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CONSTITUTIONAL RECOGNITION OF SEPARATION OF POWER

The doctrine of separation of powers is very old as its origin can be traced to British philosopher ***Locke*** who coined the term separation of powers. But it was French jurist, ***Montesquieu*** who for the first time gave it a systematic and scientific formulation in his work called "the spirit of the laws." According to his view the three wings or organs of the government shall not encroach upon each other's powers and functions. The value of the doctrine lies in the fact that it seeks to preserve human dignity by avoiding the concentration of powers in one person or body of persons or in one particular wing of the government.

This doctrine is not specifically mentioned anywhere in the constitution but still by the words of article 50 one finds that the constitution has talked about the need of the separation of powers wherein the judiciary has been told to be separate and independent from the executive. In addition there are various provisions under the Indian Constitution that clearly demonstrate the existence of the doctrine of separation of powers and they are:-

i. Article 53(1) and Article 154 of the Indian Constitution clearly say that the Executive powers of the Union and the States are vest in the President and Governor respectively and shall only be exercised directly by him or through his subordinate officers.
ii. Article 122 and Article 212 of the Indian Constitution state that the courts cannot inquire in the proceedings of Parliament and the State Legislature. This ensures that there will be no interference of the judiciary in the legislature.
iii. Article 105 and Article 194 of the Indian Constitution specify that the MPs and MLAs cannot be called by the court for whatever they speak in the session.
iv. Article 50 of the Indian Constitution encourages the separation of judiciary from the executive in the states.
v. Article 121 and Article 211 of the Indian Constitution state that the judicial conduct of any judge of the Supreme Court or High Court shall not be discussed in Parliament or State Legislature.
vi. Article 361 of the Indian Constitution specifies that the President and the Governor are not accountable to any court for exercising their powers and performance of duties in his office.

Inspite of the above mentioned provisions, in India there exists a functional and personnel overlapping amongst the wings of the government. The President, executive head of the country has law making powers by virtue of ordinance making power and clemency powers, inter alia. The Legislature apart from exercising its law-making powers exercises judicial control in cases of breach of privileges provided to the legislators, impeachment of the President and judges. The Executive wing also affects the functioning of the judiciary by making appointments to the office of the Chief Justice and other Judges of the High Courts and lower judiciary. In ***Indira Nehru Gandhi v. Raj Narain***, Ray C.J. observed that even in the Indian Constitution

there is separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India.

HISTORY OF DELEGATED LEGISLATION IN INDIA IN PRE-CONSTITUTION PERIOD

As regards pre-Constitution period relating to delegated legislation in India, ***Queen v. Burah*** is considered to be the leading authority propounding the doctrine of conditional legislation. In 1869, the Indian legislature passed an Act purporting to remove the district of Garo Hills from the jurisdiction of the civil and criminal courts and the law applied therein. By section 9, the Lieutenant Governor was empowered from time to time, by notification in the Calcutta Gazette, to extend, ***mutatis mutandis,*** all or any of the provisions contained in the Act to the Jaintia, Naga and Khasia Hills and to fix the date of application thereof as well. By a notification dated October 14, 1871, the Lieutenant Governor extended all the provisions of notification which was challenged by Burah who was convicted of murder and sentenced to death.

The High Court of Calcutta by a majority upheld the contention of the appellant and held that section 9 of the Act was ultra vires the powers of the Indian Legislature. In the opinion of the Court, the Indian Legislature was a delegate of the Imperial Parliament and as such further delegation was not permissible. Thereupon the Government appealed to the Privy Council. The Act was held valid by the Privy Council. It was held that the Indian Legislature was not an agency or delegate of Imperial Parliament and it had plenary powers of legislation as those of Imperial Parliament. It agreed that the Governor-General in Council could not, by legislation create a new legislative power in India not created or authorized by the Council's Act of Imperial Parliament.

