules and regulations are not required.
2. *Negative Laying:* The rules will come into force as soon as they are placed before the Parliament, but cease to have effect if disapproved by the Parliament.
3. *Affirmative Laying:* The rules shall have no effect unless approved by both the houses of the Parliament.

PROCEDURAL CONTROL

Procedural control means that the procedures defined in the Parent Act (Act delegating the legislating power) have to be followed by the administrative authority while making the rules.

It involves pre-publication of the rules, so that the people who would be affected by the proposed rules know it beforehand and can make representations if they are not satisfied. After pre-publication is done and once all the concerned bodies, persons, and authorities have been consulted, the rules are to be published in the official gazette, in order to inform the public about the existence of the rules.

JUDICIAL CONTROL

The judiciary looks into the following aspects to determine the legal validity of the rules so made, using the power so delegated:

1. If the administrative legislation ultra-vires the Constitution.
2. If the administrative legislation ultra-vires the Parent Act.
3. If the administrative legislation is arbitrary, unreasonable, and discriminatory.
4. If the administrative legislation is mala fide (in bad faith).
5. If the administrative legislation encroaches upon the rights of private citizens derived from the common law, in the absence of express authority in the Parent Act.
6. If the administrative legislation is in conflict with another Statute.
7. Power of the legislating authority to legislate the rules.
8. If the administrative legislation is vague.

ADMINISTRATIVE ADJUDICATION TRIBUNALS

Tribunals are constituted for speedy adjudication (a formal judgment on a disputed matter) of disputes and settlement of complaints. In a Tribunal, matters are adjudicated by a bench comprising both judicial and non-judicial members. However, Tribunals are not a substitute for courts. In India, there are a number of Tribunals which are constituted under the Central Acts.

Some of the tribunals are listed below:

1. Claim Tribunal Constituted under the Motor Vehicle Act, 1939.
2. Industrial Tribunal Constituted under the Industrial Dispute Act, 1947.
3. Income Tax Appellate Tribunal Constituted under Income Tax Act, 1961.
4. Administrative Tribunal Constituted under the Administrative Tribunal Act, 1985.
5. Railway Rates Tribunal Constituted under the Railway Act, 1989.
6. Competition Appellate Tribunal Constituted under the Competition Act, 2002.

In L Chandra Kumar V. Union of India case, the Supreme Court had held that Tribunals are the court of the first instance in respect of the areas of law for which they were constituted. All the decisions of the Tribunals are subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned Tribunal would fall, through an appeal.

Lokayuktas and RTI Act (Lakpal and Lokayuktas Act, 2013)

The Lokpal and Lokayuktas Act, 2013 is an Anti-Corruption Act, which provides for the establishment of the institution of Lokpal which would inquire into allegations against public functionaries and matters connected to them. The Act provides for an investigation into complaints of maladministration (mismanagement). The office of the Lokpal is equivalent to that of an Ombudsman.

The Act was a result of the massive public protest against corruption under the leadership of Anna Hazare. The Lokpal is an officer of the Parliament having as his primary function, the duty of acting as an agent for the Parliament for the purpose of safeguarding citizens against the abuse or misuse of administrative power by the executive.

RIGHT TO INFORMATION ACT, 2005

The Act provides for the right to information of citizens to gain access to information under the control of public authorities. The Act promotes the transparency and accountability of every public authority. The Act is essential as it keeps the citizenry informed and holds the government and its agencies accountable to the governed.

IMPORTANCE OF ADMINISTRATIVE LAW

Administrative law plays an important role in changing the era of the administrative system. It can be understood with the help of the following points:

1. *In Changing Nature of State:* The Police State has changed to Welfare State in the 20th Century. The traditional functions of the State *i.e.*, defence and administration of justice have undergone a drastic change. The State undertakes various functions for the benefit of the people in the 20th century.
2. *To Remove the Shortcomings of the Judicial System:* The judicial system has proved to be inadequate to decide all types of disputes. It was slow, expensive, complex, and having various other drawbacks that lead to the enhancement of the importance of administrative law.
3. *Remove the Inadequacy of Legislative Process:* The legislative process is not capable of laying down detailed rules and regulations for the functioning of the State. Thus, administrative law helps in removing this issue.
4. *Reform in Social Life:* The social aspect has undergone a drastic change amongst the citizens of the State. More and more laws were required to deal with complex situations in the daily life of citizens.
5. *Increasing Demand from People:* Merely defining the right of citizens was not sufficient, but also solving their problem was important for the State.
6. *Enhance the Scope for Experiment:* The present law-making process is time-consuming and cannot deal with all problems of the society. Therefore, it is necessary for a different aspect of making laws.
7. *Preventive Measures:* Administrative authorities also implement preventive measures like licensing to liquor shops, rate fixing, *etc.*
8. *State Economy:* The administrative authorities frame national policies and plans for achieving goals contemplated in the Constitution of India.
9. *Regulatory Measures:* Administrative authorities implement regulatory measures in relation to industrial production, manufacturing, and distribution of essential commodities.
10. *Industries:* Industrialization leads to various labour issues. The administrative machinery was needed to solve such issues.

NATURAL JUSTICE

Natural justice is a concept of common law and represents higher procedural principles developed by the courts, which every judicial, quasi-judicial and administrative agency must follow while taking any decision adversely affecting the rights of a private individual. In short, natural justice implies fairness, equity, and equality. It is basically a technical terminology for the rule against bias (nemo judex in causa sua) and the right to a fair hearing (audi alteram partem). While the term natural justice is often retained as a general concept, it has largely been replaced and extended by the 'general duty to act fairly'.

The basis for the rule against bias is the need to maintain public confidence in the legal system. Bias can take the form of actual bias, imputed bias, or apparent bias. The mere fact that a decision affects the rights or interests is sufficient to subject the decision to the procedures required by natural justice.

PRINCIPLES OF NATURAL JUSTICE

In India, the principles of natural justice is firmly grounded in Article 14 and 21 of the Constitution. With the introduction of the concept of substantive and procedural due process in Article 21, all that fairness which is included in the principles of natural justice can be read into Article 21. The violation of principles of natural justice results in arbitrariness and therefore, it also violates the equality clause of Article 14.

THE PRINCIPLE OF NATURAL JUSTICE ENCOMPASSES FOLLOWING TWO RULES

Audi Alteram Partem

Justice cannot prevail if there is no equality. Equality is one of the pillars on which the entire legal system is based. Under the Indian Constitution, the principles of natural justice can be traced under Article 14 and Article 21.

The principle of Audi Alteram Partem is the primary notion of the principle of natural justice. It is derived from The Latin phrase audiatur et altera pars. It means 'hear the other side', or 'no man should be condemned unheard' or 'both the sides must be heard before passing any order'.

The motive of this maxim is to provide an opportunity for other parties to respond to the evidence against him. This ensures a fair hearing and fair justice to both parties. Under this doctrine, both parties have the right to speak. No decision can be declared without hearing both the parties. This principle aims to allow both parties to defend themselves.

Essential elements of this maxim include:

1. Right to notice.
2. Right to present case and evidence.
3. Right to rebut adverse evidence *i.e.*, cross-examination and legal representation.
4. Disclosure of evidence to the party.
5. Report of inquiry to be shown to the other party.
6. Reasoned decisions or speaking orders.

Nemo Judex in Causa Sua (Rule against Bias)

It is popularly known as the rule against bias. It is the minimal requirement of the natural justice that the authority giving decision must be composed of impartial persons acting fairly, without prejudice and bias.

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Any mental condition that would prevent a judge from being fair and impartial is called bias. It may be ground for disqualification of the judge in question.

It is also defined as:

A predisposition or a preconceived opinion that prevents a person from impartially evaluating facts that have been presented for determination; a prejudice.

This principle of natural justice consists of the rule against bias or interest and is based on three maxims:

1. No man shall be a judge in his own cause.
2. Justice should not only be done but manifestly and undoubtedly be seen to be done.
3. Judges, like Caesar's wife, should be above suspicion.

Kinds of Bias:

1. *Personal Bias:* It arises out of the personal or professional relationship or hostility between the authority and the parties. It's human nature that we try to give the favourable decisions to our friends or relatives, whereas using the same as a weapon against the enemies. There are two kinds of test for personal bias:
   a. Reasonable Suspicion of Bias Looks mainly outward appearance.
   b. Real Likelihood of Bias Focuses on court's own evaluation of possibilities.
2. *Pecuniary Bias:* Any financial interest, howsoever small it may be, is bound to vitiate the administrative action and the judicial opinion is unanimous as to it.
3. *Subject-matter Bias:* The situations where the deciding officer is directly or indirectly is the subject-matter of the case. In R v. Deal justices case, the Magistrate was not declared disqualified to try a case of cruelty to an animal on the ground that he was a member of the royal society for the prevention of cruelty to animals, as this did not prove a real likelihood of bias.
4. *Departmental Bias:* The problem of departmental bias is something which is inherent in the administrative process and if it is not effectively checked, it may negate the very concept of fairness in the administrative proceeding. The problem of departmental bias arises in different context *i.e.*, when the functions of judge and prosecutors is combined in the same department. It. is not uncommon to find that the same department which initiates a matter also decides it, therefore, at times, departmental fraternity and loyalty militates against the concept of fair hearing.
5. *Preconceived Notion Bias:* Bias arising out of preconceived notions is a very delicate problem of administrative law. On the one hand, no judge as a human being is expected to sit as a blank sheet of paper. On the other hand, preconceived notions would vitiate a fair trial.

The problem of bias arising from preconceived notions may have to be disposed of as an inherent limitation of the administrative process. It is useless to accuse a public officer of bias merely because he is predisposed in favour of the same policy in the public interest.

DOCTRINE OF NECESSITY

The bias would not disqualify an officer from taking an action, if no other person is competent to act in his place. This exception is based on the doctrine of necessity.

The doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It can be invoked in cases of bias, where there is no authority to decide the issue.

If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit from it. If the choice is between either to allow a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making.

Therefore, the Court held that bias would not vitiate the action of the speaker in impeachment proceedings and the action of the Chief Election Commissioner in election matters.

JUDICIAL REVIEW

Judicial review is the power of the Supreme Court or High Court to examine an executive or legislative act and to invalidate that act if it is contrary to constitutional principles.

This power has been incorporated in the Constitution itself and cannot be done away with, since it is a basic feature. The researchers have analyzed the ground of judicial review. Though there is no clarity regarding the same, through an analysis of case law, the researchers have attempted to arrive at a certain accepted basis for such a review to take place.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS-GROUNDS

In Council of Civil Services Union v. Minister of Civil Service case, the grounds of judicial review was stated to be:

1. Jurisdictional error
2. Irrationality
3. Procedural impropriety
4. Proportionality
5. Legitimate expectation

Though these grounds of judicial review are not exhaustive and cannot be put in watertight compartments, yet, these provide sufficient base for the courts to exercise their review jurisdiction over administrative action in the interest of efficiency, fairness and accountability.

PUBLIC INTEREST LITIGATION

PIL, or Social Action Interest Litigation as termed by_Upendra Baxi, is an offshoot of liberalized rule of locus standi. The traditional rule of locus standi was based on the fact that judicial remedy can be sought only by those who have suffered an injury on account of violation of a legal right by some public authority.

The PIL chose to liberalize this rule by making it clear that any person who suffers an injury but is unable to reach the court is helped by public-minded citizens to reach the court to seek justice. The institution of PIL originated in the U.S., in mid-1960s and legal aid to these litigations were provided by private foundations. The PIL cases centered around issues relating to civil rights, liberties and problems of the distressed and this provided representation to those previously unrepresented groups.

The PIL is considered to be an off shoot of social forces where freedom suffered in the cruel hands and public participation was required to check the system. It was an opportunity for like-minded citizens to participate and reaffirm their faith in the legal process.

