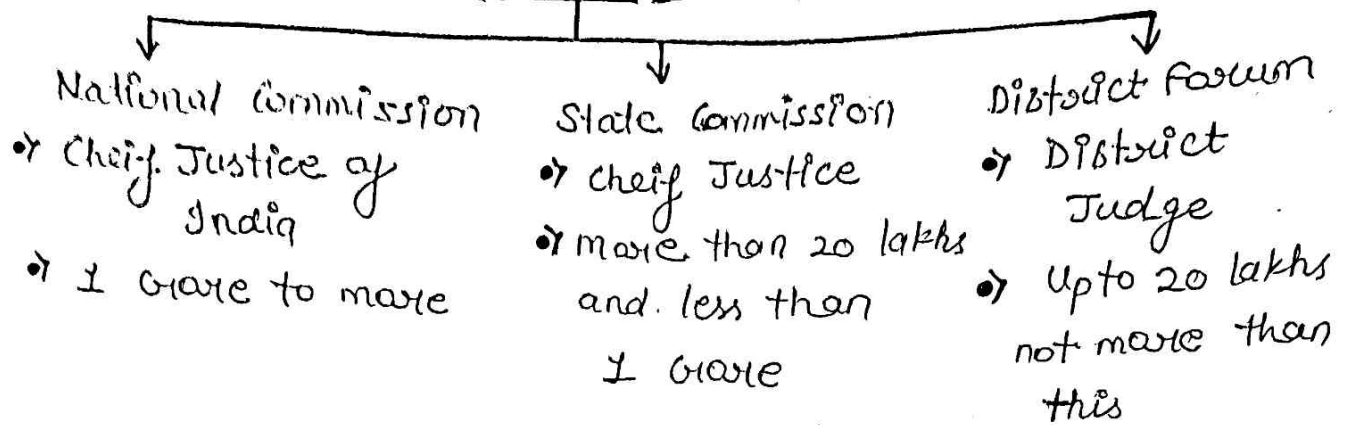


Consumer Commission



Natural Justice : From UK (England)

Case : Kihoto Hollohan v/s Sri Zaichullu, 1990.

Test whether a body is Tribunal or Act.

- * There should be a suit of affirmative nature where one party is in a favour and other is in a denial.
- * The disputes involves should be on the decision of rights and obligations of the parties.
- * The authority is called upon to deciding.

Practice & Procedure of Adjudication

Natural Justice → Audi Alterum → both the parties should be heard.

→ Rule against biased

maxims : Nemo in propria causa judex, esse debet

meaning → No one should be made a judge in his own cause or the rule against biased.

Two Types of Biasness:

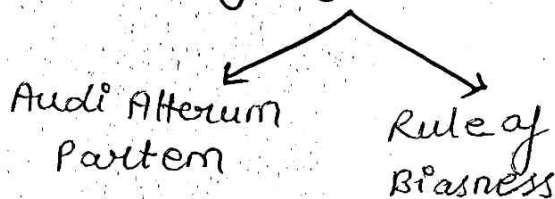
- 1) Personal Biasness: Personal Biasness arises from the certain relationships equation between the deciding authority and the parties which inclined him unfavourably or otherwise, on the side of one of the parties before him.

Case: Mineral Development Corporation Limited v/s State of Bihar, 1960 AIR.

m
land

 99 years → license for mining not for the land for the period of 99 years.

History of Natural Justice:



Case: Meenglas Tea Estate v/s workmen, 1963.

Case: D.K. Khanna v/s Union of India, 1973.

Case: AP SRTC v/s Satya Narayan Transports Private Limited, 1965.

Case: SP Kapoor v/s State of Himanchal Pradesh, 198

Definitions of Natural Justice:

- 1) According to Justice SM Sikri - Natural Justice is a rule of law and he considered it as a part of Natural Justice.

2) According to Wade & Binchall — Natural Justice is the natural sense of what is right and what is wrong.

Case° Vinnett v/s Barrett, 1985.

The Natural sense of what is right and what is wrong was envisaged under this case law, by Lord Esher, further in the case of°

Case° Hopkins v/s Smethwick Local Board of Health, 1890.

Queen's bench, the Natural Justice was defined and correlated with Fundamental Justice.

3) According to Lord Parker — Natural Justice as Duty to act fairly.

4) According to Justice Bhagwati — Natural Justice is as fair policy play in actions.

Scope of Natural Justice :

Case° Union of India v/s PK Roy, 1968 AIR.

External and scope of Natural Justice i.e.

Doctrine — Straight Jacket Formula.

⇒ Reasonable Suspicion of Bias° Tribunals are bound to follow the rules.

There is no specific case for Natural Justice, but if any case instituted, then court will require a Reasonable Suspicion of Bias, if any rights are infringing the Natural Justice or Natural Rights.

Case: Jeevan K Lohia V/s Dwiga Dutt Lohia, 1992, SC.
One of the arbitrators was terminated because he was not able to pronounce the judgment.

But the court has to check that the delivering of judgment should be universal, and not according to the people's mind.

Supreme Court observes that with regard to the Bias the test to be applied is not whether, in fact biased has affected the judgment but whether a litigant put reasonably apprehend that a bias attributable might have operated against him in the final decision.

Case: Manik Lal V/s Dr. Birmchand; AIR 1957.

