Subject :

Administrative Law

Paper : 3.2

10 YEARS CELEBRATION

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1.1. Definition of administrative law

Administrative law is the outcome of the ever increasing socio-economic functions of the State and the increased powers of the Government. It is a harsh fact of life that the phenomenal growth of administrative power as a by-product of an intensive form of government, though necessary for development and growth, at times spells negation of people's rights and values. In modern times the state has taken upon its shoulders the burden to perform functions which are in addition to the traditional functions like maintenance of law and order, administration of justice and protection of people from aggression. Now states are performing the duties of development, planning and welfare. In order to properly perform these duties enormous powers had to be conferred on the government.

Circumstances have arisen whereby conflict between the ordinary citizens and the administra-tion has become quiet natural and common. Administrative law is meant to formulate methods so that the administration is prevented from degenerating into arbitrariness and unfairness. Hence naturally administrative law has emerged as the most significant branch of public law.

Countless attempts have been made to define the term 'administrative law' but none is either write or wrong in absolute sense as some of these definitions are too wide and some are too narrow. Early English writers did not differentiate between administrative law and constitutional law. The definitions propagated by them depict their constitutional ideologies of that time. Some of the most prominent definitions being given by various scholars and political luminaries are as follows:-

- **A.V. DICEY** in the 19th century defines it as :—

i. Portion of a nation's legal system which determines the legal status and liabilities of all State officials.

ii. Defines the rights and liabilities of private individuals in their dealings with public officials.

iii. Specifies the procedure by which those rights and liabilities are enforced.

- **SIR IVOR JENNINGS** said “Administrative law is the law relating to administration. It determines the organization, powers and duties of administrative authorities”. Jennings does not differentiate between administrative law and constitutional law. He leaves many postulates of administrative law untouched including the control mechanism.

- **K.C. DAVIS** has defined administrative law as “Administrative Law is the law concern-ing the powers and procedures of administrative agencies including especially the law governing judicial review of administrative action. An administrative agency is an organ of government, other than a court and legislature which affects the rights of private parties through either adjudication or rule making. Administrative law consists of constitutional law, statutory law, common law and agency made law, and the great bulk of it is created by courts in the context of constitutional and statutory interpretation”.

- **PROFESSOR WADE** remarks that “Administrative Law is concerned with the opera-tion and control of the powers of administrative authorities with emphasis on functions rather than on structure”.

- **PROFESSOR ROBSON** defines that “Administrative Law is the Governing the admin-istration”.
- **PROFESSOR HART** defines it as “Broadly conceived, administrative law includes law that is made by as well as the law that controls the administrative authorities of a govern-ment”.
- **JAIN & JAIN** defines it as “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 by their operation”.

Hence precisely administrative law deals quasi-legislative and quasi-judicial powers of the administration as also their executive powers and controls.

1.2. NATURE AND SCOPE OF ADMINISTARTIVE LAW

Administrative law is the gift of the 20th century. It has been characterized by the jurisprudents as the most outstanding legal development of 20th century. Before it all powers were vested in the king or a group of people. All legislative and judicial powers were centralized in him. Only the maintenance of law and order was given utmost importance. With the advent of democracy and the increasing importance of having a separate branch of law i.e. administrative law to deal with the administrative concerns the concept of "Welfare State" was adopted by most of the countries in the place of "Police State".

FREUND has stated that "the main problem of administrative law relates to the nature and operation of official powers (permits and orders, ministerial and discretionary, scope and legiti-macy of underlying conditions) the formal procedural conditions for the exercise of powers, offi-cial and communal liability, the specific remedies for the judicial control of administrative action, jurisdictional limitations of powers and questions of administrative finality".

Hence it is very clear that administrative law is the study and analysis of diverse powers of administrative authorities and their control. The nature of power exercisable by the administrative authorities can be studied under the following heads :—

i. Legislative or Rule-making.

ii. Judicial or Adjudicative.

iii. Purely Executive.

PROFESSOR WADE has rightly pointed that the organization, the methods, the powers and the control by judicial authority of all public authorities is the ambit of administrative law in U.K. The scope of administrative law in our country is akin to that of the United States of America. In fact the problem before us is to prevent the potential threat to justice and encroachment on our freedom. Administrative law deals with the ways and means to keep diverse powers of adminis-trative authorities under control. It intends to prevent the growth of an autocratic rule by adminis-trative authorities. Where they are armed with discretionary powers, decisions are to be made by them in public interest. Secondly discretion must as much as possible be regulated so that it may not be abused.

Administrative law is not a law in the lawyer's sense like contract law. It is law in the realist's sense of the term which includes statue law, administrative rule-making, customs, precedents, administrative directions etc. it also includes something which is not law in true sense like policy statements, circulars etc. moreover Administrative Law is a branch of Public Law and it primarily deals with the relationship of individuals with the organized power.

One of the main thrusts of the study of administrative law is on the procedure by which the official action is reached. If the means is not proper the end cannot be just. There is method of procedure the administrative authorities follow and they can be laid down as :—

i. In the statue itself under which the administrative agency has been created.

ii. In the separate procedure code which every administrative agency is bound to follow i.e. Administrative Procedure Act, 1946 in the USA.

However in many cases either the administrative agency is left free to develop its own proce-dure or is required to render its actions according to the minimum procedure of the principles of natural justice.

So far the realm and ambit of administrative law is concerned it embraces within itself :—

a. The existence of various administrative bodies such as Wage Board, Central Board of Revenue etc. and their organization and powers.

b. Rule-Making power of Administrative agencies, i.e., delegated legislation; safeguards against abuse of power by judicial control.

c. Judicial Functions of administrative agencies like administrative tribunals.

d. Remedies like writs, injunctions, declaratory order etc.

e. Procedural guarantees, i.e., rules of natural justice.

f. Government Liability in tort and contract.

g. Public corporations.

h. Bodies like ombudsman etc.

1.3. DIFFERENCE BETWEEN ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

To the early English writers on administrative law there was no difference between administra-tive law and constitutional law. KEITH observed "it is logically impossible to distinguish adminis-trative law from constitutional law and all attempts to do so are artificial". Whereas people like HOLLAND writes that "While constitutional law describes the various organs of the sovereign power as at rest, - administrative law describes them as in motion".

The following table clearly brings out the distinction between administrative law and constitu-tional law.