The petition can be filed by any voluntary agency or a member of the public. However, the court must satisfy itself while accepting the petition and see that the person is acting bona fide and not for personal gain or profit. The PIL involves issues connected with environmental protection, and a set of evolved fundamental rights like right to free legal aid, right against torture, right to humane treatment in prison, *etc.*, reflecting the human dimension of the PIL.

Further, it extended its domain in a delicate task of mediating between social actualities and social change. Issues like degraded bonded labour, humiliated inmates of protective homes, women prisoners, custodial violence, and other victimised groups are attracting remedial attention of the courts. For this, article 32 emerged as a forum of PIL in recent years and it has become a byword for judicial involvement in social, political and economic affairs of the society.

The movement of liberalization of locus standi started with the Bar Council of Maharashtra v. M. V. Dabholkar where the Bar Council was stated to be an aggrieved party. Further, the judiciary directed the government agencies to be responsive to public grievances.

In the Fertilizer Corporation Case it was held that, 'in a society where freedom suffers from atrophy activism is essential for participative public justice. Some risks have to be taken and more opportunities opened for the public-minded citizen to rely on the legal process and not be repelled from it by narrow pendantry now surrounding locus standi.

As litigations became very expensive the affected persons joined together to fight for a common cause. Justice Krishna Iyer has observed in Akhil Bhartiya Shoshit Karmachari Sangh (Railway) case that our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is people-oriented and envisions access to justice through class actions, PIL and representative proceedings. Indeed, little Indians in large numbers seeking remedies in courts

through collective proceedings instead of being driven to an expensive plurality of litigations is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of cause of action and person aggrieved and individual litigation is becoming obsolescent in some jurisdiction.

The PIL got the required recognition in S.P. Gupta case who was not an aggrieved person. The court observed that the basis of judicial redressal was personal injury but today where there is public wrong or injury caused by an act or omission of the state or a public authority which is contrary to the constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury.

The Asiad workers case further strengthened the rule of locus standi in the PIL. The PUDR was an organization for the protection of human rights which sought to enforce labour laws for the unorganised construction workers of projects concerning Asiad Games. Justice Bhagwati held that strategy has to be evolved for relaxing the traditional rule of locus standi so that justice becomes, easily available to the lowly and the lost. Judicial activism has become the root of PIL and this was reflected in various other cases.

The Supreme Court with its wide jurisdiction and powers reflects the concern with providing social equality and rule of law. In India, the apex court has acted judiciously in changing socio-economic structure and the progress of a nation has been dependent on its decisions. The existence of this court gives a feeling of security among the citizens. It acts as an independent authority which puts check on extreme actions and upholds the constitutional values. It has adhered to values enshrined in the minds of the framers of the constitution.

Unfortunately, the apex court has not escaped controversy because of various reasons. Lately, the contempt of court cases have shown the sensitivity or the highhandedness of the Judges. The court has at last woken up to the repeated charges of human rights violations by law-enforcing agencies. Further, loads of cases and delays in judgement have reflected the loopholes of the judicial system.

As a democratic institution, the judiciary is answerable to the people. As Justice Krishna Iyer observed that all public power is people's trust and so even judicial power has a fiduciary component... Executive power is accountable to the Parliament and Parliament to the people, judicial power is not accountable to the executive nor to the Parliament in any direct sense. The judiciary by deriving its power from the constitution, its accountability to people cannot be negated. Unfortunately, these ethnics have not been adhered to by judiciary and therefore whenever natural calamities struck the different parts of the nation it remained a spectator and could not reach the people at the grassroots level, be it Bhopal tragedy or Narmada andolan.

Many areas of the court need to be reformed like the code of conduct of judges, transfer of judges, and rigidity of the system to ensure and preserve its position as the guardian of the constitution and the protector of the basic rights of the individual and society at large.

There is a great need to revamp the judicial system so that people can get access to justice and speedy justice. The experiment of Lok Adalat has met only with a limited success. Most cases referred to Lok Adalat are those where the state has to pay and it agrees to pay for an early settlement. The Supreme Court of India should inspire alternate dispute settlement machinery where public can redress its grievances and not burden it with special leave petitions.

The Judges should write brief judgements and give early decisions. In a few cases judgments are pronounced only when a judge is to, retire, otherwise they remain reserved for unlimited period. Quality of judges and ability to handle cases with speed and honesty should be the criterion in selection.

Unfortunately, politics has entered even in appointments. One finds that judges like ministers also come from different High Courts representing different castes, class, or religious backgrounds. It would be worthwhile to restrict the time for arguments. It need not be stressed that a lot of time is wasted by a few senior lawyers who keep arguing for days and many other cases suffer.

There is need to reform even the legal profession, which has made access to Supreme Court virtually impossible for millions in this country. Long and tardy procedure with further uncertainty whether the matter would be taken up or not on a particular day keeps the poor away from approching the Supreme Court.

Time has come when either we reduce the cases that can come up before the Supreme Court or have its benches in different regions. The sitting judges should not be appointed for commissions of inquiry. There is need to have a fresh took at Advisory jurisdiction also. The recent reference on Ram Janam Bhumi-Babri Masjid dispute will not end the controversy even after the decision.

JUDICIAL ACTIVISM

At the end, the fact remains that for the success of Indian democracy people still have their faith and hope in an independent judiciary and our Supreme Court has not entirely disappointed them.

THE UNION JUDICIARY IN INDIA

124. *Establishment and constitution of Supreme Court:*

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years: Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that-

(a) A Judge may, by writing under his hand addressed to the President, resign his office;

(b) A Judge may be removed from his office in the manner provided in clause (4).

(2A) The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.

(3) *A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and:*

(a) Has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or

(b) Has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) Is, in the opinion of the President, a distinguished jurist.

Explanation I.-In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.-In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

125. *Salaries, etc., of Judges:*

(1) There shall be paid to the Judges of the Supreme Court such salaries as may be determined by Parliament by law and, until provision in that behalf is so made, such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from

time to time be determined by or under law made by Parliament and, until so determined, to such privileges, allowances and rights as are specified in the Second Schedule: Provided that neither the privileges nor the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

126. *Appointment of acting Chief Justice:* When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

127. *Appointment of ad hoc Judges:*

(1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. *Attendance of retired Judges at sittings of the Supreme Court:* Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court: Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

129. *Supreme Court to be a court of record:* The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

130. *Seat of Supreme Court:* The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

131. *Original jurisdiction of the Supreme Court:* Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

(a) Between the Government of India and one or more States; or

(b) Between the Government of India and any State or States on one side and one or more other States on the other; or

(c) Between two or more States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends: Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute.

131A. [Exclusive jurisdiction of the Supreme Court in regard to questions as to constitutional validity of Central laws.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 4 (w.e.f. 13-4-1978).

132. *Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases:*

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.

(3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided.

Explanation: For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

133. *Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters:*

(1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-

(a) That the case involves a substantial question of law of general importance; and

(b) That in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court.

134. *Appellate jurisdiction of Supreme Court in regard to criminal matters:*

(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court-

(a) Has on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

(b) Has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or

(c) Certifies under article 134A that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub-clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1)of article 145 and to such conditions as the High Court may establish or require.

(2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law.

134A. *Certificate for appeal to the Supreme Court.-Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134:*

(a) May, if it deems fit so to do, on its own motion; and

(b) Shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence, determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case.

135. *Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court:* Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of article 133 or article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law.

136. *Special leave to appeal by the Supreme Court:*

(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

(2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.

137. *Review of judgments or orders by the Supreme Court*: Subject to the provisions of any law made by Parliament or any rules made under article 145, the Supreme Court shall have power to review any judgment pronounced or order made by it.

138. *Enlargement of the jurisdiction of the Supreme Court:*

(1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

139. *Conferment on the Supreme Court of powers to issue certain writs:* Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of article 32.

139A. *Transfer of certain cases:*

(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:

Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment.

(2) The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

140. *Ancillary powers of Supreme Court:* Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

141. *Law declared by Supreme Court to be binding on all courts:* The law declared by the Supreme Court shall be binding on all courts within the territory of India.

142. *Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.:*

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe.

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

143. *Power of President to consult Supreme Court:*

(1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the said proviso to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon.

144. *Civil and judicial authorities to act in aid of the Supreme Court:* All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

144A. [Special provisions as to disposal of questions relating to constitutional validity of laws.] Rep. by the Constitution (Forty-third Amendment) Act, 1977, s. 5 (w.e.f. 13-4-1978).

145. *Rules of Court, etc.:*

(1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including-

(a) Rules as to the persons practising before the Court;

(b) Rules as to the procedure for hearing appeals and other matters pertaining to appeals including the time within which appeals to the Court are to be entered;

(c) Rules as to the proceedings in the Court for the enforcement of any of the rights conferred by Part III;

(cc) rules as to the proceedings in the Court under article 139A;

(d) Rules as to the entertainment of appeals under sub-clause (c) of clause (1) of article 134;

(e) Rules as to the conditions subject to which any judgment pronounced or order made by the Court may be reviewed and the procedure for such review including the time within which applications to the Court for such review are to be entered;
(f) Rules as to the costs of and incidental to any proceedings in the Court and as to the fees to be charged in respect of proceedings therein;
(g) Rules as to the granting of bail;
(h) Rules as to stay of proceedings;
(i) Rules providing for the summary determination of any appeal which appears to the Court to be frivolous or vexatious or brought for the purpose of delay;
(j) Rules as to the procedure for inquiries referred to in clause (1) of article 317.

(2) Subject to the provisions of clause (3), rules made under this article may fix the minimum number of Judges who are to sit for any purpose, and may provide for the powers of single Judges and Division Courts.

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five: Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.

(4) No judgment shall be delivered by the Supreme Court save in open Court, and no report shall be made under article 143 save in accordance with an opinion also delivered in open Court.

(5) No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

146. *Officers and servants and the expenses of the Supreme Court:*

(1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or officer of the Court as he may direct: Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already

attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Union Public Service Commission.

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the Court authorised by the Chief Justice of India to make rules for the purpose: Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the Court, shall be charged upon the Consolidated Fund of India, and any fees or other moneys taken by the Court shall form part of that Fund.

147. *Interpretation:* In this Chapter and in Chapter V of Part VI, references to any substantial question of law as to the interpretation of this Constitution shall be construed as including references to any substantial question of law as to the interpretation of the Government of India Act, 1935 (including any enactment amending or supplementing that Act), or of any Order in Council or order made thereunder, or of the Indian Independence Act, 1947, or of any order made thereunder.

JURISDICTIONAL ERROR

The term jurisdiction means power to decide. The jurisdiction of the administrative authority depends upon the facts, the existence of which is necessary to initiate the proceedings and without which the act of the court is a nullity.

These are called 'jurisdictional facts'. This ground of judicial review is based on the principle that administrative authorities must correctly understand the law and its limits before any action is taken. The court may quash an administrative action on the ground of ultra vires in the following situations:

LACK OF JURISDICTION

It means where the Tribunal or authority has no jurisdiction at all to pass an order.

The court has the power to review and may be exercised on the following grounds:

1. That the law under which the administrative authority is constituted and exercising jurisdiction is itself unconstitutional.
2. That the authority is not properly constituted as required by law.
3. That the authority has wrongly decided a jurisdictional fact and thereby assumed jurisdiction which did not belong to it.

EXCESS OF JURISDICTION

Here the authority initially had the jurisdiction but exceeded it and hence, its action becomes illegal.

This may happen under the following situations:

1. Continue to exercise jurisdiction despite the occurrence of an event ousting jurisdiction.
2. Entertaining matters outside its jurisdiction.