Case: A.K. Kraipak V/s Union of India, 1969, Supreme Court.

Case: J. Moha Patra & Company V/s State of Orissa, 1984.

Some of the important cases of Natural Justice.

Case: AK Gopalan V/s State of Madras, 1950.

Justice Fazal Ali accepted & pronounced 4 essentials of the Concept of Natural Justice.

- Notice.
- Opportunity to be heard.
- An impartial Tribunal.
- Orderly course of Justice.

1)

Personal Biasness

Maxim: Nemo non-debet esse iudex in propria
causa quia non-potest esse iudex, at pass.

Meaning: No man ought to be a judge in his own case
because he cannot act as a judge and at the
same time be a party.

maxim: Nemo potest esse simul actor et iudex.

meaning: No one can be at once judge as well as jurist.
and a suitor at the same time.

2)

Pecuniary Biasness

⇒ The cause of actions are depend upon monetary laws.

Types of Natural Justice

i) Personal Bias →

- ♦ Family
- ♦ Friends
- ♦ Hostility

} Relationship to the party.

ii) Pecuniary Bias → Related to money.

Case: Jeejeebhoy v/s Assistant collector, Thana, 1965.

iii) Subject matter Bias →

Case: R v/s Deal Justices ex p (willing), 1881.

Justice and cruelty on animals, the person was
the head of the Tribunal he was hearing
officer so he cannot be biased for the judgements.

vi) Departmental or Institution Biased :

Case : Gullapalli Nageswara Rao v/s APSRTC

Case : Hari V/s Deputy Commissioner of Police, AIR 1956.

This was inquiry was against the constable the person from the committee given the judgement in favour of the constable.

vii) Pre-Convicted Nation Biased :

Example : If the judge listen the case, so it does not means that he does not know anything from prior.

viii) Doctrine of Necessity :

Case : In Reference Vijay Chandra Mishra.

Contempt of Court has been done, in this case.

In Natural Justice -

Doctrine of Audi Alteram Partem :

maxim : qui aliquid statuerit parte inaudita licet dicere, hard aequum jacerit.

meaning : He who shall decide anything without the outside having from heard although he may have set what is right will not have done what is right.

Case: R v/s University of Cambridge, 1923.

Doctor Bently Case.

License of a student was cancelled because, they does any violent act, court held that university cannot cancel the degree on the basis of violent acts.

Rule of Procedure in the Court:

i) Notice: Some are the basic elements of Notice:

→ Time

→ Place

→ Nature of Hearing

→ Legal authority under which hearing is to be held.

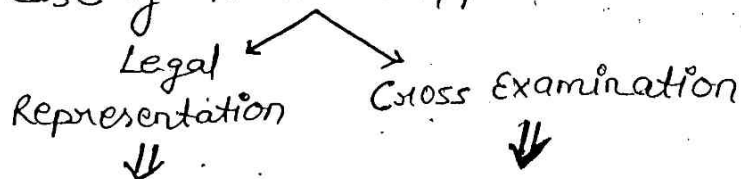
→ Statement of specific charges which the person has to go through or the person has to meet.

ii) He should be given time to know and collect the evidences against him.

iii) He will be provided with the chance of fair rebuttal.

iv) He will get the right to present the case and give evidence.

→ In the case of Rebuttal / Rebuttal



→ Parties have to present their case in the court with the documentary facts.

Both the parties can ask the questions from each other, and having a right of Rebuttal.

→ No evidence should be taken at the back of the other party.

with respect of the enquiry to be shown to the other party.

Reasoned Decision & Speaking order
(order speaks for itself)
Case : MJ Siwani v/s State of Karnataka.

The court pronounced that, when the rules direct recording of reasons it is assigned to and the condition precedent for a valid order.

1) Institutional Decision : UK Cases.

Case : Local Government Board v/s

In this case UK Government is very liberal in this, it says that it is tribunal and hearing officer can be change.

USA Case : If there is hearing officer will change a proper notice will be served.

2) Financial Incapacity to attend the Inquiry :

Case : Ghanshyam Das Shrivastava v/s State of Madhya Pradesh.

3) Decision Post Haste :

Case : City corner v/s P.A. Collector and Additional District Magistrate, 1976.

By declaring the haste (fast) decision so again decision was given and he get the license which was dismissed.

4) Third Party to the Dispute :

Case : Antonio SC^A v/s Richardson, 2006.
Sciencia

Third party will be also in dispute because there is his interest also.

⇒ Exception of Natural Justice :

i) Exclusion in Emergency : Principal of natural justice is excluded.

ii) Exclusion in case Purely Administrative matter :
No Natural Justice plea will be not applicable on it.

Case : Swadeshi Cotton mills v/s Union of India.

iii) Exclusion in case of Confidentiality :

Case : Malak Singh v/s State of Punjab and Haryana.
Case of Confidentiality

Case : Jawaharlal Nehru University v/s BS Narwal

You cannot question on an administrative,

Example : 75% attendance.

Because the rules are made of not for one but for all.

iv) Exclusion Based on Impracticability :

Case : R Radha Krishnan v/s Osmania University
AIR, 1974, AP 283.

Some students were claiming that their Natural Justice is being infringed because they were not the part of the mass copy in Exam centre.