CONSTITUTIONAL LAW	ADMINISTRATIVE LAW
1. Constitutional law is the genus.	1. Administrative law is the species of constitu-tional law.
2. Constitutional law deals with various organs of the state.	2. It deals with those organs as in motion
3. It deals with the structure of the State.	3. It deals with the Functions of the state. It is subordinate to constitutional law.
4. 4.It is the supreme and the highest law in the land.	4. It deals in details with the powers and functions of administrative authorities.
5. It gives guidelines with regard to the general principles relating to organization and powers of organs of the state, and their relations between citizens and towards the state. It touches all branches of law in this country.	5. It does not deal with international law. It deals exclusively the powers and functions of administrative authorities.
6. It also gives guidelines about the international relations.	6. It deals with the powers and functions of the administrative authorities only. Like that of civil services, public departments etc.
7. It deals with the general principles of state pertaining to all branches.	7. It is concerned with the organization of services of the various government departments.
8. It demarcates the constitutional status of Ministers and public Servants.	8. The administrators have to follow constitu-tional law first and then administrative law.
9. The constitutional law have full control over the administrative law and adminis-trators as in they are to perform certain negative duties like not to violate the funda-mental rights of citizens etc.	9.They should act with utmost obedience to the consti-tution. The administrative law is not superior to constitutional law.

1.4. HISTORY AND GROWTH OF ADMINISTRATIVE LAW IN INDIA

HISTORY BEFORE INDEPENDENCE :

Administrative law was in existence in India before Christ. Chanakya wrote a book explaining about administrative law. During the Muslim's rule the Hindu administrative law set up was dis-appeared. Since 1600 gradually our country went under the British. In fact, the east India Com-pany, the first English ruler, was nothing but an administrative branch of the British king and only got subordinate legislative powers by charters of 1600 and 1609 etc. the real rulers of our country were British parliament and crown as the real legislative power was vested in them. The British parliament enacted several acts, rules, regulations, charters etc. for the administration of India. On behalf of the parliament here the governors and governor-generals implemented such laws here. Parliament also delegated certain legislative powers to them.

At that time the real purpose of administrative law was "police state" and law "law and order only". The British parliament enacted several acts empowering the executives to issue permis-sions, suspension and revocation. But there were no controlling measure over the administrative authorities, being all of them Britishers.

HISTORY AFTER INDEPENDENCE :

After the working of the constitution started its working from 26th January, 1950 administrative law has played a vital role in the development of the nation. Nehru government adopted five year plans for the speedy development of the nation. Social security measures have been speed up.

Our constitution provided for the fundamental rights under part III of the constitution from Articles 12 to 35 and Directive Principles of State Policy in part IV of the constitution fro Articles 36 to 51. Both these parts impose great liability and responsibility over the administrators. The basic constitutional principles of the doctrine of rule of law and the doctrine of separation of powers have been recognized in India and adopted with slight variations suitable to Indian condi-tions. Welfare of people is the philosophy of the constitution besides law and order. From this point of view parliament has enacted several legislations like the companies act, the maternity benefit act, 1961, the equal remuneration act, 1976, the payment of bonus act, 1965 etc.

REASONS FOR THE GROWTH OF ADMINISTRATIVE LAW :

The reasons for the growth of administrative law are as follows :—

I. Administrative law is the by-product of intensive form of government. During the last cen-tury and in modern times the whole philosophy of the role of government has changed in almost every country from laissez-faireto paternalism and from paternalism to maternal-ism. Today the expectation is that the government will not only protect its people from external aggression and internal disturbance, but also that it will take care of its citizens from cradle to grave.

II. Today there is a demand by the people that the government must solve their problems rather than merely define their rights. The equality clause in the Indian constitution would become meaningless unless the government comes forward to actively help the weaker sections of society. This implies the growth of administrative law and process.

III. In some manner today, people recognize all problems as solvable rather than political controversies. There was a time, before the industrial revolution in England when it was considered that employer-employee conflict is a political concern but things today have changed and hence the government now is responsible to resolve this conflict and main-tain economic growth and industrial harmony. This has led to the growth of administrative law and process.

IV. Phenomenal growth in technology and science in the 20th century has placed a counter-balancing responsibility on modern government to control the forces which science and technology have unleashed. Modernization and technological developments produce great structural changes and create crucial problems such as cultural conflicts, haphazard ur-banization, ruthless exploitation of natural resources, environmental pollution etc. Growth of global administrative space has further multiplied such problems. These multi-dimen-sional problems with varied social, economic and political ramifications cannot be solved except with the growth of administration and law regulating administration.

V. The inadequacy of the traditional type of courts and law-making organs to give that qual-ity and quantity of performance which is required in the twentieth century for the function-ing of welfare and functional government is the biggest single reason which has led to the growth of administrative process and law. Today litigation is not considered a battle to be won but a disease to be cured. Inadequacy of traditional courts to respond to this problem has led to the growth of administrative adjudicatory process.

VI. Because of limitation of time, the technicalities, the need for flexibility, experimentation and quick action, the traditional legislative organs cannot pass that quality and quantity of laws which is required for the proper functioning of a modern government. Therefore there is the in-evitable growth of administrative legislative process.

1.5. SOURCES OF ADMINISTRATIVE LAW IN INDIA

There are primarily four principal sources of Administrative Law in India and they are :—

i. **Constitution of India —** The constitution itself has provided for the creation of several administrative bodies and agencies. Moreover, it has devised an extensive mechanism of control over the various kinds of administrative actions like under Article 32 and 226 writs can be issued against the actions of administrative authorities to correct the wrong done by them. Then through Article 136 special jurisdiction upon the Supreme court is given to grant leave to special appeal against any judicial or quasi-judicial order or decision. Ar-ticle 299 and 300 has fixed contractual and tortuous liability respectively of the govern-ment. Similarly Article 311 ensures protection to the public servants against any illegal disciplinary actions by their superior authorities.

ii. **Acts and Statutes —** Different acts and statutes passed by the legislature from time to time constitute the second most important source of administrative law in India. Several administrative bodies are created under such Acts and Statutes which elaborately define their powers and functions as well as the modes of their control.

iii. **Ordinances, administrative directions, notifications and circulars —** Ordi-nances are issued by the president and governor under article 123 and 213 under exigen-cies which have the force of law for a particular period and such ordinances generally give rise to additional power to administrative authorities in order to meet urgent situations. Besides very often in the modern era circulars and notifications are being issued by ad-ministrative authorities in order to regulate control over lower administrative bodies in their day to day functioning.

iv. **Judicial Decisions —** Especially in the last two or three decades the array of decisions brought by the apex court has made a revolutionary change in the areas of judicial rem-edies against administrative actions. The courts have adopted a flexible and dynamic approach towards the issue and as a result several changes have taken place like the relaxation of locus-standi and extension of rules of natural justice etc. Judicial decisions have been important in laying down new principles of judicial control of administrative action and as such the accountability of administrative actions has increased many folds.