ABUSE OF JURISDICTION

All the administrative powers must be exercised fairly, in good faith for that purpose for which it is given. In the following situations, abuse of power may arise:

1. *Improper Purpose:* Administrative power cannot be used for the purpose for which it was not given.
2. *Error Apparent on the Face of the Record:* In Syed Yakoob v. K.S. Radhakrishnan case, the Supreme Court explained that there would be a case of error of law apparent on the face of the record, where the conclusion of law recorded by an inferior tribunal is:
   a. Based on an obvious misinterpretation of the relevant Statutory provision, or
   b. In ignorance of it, or
   c. In disregard of it, or
   d. Expressly based on reasons which are wrong in law.
3. *In Bad Faith:* Where a decision-maker has acted dishonestly by claiming to have acted for a particular motive when in reality the decision was taken with another motive in mind, he may be said to have acted in bad faith.
4. *Fettering Discretion:* An authority may act ultra vires if, in the exercise of its powers, it adopts a policy which effectively means that it is not truly exercising its discretion at all.

IRRATIONALITY (WEDNESBURY TEST)

A general principle which has remained unchanged is that discretionary power conferred on an administrative authority is required to be exercised reasonably. A person, in whom discretion is vested, must exercise his discretion upon reasonable grounds.

A decision of the administrative authority shall be considered irrational if it is so outrageous in its defiance to logic or accepted norms of moral standard that no sensible person, on the given facts and circumstances, could arrive at such a decision.

Irrationality as a ground of judicial review was developed by the court in Associated Provincial Picture House v. Wednesbury case, later came to be known as Wednesbury test to determine 'irrationality' of administrative action.

The Delhi High Court in Neha Jain v. University of Delhi case, clarified that the basic requirement of Article 14 is fairness inaction of the State and non-arbitrariness in essence and substance is the heart of fair play, judicial interference with policy decision is permissible:

1. If the decision is shown to be patently arbitrary, discriminatory, or mala fide.
2. If it is found to be unreasonable or violative of any provision of the Constitution or any other statute.
3. If it can be said to suffer from any legal infirmity in the sense of its being wholly beyond the scope of the regulation-making power.
4. If it is demonstrably capricious or arbitrary and not informed by any reason.

PROCEDURAL IMPROPRIETY

Failure to comply with the procedures laid down by statute may invalidate a decision. Procedural impropriety is to encompass two areas viz. failure to observe rules lay down in statute; and a failure to observe the basic common law of natural justice. It is a fundamental requirement of justice that, when a person's interests are affected by a judicial or administrative decision, he or she has the authority to know and understand any allegations made and to make representations to the decision-maker in order to meet such allegations.

The principles of natural justice, which are imposed by the courts, comprise two elements:

1. Audi alteram partem (the rule of fair hearing).
2. Nemo Judex in causa sua (there should be an absence of bias with no person being a judge in their own cause). The essence of justice lies in a fair hearing. The rule against bias is strict, *i.e.*, it is not necessary to show that actual bias existed but the merest appearance or possibility of bias will suffice.

PROPORTIONALITY

Proportionality means that the administrative action should not be more drastic than it ought to be for obtaining the desired result. Proportionality is sometimes explained by the expression taking a sledgehammer to crack a nut. Thus, this doctrine tries to balance means with ends. Proportionality shares space with reasonableness and courts while exercising the power of review see, 'is it a course of action that could have been reasonably followed'.

Courts in India have been following this doctrine for a long time, but English Courts have started using this doctrine in administrative law after the passing of the Human Rights Act, 1998. Thus, if an action taken by the authority is grossly disproportionate, the said decision is not immune from judicial scrutiny. The sentence has to suit the offense and the offender and should not be vindictive or unduly harsh.

RULE OF LAW

The Expression " Rule of Law" plays an important role in the administrative law. It provides protection to the people against the arbitrary action of the administrative authorities. The expression 'rule of law' has been derived from the French phrase 'la Principle de legality'. *i.e.*, a government based on the principles of law. In simple words, the term 'rule of law, indicates the state of affairs in a country where, in main, the law rules. Law may be taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognized and applied by the State in the administration of justice.

RULE OF LAW IS A DYNAMIC CONCEPT.

It does not admit of being readily expressed. Hence, it is difficult to define it. Simply speaking, it means supremacy of law or predominance of law and essentially, it consists of values. The concept of the rule of Law is of old origin.

Edward Coke is said to be the originator of this concept, when he said that the King must be under God and Law and thus vindicated the supremacy of law over the pretensions of the executives. Prof. A.V. Dicey later developed on this concept in the course of his lectures at the Oxford University. Dicey was an individualist; he wrote about the concept of the Rule of law at the end of the golden Victorian era of laissez- faire in England. That was the reason why Dicey's concept of the Rule of law contemplated the absence of wide powers in the hands of government officials. According to him, wherever there is discretion there is room for arbitrariness. Further he attributed three meanings to Rule of Law.

(1) The First meaning of the Rule of Law is that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. (The view of Dicey, quoted by Garner in his Book on 'Administrative Law'.)

(2) The Second Meaning of the Rule of Law is that no man is above law. Every man whatever be his rank or condition. is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals (Ibid).

(3) The Third meaning of the rule of law is that the general principle of the constitution are the result of judicial decisions determining the rights of private persons in particular cases brought before the court.

The view of Dicey as to the meaning of the Rule of Law has been subject of much criticism. The whole criticism may be summed up as follows. Dicey has opposed the system of providing the discretionary power to the administration. In his opinion providing the discretionary power means creating the room for arbitrariness, which may create as serious threat to individual freedom. Now a days it has been clear that providing the discretion to the administration is inevitable. The opinion of the Dicey, thus, appears to be outdated as it restricts the Government action and fails to take note of the changed conception of the Government of the State.

Dicey has failed to distinguish discretionary powers from the arbitrary powers. Arbitrary power may be taken as against the concept of Rule of Law. In modern times in all the countries including England, America and India, the discretionary powers are conferred on the Government. The present trend is that discretionary power is given to the Government or administrative authorities, but the statute which provides it to the Government or the administrative officers lays down some guidelines or principles according to which the discretionary power is to be exercised. The administrative law is much concerned with the control of the discretionary power of the administration. It is engaged in finding out the new ways and means of the control of the administrative discretion.

According to Dicey the Rule of Law requires equal subjection of all persons to the ordinary law of the country and absence of special privileges for person including the administrative authority. This proportion of Dicey does not appear to be correct even in England. Several persons enjoy some privileges and immunities. For example, Judges enjoy immunities from suit in respect of their acts done in discharge of their official function. Besides, Public Authorities Protection Act, 1893, has provided special protection to the official. Foreign diplomats enjoy immunity before the Court. Further, the rules of 'public interest privilege may afford officials some protection against orders for discovery of documents in litigation.' Thus, the meaning of rule of law taken by Dicey cannot be taken to be completely satisfactory.

Third meaning given to the rule of law by Dicey that the constitution is the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts is based on the peculiar character of the Constitution of Great Britain.

In spite of the above shortcomings in the definition of rule of law by Dicey, he must be praised for drawing the attention of the scholars and authorities towards the need of controlling the discretionary powers of the administration. He developed a philosophy to control the Government and Officers and to keep them within their powers. The rule of law established by him requires that every action of the administration must be backed by law or must have been done in accordance with law. The role of Dicey in the development and establishment of the concept of fair justice cannot be denied.

The concept of rule of law, in modern age, does not oppose the practice of conferring discretionary powers upon the government but on the other hand emphasizing on spelling out the manner of their exercise. It also ensures that every man is bound by the ordinary laws of the land whether he be private citizens or a public officer; that private rights are safeguarded by the ordinary laws of the land (See Journal of the Indian law Institute, 1958-59, pp. 31-32) Thus the rule of law signifies that nobody is deprived of his rights and liberties by an administrative action; that the administrative authorities perform their functions according to law and not arbitrarily; that the law of the land are not unconstitutional and oppressive; that the supremacy of courts is upheld and judicial control of administrative action is fully secured.

CONCEPT OF RULE OF LAW

The originator of the concept of rule of law was Sir Edward Coke the Chief Justice in James I Reign.

The concept of rule of law is of old origin. Greek philosophers such as Plato and Aristotle discussed the concept of rule of law around 350 BC. Plato wrote "Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a state". Aristotle wrote "law should govern and those who are in power should be servant of the laws."

The derivation of the phrase ' Rule of Law' is from the French phrase 'la principe de legalite' which implies principle of legality. By this phrase it refers to a government based on principles of law and not of men. One of the basic principles of Constitution is rule of law and this concept is up to standard in both India and America Constitution.

The doctrine of rule of law is the entire basis of Administrative law. As discussed by Aristotle, the concept of rule of law is grounded in the ideas of justice, fairness and inclusiveness. Today, an intricate chain of fundamental ideas is incorporated in rule of law which further encompasses equality before law, equal treatment before the law for government, independence of judiciary, consistency, transparency and accountability in administrative law.

MEANING OF RULE OF LAW

To simply understand the meaning of rule of law, it means that no man is above law and also that every person is subject to the jurisdiction of ordinary courts of law irrespective of their position and rank.

The term 'rule of law' is originated from England and India has taken this concept. The concept of rule of law further requires that no person should be subjected to harsh or arbitrary treatment. The word 'law' in rule of law means that whether he is a man or a society, he must not be governed by a man or ruler but by law. In other words, as per Article 13 of the Indian Constitution rule of law means law of land.

According to Black's Law Dictionary: "Rule of Law" means legal principles of day to day application, approved by the governing bodies or authorities and expressed in the form of logical proposition.

According to Oxford Advance Learner's Dictionary: "Rule of Law" means the situation in which all the citizens as well as the state are ruled by the law.

POSTULATES OF RULE OF LAW

In 1885, Professor A.V Diceydeveloped this concept of Coke and propounded three principles or postulates of the rule of law in his classic book 'Law and the Constitution.' According to Professor A.V Dicey, for achieving supremacy of law three principles of postulates must be followed which are as follows:

Supremacy of Law

As per the first postulate, rule of law refers to the lacking of arbitrariness or wide discretionary power. In order to understand it simply, every man should be governed by law.

According to Dicey, English men were ruled by the law and the law alone and also where there is room for arbitrarinessand that in a republic no less than under a monarchy discretionary authority on the part of the Government must mean insecurity for legal freedom on the part of its subjects. There must be absence of wide discretionary powers on the rulers so that they cannot make their own laws but must be governed according to the established laws.

Equality before Law

According to the second principle of Dicey, equality before law and equal subjection of all classes to the ordinary law of land to be administered by the ordinary law courts and this principle emphasizes everyone which included government as well irrespective of their position or rank. But such element is going through the phase of criticisms and is misguided. As stated by Dicey, there must be equality before law or equal subjection of all classes to the ordinary law of land. French legal system of Droit Administrative was also criticized by him as there were separate tribunals for deciding the cases of state officials and citizens separately.

Predominance of Legal Spirit

According to the third principle of Dicey, general principles of the Indian Constitution are the result of the decisions of the Indian judiciary which determine to file rights of private persons in particular cases. According to him, citizens are being guaranteed the certain rights such as right to personal liberty and freedom from arrest by many constitutions of the states (countries). Only when such rights are properly enforceable in the courts of law, those rights can be made available to the citizens. Rule of law as established by Dicey requires that every action of the administration must be backed and done in accordance with law. In modern age, the concept of rule of law oppose the practice of conferring discretionary powers upon the government and also ensures that every man is bound by the ordinary laws of the land as well as signifies no deprivation of his rights and liberties by an administrative action.

EXTENT OF JUDICIAL REVIEW

The initial years of the Supreme Court of India saw the adoption of an approach characterised by caution and circumspection. Being steeped in the British tradition of limited judicial review, the Court generally adopted a pro-legislature stance. This is evident form the rulings such as A.K. Gopalan, but however it did not take long for judges to break their shackles and this led to a series of right to property cases in which the judiciary was loggerhead with the

parliament. The nation witnessed a series of events where a decision of the Supreme Court was followed by a legislation nullifying its effect, followed by another decision reaffirming the earlier position, and so on. The struggle between the two wings of government continued on other issues such as the power of amending the Constitution. During this era, the Legislature sought to bring forth people-oriented socialist measures which when in conflict with fundamental rights were frustrated on the upholding of the fundamental rights of individuals by the Supreme Court. At the time, an effort was made to project the Supreme Court as being concerned only with the interests of propertied classes and being insensitive to the needs of the masses. Between 1950 and 1975, the Indian Supreme Court had held a mere one hundred Union and State laws, in whole or in part, to be unconstitutional.