HISTORY OF DELEGATED LEGISLATION IN INDIA IN POST-CONSTITUTION PERIOD

The question of constitutional validity of delegation of powers came for consideration before the Federal Court in ***Jatindra Nath Gupta v. Province of Bihar***. In this case the validity of section 1 (3) of Bihar Maintenance of Public Order Act, 1948 was challenged on the ground that it empowered the Provincial Government to extend the life of the Act for one year with such modification as it may deem fit. The Federal Court held that the power of extension with modification is not a valid delegation of legislative power because it is an essential legislative function which cannot be delegated. In this way for the first time it was ruled that in India Legislative powers cannot be delegated.

As the decision in ***Jatindra Nath*** case had created confusion, the question of permissible limits of delegation of legislative power became important. Therefore, in order to get the position of law clarified, the President of India sought the opinion of Supreme Court under Article 143 of the Constitution. The question of law which was referred to the Supreme Court was of great Constitutional importance and was first of its kind.

There were a few Part C States. Delhi was one of them. Part C States were under the direct administration of the Central Government as they had no legislature of their own. Parliament had to legislate for these States. It was, therefore, that Parliament passed a law, the Part C States (Laws) Act, 1950. The Central Government was authorized by section 2 of the Part C States (Laws) Act, 1950 to extend to any Part C State with such modifications and restriction as it thinks fit, any enactment in force in a Part A State, and while doing so, it could repeal or amend any corresponding law (other than a central law) which might be in force in the Part C States. Really, it was a very sweeping kind of delegation.

The Supreme Court was called upon to determine the constitutionality of this provision. By a majority, the specific provision in question was held valid subject to two limitations:

a. The executive cannot be authorized to repeal a law in force and thus, the provision which authorized the Central Government to repeal a law already in force in the Part C States was bad; and
b. By exercising the power of modification, the legislative policy should not be changed, and thus, before applying any law to the Part C State the Central Government cannot change the legislative policy.

In Re Delhi Laws Act may be said to be "***Siddhanatawali***" i.e. principles as regards constitutionality of delegated legislation. In this case it was propounded:-

a) Parliament cannot abdicate or efface itself by creating a parallel legislative body.
b) Power of delegation is ancillary to the power of legislation.
c) The limitation upon delegation of legislative power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the Constitution. Essential legislative power means laying down policy of law and enacting that policy into a binding rule of conduct.
d) Power to repeal is legislative and it cannot be delegated.

The theme of Re Delhi Laws Act case is that essential legislative function cannot be delegated whereas non-essential can be delegated.

POWERS OF LOKPAL AND LOKAYUKTA

In India, the Ombudsman is known as the Lokpal or Lokayukta. Lokpal is at the Centre and one Lokayukta each at the State level for redress of people's grievances. A Lokpal ("defender of people" or "People's Friend") is an anti-corruption authority or body of ombudsman who represents the public interest in the Republic of India.

The Lokpal and Lokayuktas Act was passed in 2013 with amendments in parliament. Lokpal will consist of a chairperson and a maximum of eight members, of which 50% will be judicial members. Selection of

chairperson and members of Lokpal will be done through a selection committee consisting of PM, Speaker of Lok Sabha, leader of opposition in Lok Sabha, Chief Justice of India or a sitting Supreme Court judge nominated by CJI. Eminent jurist is to be nominated by President of India on basis of recommendations of the first four members of the selection committee "through consensus".

The Lokpal has jurisdiction to inquire into allegations of corruption against anyone who is or has been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D. Also covered are chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either established by an Act of Parliament or wholly or partly funded by the Union or State government. It also covers any society or trust or body that receives foreign contribution above ₹10 lakh (approx. US$14,300/- as of 2019).

The Lokpal, however, cannot inquire into any corruption charge against the Prime Minister if the allegations are related to international relations, external and internal security, public order, atomic energy and space, unless a full Bench of the Lokpal, consisting of its chair and all members, considers the initiation of a probe, and at least two-thirds of the members approve it.