2.1. DICEY'S CONCEPT OF RULE OF LAW

Rule of Law according to **Dicey** is one of the basic features of the English Constitutional System. The origin of the concept of the rule of law is ascribed to **Edward Coke** in England when he remarked that the king must be under god and law. He meant the supremacy of law over the Executive.In his1885 treatise on England's unwritten constitution, "Introduction to the Study of the Law of the Constitution", **A.V. Dicey**, the English jurist, discussed the supremacy or rule of law and what it meant in relation to England's unwritten Constitution. Although the term "rule of law" can be found as far back as mid-300 B.C. in the writings of two Greek philosophers, **Plato** and **Aristotle**, contrasting the rule of law with the rule of man, it was **Dicey** who revived and discussed the term in such a way that everyone could understand it.

According to **Dicey** the rule of law has the following three meanings which are as follows :—

a) **Supremacy of Law —** It means "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrari-ness…. Or even of wide discretionary authority on the part of government".

b) **Equality before Law —** No man is above the law whatever his rank or condition is, he is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. This means not only that everyone is accountable if they break the law but also that everyone, regardless of rank or condition, will be subjected equally to the same law and be subject to the same law courts. On this aspect **Dicey** criticized the Droit Adminis-tratif as a separate hierarchy of administrative courts provided under French administra-tive system resulted in denial of equality before the law according to him.

c) **Predominance of Legal Spirit —** This concept addresses the importance of not only having the rights and liberties of individuals given in law (even unwritten law) but also having workable remedies for the breach of these rights in a separate government body or branch. It is the separation of power here which is important. He feared that a mere declaration of the rights is not enough and in order to secure their existence decisions of court must be implemented. Here he stressed the role of court as protector of liberty.

2.2. RULE OF LAW VIS-À-VIS ADMINISTRATIVE LAW

It is quoted quiet often that rule of law is the negation of administrative law. As a matter of fact, the concept of rule of law hampered the recognition of administrative law in England for a long time because of the influence of Dicey's interpretation. Dicey believed that administrative law was not something within the inherent constitutional setup of England as it involved setting up of various things like the establishment of administrative courts for deciding conflict between indi-viduals and state officials as they are in operation in France. Dicey believed all these operation would oppose the rule of law and he also wrongly believed that England is the sole Repository of rule of law. In the modern times the thinking is that national planning has completely put into oblivion the ideals of personal freedom and liberty in several respects. The degree of public control has increased in many areas which henceforth constituted the areas of operations of private rights. The notion is that in carrying out the welfare activities of the state, the administration had to be armed with greater power and in the way a large measure of personal liberties was bound to be compromised.

But in fact, the rule of law emphasizes upon rule that the executive must act under the law and not by its own whims and fiat. The executive does not derive power out of its own accord but derives them from the law. The rule of law serves as the basis of judicial control over administra-tive action. Its principal concern like that of administrative law is to keep the executive and the operation of its powers within the limits of law so that it may not turn to be arbitrary. There is no conflict between rule of law and administrative law. In reality, viewed as a system of control of administrative powers, it can be asserted

that administrative law does not contradict but , on the other hand, promotes rule of law and the two of them go parallel with a common objective of attaining an orderly government.

2.3. APPLICATION OF RULE OF LAW IN INDIAN CONSTITUTION

Our constitution is the mandate as in India the constitution is the supreme. There cannot be any rule of law other than the constitutional rule of law. The Preamble of our Constitution clearly sets out the principles of rule of law when it lays down the objectives of social, economic and political justice, equality of status and opportunity, and fraternity and dignity of individuals in India. The constitution provides for the Fundamental Rights of the citizens and sometimes to non-citizens also in Part III which comprises articles 12 to 35. There are also articles 32 and 226 for the vindication of the Fundamental Rights guaranteed in part III of the constitution through the mecha-nism of the judicial protection concerned with these rights against any legislative or executive encroachments. The laws made by the legislature and the orders, rules etc. Created by the execu-tive cannot in any way violate the fundamental rights of Part III or else they will be struck down under Article 13. The Part IV of the constitution also provides for Directive principles of State Policy. Article 300 imposes the tortuous liability, vicarious liability on the government. Article 299 imposes the contractual liability on the government. The maxim "King can do no wrong" does not apply in India. From the highest post of prime minister to peon all are equal before the law. If any executive exceeds the courts then give the protection to the aggrieved party. Hence our judiciary is well developed and well equipped to deal with matters.

In **ADM Jabalpur v. Shivkant Shukla**, popularly known as the Habeas Corpus Case, an attempt was made to challenge the detention orders during Emergency on the ground that it vio-lates the principles of rule of law as the "obligation to act in accordance with the rule of law… is a central feature of our constitution and is a basic feature of the constitution". Though the conten-tion did not succeed and some justices even went on to suggest that during emergency, the emer-gency provisions themselves constitute the Rule of Law, yet if the reasoning of all five opinions is closely read it becomes clear that the contention was accepted, no matter it did not reflect in the final order passed by the court. Therefore even in such a judgment whereby the provision to knock the doors of court during emergency was closed but still the concept of rule of law was used as a legal concept. In **Smt. Indira Nehru Gandhi v. Raj Narain**, Justice Mathew stated that according to the majority opinion in Fundamental rights Case (Keshavananda Bharati Case) rule of law is a basic structure of the constitution of India apart from democracy. It is impossible to enunciate the rule of law which has as its basis that no decision can be made unless there is a certain rule to govern decision. The provisions of the constitution were enacted with a view to ensure the rule of law. The equality aspect of the rule of law and of democratic republicanism is provided in Article 14 of the constitution.