After the period of emergency the judiciary was on the receiving end for having delivered a series of judgments which were perceived by many as being violative of the basic human rights of Indian citizens and changed the way it looked at the constitution.

The Supreme Court said that any legislation is amenable to judicial review, be it momentous amendments to the Constitution or drawing up of schemes and bye-laws of municipal bodies which affect the life of a citizen. Judicial review extends to every governmental or executive action - from high policy matters like the President's power to issue a proclamation on failure of constitutional machinery in the States like in *Bommai case*, to the highly discretionary exercise of the prerogative of pardon like in *Kehar Singh case* or the right to go abroad as in *Satwant Singh case*. *Judicial review* knows no bounds except the restraint of the judges themselves regarding justifiability of an issue in a particular case.

6

Administering a Constructive Trust in Common Law

THE INDIAN TRUST ACT

1. The Law relating to Trust is contained in Act II of 1882.
2. It is an Act which defines and amends—that means that it does not introduce any new principle.
3. The Act does not consolidate the Law—That means that it is not an Exhaustive Code.
4. The object of the Act was to group in one to enact the legal provisions relating to trusts. Before the Act of 1882 the statutory law relating to trust was contained in 29 *Car II. C. 31 sections 7— II.*
   Act XXVII of 1866 Act XXVIII of l866: There were also few isolated provisions scattered through the Penal Code, Specific Relief, C. P. Code Stamp Act, Limitation, Government Securities Act, Companies Act, Presidency Banks Act.
5. As originally passed, the Act did not apply to the whole of British India. For instance, it did not apply to Bombay. But provision was made to extend it by notification by local Government.
6. It is unnecessary to discuss here whether the Hindu Law and Mohammedan Law recognised trust as defined in the Trust Act. That may be dealt with by others.

THE NATURE OF A TRUST

1. Trust is defined in section 3. A trust involves three things:
   (1) A person who is the *owner* of some property.
   (2) Ownership burden with an obligation.
   (3) Obligation to use the property for the benefit of another or of another and himself.
2. It is ownership without beneficial enjoyment. It involves separation of ownership and beneficial enjoyment.
3. A trust arises out of a confidence reposed in and accepted by the owner.
4. The owner in the eye of the law is the trustee. After the trust is created the author of the trust ceases to be the owner of the property.

What is a Trust:

1. The terms Trust and Trustee are defined in various enactments of the Indian Legislature.
   (i) *Definition in Specific Relief Act I of 1877. Section 3:*
      (1) *Obligation* includes every duty enforceable by law.
      (2) *Trust* includes every species of express, implied or constructive fiduciary ownership.
      (3) *Trustee* includes every person holding expressly, by implication, or constructively a fiduciary ownership.
   (ii) *Definition in the Indian Trustees Act XXVII of 1866. Section 2:* "Trust shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words *trust* and *trustee* shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of executor or administrator of a deceased person.
   (iii) *Definition in Limitation Act IX of 1908. Section 2 (ii): Trustee* does not include a benamidar, a mortgagee remaining in possession after the mortgage has been satisfied or a wrongdoer in possession without title.
   (iv) *Indian Trusts Act II of 1872.*
      (1) *Section 3":*A trust is an obligation annexed to the ownership of property...
      (2) Ingredients of a Trust (i) A Trust in an *obligation.* (ii) The obligation must be annexed to the *ownership* of property. (iii) The ownership must arise out of *confidence* reposed in and accepted by the owner. (iv) The ownership must be for the benefit of another (*i.e.*, a person other than the owner) or of another and the owner.

EXPLANATION OF TERMS

I. There must be obligation.
II. Obligation must be annexed to ownership property.
    1. There may be an obligation to which a person is subject although there is no property to which it is annexed.
       E.g. Torts assault:
    2. There may be property without there being any obligation attached to it. *E.g. Full* and *complete* ownership—sale of property.
III. The ownership of property may befounded in confidence or it may not.
    Illus: A person may transfer ownership to another with the intention of conferring upon him the right to enjoy the property.
    A person may transfer ownership to another without the intention of conferring upon him the right to enjoy the property. The difference between ownership founded in confidence and ownership not founded in confidence consists in this—
        (i) In the latter there is *a jus in re* (a complete and full right to a thing) *or jus ad rem* (an inchoate and imperfect right).
        (ii) In the former there is not. *E.g.* Bailment.
    3. The nature of a trust can be better understood by contracting it with other transactions resembling a trust.

TRUST DISTINGUISHED FROM AGENCY

1. Where there is a trust, the ownership of the trust property is in the trustee. The trustee is personally liable on all contracts entered into by him in reference to the trust, although he may have a right of recourse against the trust funds or against the beneficiary.
2. An agent has no ownership in law in the goods entrusted to him. If an agent enters into a contract as agent, he is not personally liable. The contract is with the principal.

TRUST DISTINGUISHED FROM CONDITION

1. *Cases of condition differ from cases of trust in two respects:*
   First. A trust of property cannot be created by any one except the owner. But A may dispose of his property to B upon condition express or implied that B shall dispose of his own property in a particular way indicated by A.
   Second. The obligation of the person on whom the condition is imposed is not limited by the value of the property he receives, *e.g.*, if A makes a bequest to B, on condition of B paying A's debts, and B accepts the gift, he will be compelled in equity to discharge the debts although the exceed the value of the property.

2. But the words "upon condition" may create a real trust. Thus a gift of an estate to A on condition of paying the rents and profits to B constitutes a trust because it is clear that no beneficial interest was intended to remain in A.
   A may dispose of his property to B upon condition express or implied that B shall dispose of his property to C. There is a condition in favour of C.

IS THIS A TRUST? TRUST DISTINGUISHED FROM BAILMENT

1. Bailment is a deposit of chattel and may in a sense be described as a species of trust. But there is this great difference between a bailment and a trust, that the general property in the case of a trust, is in the trustee, whereas a bailee has only a special property, the general property remaining in the bailor.
2. The result of this difference is that an unauthorised sale by a trustee will confer a good title upon a *bonafide* purchaser who acquires the legal interest without notice of the trust, whereas such a sale by a bailee confers as a rule no title as against the bailor.
3. Bailee does not become the owner of the property as a result of the bailment. But a trustee does in law become the owner of the property as a result of the trust notwithstanding he is under an obligation to deal with the property in a certain specified manner.

TRUST DISTINGUISHED FROM GIFT

Ordinary contract differs from a trust. Contract which confers a benefit on a third party closely resembles a trust.

1. There is a similarity between a Trust and a Gift inasmuch as in both the transfer results in ownership. The Trustee and the Donee both become owners of the property.
2. But there is a difference between the two. In a gift the donee is free to deal with the property in any way he likes. In a Trust the trustee is under an obligation to use the property in a particular manner and for a particular purpose.

TRUST DISTINGUISHED FROM CONTRACT

1. That there is a distinction between trust and contract is evident from the existence of differing legal consequences attached to a trust and to a contract:
   (i) A trust, if executed, may be enforced by a beneficiary who is not a party to it whilst only the actual parties to a contract can, as a rule, sue upon it
   (ii) An executed voluntary trust is fully enforceable while a contract lacking consideration is not.

2. However, the determination of the question whether a given set of facts gives rise to a trust or a contract is not easy. What is the test?
   Keetan—-pp. 5-6 (1919) A. C. 801 |38 Bom. S. R. 610.
   (1926) A. C. 108
   It is a question of intention.

TRUST DISTINGUISHED FROM POWER

1. The term "power" in its widest sense includes every authority given to a person (called the donee of the power) to act on behalf of or exercise rights belonging to the person giving him the authority (called the donor of the power).
2. Powers are of many kinds *e.g.*
   (i) The common law power of an agent to act for his principal, given sometimes by a formal "power of attorney".
   (ii) Statutory power such as the power of sale given to a mortgagee.
   (iii) The various express and implied equitable powers possessed by trustees and executors.
   (iv) Powers to appoint trusts so as to create equitable interests.
3. The power of appointment is a transaction which resembles a trust and it is this which must be distinguished from a trust.

The word appointment means-pointing out, indicating-the act of declaring the destination of specific property, in exercise of an authority conferred for that purpose-the act of nominating to an office. The last class *termed, powers of appointment* are made use of where it is desired to make provision for the *creation* of future interests, but to postpone their complete declaration.

Thus in a marriage settlement, property may be given to trustees upon trust for the husband and wife for their lives and, after the death of the survivor upon trust for (i) *Such of the children* of the marriage as the survivor shall appoint, or (ii) *All the children* of the marriage in such shares as the survivors shall appoint.

In such a case, upon appointment being made, the child to whom it is made takes exactly as if a limitation to the same effect had been made in the original instrument.

A power of this kind, where there is a restriction as to its objects (*i.e.*, persons in whose favour it may be exercised) is termed a *special power of appointment.* But there may be a *general power* of appointment when there is no such restriction, so that the donee may appoint to himself. In such a case the donee having the same powers of disposition as an owner, is for most purposes treated as the owner of the property:

(i) A power may give a mere discretion and therefore is distinct from a trust, which creates an obligation or
(ii) A power may impose an obligation to exercise the discretion.
   In the former case there is no trust. In the latter case there is. The former is called *mere power.* The latter is called power in the nature of a trust *or power coupled with trust.*
(iii) There is also a third category of cases which arc cases of a *trust coupled with a power.*

These are cases where a trustee of a property though under an obligation to apply it for the benefit of certain individuals or purposes, may have a *discretion* as to whether he will or will not do certain specified acts, or as to the amount to be applied for any one individual or purpose or as to the time and manner of its application.

In such cases, the Court will prevent the trustee from exercising the power unreasonably, it will not compel him to do such acts or attempt to control the proper exercise of his discretion.

1. Power resembles a trust and also differs from it.
   (i) It resembles a trust inasmuch as a power is an authority to dispose of some interest in land, but confers no right to enjoyment of land.
   (ii) It differs from a trust inasmuch as a power is discretionary, whereas a trust is imperative; the trustee if he accepts must necessarily do as the settlor directs.

New Trustees:

(1) Survivorship of the office and estate or trustee on death.
(2) Devolution of the office and estate on Death of the survivor.
(3) Retirement or Removal of a Trustee.
(4) Appointment of New Trustees.

Appointment of a Judicial Trustee.

The Public Trustee:

(1) Nature and Function.
(2) Appointment of a Public Trustee as an ordinary Trustee.
(3) Appointment and Removal of the Public Trustee.
(4) Duties, Rights and Liability of the Custodian Trustee and Managing Trustee.
(5) Special Rules relating to the Public Trustee.

The Rights of the Trustee:

(1) Right to Reimbursement and Indemnity.
(2) Right to discharge on completion of Trusteeship.
(3) Right to pay Trust Funds into Court.

Right of trustees and beneficiaries to seek the assistance of public trustee or court.

(1) Right of Official audit.
(2) Right to take direction of Court.
(3) Right to have Trust administered by Court.
(4) Right to take direction of Court.
(5) Right to have Trust administered by Court.

Consequences of a Breach of Trust.

Definition of Breach of Trusts: Breach of trust is defined in section 3, a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a breach of trust.

Under the English Law: Any act or neglect on the part of a trustee which is not authorised or excused by the terms of the trust instrument, or by law, is called a breach of trust.

Breach of Duty: A trustee has Duties, Right, Powers and disabilities. Only breach of duty is breach of trust.