POSITION OF OMBUDSMAN IN SCANDANAVIAN COUNTRIES

In general, an ombudsman is a state official appointed to provide a check on government activity in the interests of the citizen and to oversee the investigation of complaints of improper government activity against the citizen mainly concerned with corruption. If the ombudsman finds a complaint to be substantiated, the problem may get rectified, or an ombudsman report is published making recommendations for change. Further redress depends on the laws of the country concerned, but this typically involves financial compensation. Ombudsmen in most countries do not have the power to initiate legal proceedings or prosecution on the grounds of a complaint. This role is sometimes referred to as a "tribunician" role, and has been traditionally fulfilled by elected representatives.

The Ombudsman as an institution presents a dedication to the consolidation of the democracy and an instrument of control, transparency and accountability, to protect citizens' rights and freedoms and to fight maladministration. The Ombudsman is an instrument of state control in parliamentary systems, where the representative bodies have created additional instruments to limit and control the work of the administration. Secondly, the Ombudsman is vested with the authority of citizen's support in the case of violation of their rights. In this regard, Ombudsman is presented as the institution of external control over the public administration. Ombudsman has further measures of control aiming to balance the lack of legal protection and have the capacity to protect the legality of administrative actions in more efficient way, which may provide the citizen's right to appeal before the regular or administrative courts and the right to challenge

laws and regulations before the constitutional courts (Norway, Denmark, the United Kingdom and the European Ombudsman).

The object of the office of Ombudsman is to promote good governance in order to encourage accountability, efficiency and transparency in administration. Any person who believes that his rights have been violated by an act, action or inaction of bodies of local or central administration or any other body vested with public authorities, can file a complaint with the Ombudsman. Monitoring the implementation of good administration, for a long time has been one of the key areas of legality control through which the Ombudsman protects fundamental rights.

LEGITIMATE EXPECTATION

Concept of legitimate Expectation in administrative law has now gained sufficient importance. A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an Implied representation or from consistent past practice.

A case of legitimate expectation would arise when a body, by representation or by past practice, aroused expectation which would be within its power fulfil. The protection is limited to that extent and the judicial review can be within those limits. A person, who bases his claim on the doctrine of legitimate expectation in the first instance must satisfy that there is a foundation and thus has locus standi to make such a claim.

Legitimate expectations may come in various forms and owe their existence to different kinds of circumstances e.g. cases of promotions which are in normal course expected, contracts, distribution of largess by the Government and somewhat similar situations i.e. discretionary grants of licences, permits or the like, carry with it a reasonable expectation though not a legal right to renewal or non-revocation, and to summarily disappoint that expectation may be seen as unfair without the expectant person being heard.

The principle of legitimate expectation is closely connected with a 'right to be heard'. Legitimate expectation may arise:-

1. if there is an express promise given by a public authority; or
2. because of the existence of a regular practice which the claimant can reasonably expect to continue;
3. Such an expectation must be reasonable.

The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatsoever of invoking the doctrine as against the legislation.

IMPORTANCE OF ADMINISTRATIVE LAW

Administrative law can avoid small procedures. Administrative law is more about a functional approach than a theoretical and legislative approach. The traditional judicial system is traditionalist, inflexible and professional. It is not understandable that a court chooses a case without convention or procedure.

The administrative court is not bound by the rules of evidence and methodologies and can take a functional perspective on the subject in order to select complex issues. There are many precautions that government authorities can take on their own. Unlike ordinary courts, they do not have to wait for the parties to come in front of them to resolve the dispute.

In general, these precautions can be more effective and useful than dodging people after filing a law violation. Government authorities can take strong steps in implementing precautionary measures such as suspending, revoking, revoking permits, and atomizing unwanted items that are not accessible in ordinary courts. The main role of administrative law is to uphold the authority of the government under the law and to protect the rights and public interests of individuals. As is well known, the scope of government expands over time.