The Supreme Court expressed its confidence about the existence of rule of law under our constitution even in its earlier pronouncement in **A. K. Kraipak v. Union of India** whereby it stated that "Under our Constitution the rule of law pervades over the anti-field of administration. Every organ of the state under our constitution is regulated and controlled by the rule of law". Article 14, 19 and 21 represent the foundational values which form the basis of the rule of law. The Supreme Court in a case, namely Supreme Court Advocates on **Record Association v. Union of India**, reiterated that absence of arbitrariness is one of the essentials of rule of law. The court observed "for the rule to be realistic there has to be rooms for discretionary authority within the operation of rule of law, even though it has to be reduced to the minimum extent necessary for proper governance, and within the area of discretionary authority".

3.1. Definition of 'natural justice'

Principles of natural justice which are judge made rules and still continue to be a classical example of judicial activism were developed by the courts to prevent accidents in the exercise of outsourced power of adjudication to the administrative authorities.

Rules of natural justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and rule of law prevailing in the community. In order to protect himself against the excesses of organized power man has always appealed to someone beyond his own creation. Such someone could only be god and his laws, divine law or natural law to which all temporal laws and actions must conform. This is the origin of the concept of natural justice. Natural justice implies fairness, reasonableness, equity and equality. Natural justice is a concept of common law and it is the common-law world counterpart of the American 'procedural due process'. Natural justice represents higher procedural principles devel-oped by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual.

Natural justice is another substitute for the name of common-sense justice. Rules of natural justice are not codified cannons. They are principles ingrained in the conscience of man. Justice is based substantially on natural ideals and values which are universal. Natural justice is not circumscribed by linguistic technicalities and grammatical niceties or logical fabrication. It is the substance of justice which has to determine its form. What particular form of natural justice should be implied and what its extent should be in a given case must depend to a great extent on the facts and circumstances of that case and the framework of the statue under which the action is taken.

Natural justice meant many things to many writers, lawyers and systems of law. It is concept of changing content. However, this does not mean that at a given time no fixed principles of natural justice can be identified. The principles of natural justice through various court decisions can be easily traced though their application at a given situation may depend on multiple factors. The contents of natural justice yield to change with exigencies of different situations and therefore do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal straitjacket. They can be adapted, modified, and excluded by statue, rules or the constitution, except where such "exclusion is not charged with the vice of unreasonableness and consequential voidness".

Regarding the definition of the term 'natural justice' many theories and conceptions have ex-isted from the very beginning. The committee on Ministers' Powers expressed "…..it is beyond
doubt that there are certain canons of judicial conduct to which all tribunals and persons who have to give judicial or quasi-judicial decisions ought to conform. The principles on which they rest are, we think, implicit in the rule of law. Their observance is demanded by our notional sense of justice".

Mr. Justice Chinappa Reddy of the Supreme Court of India explained "Natural justice, like Ultra Vires and Public Policy, is a Branch of the public law and is a formidable weapon which can be wielded to secure justice to the citizen. It is productive of great good as well as much mischief. While it may be used more often than not to protect vested interests and to obstruct the path of progressive change. In the context of modern welfare legislation, the time has perhaps come to make an appropriate distinction between natural justice in its application to fundamental liberties and natural justice in its application to vested interests".

For some three or four hundred years Anglo-American courts have actively applied two prin-ciples of natural justice. These are two principles are: —

i. **Nemo debet esse judex in proprio causa —** No one should be made a judge in his own cause, or the rule against bias.

ii. **Audi alteram partem —** Hear the other party, or the rule of fair hearing, or the rule that no one should be condemned unheard.

These principles form the cornerstone and foundation upon which of judicial control of admin-istrative action is based.

3.2. COMPONENTS OF NATURAL JUSTICE AND THEIR APPLICATION IN INDIA

A. RULE AGAINST BIAS (Nemo debet esse judex in proprio causa)

This rule basically means that No one should be made a judge in his own cause. Bias means operative prejudice whether conscious or unconscious, in relation to a party or issue. Such opera-tive prejudice may be the result of a preconceived opinion or a predisposition to decide a case in a particular manner, so much so that it does not leave the mind open. In other words bias may be generally defined as partiality or preference which is not founded on reason and is actuated by self-interest whether pecuniary or personal. Hence the rule against bias strikes against those fac-tors which may improperly influence a judge in arriving at a decision in any particular case. The basic requirement of this principle is that the judge must be impartial and must decide the case objectively on the basis of evidence on record. A person may not take objective decision in a case where he has an interest for, as human psychology tells us, very rarely can people take decisions against their own interests. Therefore the maxim is very important that a person cannot be made a judge in his own case.

This rule is applied not only to avoid the possibility of a partial decision but also to ensure public confidence in the impartiality of the administrative adjudicatory process because justice should not only be done but should manifestly and undoubtedly be seen to be done. The minimum requirement of natural justice is that the authority must be composed of impartial persons acting fairly, without prejudice and bias. This principle will not apply where the authority has no per-sonal lis with the person concerned. Similarly not every kind of preference will invalidate an ad-ministrative order. If the preference is based on rational grounds without any personal or pecuni-ary interest then it is always welcome.

KINDS OF BIAS

Bias is usually of the following types :—

i. **Pecuniary Bias —** A series of consistent decisions ion English courts have laid down the rule that pecuniary interest, howsoever small will invalidate the proceedings. So great en-thusiasm was there in the minds of the English judges against the pecuniary interest that very small amount and negligible quantity of interest were considered to be a valid ground. The famous English case in this aspect is the case of ***Dimes v. Grand Junction Canal Co.*** where the decision of Lord Chancellor was cancelled by the their Lordships of House of Lords because of the pecuniary interest lord chancellor was having in the case. Indian courts also invariably followed the decision in Dimes' case. The Privy Council made a reference to this famous case in ***Vassailliadas v. Vassailliadas***. Relying on the case lord Wright observed that "the simplest type of bias is where the judge is shown to have pecu-niary interest in the results of the proceedings, that it will be held at once he is disqualified howsoever small the interest andhowsoever clear it may be that his mind could be af-fected.

ii. **Personal Bias —** Personal bias has always been the interest of judicial scrutiny. It is the most studied kind of bias which the judiciary tried to find out during the last century. With the growing

interdependability of human relations, cases of personal bias favoring one or the other party have grown tremendously. Personal bias can be of two types namely :—

I. Where the presiding officer has formed the opinion without finally completing the proceeding.

II. Where he is interested in one of the parties either directly as a party or indirectly as being related to one of the parties.