Natural Justice → England and USA

institution & legal right infringement

Rule against Bias

Family Friends Hostility { खानदानी दुश्मनी }

within the relationship

- 1) Personal Bias
- 2) Pecuniary Bias

when subject matter is deciding factor in judgement

Case: APSTRC case (Cooperative society).

- 3) subject matter Bias

what is the subject matter in the cases.

- 4) Departmental / official Bias

For the employer and employees

- 5) Pre- Conceived notion

For the judges, when they pre-conceived or pre assume anything.

⇒ Judges are not blank sheet of paper.

Judges have some personal knowledge regarding the person's normal life.

Acti Alteram partem ⇒ unheard

(Acting judicially)

Rule of Procedure in Court

- i. Right to Notice.

Time, Place and Nature

- ii. Legal authority to be heard the one who is calling you have that much power to call you.

- iii. Statement of hearing.

- iv. Right to know the cases, evidence against him

- v. Right to present and rebutt your case.

- vi. Right to Rebuttal

Cross examination

Legal Representative

- vii. No evidence should be taken at the back of the party.

- viii. Report of the enquiry to be shown to the other party.

- ix. Institutional decision. The one who hears must decide.

It is "American Term"

viii. Financial Incapacity in attending the ...
Case: Ghanshyam Das Srivastava v/s State of Madhya Pradesh AIR 1973.

ix. Decision Post Truste.
(अवस्थापना के बाद निर्णय)

Donot rush over the decisions.

* Should the third party to the dispute be heard?



Case: Antonio S. C. Pereira v/s Ricardina, 2006.

xi. Post decisional hearing.

Should have to give the reasons before stop anyone to do anything?

Exceptions to Natural Justice:

vi) Exclusion in Certain Interim Preventive Actions:

when case is not decided yet so no student is allowed to study in college until the decision is out.

Case: Abhay Kumar v/s K. Srinivasan, AIR 1981.

vi) Exclusion of Legislative Actions: No person can claim for any

law that this is not in my favour so change it.

Case: L.N.M. Institute of Economic, Development & Social Change v/s State of Bihar, 1988.

⇒ Where no rights of any person is infringed.



Natural justice applies here.

vii) Exclusion In Case of Statutory Exception Necessity :
Case : Chandanlal Sahu v/s Union of India, 1990
Bhopal Gas Tragedy

- Government were bound to pay the compensation.
- In case of other party the government is liable to pay.
- Here, the Doctrine of Necessity applies.

viii) Exclusion In Case of Contractual Agreement : If you are contracting in any sense then he cannot claim Natural Justice.

Case : State of Gujarat v/s M.P. Shah Charitable Trust, 1994.

ix) Exclusion in case of Government Policy Decision :

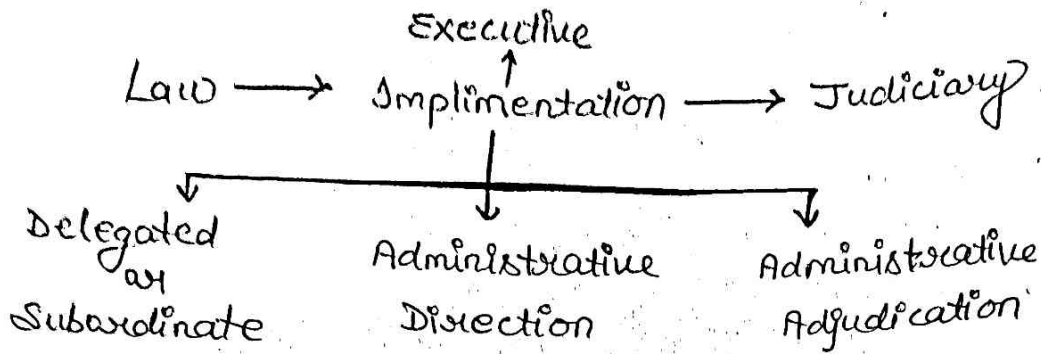
- You cannot question any government policies on the case of Natural Justice.

⇒ Exception : On the basis of personal ground for government policy no one can claim Violation of Natural Justice.

Example : mid day meal.

Case : BALCO Employees Union v/s Union of India, 2002
workers said that there are some policies which has to be change because it is a detrimental in nature but, court said that if there is a circumstances of that policies being Arbitrary and illegal in nature then only it may be changed.

Administrative Discretion



* Excessive Delegation ⇒ Tribunals.

Constituted under any specified respective labour Tribunal.

* Principles of Natural Justice ⇒ Rule against bias
 ⇒ Rule of fair hearing.

Useless Formality Theory

Only one can cause of action, one authority should be there.

<u>Henry clause</u>	<u>Droit Administrative</u>	<u>Rule of law</u>
England Employee Insurance Act, provisions can be amended Parent Act → where they need it can be amended for the demand of time, because it comes in arbitrariness.	From France originated by Napoleon * Council d'etat * Dual Court system ordinary courts Tribunals ordinary courts or government * Rules or regulations	Pre dominance of legal spirit Supremacy of law Equal protection of law or Equality before law.

UNIT-IV

Administrative Discretion :



Choosing amongst various options
{Amount of power to be used under in any authority provided}

Meaning of Discretion : choosing from amongst the various available alternatives with reference to non-predetermined criteria.