PUBLIC INTEREST LITIGATION

Public Interest Litigation popularly known as PIL can be broadly defined as litigation in the interest of that nebulous entity: the public in general. The expression 'Public Interest Litigation' has been borrowed from American jurisprudence, where it was designed to provide legal representation to previously unrepresented groups like the poor, the racial minorities, unorganised consumers, citizens who were passionate about the environmental issues, etc. Public interest Litigation (PIL) means litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards etc. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.

Public interest litigation is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of public at large. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body. The court can itself take cognizance of the matter and proceed suo moto or cases can commence on the petition of any public spirited individual.

Prior to 1980s, only the affected parties had the locus standi (standing required in law) to file a case and continue the litigation and the non-affected persons had no locus standi to do so. The traditional view in regard to locus standi in Writ jurisdiction has been that only such persons who:

a) Has suffered a legal injury by reason of violation of his legal right or legally protected interest; or

b) Is likely to suffer a legal injury by reason of violation of his legal right or legally protected interest.

Thus before a person acquired locus standi he had to have a personal or individual right which was violated or threatened to be violated.

However, these entire scenarios gradually changed when the post emergency Supreme Court tackled the problem of access to justice by people through radical changes and alterations made in the requirements of locus standi and of party aggrieved. The splendid efforts of Justice P N Bhagwati and Justice V R Krishna Iyer were instrumental in this change as they recognised the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. At present, the court can treat a letter as a writ petition and take action upon it. Now any public spirited person can file PIL on behalf of the victim party.

The first reported case of PIL was ***Hussainara Khatoon vs. State of Bihar*** that focused on the inhuman conditions of prisons and under trial prisoners that led to the release of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. A new era of the PIL movement was heralded by Justice **P.N. Bhagawati** in the case of ***S.P. Gupta vs. Union of India***. In this case it was held that "any member of the public or social action group acting bonafide" can invoke the Writ Jurisdiction of the High Courts (under article 226) or the Supreme Court (under Article 32) seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court. By this judgment PIL became a potent weapon for the enforcement of "public duties". Justice Bhagwati did a lot to ensure that the concept of PILs was clearly enunciated. He did not insist on the observance of procedural technicalities and even treated ordinary letters from public-minded individuals as writ petitions.

In M.C Mehta vs. Union of India a Public Interest Litigation was brought against Ganga water pollution so as to prevent any further pollution of Ganga water. Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.

LIABILITY OF GOVERNMENT IN TORT

To what extend the government or administration would be liable for the torts committed by its servants is a complex problem especially in developing countries with ever widening State activities. The liability of the government in tort is governed by the principles of public law inherited from British Common law and the provisions of the Constitution. The whole idea of Vicariously Liability of the State for the torts committed by its servants is based on three principles:

1. ***Respondeat superior*** (let the principal be liable).

2. ***Qui facit per alium facit per se*** (he who acts through another does it himself).

Article 300 of the Constitution of India provides for vicarious 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.

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 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 doctrine of immunity, for acts done in the exercise of sovereign functions, was applied by the Calcutta High Court in ***Nobin Chander Dey v. Secretary of State***. The plaintiff, in this case, contended that the Government had made a contract with him for the issue of a license for the sale of ganja and had committed a breach of the contract. The High Court held that upon the evidence, no breach of contract had been proved. Secondly, even if there was a contract, the act had been done in exercise of sovereign power and was thus not actionable.

In the case of ***State of Rajasthan v. Vidyawati,*** the respondents filed a suit for the damages made by an employee of a State and the case questioned whether the State was liable for the tortious act of its servant. The Court held that the liability of the State in respect of the tortious act by its servant within the scope of his employment and functioning as such was similar to that of any other employer. It was held in this case that the court held that State should be as much liable for tort in respect of tortuous acts committed by its servant within the scope of his employment and functioning as such, like any other employer.