As a matter of fact there may be several instances of personal bias like where the party may be a friend of the judge, or where relation is there or there is hostility against one of the parties. All these instances create bias of the nature of personal bias and will operate as a disqualification for a person to adjudicate the case.

The leading case on the issue is ***Mineral Development Ltd. V. State of Bihar***, in this case the petitioner company was owned by Raja Kamkshya Narain Singh, who was a lessee for 99 years of 3026 villages, situated in Bihar, for the purpose of exploiting mica from them. The minis-ter of revenue acting under the Bihar mica act cancelled his license. The owner had opposed the minister in the general election of 1952 and the minister had filled a criminal case under sec 500 of IPC against him which was transferred to the magistrate in Delhi. The act of cancellation was held to be quasi-judicial act and since the rivalry between the owner of the company and the minister was established the cancellation order was held to be violative of law. Another leading case in this issue is the case of ***Manek Lal v. Prem Chand*** in this case the respondent had filed a complaint of professional misconduct against Manek Lal who was an advocate at the Rajasthan high court. The chief justice constituted a bar council tribunal to look into the matter. The chair-man of the tribunal had earlier represented the respondent in a case. The Supreme Court held that even though the chairman had no personal contact with his client and did not remember that he had appeared on their behalf previously in his legal career and no there was no likelihood of bias, but still he was disqualified to conduct the inquiry. He was disqualified on the ground that justice must not only be done but must be seem to be done to the general public. Reasonable ground for assuming the possibility of bias is sufficient even in absence of actual proof of prejudice.

iii. **Bias as to the subject-matter —** Those cases fall within this category where the deciding officer is directly, or otherwise, involved in the subject-matter of the case. Here again mere involvement would not vitiate the administrative action unless there is real likelihood of bias. A judge may have a bias in the subject-matter which means that he is himself a party, or has some direct connection with the litigation, so as to constitute a legal interest. A legal interest means that the judge is in such a position that bias must be as-sumed. The smallest of legal interest will disqualify the judge from adjudicating the case.

In ***Murlidhar v. Kadam Singh***, the court refused to quash the decision of the Election Tribu-nal on the ground that the wife of the Chairman was a member of the Congress Party whose Candidate the petitioner got defeated. Subsequently the Supreme Court in ***H.C. Narayanappa v. Mysore*** observed that the minister while deciding a dispute under the Motor Vehicles Act between the State Transport undertaking and the Private bus operators acts in a quasi-judicial manner. A scheme approved by him could not be challenged on the ground of official bias unless there was reliable evidence to show that his decision was actually biased. However in ***Kondala Rao v. A. P. Transport Corp.*** the apex court rejected the argument of policy bias and held that if the authority concerned acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge. Here the minister heard objections regarding the

nationalisation of certain bus routes. The minister a few days earlier had presided over a meeting of the officials where the scheme of nationalisation was decided. The petitioner challenged the hearing on the ground that the minister had a pre-determined mind and hence the hearing was vitiated in law. The court did not accept the contention of the petitioner and held that it was only a policy decision in the official meeting and it did not involve a predetermination of the issue.

B. AUDI ALTERAM PARTEM (Hear the other side)

This is the second long arm of natural justice which protects the individual from arbitrary administrative actions. The principle of audi alteram partem is the basic concept of the principle of natural justice. The supremacy inherent in the doctrine is that no one should be condemned unheard. In the field of administrative action, this principle has been applied to ensure fair play and justice to affected persons. However the doctrine is not the cure to all ills in the process. Its application depends upon the factual matrix to improve administrative efficiency, expediency and to mete out justice. The procedure adopted must be fair and just. The expressionaudi alteram partem simply implies that a person must be given an opportunity to defend himself. This principle is a sine qua non of every civilized society. Corollary deduced from this rule is qui aliquid statuerit, parte inaudita altera aeuquum licet dixerit, haud aequum facerit (he who shall decide anything without the other side having been heard although he may have said what is right will not have done what is right).

The judgement in ***Ridge v. Baldwin*** decided by the House of Lords in England widely influenced the Indian courts in enlarging the area of the rule. Influenced by this judgement the Supreme Court in ***State of Orissa v. Dr. Mrs. Bina Pani Dey*** mentioned that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. In ***Ashwini Kumar v. University of Delhi***, petition is filed by four petition-ers, who are students of Delhi University. They are research scholars doing research in different fields in the departments under Delhi University. These students were expelled from the hostel on ground of maki8ng demonstration at the residence of provost at midnight. The record of the university showed that the said provost had participated in a meeting of committee held for taking disciplinary action against students and as such had become a part of decision making process of expulsion. In such circumstances, the court observed that before passing an order of expulsion, the students were not given an opportunity of hearing. The order therefore was set aside by the court and direction was issued to the university to give them opportunity of hearing first and then to conclude about the validity of their expulsion.

The maximaudi alteram partem has many aspects and the two most important of them are as follows :—

A. **Notice of the case to be met —** It means that notice must be given to the party or parties before the proceedings starts. The requirement of notice means that the Party whose civil rights are affected thereby must have reasonable notice of the case he has to meet. Any proceedings without fulfilling this mandatory requirement will be against the principle of natural justice. In Kuldeep Tiwari v. Oriental Insurance Co. the court observed that the minimum requirement of issuing show cause notice and giving opportunity of hearing to submit explanation was required to be fulfilled as notice is regarded as the heart of the right of fair hearing.

B. **Opportunity to Explain —** This rule is universally respected and duty to afford a fair hearing in Lord Loreburns quoted language is “a duty lying upon everyone who decides something” in the exercise of legal power. Under the Indian law the requirement of hearing is an essential aspect of administrative and quasi-judicial proceedings. Any administra-tive order passed by the authority without reasonable opportunity of being heard is illegal and must be set aside. The requirement of an opportunity of hearing has two elements namely (a) the Opportunity must be given and (b) the opportunity given must be adequate and reasonable. In ***Mahadayal Prem Chandra v. Commercial Tax Officer***, when the Sales Tax Officer depended entirely on the advice of his senior and assessed the appellant without showing him the senior's opinion and giving him an opportunity to state his point of view against the same, the supreme court quashed the assessment proceeding.

EXCEPTIONS TO THE RULE OF AUDI ALTERAM PARTEM

Following are the grounds on which the right to be heard may be denied wholly or partly-

a. Where the functions of the authority is policy oriented.

b. Where the functions of the agency concerned are held to be administrative or discretion-ary.

c. Where an obligation to give notice and opportunity to be heard would obstruct the taking of prompt action, especially action of a preventive remedial nature.

d. Where the disclosure of relevant information to the party affected would be prejudicial to the public interests.