What are the words in Drafting Techniques :

- i) Adequate {if you think fit / if you deems fit}.
- ii) Beneficial.
- iii) Appropriate.
- iv) Competant.
- v) Prejudicial to safety.
- vi) Detrimental.
- vii) Public purpose.
- viii) Expedient.

Two types of Delegation (Control over) :

i) Control at the stage level of Delegation of Discretion.

ii) Control at the stage of Exercise of Discretion.

① {Judicial Behaviour & Administrative Discretion}

- * If a person is doing his work at his authority and position it is exercise of discretion.
- * If a person is transferring his duty or work with a authority to some other person it is a delegation of discretion.

Article 14 → Right to Equality :

Case: State of West Bengal v/s Anwar Ali Sarkar
AIR, 1952, SC.

Judiciary confers to the state government if you have any case which needs speedy trial it will directly go to the special courts, it was wrongly exercised. the delegation because it was clear that there is a hierarchy of the courts and things should be run properly.

Case: State of Punjab v/s Khemchand.

It was held that a person can not use their authority in a arbitrary manner because one of the DM in Punjab lend a private tourck of the person Khemchand and after that did not pay him sufficiently.

11) Article 19 → Right to Freedom :

Case: Himmatlal K. Shah v/s Commissioner of Police, 1973
AIR 1973, S.C.

In Bombay Police Act, 1951, a police have a right to give or denial the permission for the gathering of people in streets, or the public meeting, it was

held that even if you have a discretion but you are answerable and reasons should be valid.

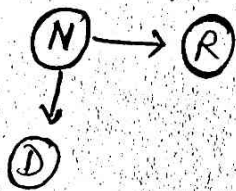
2) At the stage of Exercise of Discretion :

1) Formulation regarding the Exercise of Discretion are grouped into two broad generalisation :-

- Authority is deemed not to have exercised its discretion at all or failure to exercise discretion.
- Authority has not exercised its discretion properly or excess or abuse of discretion.

1) Doctrine :- "delegatus non potest delegare"

meaning - A delegatus cannot delegate his power further.



Case :- Purnabpore Company Limited v/s Cane Commissioner of Bihar, AIR 1970 SC 189

You are not authorised to use your power in a wrong way. 99 villages which were restricted by the plaintiff to manufacture sugarcane by the demand of CM.

- 1) Improper use of Discretion (Abuse) - India (Eng. law)
- unreasonableness of the Discretion - USA (codified) (Exercise)

Case: Indian Railway Construction Company Limited v/s
Ajay Kumar, 2003 45CC579.

If you are the authority to do any work you should have to entertain that authority.

How to follow the Discretion (Rule making) :

1) Delegated Legislation

↓
Subordinate legislation

Because Supreme Central Authority delegated its power to the sub-ordinate Authority - (State) to (sub-ordinates)
↓
sovereignty

1973 to 1977 the first legislation was delegated.

302 new rules and regulations were made

↳ new laws by Committees, Councils, Panels.

Scope of Delegated Legislation :

* Wide General Powers — For small small acts, parliament or legislation will delegate its power to its sub-ordinates, not to everyone it can delegate its power but to its own sub-ordinates, because they don't have so much time to make laws on small powers so they widening their general powers.

* Taxation — All the laws related to taxation are made by the sub-ordinates

* Power to Vary Acts of Parliament : Amendment related rules, it may amended because if any laws does not have effects

Administrative Discretion -

① Judicial Behaviour / Control

i) Delegation of Discretion -

* Right to Equality.

* Right to Freedom.

ii) Exercise of Discretion -

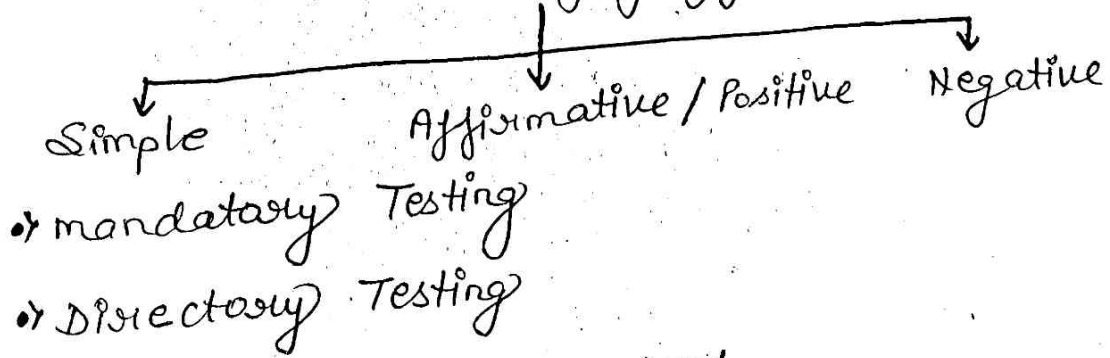
* Failure to Exercise.

* Excess or Abuse of Discretion.

② Legislative Control

i) Direct Control : Parliament make the laws directly, through two legal tests :

⇒ Special Control - By special authority or laying off.



⇒ Simple / General Control

2) Indirect Control

in the society so it may be amended by the sub-ordinates but it will only be amended declared by the Parliament. And Henry clause VII will always be remembered.

* Technicality - The who are law maker are the only person or department who knows that how to and where to make rules regarding to what.

* Emergency Powers - By some natural emergencies in the society not as a country. That we have to quick change the rules as per the requirement of the society.