LIABILITY OF GOVERNMENT IN CONTRACT

The Government of India both at the Centre as well as at the State level make several contracts. While an ordinary contract is governed by the Indian Contract Act, 1872 but in case of a Government Contract some additional provisions have been provided under the Indian Constitution, thus the formation of Government contract is done in a different manner as compared to an ordinary contract.

As per Article 299, all the contracts which are made under the Executive power of the Union or the State should be made in the name of the President or the Governor respectively. If a contract is not made under the President's or Governor's name, such a contract will not be considered as a Government contract. Further, all the terms of the contract should be enforced on their behalf a person who has been authorized to act on their behalf.

Under Article 299 Clause 2, the President and the Governor and the person who is authorized to act on their behalf are provided immunity from any personal liability which may be incurred due to non-performance of the contract. This immunity is provided to them only but it does not mean that the Government is also not liable for the contract because it would be unfair for the other party. So the liability of the Government will be the same as is the case in a normal contract under the Indian Contract Act, 1872. Thus, a person can sue the Government for the breach of contract and may be awarded damages by the court.

The courts have also held that in case the Government has derived any benefit from a person by an agreement which does not fulfil the requirements under Article 299, the Government will be held liable for compensating the other party under Section 70 of the Contract Act and such a contract will be deemed to be a quasi-contract to the extent the Government gets the benefit. This has been provided to protect an innocent party from suffering loss. In the case of ***Seth Bhikraj Jaipuria v. Union of India***, the Supreme Court had observed that from the words 'expressed to be made' and 'executed' in Article 299 it is clear that the Government contract should be made by a formal written contract. The court also held these formalities under Article 299 are of mandatory nature and they cannot be skipped by the contracting parties. If there is any contravention of these provisions then the contract will be nullified it will not be enforceable against the Government.

RULE OF LAW IN THE LIGHT OF INDIAN CONSTITUTION

Indian adopted the Common law system of justice delivery which owes its origins to British jurisprudence, the basis of which is the Rule of Law. The Constitution of India intended for India to be a country governed by the rule of law. It provides that the constitution shall be the supreme law of the land and the legislative and the executive derive their authority from the constitution.

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 mechanism of the judicial protection concerned with these rights against any legislative or executive encroachments.

Any law that is made by the legislature has to be in conformity with the Constitution failing which it will be declared invalid and this is provided for under **Article 13 (1)**. **Article 21** provides a further check against arbitrary executive action by stating that no person shall be deprived of his life or liberty except in accordance with the procedure established by law.

The maxim "**King can do no wrong" does not apply in India**. The aspect of "Equality before law" depicted in the concept of Rule of law finds place in Indian constitution in the **first part of Article 14**. Moreover the principles of Rule of law are also found in **articles 129 and 141 also**. Article 14 to 18 which depicts right to equality ensures that all citizens are equal and that no person shall be discriminated on the basis of sex, religion, race or place of birth, finally.

The **Part IV** of the constitution also provides for **Directive principles of State Policy** which ensures that there is a separation of power between the wings of the government and the executive have no influence on the judiciary. **Article 300** imposes the **tortuous liability, vicarious liability** on the government**. Article 299** imposes the **contractual liability** on the government.it ensures that there is a separation of power between the three wings of the government and the executive and the legislature have no influence on the judiciary. By these methods, the constitution fulfills the requirements of Dicey's theory to be recognized as a country following the Rule of Law.

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 violates 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 contention did not succeed and some justices even went on to suggest that during emergency, the emergency 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.

Most famously in the case of ***Kesavananda Bharati v. State of Kerala*** the Supreme Court held that the Rule of Law is an essential part of the basic structure of the constitution and as such cannot be amended by any Act of Parliament, thereby showing how the law is superior to all other authority of men. 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".