3.3. EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

The requirement of the application of natural justice may be excluded under certain excep-tional circumstances which are as follows :—

a. **Statutory Exclusion —** Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principles of natural justice such silence is taken to imply the observance thereto. However when the statute expressly or by necessary implication excludes the application of the principles of natural justice, the courts does not ignore the statutory mandate.

b. **Emergency —** In exceptional cases of urgency or emergency where prompt and preven-tive action is required the principles of natural justice need not be observed. Thus the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality. However the determination of the situation requiring the exclusion of the principles of natural justice by the administrative authorities is not final and such determination may be reviewed by the court.

c. **Legislative Function —** It is well established principle that legislative function or legisla-tive act is not subject to the principles of natural justice. The legislative act or function is that of mak8ing rules and regulations (i.e. the delegate or subordinate legislation). But if there is a provision in the statute requiring the compliance of the rules of natural justice, the provision must be adhered to and thus in such situations the rules of natural justice would be followed.

d. **Public Interest —** The requirement of notice and hearing may be excluded where prompt action is to be taken in the interest of public safety, or public health and public morality. In cases of pulling down property to extinguish fire etc. action has to be taken without giving the opportunity of hearing.

e. **Interim Disciplinary Action —** In case of interim disciplinary action the rules of natu-ral justice are not applicable. For an example, the order of suspension of an employee pending an inquiry against him is not final but an interim order and the application of the rules of natural justice is not attracted in such case.

f. **Academic Evolution —** Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the requirement of pre-decisional hearing is excluded.

g. **Impracticability —** Where the authority deals with a large number of persons it is not practicable to give all of them opportunity of being heard and hence the rules of natural justice is not observed in such conditions and circumstances.

4.1. DEFINITION OF ADMINISTRATIVE TRIBUNAL

There have been several tests in order to determine whether a particular body or authority is a tribunal or not. It is a mandatory requisite that in order to form a tribunal as administrative tribu-nal the tribunal must be constituted by the state and vested with some judicial powers of the state. Tribunals are administrative bodies set up, solely with the idea of discharging quasi-judicial du-ties. Their determinations affect the rights of the parties and they therefore have been held to be quasi-judicial bodies. They are required to observance the principles of natural justice or fair hearing while determining issues that are being brought before them. They are bodies with quasi-judicial powers but they exist outside the usual judicial hierarchy of the Supreme Court and high Courts. For example there are Industrial tribunals, Sales Tax tribunals, Income tax Tribunals etc.

The necessity for the establishment of the administrative tribunals was recommended by the Swaran Singh Committee appointed by Parliament. The administrative tribunals act was passed by parliament in the early part of 1985 in pursuance of the power given in Article 323-A of the constitution of India

4.2. DIFFERENCE BETWEEN ADMINISTRATIVE TRIBUNAL AND COURT

ADMINISTARTIVE TRIBUNAL	COURT
1. Administrative tribunal deals with only the service matter.	1. Court deals with all matters.
2. Administrative tribunal need not follow C.P.C. or Evidence rules.	2. Court has to follow C.P.C and Evidence rules.
3. The members of the administrative tribunal need not be trained persons in law.	3. The judge or magistrate in the court is a trained person in law.
4. The decision given in administrative tribunals is subjective.	4. The Decision delivered by the Court is objective.
5. It is more rapid, cheap and efficient mode of dispute settlement.	5. It is more lengthy, costlier and inefficient parti-cularly in service matters as compare to tribunal.
6. It is a new trend in the world including India.	6. The system of courts was established way back centuries ago.
7. It need not follow precedents, principles of res-judicata, estoppel etc.	7. It should follow precedents, principle of res-judi-cata and estoppel.
8. 'Independence of judiciary principle' is not seen in Administrative tribunals. The executive interferes with the tenure, terms and conditions of service of the members and certain constitutional guarantees are provided to check the executive power.	8. Courts function under the principle of indepen-dence of the judiciary and hence the executive is barred from tampering with the tenure, condi-tions of service etc. of the judges.
9. It is strictly speaking a branch of Government. Lord Greene criticizes Tribunals function as "hybrid function" i.e. executive plus judicial.	9. It is purely judicial
10. They are not over-burdened with the number of cases as they deal in specific subject matter.	10. They are overburdened with pending litigations.
11. They are functional rather than a theoretical and legalistic approach.	11. They are rigid and procedural technicality is adhered.
12. They enjoy a wide discretion.	12. They enjoy a lesser discretion compared to Administrative Tribunal.
13. Administrative tribunal cannot decide 'Vires' of legislation.	13. The court can decide 'Vires' of legislation.
14. An administrative tribunal possesses only few qualities of a court	14. The court possesses all the judicial qualities.

4.3. CHARACTERISTICS OF ADMINISTRATIVE TRIBUNALS

An administrative tribunal is not strictly a court nor it is an executive body and it stands some-where midway between the two. It is in reality off-spring of compromise between the executive and judiciary. **Prof. Wade** has rightly said that "they are often called administrative tribunals but this does not mean that their decisions are necessarily administrative. In the great majority of cases they are judicial, in the sense that the tribunal has to decide facts and apply rules to them impartially, without considering executive policy. In India the establishment of these adjudicative bodies has been constitutionally recognized under articles 136, 226 and 227. They are vested with power of a civil court exercisable under the code of civil procedure in the matter of **(i)** summoning witness, **(ii)** compulsory production and discovery of documents, **(iii)** receiving of evidence on oath and affidavit, **(iv)** issuing commissions etc. the administrative tribunals can be attributed the following features which are as follows :—

a. It is established by the executive in accordance with statutory provisions.
b. It is required to act judicially and it performs quasi-judicial functions.
c. Its proceedings are deemed to be judicial proceedings and in certain matters it has got the power of a civil court.
d. It is an independent body and acts without bias.
e. It is required to follow principles of natural justice in deciding the cases.
f. It does not follow the technicalities of rules of procedure and evidence prescribed by the Civil Procedure Code and the evidence act.
g. It is not a court in the strict sense
h. The issues which have already been decided by the Supreme Court and High Court can-not be taken up by the Central Administrative Tribunal.