Types of Delegated Legislation:

1) Title Based : while making any Act;
Rules, Regulations, Act enact
↓
written in General clauses Act, 1897.

- Rules : Theory.
- Regulations : Implimented.
- Orders : Quasi or Judicial, legislative decisions.
- Bye laws : Rules made by semi-governmental legislations.
- Directions : * Central Government asked to State Government to make laws regarding some regulations by some legislation.
* central government if doing anything then till advised state government will not interfere in it.

- ① Constitution gives power to central government to give directions to the state government.
 - ② Discretion is a term of administrative rule making under the authority of law or rules made there under.
- Directions

- Schemes: Situation where law authorises administrative agencies to lay down the work.

Framework within which the detailed administrative actions is to proceed.

- 2) Discretion Based / Condition Based: under the option of the authority to do any work.
- ↓
- Contingent / Conditional legislation

Case: Field v/s Clarke 143 US 649, 1892.

President have the discretion to give free to the citizens, he negligently distributed some of the products which leads the country at downfall, Congress/Court held that you cannot do any arbitrary act.

- 3) Purpose Based Legislation:

- Enabling Acts: U/GC makes rules or Acts to present and manage, but the management needs to present it in such a manner.
- Extensions and Applicability of Acts:
- Dismissal or suspension of any law:
- Alteration of Acts:
- Taxation: Taxing acts.

4) Authority Based Classification :

↓
Sub delegation

If you delegated your power it should be delegated to the superior authority.

Case: A.K. Roy V/s State of Punjab, 1986.

Maxim - "delegatus non potest delegare."

You cannot delegate your power / authority until it specifically mentioned in Parent Act.

5) Nature Based Delegation :

↓
Normal Delegation Exceptional Delegation

↓
Positive
Delegation

where the provisions of the enabling acts are mentioned clearly.

↓
Negative
Delegation

→ where the things are not clearly mentioned and have some exceptions for the acts.

⇒ Exceptional Delegation

- ↓
- ✧ Power to legislate on matter principle.
 - ✧ Power conferring such a wide discretion which is almost impossible to know the limits.
 - ✧ Power to amend the rule of parliament.
 - ✧ Power to make rules without being challenged in the court of law.

Judicial Control Doctrine of Ultra vires

It means beyond the scope, power or authority of any company, corporation or statutory body.

It is under Judicial Control by :-

i) Substantive Ultra vires :- where the legislature is in excess the validity of power conferred on the legislature by the constitution, the legislature is said to be ultra-vires the constitution.

Constitution → written and codified (substantive law) when rules of constitution will exceeds the power and make some guidelines it is Substantive ultra vires when sub-ordinate legislation goes beyond the authority of delegated legislation, then it is said to be, substantive ultra vires.

ii) Procedure Ultra vires :- An Act if done by someone who is acting beyond his or her jurisdiction.

Circumstances of Substantive Ultra vires

* If the parent Act is unconstitutional.

Case :- Chintaman Rao v/s State of MP, 1951 SCR 759
Trade of Bidi, the reason behind that trade is unconstitutional then Deputy Commissioner was not sued.

* Delegated legislation is ultra vires the constitution.

Case: *Abi India v/s Navjesh mirza*, 1991.

No AID hostesses will be ^{not} more than 35 and after 4 years you cannot marry or having a baby. Court held that you can not control the personal life or personal liberty of any person.

Case: *DS Nakara v/s Union of India*, 1983.

If a person retired at a particular date of time before he got higher pension than a person who retired after at a particular date of time.

* Delegated legislation is inconsistent with parent Act

Case: *Indian Council of Legal Aid and Advice v/s Bar Council of India*, 1955.

The rule is provided of after 45 years no person will be allowed to appear for the Bar of Council of India to give an exam for Advocate. It was denied by the Supreme Court.

* Where delegated legislation includes ouster clause.

⇒ Any law or provisions which are ~~not~~ related to judicial review it can not be asked.

* Where delegated legislation is malafied (Bad intention).

Case: *Indian Express Newspaper Private Limited v/s Union of India*, 1985.

unreasonableness is the ground for Judicial review.
Something was irrelevant was mentioned in newspaper.

* where delegated legislation is arbitrary.

* Excessive delegation.

⇒ No person can delegate his power further.

"No delegated power can be further delegated, until and unless the Parent Act is itself permits or authorises."

Procedural ultra vires :

* Publication

* Consultation - in (Judicial)

Laying on the table - in (Parliamentary)

Publication

Previous

Post

Case: Harla v/s State of Rajasthan, 1951, AIR 467.

In this case, legislation was passed by the council and was made to know to general public. Honorable court in this case held that "publication of laws is important."

Previous Publication -

Things needs to be published before its final.

Post Publication -

maxim - Ignorantia juris ^{non} excusat.

Ignorance of law will not be excuse.