EXCEPTIONS TO THE RULE OF NATURAL JUSTICE

The exceptions to the Rule of Natural Justice are as follows:-

1. **Doctrine of necessity**- The **doctrine of necessity** is an exception to the **Rule against Bias**. The law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. There are certain extreme cases in which substitution/replacement of impartial adjudicator is not possible. In such situations, the principle of natural justice, under necessity has to give way. Otherwise the administration of justice breaks down and there is no other means to decide.
2. **Statutory exclusion**- Natural justice is submitted by the Courts when the parent statutes under which an action is made by the administration is quiet as to its application. Exclusion to make reference to one side of hearing in the statutory arrangement does not reject the hearing of the other party.
3. **Legislative function** - There are certain circumstances in which hearing might be prohibited. It is just that the activity of the Administrative being referred to is authoritative and not regulatory in character. Generally, an order which is of general nature is not applied to one or more specified person and is regarded as legislative in nature. Administrative activity, entirely, isn't liable to the guidelines of natural justice. In light of the fact that these standards set out an approach without reference to a specific person. On a similar rationale, standards of natural justice can likewise be prohibited by an arrangement of the Constitution too. The Indian Constitution rejects the standards of natural justice in Art. 22, 31(A), (B), (C) and 311(2) as an issue of arrangement. However, if the legislative exclusion is mainly concerned with arbitrary, unreasonable and unfair, courts may cancel such a provision under Article 14 and Article 21 of the Constitution of India.
4. **Impractibility**- The concept of natural justice is involved when it is practicable to do so but it is not applied in the case where it is impracticable to apply the rule and in such a situation it is excluded.

5. **Academic Evolution**- Where nature of power are absolutely regulatory then no privilege of hearing can be asserted.
6. **Inter-Disciplinary Action**- The words like suspension etc. which is inter-disciplinary action in such cases there is no need of the rule of natural justice. In the case of ***S.A. Khan v. State of Haryana*** Mr. Khan was at the post of deputy inspector general Haryana and was IPS officer. He was suspended by the Haryana government because many complaints were made against him. He filed a suit in the Supreme Court that he does not get an opportunity of being heard. The Supreme Court held that suspension was because of interdisciplinary approach and there is no requirement of hearing once.

CONSTITUTIONAL STATUS OF TRIBUNAL SYSTEM OF ADJUDICATION

The 42nd Amendment to the Constitution introduced Part XIV-A which included Article 323A and 323B providing for constitution of tribunals dealing with administrative matters and other issues. According to these provisions of the Constitution, tribunals are to be organized and established in such a manner that they do not violate the integrity of the judicial system given in the Constitution which forms the basic structure of the Constitution. The introduction of Article 323A and 323B was done with the primary objective of excluding the jurisdiction of the High Courts under Article 226 and 227, except the jurisdiction of the Supreme Court under Article 136 and for originating an efficacious alternative institutional mechanism or authority for specific judicial cases. The purpose of establishing tribunals to the exclusion of the jurisdiction of the High Courts was done to reduce the pendency and lower the burden of cases.

Article 323A provides the establishment of administrative tribunals by law made by Parliament for the adjudication of disputes and complaints related to the recruitment and conditions of service of Government servants under the Central Government and the State Government. It includes the employees of any local or other authority within the territory of India or under the control of the Government of India or of a corporation owned or controlled by the Government. The establishment of such tribunals must be at the centre and state level separately for each state or for two or more states. The law must incorporate the provisions for the jurisdiction, power and authority to be exercised by tribunals; the procedure to be followed by tribunals; the exclusion of the jurisdiction of all other courts except the Supreme Court of India. In pursuance of the provisions in Article 323A, Parliament passed the Administrative Tribunal Act, 1985, providing for all the matters falling within the clause(1) of Article 323-A. According to this Act, there must be a Central Administrative Tribunal (CAT) at the centre and a State Administrative Tribunal (SAT) at the state level for every state.

Article 323B empowers the Parliament and the State Legislature to establish tribunals for the adjudication of any dispute or complaint with respect to the matters such as levy, assessment, collection and enforcement of

any tax; foreign exchange and export; industrial and labour disputes; production, procurement, supply and distribution of foodstuffs; rent and its regulation and control and tenancy issues etc.