4.4. FACTORS RESPONSIBLE FOR THEIR GROWTH

The factors responsible for the growth of Administrative Tribunals are as follows:—

1) Minimum norms of fair hearing are observed in the administrative tribunals. They do not adopt the lengthy process of the courts.

2) Speedy disposal of the matters is a great advantage of administrative tribunals. They need not adhere to the strict principles of C.P.C and evidence act etc.

3) Administrative tribunals are specialized in service matters. They deal with service matters only and in the contrary courts deal with all spectrum of legal domain. The objective of specialization is to provide the best services. Similarly, the administrative tribunals try to provide the solution for administrative disputes.

4) Today the traditional courts including the supreme court, the numerous high courts are filled with pending litigation and hence the administrative tribunal is required who will lessen the burden of the courts at least in relation to administrative matters as they are not shouldering that much as burden compared to traditional courts and hence speedy rem-edy can be provided to them.

5) The remedy available through the administrative tribunal is cheaper, speedy and effective than the courts.

6) The subject of administration adjudication has received serious attention in recent years in all countries.

7) The tribunal is composed with the experienced civil servants and also Justice of High Court. Once a public servant is appointed member or chairman of the tribunal, he is ineligible for further employment in government departments. Such types of guarantees are similar to those provided for the Justices of the high court, the Auditor-General and imparts impartial results.

8) There is greater flexibility with which tribunals discharge their functions. They are not bound by their past decisions and decisions of other authorities. in several cases adminis-trative tribunals are given the power to reverse its own decisions if new facts are brought on to light as the principle of res-judicata does not apply to them.

4.5. DEMERITS OF ADMINISTRATIVE TRIBUNALS

The following are the Demerits of the Administrative Tribunal System: —

a) There is a wide variety of tribunals having diverse procedure and different purposes and compositions. They are not generally governed by the procedural laws and law of evi-dence. The proceedings are not generally required to be conducted in public, some tribu-nals allow legal representatives while others don't and some take evidence on oath while others don't.

b) There is no provision of appeal against the decisions of tribunals. It has been found that great power is vested in the hands of a few men, sitting in the tribunal who can affect the rights of persons to a large extent.

c) The persons sitting in the tribunal need not be legal expert nor do they require legal quali-fications in general. In the words of **Prof. Wade** "a court of no appeal has been put in the hands of men who are generally neither qualified lawyers, nor judges".

d) In absence of any specific provisions for evidence on oath, there can be no proper cross-examination 'as in court of law', so it becomes too difficult a task to get truth.

e) The decision given in administrative tribunals is subjective and depends on departmental policy as compared to courts who give objective decisions.

f) The administrative tribunals cannot declare the 'vires' of legislation.

4.6. JUDICIAL CONTROL OF ADMINISTRATIVE TRIBUNAL

The problem of judicial review of administrative tribunals has become sensitive. There is a feeling that they should be kept in the bounds of their authority and judicial overview is always necessary over the administrative tribunals. The main grounds upon which the Supreme Court or a high court may interfere are as under:-

1. Where the tribunal has acted without jurisdiction.
2. Where the award of the tribunal is malicious.
3. Where the tribunal has acted in violation of the principles of natural justice.
4. Where its determination is vitiated by an error apparent on the face of the record.
5. Where the award of reference itself is ultra-vires the provisions of the Act.

There are certain acts which prohibits the jurisdiction of the high court's from the review of the working of the administrative tribunals like in the Administrative tribunals act, 1985 the high court's does not have the power of judicial review of their actions and the only remedy is article 136 invoking the special jurisdiction of the supreme court. But now the present position has changed. The Supreme Court observed in the case of ***L.Chandra Kumar v. Union of India*** and others that the aggrieved party is entitled to move to the Division bench of the High Court under article 226/227 against the decisions of tribunals whether created according to article 323-A or 323-B of the constitution as the jurisdiction conferred upon high courts under article 226/227 and under article 32 upon supreme court is part of the inviolable basic structure of the constitu-tion. Hence all decisions of these tribunals, will, however be subject to scrutiny before a Division Bench of the High Court, within whose jurisdiction the tribunal falls.

5.1. Tortious liability of government action.

Generally a man is liable for his own wrongful acts. He is not liable for the wrongful acts of others. But under certain circumstances a person may be held liable for the wrongful acts of others. This is popularly known as "Vicarious Liability". Article 300 of the Constitution of India provides for such kind of liability when for the actions of the governments servants the respective government can be held liable. Regarding the history of "Vicarious Liability" of the government it predates the constitution as The Government of India Act, 1858 in its section 65 took that liability. The same liability had been incorporated in section 176 of The Government of India Act, 1935.

According to the wordings of this article the government of India or the government of a state is a person in the eye of law. It can sue or be sued like any other natural person. The government of India may be sued by the name of union of India and the government of the concerned state be sued by the name of that state. The extent of liability of the government i.e. Vicarious Liability shall be determined from time to time by the legislation of Parliament and State Legislature Assemblies. By incorporating article 300(1) the constitution confers powers to the central government and the state governments and at the same time the liability has been imposed upon the governments. Hence the government of India and of the states is held liable for torts committed by their servants.

In India the immunity of the government for the tortious acts of its servants based on the offcuts of old feudalistic notion that the king cannot be sued in his own courts without his consent never existed. The very first important case regarding this concept was involving the tortious liability of the secretary of State for India-in-Council was put forward in the case of Peninsular and ***Oriental Steam Navigation Co. vs. Secretary of State*** . The question of law in this case was whether the Secretary of State for India is liable for the damages caused by the negligence of the servants in the service of the government. The Supreme Court answered the question in the affirmative direction and stated that the Secretary of State is liable for the damages caused as a result by the negligence of the Governments servants, if the negligence is such as would render an ordinary employer liable.

The case of ***State of Rajasthan v. Vidyawati*** is another very important case regarding this aspect. Here also the Supreme Court stated that the state is vicariously liable for damages caused by the negligence of its employees. The apex court introduced a pivotal qualification on the state immunity in tort based on the doctrine of sovereign and non-sovereign functions. It decided that the immunity in case of state action can be granted only if the act in question is done in the course of the exercise of sovereign functions.

The third most important case in this aspect is of ***Kasturi Lal v. State of U.P.*** and in this particular case the Government was not held liable for the tort committed by its servants because the tort was said to have been committed by him in the course of the discharge of statutory duties. This statutory function was based on the delegation of the sovereign powers of the state and hence the liability does not arise.