② Legislative Control

- * Laying on the table.
- * Scrutiny Committees.
by Lok Sabha and Rajya Sabha

③ Parliamentary Control

- * Direct General Control.
(Executives are liable for this control)
 - a) Debate on the Act regarding alteration, amend.
 - b) Questions and notices.
 - c) Through moving resolutions.
 - d) vote for grant.
 - e) Through a bill passed by private members, in any parent act.
- * Direct Special Control.
 - a) Laying on the table. (UK Technique).
↓
Various forms -
 - i) Laying with no further directions.
 - ii) Laying subject to negative resolution.
 - iii) Laying subject to affirmative resolution.
 - ⇒ Laying in draft to subject to "negative resolution".
(within 40 days)
 - ⇒ Draft shall have no effect unless approved by the house for laying in draft subject to "affirmative resolution".
- * Procedural Control.

a) Drafting → Instructions.
by consultation with affected persons → citizens.

Drafting
↓
within the authority (Instructions) must possess clear language

Judicial Review → SC and HC

Sub moto → can do null and void if violate any FR or constitutional provision.

372(1) → Be Constitution

136, 32, 131 to 136, 143, 226 and 246

Doctrine of Reasonable Classification Test:

To testify the reason behind.

classification should be reasoned.

Case: Ramkrishna Dalmia v/s Justice Tendolkar.

High court ruled that where a government might appoint a commission to investigate a case where it is expressly or impliedly essential.

Doctrine of Test of Proportionality:

to check and balanced of the decision of classification reasonable Test.

Case: Hind Construction Company v/s workmen

Employer terminated some employees because they took holidays and the reason was not justified. Court held you should have penalised them not get them terminated, just because the reason was not justified.

Ombudsman — Lokpal
↓
Lokayukta

A watch dog

He was appointed by the President with the consultation of the Chief Justice of India.

Definition: इषित प्रशासन
It deals with complaints of mal administration, corruption, administrative inefficiency, negligence and other related concepts.

History: Institution of Ombudsman was first developed in Sweden in 1809, later on it was copied by Norway and New Zealand in 1962.

Characteristics: * They are an independent and non partisan officer of legislature whose work is to supervise the administration.

* He deals with specific complaints from public against administrative injustice.

[*] He has the power to investigate, criticise and report back to the legislature, but not to reserve administrative action.
(to stop someone)

Position of ombudsman in India :

In all India lawyers conference held in 1962 Sir M. Sitaland gave the idea to establish an institution similar to that of an ombudsman in 1966 administration reform commission passed this institution.

Reason behind the Institution -

- 1) India being a democratic country it has an obligation to satisfy citizens about its functioning and to offer them adequate means for the redressal of their grievances.

Appointment :

President + CJI → Union



Governor + CJ of High Courts → Lok Ayukta.

- 11) Existing institution of Judicial review and parliamentary control also play a very important role in administration over ombudsman.

Objectives of Institution of Ombudsman :

- 1) Complainants need not give evidence or prove the allegation before the ombudsman as he himself acts as petitioner's lawyers and will make an inquiry without publicity and formality.
- 2) Complainants need not to pay court fee.

- 3) Ombudsman has no power to make an order decision, but can only recommend the concerned department to take follow-up actions.
- 4) If the concerned department does not follow the instructions or do not take any actions or steps on his report then, the ombudsman can report the matter to the parliament.

⇒ Ombudsman is called Parliamentary Commissioner in England. In India Lokpal and Lok Ayukta.

Note : Ombudsman consists of following :

- Common wealth Ombudsman.
- 3 Deputy common wealth ombudsman.
(Australia's ombudsman)

⇒ The first Lok Ayukta appointed in Uttar Pradesh in 1970.

⇒ Administrative reform commission formulated the principle recommended the office of Lokpal :

- 1) It should be demonstrably impartial and independent.
- 2) Their investigations and proceedings should be conducted in private and informal character.
- 3) Appointment should not be on political basis and interference.
- 4) Status should be equivalent with the highest judicial functions in India.
- 5) He should deal with matters involving and acts of injustice, corruption and favouritism.

Imp:

- 6) According to Lokpal Bill 1977, the Lokpal is to be appointed by President in consultation with CJI and with the speaker of Lok Sabha including leader of opposition.

Imp: Lokpal Bill 1977 $\Rightarrow$ CJI + Speaker of Lok Sabha + Leader of opposition.

- He is appointed for 5 years.
- He cannot be reappointed for more than 1 term under the government be given to him after 1 term.
- He can be removed from his office during his term only on the enquiry which is to be held by a sitting or retired judge of Supreme Court in the same manner with reference to the provision/procedure, provided under Judges Enquiry Act, 1968. By which the enquiry report is to be placed before the house of Parliament and each house has to pass an address for his removal by a majority of its total membership and the majority is not less than $\frac{2}{3}$ rd of its members present and voting.
- Section 6 of Lokpal and Lok Ayukta Act, 2012. Section 6 talks about term (5 years) till the age of 65-70 years.

Corporation, State Electricity Board etc.

Categories :

a) Government Departmental undertaking -

Example : Post office, telegraphs, railways,
government through public delegate powers.

b) Governmental companies -
are also known as Non-Statutory Public under-
-taking.

Section 617, under companies Act provides that a
Government company means any company in
which not less than 51%.

How Government Controls Government Companies :

a) The Auditor of the company is appointed by
central government on the CAG.

(Comptroller Auditor General)

b) If central government is a member of a government
company he can insist for an annual report on
the working and affairs of the company to be
laid before both the house of parliament with
the copy of audit report and respective comments
provided by CAG on it.

c) CAG have power to direct the manner in which
company's accounts must be audited and to
conduct a supplementary or test audit by any
authorised person on this behalf.