In the landmark case of ***L. Chandra Kumar v. Union of India***, the court reached various conclusions as to jurisdictional powers of the tribunal constituted under Articles 323A and 323B. The Supreme Court struck down clause 2(d) of Article 323A and clause 3(d) of Article 323B on the ground that they excluded the jurisdiction of the High Courts and the Supreme Court under Article 226/227 and 32 respectively. The Court ruled that the tribunals created under Article 323A and 323B would continue to be the courts of the first instance in their respective areas for which they are constituted. The litigants are not allowed to approach the High Courts directly by overlooking the jurisdiction of the concerned tribunal. No appeal for the decision of the tribunal would lie directly before the Supreme Court under Article 136 but instead, the aggrieved party would be entitled to move the High Court under Article 226 and 227 and after the decision of the Division Bench of the High Court, the party may approach the Apex Court under Article 136. The Supreme Court held that tribunals were not equal to High Courts and recognized the need for tribunals as distinct from courts, but reiterated that no tribunal could really be a substitute of a High Court.

DELEGATA POTESTAS NON POTEST DELEGARI

The maxim *Delegata potestas non potest delegari* is a principle of constitutional and administrative law with the latin meaning a delegated authority cannot again be delegated. The maxim can also be stated as "*Delegatus non potestdelegare*" which means no one to whom power is delegated cannot himself further delegate that power. In other words a person to whom some power is delegated cannot sub-delegate that power to someone else. The reason why this principle is followed is very simple. One who has the power or authority from another person to do an act must do it himself or herself as this is a trust or confidence reposed in that person personally. It cannot be assigned to a stranger whose ability and integrity might not be known to the principal.

A.K. Roy and anr. v. State of Punjab and anr was the first case in India which established the principle that a delegated authority cannot again be delegated as laid down by the maxim *delegatus non potest delegare*. In this case the validity of sub-delegation of power under the Prevention of Food Adulteration Act, 1954 was questioned. Section 24(2)(e) of the Act enables the State Government to frame a rule for delegation of powers and functions under the Act, but it clearly does not envisage any sub-delegation. The maxim *delegatus non potest delegare* merely indicates that this is not normally allowable but legislature can always provide for sub-delegation of powers. Thus, in other words the principle laid down by the maxim is a general rule but legislature can or the authority making such law can provide for an exception by expressly allowing sub-delegation of powers.

JUDICIAL OBSTINACY

Judicial obstinacy is a type of bias that occurs when a judge is unwilling to change their mind, even when there is new evidence or a higher court has ruled against them. It can prevent fair consideration of a case. Judicial obstinacy refers to a judge's unwavering adherence to a particular viewpoint or decision, even in the face of higher court reversals or new evidence. It signifies a mental rigidity that compromises the judge's ability to remain open-minded and impartial. Bias on account of obstinacy refers to a situation where a decision-maker shows unreasonable and unwavering persistence in upholding their own decision or judgment, even when there are valid reasons to reconsider it.

In the case of ***A.U. Kureshi v. High Court of Gujarat,*** a judicial officer (the appellant) was dismissed from service after being found guilty in a disciplinary inquiry. The appellant had previously acquitted an accused under the Gambling Act and returned the seized money. A complaint was later filed against the appellant, leading to a disciplinary inquiry. The High Court recommended the appellant's dismissal based on the suggestion of the Disciplinary Committee.

The Supreme Court held that a judge who was part of the Disciplinary Committee should not have decided the matter on the judicial side. It was improper for a member of the Disciplinary Committee to adjudicate on a challenge against the same dismissal order while acting in a purely judicial capacity.

Such actions create an apprehension of bias on the part of the judge. Consequently, the Supreme Court set aside the High Court's order and remitted the matter for fresh consideration, adhering to the principle that no judge should decide a dispute they have dealt with in any capacity other than a purely judicial one.