1. The measure of liability is the loss caused to the trust property.
2. *Is he liable to pay interest? Only in the following cases:*
   (a) Where he has actually received interest.
   (b) Where the breach consists in unreasonable delay in paying trust-money to the beneficiary.
   (c) Where the trustee ought to have received interest, but has not done so.
   (d) Where he may be fairly presumed to have received interest.
   (e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends.
   (f) Where the breach consists in the employment of trust property or the proceeds thereof in trade or business.
3. Is he entitled to set off a gain from breach of trust against a loss from breach of trust.

What is the nature of the Law of Limitation?

1. *There are various ways in which a time-limit enters into a course of litigation: (1) Cases where the law says action shall be taken within a stated period:*
   Illus: Order 6 Rule 18.—Amendment of a Plaint. Party obtaining leave to amend must amend within the time fixed by the Court for amendment and if no time is fixed then within 14 days. (2) Cases where the law says action shall not be taken before a certain period has elapsed.
   Illus: Section 80 of the C. P. C.—Suit against Secretary of State. No suit shall be instituted against the Secretary of State for India in Council or against any public officer in respect of any Act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been given. (3) Cases in which the law prescribes that action shall not be taken *after* a certain period has elapsed.
2. It is the *third* class of cases which strictly speaking constitute the subject-matter of the Law of Limitation.

Distinction between Limitation— Estoppel— Acquiescence and Laches: All these have the effect of denying to an aggrieved party a remedy for the wrong done to him. That being so it is necessary to distinguish them from Limitation as such.

LIMITATION AND ESTOPPEL

1. By Limitation a person is prevented from getting relief because of his having brought the action after the time prescribed for bringing his suit.
2. By Estoppel a person fails to get relief because he is prevented by law from adducing evidence to prove his case.

LIMITATION AND ACQUIESCENCE

1. Limitation defeats a suitor in the matter of obtaining relief for a wrong because he has *consented* to the doing of the wrong because his suit is beyond time.
2. Acquiescence defeats a suitor in the matter of obtaining relief for a wrong because he has *consented* to the doing of the wrong.

LIMITATION AND LACHES

1. Both have one common feature—relief is denied on the sole ground that action is not brought within time.
2. The distinction lies in this—In limitation time within which action shall not be brought is prescribed by Law. In laches there is no time prescribed and the Court, therefore, in granting relief works on the principle of unreasonable delay.
3. In India the doctrine of laches has not much scope because of the Law of Limitation which has prescribed a definite time limit for almost all actions. It does not, therefore, matter whether a man brings his suit on the first day or the last day of the period prescribed by law for his action.

The doctrine of laches applies in India only in the following cases:

(1) Where the relief to be granted by the Court is *discretionary.*
This is so (i) In cases falling under specific relief. (ii) In cases falling under interlocutory relief.

(2) Where the Law of Limitation does not apply *e.g.*, Matrimonial suits. Delay would mean that the offence was condoned.

THE OBJECT OF LIMITATION

1. Two things are necessary for a well-ordered community (i) Wrongs must be remedied. (ii) Peace must be maintained.
2. To secure peace of the community it is necessary that titles to property and matters of right in general should not be in a state of constant uncertainty, doubt and suspense.
3. Consequently, if persons are to be permitted to claim relief for what they think are wrongs done to them, then they must be compelled to seek relief within a certain time. There is nothing unjust in denying relief to a person who has tolerated the wrong done to him beyond a certain period.
4. The Law of Limitation is based upon this principle.
5. That being the underlying principle, the Law of Limitation is absolute in its operation and is not subject to agreement or conduct of the parties. That is to say it is not subject to (1) Waiver. (2) Custom. (3) Estoppel. (4) Variation in respect of enlargement or abridgement of time by agreement of parties sections 28 and 23 of the Contract Act.

6. In this respect the Law of Limitation differs from the Law of Negotiable Instruments.
7. Limitation and the onus of Proof.
    1. The onus of proof is upon the Plaintiff. He must prove that his suit is within time.

37. Bom. S. R. 471-A.I.R.. 1935 September.

A by a registered lease, dated 8th July 1922, gave certain lands to B on a rental for a period of 25 years. Subsequently, A dispossessed B alleging that the lease was taken by undue influence. B brought a suit against A for an injunction restraining A from interfering in any way with his possession and enjoyment and for possession of land.

It was contended on behalf of B that A was precluded from challenging the validity of the lease, on the ground that if he had sued to have the lease set aside the suit would have been barred by Limitation. In other words, it was contended that the plea of the Defendant was barred of the Limitation.

Question is: Is Defendant bound by the Law of Limitation?

The answer is No. —Section 3 refers to Plaintiff and not to Defendant.

ADMINISTRATIVE LAW IN COMMON LAW COUNTRIES

Generally speaking, most countries that follow the principles of common law have developed procedures for judicial review that limit the reviewability of decisions made by administrative law bodies. Often these procedures are coupled with legislation or other common lawdoctrines that establish standards for proper rulemaking. Administrative law may also apply to review of decisions of so-called semi-public bodies, such as non-profit corporations, disciplinary boards, and other decision-making bodies that affect the legal rights of members of a particular group or entity.

While administrative decision-making bodies are often controlled by larger governmental units, their decisions could be reviewed by acourt of general jurisdiction under some principle of judicial review based upon due process (United States) or fundamental justice (Canada). Judicial review of administrative decisions is different from an administrative appeal. When sitting in review of a decision, the Court will only look at the method in which the decision was arrived at, whereas in an administrative appeal the correctness of the decision itself will be examined, usually by a higher body in the agency. This difference is vital in appreciating administrative law in common law countries.

The scope of judicial review may be limited to certain questions of fairness, or whether the administrative action is *ultra vires*. In terms of ultra vires actions in the broad sense, a reviewing court may set aside an administrative decision if it is unreasonable (under Canadian law, following the rejection of the "Patently Unreasonable" standard by the Supreme Court in Dunsmuir v. New Brunswick), *Wednesbury* unreasonable (under British law), or arbitrary and capricious (under

U.S.) Administrative Procedure Act and New York State law). Administrative law, as laid down by the Supreme Court of India, has also recognized two more grounds of judicial review which were recognized but not applied by English Courts viz. legitimate expectation and proportionality.

The powers to review administrative decisions are usually established by statute, but were originally developed from the royalprerogative writs of English law, such as the writ of mandamus and the writ of certiorari. In certain Common Law jurisdictions, such as India or Pakistan, the power to pass such writs is a Constitutionally guaranteed power. This power is seen as fundamental to the power of judicial review and an aspect of the independent judiciary.

ADMINISTRATIVE LAW IN CIVIL LAW COUNTRIES

Unlike most Common-law jurisdictions, the majority of civil law jurisdictions have specialized courts or sections to deal with administrative cases which, as a rule, will apply procedural rules specifically designed for such cases and different from that applied in private-law proceedings, such as contract or tort claims.

FRANCE

In France, most claims against the national or local governments are handled by administrative courts, which use the *Conseil d'État*(Council of State) as a court of last resort. The main administrative courts are the *tribunaux administratifs* and appeal courts are the*cours administratives d'appel*. The French body of administrative law is called "*droit administratif*".

GERMANY

Administrative law in Germany, called Deutschland, generally rules the relationship between authorities and the citizens and therefore, it establishes citizens' rights and obligations against the authorities. It is a part of the public law, which deals with the organization, the tasks and the acting of the public administration. It also contains rules, regulations, orders and decisions created by and related to administrative agencies, such as federal agencies, federal state authorities, urban administrations, but also admission offices and fiscal authorities, *etc.* Administrative law in Germany follows three basic principles.

- Principle of the legality of the authority, which means that there is no acting against the law and no acting without a law.
- Principle of legal security, which includes a principle of legal certainty and the principle of nonretroactivity
- Principle of proportionality, which says that an act of an authority has to be suitable, necessary and appropriate

Administrative law in Germany can be divided into general administrative law and special administrative law.

GENERAL ADMINISTRATIVE LAW

The general administration law is basically ruled in the Administrative Procedures Law. Other legal sources are the Rules of the Administrative Courts, the social security code and the general fiscal law.

THE NETHERLANDS

In The Netherlands, administrative law provisions are usually contained in separate laws. There is however a single General Administrative Law Act ("Algemene wet bestuursrecht" or Awb) that applies both to the making of administrative decisions and the judicial review of these decisions in courts. On the basis of the Awb, citizens can oppose a decision ('besluit') made by a public body ('bestuursorgaan') within the administration and apply for judicial review in courts if unsuccessful.

Unlike France or Germany, there are no special administrative courts of first instance in the Netherlands, but regular courts have an administrative "chamber" which specializes in administrative appeals. The courts of appeal in administrative cases however are specialized depending on the case, but most administrative appeals end up in the judicial section of the Council of State (Raad van State).

Before going to court, citizens must usually first object to the decision with the administrative body who made it. This is called "bezwaar".

This procedure allows for the administrative body to correct possible mistakes themselves and is used to filter cases before going to court. Sometimes, instead of bezwaar, a different system is used called "administratief beroep" (administrative appeal).

The difference with bezwaar is that administratief beroep is filed with a different administrative body, usually a higher ranking one, than the administrative body that made the primary decision. Administratief beroep is available only if the law on which the primary decision is based specifically provides for it. An example involves objecting to a traffic ticket with the district attorney ("officier van justitie"), after which the decision can be appealed in court.

SWEDEN

In Sweden, there is a system of administrative courts that considers only administrative law cases, and is completely separate from the system of general courts. This system has three tiers, with 12 county administrative courts (*förvaltningsrätt*) as the first tier, four administrative courts of appeal (*kammarrätt*) as the second tier, and the Supreme Administrative Court of Swedenas the third tier.

Migration cases are handled in a two-tier system, effectively within the system general administrative courts. Three of the administrative courts serve as migration courts (*migrationsdomstol*) with the Administrative Court of Appeal in Stockholm serving as the Migration Court of Appeal (*Migrationsöverdomstolen*).

BRAZIL

In Brazil, unlike most Civil-law jurisdictions, there is no specialized court or section to deal with administrative cases. In 1998, a constitutional reform, led by the government of the President Fernando Henrique Cardoso, introduced regulatory agencies as a part of the executive branch.

Since 1988, Brazilian administrative law has been strongly influenced by the judicial interpretations of the constitutional principles of public administration (art. 37 of Federal Constitution): legality, impersonality, publicity of administrative acts, morality and efficiency.

CHILE

The President of the Republic exercises the administrative function, in collaboration with several Ministries or other authorities with*ministerial rank*.

Each Ministry has one or more under-secretary that performs through public services the actual satisfaction of public needs. There is not a single specialized court to deal with actions against the Administrative entities, but instead there are several specialized courts and procedures of review.

PEOPLE'S REPUBLIC OF CHINA

Administrative law in the People's Republic of China was virtually non-existent before the economic reform era initiated by Deng Xiaoping. Since the 1980s, the People's Republic of China has constructed a new legal framework for administrative law, establishing control mechanisms for overseeing the bureaucracy and disciplinary committees for the Communist Party of China. However, many have argued that the usefulness of these laws is vastly inadequate in terms of controlling government actions, largely because of institutional and systemic obstacles like a weak judiciary, poorly trained judges and lawyers, and corruption.

In 1990, the Administrative Supervision Regulations and the Administrative Reconsideration Regulations were passed. Both regulations have since been amended and upgraded into laws. The 1993 State Civil Servant Provisional Regulations changed the way government officials were selected and promoted, requiring that they pass exams and yearly appraisals, and introduced a rotation system. In 1994, the State Compensation Law was passed, followed by the Administrative Penalties Law in 1996.

CONSTRUCTIVE TRUSTS

1. There ar*e fourteen* cases of constructive trusts which are enumerated in the Trust Act.
2. *They fall under five heads:*
   (1) Constructive trusts arising out of transfers—Sections 81, 82,84,85.
   (2) Constructive trusts arising out of unfair advantage gained by one person as against another person—Secs. 85, 88, 89, 90, 93.