Public Corporation :

Definition : It means a body created by or under a statute and interested with various functions of public importance and they are owned and controlled by the state.

Although an artificial person they possess entirely separate and distinct from the individuals who has completed it along with continuous existence and succession, they possesses the capacity of taking, holding and conveying property, entering into contract, suing and can be sued.

Note : A corporation is defined in Dhanova v/s Municipal Corporation, Delhi (AIR 1981 SC 1395), as

A corporation is an artificial being created by law having legal entity entirely separate and different from the individuals who composed it with the capacity of continuous existence and succession not withstanding changes in its membership.

Characteristics of Public Corporation :

- Public corporation whether created by statute or under possession of the same.
- ① It should be created by or under a statute.
- ② It operates an activity on behalf of the government in public interest.

- ③ Public corporation possesses an independent corporate personality by which they have a common seal and possesses perpetual succession. The most important thing about this is, it has the power to sue and can be sued.
- ④ It can possess, hold and dispose of property by its corporate name.
- ⑤ Depending on the provisions of the statute public corporation is created as such by in large as an autonomous body, corporation is its own head/master in day to day management.
- ⑥ The constituent statute may delegate rule making power to the public corporations.
- ⑦ Public corporation created by or under the statute comes within the definition of state under Article 12 of the Indian Constitution and therefore, it is subject to the writ jurisdiction of Supreme Court and High Courts, (Article 32, 226).
- ⑧ Employees of a public corporation do not have a civil post under union or states.
- ⑨ A public corporation is not a "citizen" but a legal entity, therefore, it cannot claim the benefits of those fundamental rights which have been guaranteed to the citizen.
- ⑩ Since, public corporation is neither a department

not an organ of the government it can not claim the privilege of the government to withhold documents.

Classification of Public Corporation

1) Commercial Corporation: they are financially self supporting earn profits and at the same time they are concerned with the public interest.

Example: Indian Airlines corporations, Hindustan Machine Tools Limited, Air India and Air Indigo.

2) Developmental Corporation: they are those which encourage the national progress by undertaking development work in the country, they are not generally commercial, they seek financial support from government.

Example: ONGC (Oil and Natural Gas Commission), FCI (Food Corporation of India, National Research Developmental Corporation Limited, Rehabilitation Housing Corporation Limited.

3) Social Service Corporation: they are also not commercial oriented they are used to provide essential service to the public it is a service oriented corporation. The objectives of these corporations are to provide services to the community economically and efficiently having

primary aim to life to earn profit.

Example : Transportation, Energy, Communications, Electricity and others.

Housing Boards, Employees estate insurance corporation.

4) Financial Corporation : they advance loan carry on to wit or business provides credit for institutions and give financial assistance on reasonable terms to displaced person for trade, business or industry; among them some corporations collect premium or insurance life property.

Example : RBI, Union Trust Bank, Film Financing Bank, LIC, Reconstruction Banks.

Difference Between:

Government Departmental Undertaking (GDU)	Public Corporation/ Statutory Corporation	Government Company
1) It is purely owned and run by government.	It is an instrument of state which is created by an enactment.	It is a company in which not less than 51% of the share capital is held by the central/state govt.
2) It is not an autonomous body.	It is purely under the control of government and ministry concerned.	It is an autonomous body. It is a self financed.
3) It is administered by government orders.	It is administered and directed by the statute.	It is administered as per "Articles of Association and memorandum of

Association."

4) It does not possess commercial qualities.

It is purely commercial.

It has the characteristics of private commercial company.

5) It is a part of an executive.

It has its own independent administration.

It has its directors to administer.

6) In case of tortious liability - Article 300 of the Constitution applies and the govt. can claim privileges and in certain cases.

For tortious liability no provisions applies.

No such provisions applies here also.

7) Article 299 (Contractual liability of the state) applies to Government Departmental undertaking (GDU).

No such provisions are applicable.

No such provisions are applicable.

8) It is not a juristic person it can sue or can be sued in the name of ministry/ minister/ secretary concerned.

It has a separate juristic person. It can be sued and can sue in its name.

It has a separate juristic personality.

9) The employees are civil servant.

Except a few officers such as: MD, chairman, and related designation.

Employees of a company are employees of a

10) Industrial Employment (Standing Orders) Act, 1946 does not apply to GDU's.

11) The service problems between the employees and the GDU's shall be solved only by central or state administrative Tribunal.

12) Section 123 of Evidence Act i.e. privilege of communications of state affairs; it can be invoked by the government department.

13) Example: Railways, Postal and Telegraph or Telegram department etc.

The IE(SO), Act, 1946 shall apply to the public corporation.

The labour problems between the employees and public corporation shall be settled by the way of Industrial Tribunal and labour courts.

Section 123 of Evidence Act, shall not apply to the public corporation.

Example: ONGC, Air India, LIC, etc. (corp.)

private firm and not a civil servant.

IESO, Act, 1946 shall apply to the government company also.

The labour problems between the employees and government company shall be settled by the way of Industrial Tribunal and labour courts.

Example: The National Construction Company Limited. (Ltd.)