The difference in the approach of the Supreme Court regarding the sovereign and non-sover-eign functions has happened finally and now this difference is being narrowed down as the court started holding most of the governmental functions as non-sovereign with the result that the area of tortious liability of the government has expanded considerably. The leading case in this new approach is of ***Bhim Singh v. State of J & K*** where the petitioner a MLA was arrested while he was on his way to Srinagar to attend Legislative Assembly in gross violation of his Constitu-tional rights under Article 21 and 22(2) of the Constitution and the Court awarded monetary compensation of Rs 50,000/- as exemplary damages to the petitioner.

6.1. PUBLIC CORPORATIONS

Public corporations or public undertaking means an activity of a business character, managed or owned by 51% or more by the Government be it the central or the state or the local and whereby goods/services is being provided for a price. Major decisions pertaining to public corpo-rations would rest on distinctive social criteria to the exclusion of any personal interest. The con-cept of public corporations involves social responsibility. In Great Britian, public Corporations are called "Nationalised industry" and in Latin America it is known as "para-statal" sector.

In India there are three forms of public sector corporations :—

i. Government's Departmental Undertakings
ii. Public Corporations
iii. A Government Company registered Under the Indian Companies act, 2013.

6.2. CHARACTERISTICS OF PUBLIC CORPORATIONS

i. They are creation of statutes and have a separate and independent existence from the union or state government.

ii. The union or the state government holds the maximum number of shares in this type of corporation.

iii. They are largely autonomous in finance and management. They have their own funds.

iv. They may be regulatory like the RBI or may be beneficiary like Insurance Corporation of India.

v. They are subject to the Writ Jurisdiction of the High Court and Supreme Court.

vi. They do not enjoy immunity From Taxation.

vii. They do not enjoy the privileges of the Government under the Evidence Act and other laws.

viii. In majority of cases employees of public Corporations are not civil servants and are re-cruited and remunerated under the terms and conditions of the corporation itself.

6.3. CONTROL OVER PUBLIC CORPORATION

The various types of Control over Public Corporation are as follows :—

A. PARLIAMENTARY CONTROL — it is done by the following methods —

- Legislation
- Laying of rules and regulations
- Questions
- Half an hour discussion
- Statement by Ministers
- Resolutions
- Motions
- Parliamentary Committees

B. MINISTERIAL CONTROL — it is done through by the following ways —

- Appointment of governing body and managers of an enterprise.
- Issue of general policy directions.
- Issue of specific directions.
- Approval of or veto of specified categories of actions and policies.
- Participation in management as a member of the governing body.

C. PUBLIC CONTROL — It is done through the following manner —

- Through the medium of consumer councils like consumer forum.
- Through invocation of writ jurisdiction if fundamental or other right is violated.

Public corporation

Definition:

a public corporation may be defined as an agency created by a statute of legislature, running a service on behalf of the government, but as an independent legal entity with funds of its own and largely autonomous in management. It has no regular form and no specialised function. It is employed wherever it is convenient to confer corporate personality.

A corporation is defined in ***Dhanoa V. Municipal corporation, Delhi*** in the following terms : " *A corporation is an artificial being created by law having legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possess the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other power and privileges as may be conferred on it by the law of its creation just as a natural person may "*

OBJECT:

A public corporation is an institution established for administering some particular enterprise in the public interest. Due to the expansion of administrative burden and the need for relieving the formal administrative machinery from those activities of a welfare state which partake of the character of a business enterprise, such

activities are given to statutory corporations which do not form part of governmental machinery and get carry on administrative functions in a business-like manner like private companies but subject to statutory limitations.

In ***Som Prakash Rekhi V. Union of India***, the Supreme Court observed that, a commercial undertaking although run under the constitutional scheme of the Government is better managed with professional skills and on business principles, guided by social goals, free from departmental rigity, slow motion procedure and hierarchy of officers.

CLASSIFICATION:

A logical classification of public corporation is not possible, and neither parliament nor the courts have made any serious attempt in that direction. But jurists have tried to categorise public corporations.
In India, public corporations may be classified into four main groups:

I. **Commercial corporations**: this group includes those corporations which perform commercial and industrial functions. The managing body of a commercial corporation resembles the Board of Directors of a public company. State Trading Corporation, Hindustan Machine Tools, Indian Airlines Corporation and Air India International are some of the commercial corporations.

II. **Development corporations**: the modern State is a 'Welfare State'. As a progressive State it exercises many non-sovereign functions also. Development corporations have been established with a view to encourage national progress by promoting development activities. Oil and Natural Gas Corporation, Damodar Valley Corporation, Food Corporation of India, are some development corporation.

III. **Social service corporations**: corporations which have been established for the purpose of providing social services to the citizens on behalf of the Government are not commercial in nature. Generally, they depend on the government for financial assistant. Employees' State Insurance Corporation, Rehabilitation Housing Corporation are examples of social services corporations.

IV. **Financial corporations**: this group includes financial institutions, like Reserve Bank of India, State Bank of India, Life Insurance Corporation of India, Industrial Finance Corporation of India etc.

LIABILITIES OF PUBLIC CORPORATION:

LIABILITIES IN CONTRACT: A public corporation can enter into contract and sue and be sued for breach thereof. Since a public corporation is not a government department, the provisions of article 299 of the constitution of India do not apply to it and a contract entered into between a public corporation and private individual need not satisfy the requirements laid down in Article 299.

LIABILITY IN TORTS: A public corporation is liable in tort like any other person. It will be liable for the tortuous acts commited by its servants and employees to the same extent as a private employer of full age and capacity would have been. A public corporation cannot claim the immunity conferred on the Government under Article 300 of the constitution. A corporation may be held liable for libel, deceit, or malicious prosecution though it cannot be sued for tortuous act of a personal nature, such as assult, personal defamation etc. Similarly, it can sue for tortuous acts of any person, such as libel, slander etc. Likewise, all defences available to a private individual in an action against him for tortuous acts will also be available to a public corporation.

LIABILITY FOR CRIMES:A public corporation may also be held vicarious liable for offences committed by its servants in the course of employment e.g. libel, fraud, nuisance, contempt of court etc. Since, however, it is an artificial person, it cannot be held liable for any offence which can be committed only by a natural person e,g, murder, hurt bigamy, etc
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