(3) Constructive trusts arising out of contracts made-Secs. 86, 91,92.
(4) Constructive trusts arising out of a merger of two personalities in one individual—Section 87.
(5) Constructive trusts arising out of a past trust—Section 83.

(1) Transfer or Bequest of Property

(i) Section 81.

1. In certain cases the transfer or bequest of property imposes an obligation upon the transferee or legatee in the nature of a trust in favour of the owner or his legal representative. Ordinarily the transferee or legatee would take the property absolutely without any such obligation.
2. When can it be held that the transferee or legatee takes it subject to an obligation? He takes it subject to an obligation when there is no intention on the part of the owner to dispose of the beneficial interest in the property to the transferee or legatee.
3. How is intention to be determined?—In the light of the circumstances of the case. It is the circumstances which must be referred to in order to find out the intention of the owner.

(ii) Section 82.

1. The second case where the transfer of property imposes an obligation upon the transferee in the nature of a trust is the case where the transferee is made to one and the consideration is paid by another—in such a case the transferee holds it on trust for the person who paid the consideration. Ordinarily the transferee would be the owner in the eye of the law, the property being conveyed to him by the transferror.
2. This rule that a transferee who has not paid consideration holds it on trust for a person who has paid consideration applies generally except in one case—
3. *Exception:* This rule does not apply where there is an intention on the part of the person who paid the consideration to benefit the transferee.
4. Proof of intention.

(iii) Transfer for an illegal purpose. Section 84.

1. Ordinarily when a transfer is for an unlawful purpose the Court will neither enforce the transaction in favour of the transferee nor will it assist the transferror to recover the estate if he has parted with it.
2. But the rule does not apply under *all* circumstances. The rule does apply under certain circumstances.
3. What are the circumstances in which the rule does not apply?
   The circumstances in which the rule does not apply are:
   (i) If the propose is not carried into execution.
   (ii) If the transferror is not as guilty as the transferee.
   (iii) If the effect of permitting the transferee to retain the property might be to defeat the provisions of any law.
4. In these cases the Court will help the transferror and impose upon the transferee an obligation to hold the property for the benefit of the transferror.

Bequest upon trust for an illegal purpose. Section 85.

1. The position in law with regard to transfers for an illegal purpose is on a par with trust for an illegal purpose.
2. That is, a Court will neither enforce the trust in favour of the parties intended to be benefited nor will it assist the settlor to recover the estate if he has parted with it.
3. Section 85 recognises a trust although the purpose is unlawful. This is in contrast with the general principle enunciated in section 4 of the Trust Act and therefore requires some explanation.
4. *The general principles governing the rights of the parties to an unlawful trust and the exceptions to those principles may formulate as follows:*
   I. Where a trust is created for an unlawful and fraudulent purpose, the Court will neither enforce the trust in favour of the parties intended to be benefited nor will it assist the settlor to recover the estate (except in one case).
      Q.—Why is a beneficiary not allowed to enforce it?
      A.—Because it would be giving effect to an unlawful purpose.
      Q.—Why is the author not allowed to recover the estate if he has parted with it?
      A.—Because it would be helping him to take advantage of his own fraud.
   II. The one case in which the settlor allowed to recover the property although the trust is for an illegal purpose is the case where the illegal purpose has failed to take effect.
      Q.—Why is this exception made?
      A.—There are two reasons:—
      (i) The purpose being unlawful no trust arose—it being void *ab initio.*
      (ii) The trustee having paid no consideration has no right to retain the beneficial interest in the property which must, therefore, return to the settlor.
   III. The disabilities attaching to the author of an unlawful trust do not apply to his legal representatives—
      Q.—why?
      A.—Because they are not parties to the transactions.
5. The reason why section 85 recognises a trust in favour of legal representatives is because they are innocent parties having nothing to do with the creation of an unlawful trust.

Constructive Trusts arising out of unfair advantage:

1. Section 85.

1. The first case under this head arises where property is bequeathed under a will and the testator during his lifetime wanted to revoke the bequest and he is prevented from revoking it by coercion.

2. Under such circumstances the legatee takes the property not as a beneficial owner thereof but holds it as a trustee for the legal representatives of the testator.
3. The reason is that the legatee has taken unfair advantage by using unfair means. He cannot, therefore, be allowed to retain such an advantage.

II. Section 88

1. The second case arises when any person who is bound to protect the interest of another person by reason of his fiduciary relationship with the latter.
2. *Persons who fall in this category are:*
   (i) Agent and Principal.
   (ii) Partners in a firm.
   (iii) Guardian and ward.
   (iv) Trustee and beneficiary.
   (v) Executor and Legatee.
3. *The section says:*
   (i) That any such person who gains any pecuniary advantage by availing himself of his fiduciary.
   (ii) Enters into any dealings under circumstances in which his own interests are adverse to those of the person whom he is bound to protect and thereby gains for himself a pecuniary advantage
   Then,
   He must hold the advantage so gained for the benefit of the person whose interest he was bound to protect.
4. *Illus.*
   (i) A partner buys land in his own name with funds belonging to his firm. He must hold it for the benefit of the partners.
   (ii) A trustee, retires from his trust in consideration of a bribe paid to him by his Co-trustee. The trustee must hold the sum for the benefit of the trustee.
   (iii) An agent is employed by A to secure a lease from B of a certain property. The agent obtained a lease for himself. The agent must hold it for the benefit of B.
   (iv) A guardian buys up the Encumbrances on his ward's property at an undervalue. He can charge the ward only for the value he has actually paid for the Encumbrances.

III. Section 89

1. The third case arises where advantage is gained at the cost of another person by the exercise of undue influence.
2. This is dealt with in section 89. Section 89 says that such a person must hold the advantage for the benefit of the person who is the victim of such undue influence.
3. *This is subject to two limitations:* (i) The advantage must have been gained without consideration or (ii) The person must have had notice of the advantage having been gained by undue influence.

IV. Section 90

1. The fourth case arises where advantage is gained by a qualified owner availing himself of his position as such in derogation of the rights of other persons interested in the property.
2. This is dealt with in section 90. Section 90 says that such an advantage shall be held for the benefit of all and not merely for the benefit of the one who secured it.
3. *Subject to two conditions:* (i) The others must repay their due share of expenses properly incurred for securing such advantage. (ii) The others must bear proportionate part of their liabilities properly contracted for gaining such an advantage.
4. Cases covered are those of cotenants, members of joint family, mortgagee, *etc.*

V. Section 93

1. The fifth case arises where the advantage is gained by a creditor secretly.
2. Such a case generally arises when the creditors accept a composition from a debtor who is unable to pay his debts in full.
3. If it is found that one of the creditors who is a party to the composition has by arrangement with the debtor unknown to the other creditors gains better terms for himself he shall not be entitled to retain the advantage gained by him by reason of such better terms which have caused prejudice to other creditors.
4. The law will regard him as a trustee for the other creditors in so far as the advantage gained by him is concerned.

Constructive Trusts Arising out of Contracts

I. Section 86

1. The first case dealt with by the Trust Act under this head relates to a contract for the transfer of property.
2. It falls under section 86. Section 86 refers to a contract in pursuance of which property is transferred and where the contract is of such a character that— (i) It is liable to recession or (ii) It is induced by fraud or mistake.
3. The transferee of the property under such a contract shall hold the property for the benefit of the transferror.
4. This obligation arises only under certain circumstances and is not absolute:
   (i) The obligation arises only on receiving notice from the transferror that the contract is liable to recession or that it has been induced by fraud or mistake.
   (ii) The obligation will be enforced only on repayment by the transferror of the consideration actually paid by the transferee.

II. Section 91

1. Acquiring property with notice that is subject to a contract with another person.
2. In such a case the person who acquires the property must hold it for the person who had contractual rights in it.

3. This obligation is limited in its extent. It is enforced only to the extent necessary to give effect to the contract.
4. This obligation does not arise in the case of every acquisition of property which is subject to a contract. It applies only in the case of a contract which could be specifically enforced.
    1. Property bought for being held on trust for certain persons.
    2. A contracts to buy property from B and represents to B that the purpose of buying it is to hold the property on trust for C. B believing in the representation of A sells the property to A.
    3. A must hold the property for the benefit of C.
    4. This obligation is also limited in its extent—It is enforced only to the extent necessary to give effect to the contract.
    5. The contract may be to hold part of the property in trust for C. In that case the obligation will be enforced only to the extent of the property.

Constructive Trust Arising out of Merger of Two Personalities in one Individual.

1. Section 87

1. This provides for the case of double personality —one man but two persons.
2. Every contract, debt, obligation or assignment requires two persons.
3. But these two persons may be the same human being.
4. In all such cases, were it not for the recognition of double personality, the obligation or Encumbrance would be destroyed by merger.
5. Because no man can in his own right be under any obligation to himself; or own any Encumbrance over his property.
6. But with the recognition of the double personality this is possible.
7. In fact this is necessary.
8. *Illustration*— Debtor becoming executor. Executor is the owner in the eye of the law. Merger. Extinction of debt.
9. Section says no.

7

Classification of Administrative Action

Classification of administrative action is necessary to determine the scope of effect of judicial and legislative powers on administrative actions, such as judicial review of administrative actions is less restricted as compared to legislative action; mandamus cannot be issued against an executive body with respect to its legislative actions, *etc.*

The general sentiment amongst legal writers and lawyers is that any attempt made at classifying administrative law is not merely impossible but also redundant. Even a student of administrative law is made to delve into this classification since there is a complex amalgamation of the three wings of the government and projection of one wing on another.

Broadly speaking, administrative action can be classified into three groups:

1. Quasi-legislative or rule-making action
2. Quasi-judicial action or rule-decision action
3. Purely administrative action or rule application action

Let's understand this classification in detail:

QUASI-LEGISLATIVE ACTION

Legislature is the law-making branch of the State. Unlike constitutions like the Australian Constitution and American Constitutions, wherein this power has been explicitly demarcated, the Indian Constitution doesn't have express provisions for the same. Though the intention of the Constitution makers remains that legislative powers should be exercised by those in whom it's vested, the same cannot be fructified in lieu of the efficient working of the intensive form of the modern government.

Therefore delegation of powers to administrative bodies is a necessity. When any administrative body exercises the law-making power delegated to it, it's known as rule-making action or quasi-legislative action. When an instrument of a legislative nature is made by way of delegated powers, it's called subordinate legislation, being subordinate in the sense that the powers of the authority are limited by the statute which conferred these powers.

Quasi-legislative action is the function of subordinate legislation – making rules, regulations and other statutory instruments to fill in the details of legislative enactments in order to make the execution of laws possible. It imbibes in itself the characteristics which a normal legislation possesses.

According to Chinnappa Reddy, J. a legislative action has four features: 1. Generality; 2. Prospectivity; 3. Public interest; 4.rights and obligations flowing from it. These features help distinguish quasi-legislative actions from quasi-judicial action. However, this even in certain cases is not easy differentiation. In *Express New Paper v UOI,* the Supreme Court kept question whether the function of Wage Commission under the Journalists (Condition of Service) Act, 1956 is quasi-legislative or quasi-judicial was left open. However the power to fix the price of sugar was held to be quasi-legislative. Therefore it can be understood that the task of differentiating between legislative and administrative action is difficult and theory and impossible in practice.

If a particular function is termed 'rule-making' instead of 'judicial' it can have substantial effects upon the parties concerned. There is no right of being heard before the making of a legislation, whether primary or delegated unless provided by the statute itself. But since these actions are controlled by Parliament and the courts, Art 14 equally applies to these actions as well.

QUASI-JUDICIAL ACTION

Majority of decisions which affect individuals and private bodies come not from administrative agencies. Since administrative decision making is a by-product of intensive form of government, the traditional judicial system falls short in giving quantitative and qualitative judgements required in a welfare state.