Rights & Liabilities:

Rights of Public Corporation:

Being a legal person corporation possess following rights

- * It has perpetual succession and a common seal.
 - * Being a legal person it can sue and can be sued.
 - * Not being a citizen it cannot claim benefit of the fundamental rights guarantees only to the citizen.
- ⇒ (Article 15, 16, 19, 29 and 30) other than these all the other Articles or rights are also for the Public corporation.

Liabilities of Public Corporation:

Case: Cope v/s Thames Rly Company, 1849.

Case: British Transport Corporation v/s Westmorland Country Council, 1957.

If any requirement has been laid down in the constituent statute or in the rules, regulations or by laws of the corporation they must be complied with.

Case: Lakshmanswami v/s LIC, 1963.

The contract which is ultra vires is void ab initio and cannot be ratified.

↑
i) Contractual liability:

2) Tortious Liability : It can be sued for the Torts committed by its servant provided the act is within the powers of the corporation and that it could be actionable if committed by a private individual.

Case : Lakshmanswami v/s LIC, 1963.

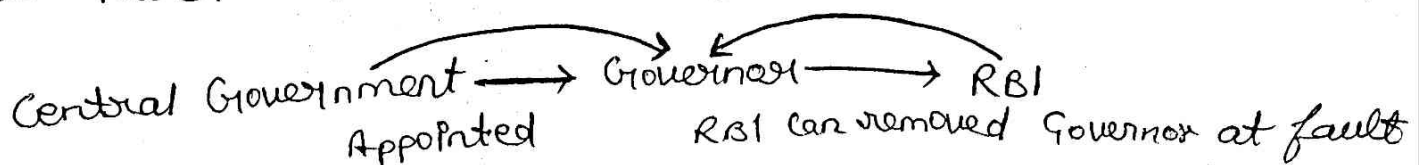
3) Criminal Liability : Corporation may incur liability for an offences committed by their employees/servants during the course of employment.

Control over Public Corporation

a) Parliamentary Control : At the initial stage the control is exercised at the time when the Bill proposing creation of the statutory corporation is introduced for the discussion in the house.

b) Government Control : In order to ensure that the affairs of statutory corporations are conducted in the best interest of society,

- Power of Dissolution, Removal and Appointment.
- Power to issue Directions.
- Power to control finance.
- Power to institute enquiry.



c) Judiciary Control : A statutory corporation is a estate within the meaning of Article 12 of the Indian Constitution and therefore, subject to the writ jurisdiction of Supreme Court and High Court.

Case: In Corporation of Nagpur v/s Nagpur Electric Light and Power Company.

A mandamus writ was filed for the public utility to supply the lights. In the matters of suit the statutory corporation is not entitled to any of the privileges and immunities of the state.

d) Public Control :

* Mass media - They play a significant role

* Consumer Organisation & Council - Consumer Protection Act, 1973.

* Interest Representation.

* Consumer Redressal Forum.

Case: RD Shetty v/s International Airport Authority, 1960.

Administrative faults:

- Ombudsman.
- Right to information. (2005)
- Central vigilance commission.

Primary goal of RTI is: To empower citizens promotes openness and government accountability in government operations. Sometimes, it is also used to combat corruption and make our democracy truly functional for the people.

What type of information that can be requested by the RTI:-

- ① Information related to government authorities that government can disclose to the parliament.

Exemptions / Exceptions:

- i) Information related to internal securities.
- ii) Relations with foreign countries.
- iii) Matters relating to IPR.
- iv) Fundamental cabinet discussions.

⇒ Objectives of RTI:

⇒ RTI Act, 2005:

3/ 2(h): Public Authority - it means

1) All authorities and bodies under union, state ^{govt} or local body.

2) Civil societies that are ^(not completely) substantially funded, directly or indirectly by the public funds.

S/ 4(1)(b): Government has to maintain and pro actively disclose informations.

S/ 6 ~~(4)~~: Prescribes a simple procedures for securing information.

S/ 7: Prescribes a time frame for providing informations by PIO's. (Persuance of Indian origin).
↓ ↓

PIO means: ① Citizen of a foreign origin except a National of Pakistan, Afghanistan, Bangladesh, China, Iran, Bhutan, Sri-Lanka & Nepal. who at any time ~~had~~ held an Indian passport or ② who or either of their parents, grand parents, or great grand parents who was born and was permanent resident of India as defined in "Government of India Act, 1935" or ③ who is a spouse of citizen of India.

S/ 8: only minimum information exempted from disclosure.

S/ 8(1): mentions exemptions against furnishing information under "RTI Act".

S/18: provides for disclosure of information exempted under the "Official secrets Act, 1923" (1923)

S/19: Two tier mechanism of appeal.

1) The first appeal lies within the public authority itself which is made to an officer, designated as the first appellate authority by the concerned public authority?

2) ~~The second appeal will lie with the~~ first appellate authority happens to be an officer senior in rank

3) The second appeal lies with the central information Commission (CIC).

6 (CP10) Central Public Information officer
(First appellate authority senior officer)

7 S/20 Provides penalties in case of failure to provide information. (on time, correct), (in complete, misleading or distorted) it should not be.

S/23: lower courts are barred from entertaining suits or applications. whereas, the const jurisdiction of High Court and Supreme Court remains unaffected.

Difference between RTI and Right to Privacy?

RTI

It provides FR to any person to access information held by government bodies.

RTP

RTP laws grant individuals a FR to control the collection of excess to and use of personal information about them i.e. held by government and private bodies.