Some jurisdictions use the term 'quasi-judicial' to describe administrative, adjudicatory or decision –making process.

However since the term quasi-judicial is somewhat vague, it's difficult to define and thereby falling to disuse. Administrative decision making may be defined as a power to perform acts administrative in nature but requiring some judicial characteristics.

On the basis of this various administrative functions have been held to be quasi-judicial by various courts:

1. Disciplinary actions against students.
2. Disciplinary proceedings against an employee for misconduct.
3. Confiscation under the Sea Customs Act, 1878.
4. Cancellation, suspension, revocation or refusal to renew licence or permit.

5. Determination of citizenship.
6. Deciding statutory disputes.
7. Power to continue detention of seized goods beyond a certain period.
8. Refusal to grant NOC under Bombay Cinemas (Regulations) Act, 1953.
9. Forfeiture of pensions and gratuity.
10. Granting or refusing permission for retrenchment.
11. Grant of permit by regional transport committee.

Donoughmore Committee on Minister's Powers (1932) had attempted to analyse the attributes of a true administrative action.

The Committee was of the view that a true judicial decision presupposes a lis between two or more parties and then involves:

1. Presentation of the case
2. Ascertainment of evidence
3. Submission of legal arguments
4. Decision which disposes of the whole matter by applying law and analysing evidence of the case

A quasi-judicial action involves the first two elements, may involve the third but never the fourth. Decisions which are administrative stand on a wholly different footing from quasi-judicial and judicial decisions since in case of administrative actions there is no legal obligation to consider and weigh submission or collect evidence or pass judgement. The entire discretion is left to the administrative authority. However this approach of the committee seems problematic because judges can't be regarded merely as norm-producing machines. Also in certain areas of administrative adjudication, such as tax, administration applies facts and laws similar to a judge. Hence it's wrong to relegate a mixture of administration to the virgin purity of judicial pronouncement to a quasi-judicial position. Also this classification will fail in the case of independent tribunals.

The distinguishing feature of a quasi-judicial proceeding is that the authority concerned is required by law to act judicially. In India judicial search for the duty to act judicially was made within the statute under which the authority exercises powers, sometimes in extraneous and remote material and the implications arising thereof. This doctrinal approach of both Indian and English Courts caused confusion and eluded justice in several cases. Finally to prevent this, the foundation for application of principles of natural justice was laid down by Subba Rao, J.'s dissent in *Radheshyam Kare v State of MP*. He wrote that incompetency carries with it a stigma and what is more derogatory than being stigmatized as incompetent to do their duty. It's not reasonable to assume that officials in a democratic country are allowed to be punished without being given a chance to be heard. This dissent became strikingly pronounced in *A.K. Kraipak v. Union of India.* Herein the Supreme Court held that though the action of making selection for government service is administrative, yet the selection committee is under a duty to act judicially. The Court observed that the dividing line between an administrative power and quasi-judicial power is quite thin

and being gradually obliterated. Going a step further the Supreme Court clearly held in *CB Boarding and Lodging House v State of Mysore* that it is not necessary to classify an action of the administrative authority as quasi-judicial or administrative because the administrative authority is bound to follow the principles of natural justice in any case.

PURELY ADMINISTRATIVE ACTION

The expression administrative act is a comprehensive expression, comprising of three categories namely, quasi-legislative, quasi-judicial and purely administrative. In *Ram Jawaya v State of Punjab* Mukherjee, CJ. observed that an exhaustive definition of executive function can't be devised. Ordinarily, executive power refers to the residue of governmental functions that remain after legislative and judicial functions are taken away. Thus administrative functions are those which are neither legislative nor judicial. A quasi-legislative act consists of making rules, regulations and the like, while a purely administrative act is concerned with the treatment of a particular situation. Therefore a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act includes the adoption of a policy, the making and issue of specific directions, and the application of a general rule to a particular case in accordance with the requirements of policy of expediency or administrative practice.

Accordingly:

1. In certain circumstances an order has to be published as a statutory instrument if it is of a legislative nature but not if it is of an executive (*i.e.*, administrative) character. But this test adopted for discriminating between the legislative and executive often appear to be pragmatic (is it in the public interest that this order should be published?) rather than conceptual.
2. It has generally been assumed that the courts will not award certiorari to .quash a legislative order Now that the courts no longer insist upon the need to characterize administrative decisions reviewable by certiorari as judicial in nature, it would perhaps be surprising, if they were to exclude from reach of the remedy administrative decisions of a legislative nature.
3. Courts may declare administrative act to be invalid for manifest unreasonableness, but it is not so clear that they have jurisdiction to hold a statutory instrument to be invalid for unreasonableness per se. However bye laws, a form of delegated legislation, have always been reviewable for manifest unreasonableness.
4. Authority to sub delegate legislative powers will be held to be implied only in the most exceptional circumstances. The courts are somewhat less reluctant to read into a grant of administrative authority to sub-delegate. It is, therefore, necessary to determine what type of functions the administrative authority performs

5. The duty to give reason for their decision does not extend to decisions in connection with the orders or schemes of a legislative and not of an executive character.

An administrative action is the residuary action which is neither legislative nor judicial. It has no procedural obligations of collecting evidence and weighing argument, it is based on subjective satisfaction where decision is based on policy and expediency. The principles of natural justice can be ignored completely when the authority is exercising "administrative powers". Unless the statute provides otherwise, a minimum of principles of natural justice must always be observed depending on the fact situation of each case.

The new judicial trend is to insist that even if an authority is not acting in a quasi-judicial capacity, it still must act fairly. The courts have propounded the proposition that whether the function being discharged by the administration may be regarded as 'quasi-judicial' or 'administrative', it must nevertheless be discharged with fairness. The courts are increasingly shedding the use of the terms 'quasi-judicial' and 'natural justice' and instead adopting the concept of fairness. The advantage of the new judicial trend is that procedural fairness can be imposed on all decision-making bodies without having to characterise their functions as quasi-judicial.

The aim of both administrative inquiry and quasi-judicial inquiry is to arrive at a just decision and "if a rule of natural justice is calculated to secure justice, to prevent miscarriage of justice, it's difficult to see why it should be applicable to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.

The concept of fairness has become a much more widely applicable procedural requirement. However, in spite of great expansion in the range of the administration where fair procedure is applied, the two concepts: quasi-judicial and natural justice-occur quite often in judicial opinions. For certain purposes the concept of quasi-judicial is still relevant. It therefore seems that the two concepts, 'fairness" and "quasi-judicial" would continue to hold the field. It is also possible to argue on the basis of case law, that whereas those acting in a quasi-judicial manner have to observe the principles of natural justice those acting administratively have only to act fairly.

A few actions can be noted for the sake of clarity:

1. Issuing directions to subordinate officers not having the force of law
2. Making a reference to a tribunal for adjudication under the Industrial Disputes act.
3. Interment and deportation.
4. Granting or withholding sanction to file a suit under Section 55(2) of the Muslim Wakf Act, 1954.
5. Granting or withholding sanction by the Advocate General under Section 92 of the Civil Procedure Code
6. Fact-finding action.
7. Requisition, acquisition and allotment.

8. Entering names in the surveillance register of the police.
9. Power of the Chancellor under the U.P. State Universities Act, 1973 to take decision on the recommendation of the Selection Committee in case of disagreement of the Executive Council with such recommendation.
10. Functions of a selection Committee.
11. Decision to extend time for anti-dumping investigation.

Administrative action can be statutory having the force of law or non statutory which are devoid of such force.

The bulk of the administrative action is statutory because a stature or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinate, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonably.

There is a general consensus amongst writers and lawyers alike that any attempt at classifying administrative functions on any conceptual basis is redundant. But sometimes even an administrative lawyer has to classify action into administrative, legislative, judicial and quasi-judicial. The fiction of quasi has been conveniently created to distinguish acts of the three organs. Although scholars decry such dichotomy as too artificial and superficial, such classifications are necessary especially between purely administrative and quasi-judicial. Also the concept of fair-play in administrative actions has discarded the distinction between the two, the fact still remains that in the present state of administrative law requires labelling of the functions and actions.

CLASSIFICATION OF ADMINISTRATION ACTION MEANING & CONCEPT

It is widely accepted that Government functions can be categorised as Legislative, Executive and Judicial. The Legislature is the law-making organs of any State. As per noted author on Administrative Law I.P. Massey in some written constitutions like the U.S., and Australian, the law-making power is expressly vested in the Legislature. However, in the Indian Constitution though this power is not so expressly vested in the Legislature, yet the combined effect of articles 107 to 111 and 196 to 201 is that, the law-making power can be exercised for the union by Parliament and for the States by the respective State Legislatures.

However, due to tremendous increase in the modern-day administrative functions, the legislative bodies cannot give that quality and quantity of laws which are required for the efficient functioning of a modern intensive form of government. So, the delegation of law-making power to the administration is become compulsive mechanism. When any administrative authority exercises the law-making power delegated to it by the Legislature, it is known as the rule making action or quasi legislative action.

Thus, generally an administrative action can be classified into four categories:

1. Rulemaking action or quasi-legislative action.
2. Rule Decision Action or Quasi-Judicial Action.
3. Rule Application Action or Administrative Action.
4. Ministerial Action or Pure Administrative Action.

So, it is essential to know which action administration is performing.

(1) *Wade and Philips:* It is customary to divide function of Govt. into 3 categories – Legislature/Executive/Judiciary.

(2) *Today Executive performed variety of functions:*
   i. Investigate;
   ii. To prosecute;
   iii. To prepare & adopt schemes;
   iv. To issue & cancel licenses;
   v. To make rules, regulations, bye laws;
   vi. To adjudicate or disputes;
   vii. To impose fine/penalties.

(3) *Schwartz:* Rightly said that rule making (quasi Legislative) and adjudication (quasi-judicial) have become the chief weapons in the adm. armoury— (French adm. Law)

NEED FOR CLASSIFICATION:

(1) Functions performed by Administrative authorities–
   i. Purely administrative;
   ii. Quasi-judicial;
   iii. Quasi-Legislative.

(2) To decide which functions performed by Administrative authorities is very difficult.

(3) No precise, perfect & scientific Test—Courts have not formulated any definite Test.

(4) Such classification is essential inevitable as many consequences flow from it.

ADMINISTRATIVE ACTION- MEANING, CLASSIFICATION AND CONTROL

MEANING OF ADMINISTRATIVE ACTION

Administrative action is the action which is neither legislative nor judicial in nature but only concerned with the analysis and treatment of a particular situation and is devoid of generality. It has no procedure of collecting evidence and weighing arguments but only based upon subjective satisfaction where decision is based on policy and expediency. It does not decide a right or wrong, neither it ignores the principles of natural justice completely though it may affect a right. Unless the statute provides otherwise, a minimum of the principles of natural justice must

always be observed depending on the fact situation of each case. Administrative action may be statutory, having the force of law, or non statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable.

CLASSIFICATION

Administrative action is classified broadly into three main organs of the government namely:

- Legislative
- Executive
- Judiciary.

In Jayantilal Amritlal Shodhan V. F.N Rana and Ors

Generally an administrative action can be further bifurcated into 3 parts:

- *Quasi-legislative action or Rule making:* It includes the rule making power and delegated legislation. Under this organ the administration performs the function of legislation in such situations where it is not possible for any legislation to legislate laws for the kind of conflicts arising.
- *Quasi-Judicial action or Rule decision action:* It includes such conditions under which the administration puts on the hat of the judiciary and confers the special power of taking decisions in cases where legal rights of individual are effected.
- *Purely administrative action or Rule application action:* This includes the actions which are neither legislative nor judiciary but purely administrative in nature.

In Article 14 and 21 of the constitution of India, the concept of natural justice is defined in case of consequences suffered in administrative action.

1. Nemo in propria causa judex, esse debet – no one should be made a judge in his own cause, or the rule against bias.
2. Audi alteram partem – no one should be condemned unheard.

In case of A.K. Kraipak v. Union of India, the Court held that in order to determine whether the action of the administrative authority is quasi-judicial or administrative in nature, one has to see the power conferred, to whom power is given, the framework within which power is conferred and the consequences.

CONTROL OF ADMINISTRATIVE ACTION

Administrative actions are controlled by courts in certain circumstances by issuing different writs and thus plays an important role in judicial control of administrative actions in India. Article 32(2) states the power of the Supreme court to issue writs in nature of-

WRIT OF HABEAS CORPUS

The expression "Habeas Corpus" in Latin means 'to have the body'. Under this writ, if a person is unlawfully detained, his friends or relatives or any person or any person on behalf of the prisoner or the prisoner himself can file an application in court under Article 226 in High Court or under Article 32 in Supreme Court.

Even a letter to the judge mentioning illegalities committed on prisoners in jail can be admitted. If he Court will be satisfied with the contents of the application, it will issues the writ and will produce an order calling upon the person who has detained another to produce the same before the Court, to let know the grounds of confinement and set the peron free if there is no legal justification and will award exemplary damages.

In the case of Bhim Singh v State of Jammu& Kashmir, AIR 1986 SC 494, the Hon'ble Court awarded the exemplary damages of Rs.50,000 for the wrongful confinement.

Sunil Batra v Delhi Administration, AIR 1980 SC 1579, is another landmark judgement, in which a convict wrote a letter to one of the Judges of the Supreme Court alleging inhuman torture and illegalities on a fellow convict.

WRIT OF MANDAMUS

The expression 'Mandamus' in Latin means "We Command". Mandamus is a Judicial order strictly following the rule of rule of Locus Standi. It is issued in the form of a command to any Constitutional, Statutory or Non-Statutory authority asking to carry out a public duty imposed by law or to refrain from doing a particular act, which the authority is not entitled to do under the law. It is an important writ to check arbitrariness of an administrative action. It is also called 'Writ of Justice'.

WRIT OF PROHIBITION

The expression 'prohibition' literally means 'to prohibit'. It is a judicial order issued by the Supreme Court or a High Court to an inferior Court or quasi-judicial body which forbids the inferior courts to continue proceedings and keep themselves within the limits of their jurisdiction.

The writ of prohibition can be issued on the following grounds:

(i) Absence or Excess of jurisdiction;
(ii) Violation of the principles of natural justice;
(iii) Unconstitutionality of a Statute;
(iv) Infraction of Fundamental Rights

WRIT OF CERTORI

The expression "certiorari" in Latin word means "to certify". This writ is a judicial order which confers power on the Supreme Court under Article 32 and High Courts under Article 226 of the Constitution to correct illegality of their decisions or otherwise quash it.

The grounds on which the writ of certiorari may be issued are:

(a) Error of Jurisdiction- Lack of jurisdiction or Excess of jurisdiction
(b) Abuse of jurisdiction
(c) Error of law apparent on the face of the record
(d) Violation of principles of natural justice.

CLASSIFICATION OF ADMINISTRATIVE ACTION – AN ACADEMIC OVERVIEW

In modern times, administration has assumed such extensive contours that it's almost impossible to define it. As the functions of the governments and its subservient administrative institutions are continuously expanding qualitatively as well as quantitatively, administrative law is also growing continuously. Thus, no complete and absolute definition of administrative law can be put forth.

If we take a closer look into the whole administrative process and ecosystem, various administrative functions are performed by the administrative organs and units so much so that they cut across the rigid bounds of classification of organs of the state and converges all the powers exercised by all the organs, *i.e.*, legislature, executive, judiciary, into one.

So basically, all the functions which are given upon the administrative bodies are performed by the means of administrative actions. In simpler words, administrative action is the action which is neither completely legislative nor strictly judicial in nature but concerns itself with the analysis of a particular situation and mode of proceeding upon it.

All the administrative actions under the sun could be broadly classified into 3 major categories. These are:

1. Quasi-Legislative actions
2. Quasi-Judicial actions
3. Purely Administrative actions

In India, over the time, the Supreme Court has settled down the position regarding the classification of administrative action by the executive.

The Apex body has, in one of its earlier judgements, observed that "*In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make decisions affecting the personal and proprietary rights of individuals which are quasi-judicial in character. In addition to these quasi-judicial, and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics*."

QUASI-LEGISLATIVE ACTIONS

Traditionally, legislation came to be understood as the sole proprietary of the Law-making body; Parliament, in India. However, with growth of complexity in the politico-societal sphere and with dilution of the concept of *laissez faire* –

in political as well as financial way, the advent of Quasi-Legislative actions or delegated legislation was inevitable. As the scope of the exercising of power by the executive wing has increased over the decades, the legislature cannot perform all its functions effectively. This demands divergence or de-centralisation of the legislative powers.

In India, though the intention of the Constitution framers was that the legislative powers should be exercised only by those who derive their mandate directly from the people and in whom it's originally vested, this cannot be a pragmatic approach in lieu of the efficient working of the complex and rather inclusive form of the modern governments.

But, firstly it is important to understand what actually delegated legislation or Quasi-Legislative action means. According to the great Jurist Salmond, delegated legislation is something that proceeds from any authority other than the sovereign power and is therefore, dependent for its continued existence or validity on some superior or supreme authority.

The term Quasi-Legislative actions are normally used in two different settings. The first one is the exercise of power by some subservient or subordinate body and the second one, the subsidiary rules and orders which originate from such subsidiary bodies themselves.

In one of the leading cases regarding identification of delegated legislation, *Express Newspaper Ltd. v. Union of India*, the Supreme Court of India pointed out the underlying difficulty in identifying the exact nature of administrative action and observed that, "*One of the greatest difficulties of properly classifying a particular function of an administrative agency is that frequently—and, indeed, typically— a single function has three aspects- It is partly legislative, partly judicial and partly administrative. Consider, for example, the function of rate-making.*"

However, Bhagwati J then also clarified by an illustration, *"Consider, for example, the function of rate-making. It has sometimes been characterised as legislative, sometimes as judicial. In some aspects, it involves merely executive or administrative powers. For example, where the Interstate Commerce Commission fixes a tariff of charges for any railroad its functions is viewed as legislative. But where the question of decision is whether a shipment of a mixture of coffee and chicory should be charged the lower rate established for chicory, the question is more nearly judicial. On the other hand, where the problem is merely the calculation of the total freight charges due for a particular shipment, the determination can fairly be described as an administrative act."*

Notable Jurist HWR Wade, upon this matter of distinction and identification, has remarked in his book, *"[they] are easy enough to distinguish at the extremities of the spectrum: an Act of Parliament is legislative and a deportation order is administrative. But in between is a wide area where either label can be used according to taste, for example, where Ministers making an order affecting a large number of people"*

QUASI-JUDICIAL ACTIONS

Just as the name suggests, the Actions having Quasi-Judicial nature involves adjudicating functions. Evolution of such Quasi-Judicial actions can be credited to the escalating pressure upon the judiciary in recent years that may result in the delay in justice. Such actions are administrative in nature but requires judicial control and are mainly performed by the executive or administrative bodies.

A Quasi-Judicial decision is one which has some of the attributes of a judicial decision, but completely not all. It involves resolving disputes by the administrative bodies or tribunals for special subject matters. Decisions which are purely administrative in nature stand on a wholly different pedestal from quasi-judicial as well as from judicial decisions and must be distinguished accordingly.

In the case of an administrative action, any kind of legal obligation upon the person charged with the duty of rendering a particular decision after considering and weighing submissions and arguments, or to collating any available evidence, is absent. The grounds upon which the authority acts, and the recourse which it takes to inform itself before acting, are left entirely to the authority's discretion.

In one of the leading cases of *Province of Bombay v. Khushaldas Advani,* Section 3 of Bombay Land Requisition Ordinance was in question, which reads as – *"If in the opinion of the Provincial Government it is necessary or expedient to do so, the Provincial Government may by order in writing requisition any land for any public purpose:*

Provided that no land used for the purpose of public religious worship or for any purpose which the Provincial Government may specify by notification in the Official Gazette shall be requisitioned under this section."

It was contended that under Section 3 of the Ordinance, the decision of the Bombay Provincial Government to requisition certain premises for the purpose of allocating it to a refugee from Sindh was clearly a matter of its opinion and is not liable to be tested by any objective standards of the Constitutional Courts.

It was observed in this case that the judicial functions can be said to start with the presentation of a case, ascertainment of the fact by means of evidence, disputes that involve a question of law, and finally the application of law to the concerned fact of the case.

Thus, a true judicial decision presupposes an existing dispute between two more parties, and then involves requisits:

1. The presentation of their case by the parties to the dispute;
2. If the dispute between them is a question of fact, the ascertainment of fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence;
3. If the dispute between them is a question of law, the submission of legal argument by the parties; and
4. A decision which disposes of the whole matter by finding upon the facts in dispute and an application of the law of the land to the facts so found, including, where required, a ruling upon any disputed question of law.

PURELY ADMINISTRATIVE ACTIONS

To start with, in the case of *AK Kraipak v. Union of India,* the Supreme Court of India observed that "*…in order to determine whether the action performed by an administrative agency is quasi-judicial or administrative, one has to see the nature of powers conferred, the powers are given to whom and under which framework and situations are they conferred."*

Also, in the case of *Ram Jawaya Kapur v. State of Punjab,* it was observed by the Hon'ble Apex Body that an exhaustive definition of executive function can't be devised. Ordinarily, executive power refers to the residue of governmental functions that remain after legislative and judicial functions are taken away.

After such observations, it is needless to say that distinguishing between Purely Administrative and Quasi-Judicial actions is a very cumbersome and difficult task. However, it can be reckoned that all those functions, which are neither Quasi-Judicial or Quasi-Legislative, are pure administrative functions.

Although such actions are purely administrative in nature, it must not be understood that these actions cannot escape the doctrine of Natural Justice. In the case of *In Re Pergamon Press Ltd.,* it was established that whether the function being discharged by the administration may be regarded as 'quasi-judicial' or 'administrative', it must nevertheless be discharged with fairness.

Such administrative actions can be statutory that having the force of law or non statutory are devoid of such force. Although the bulk of such action is statutory in nature and deriving their existence from a statute or the Constitution, in some cases may be non-statutory, such as issuing directions to subordinate authorities or bodies, but its violation may be visited with various disciplinary actions.

There is a general consensus amongst writers, lawyers and jurists that any effort of classifying or grading administrative functions on any conceptual or hypothetical basis is redundant. However, sometimes, as an administrative lawyer or a student of administrative law, has to classify actions broadly into administrative, quasi-legislative and quasi-judicial.

Thus, such classifications are purely academic in nature and do not have any bearing upon their application as these principles can't be applied in form of close and separated caskets.

ADMINISTRATIVE LAW

"Administrative Law" is an indispensable resource offering a comprehensive exploration of the legal principles governing administrative agencies and their functions within government. This authoritative text delves into the intricate dynamics of administrative processes, including rulemaking, adjudication, and judicial review, providing readers with a thorough understanding of the administrative state's operations. Written in clear and accessible language, the book covers foundational concepts such as the delegation of authority, procedural due process, and the limits of administrative discretion. It also addresses contemporary issues shaping administrative law, such as the role of administrative agencies in policymaking, the intersection of administrative law with constitutional law, and the challenges posed by administrative decision-making in a rapidly evolving regulatory environment. With insightful analysis and relevant case studies, "Administrative Law" equips students, practitioners, and policymakers with the knowledge and tools necessary to navigate the complexities of administrative practice. Whether used in the classroom or as a reference guide, this book offers invaluable insights into the legal framework governing administrative action, making it an essential addition to any library on administrative law.

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