SOURCES OF LAW

INTRODUCTION

The nature and meaning of law has been described by various jurists. however, there is no unanimity of opinion regarding the true nature and meaning of law

We may classify various definitions into five broad classes

1. **NATURAL SCHOOL**
   Under this school fall most of the ancient definitions given by Roman and other ancient Jurists.
   Ulpine defined Law as "the art or science of what is equitable and good."
   Cicero said that Law is "the highest reason implanted in nature."
   Justinian's Digest defines Law as "the standard of what is just and unjust."

2. **POSITIVISTIC DEFINITION OF LAW**
   According to John Austin, "Law is the aggregate of rules set by man as politically superior, or sovereign, to Lesson 1 Sources of Law 3 men as political subject." In other words, law is the "command of the sovereign". It obliges a certain course of conduct or imposes a duty and is backed by a sanction. Thus, the command, duty and sanction are the three elements of law.

   HISTORICAL DEFINITION OF LAW
   Historical Definition of Law Savigny's theory of law can be summarised as follows:
   – That law is a matter of unconscious and organic growth. Therefore, law is found and not made. – Law is not universal in its nature. Like language, it varies with people and age.
   – Custom not only precedes legislation but it is superior to it. Law should always conform to the popular consciousness.
   – Law has its source in the common consciousness of the people. – Legislation is the last stage of law making, and, therefore, the lawyer or the jurist is more important than the legislator.

3. **SOCIOLOGICAL DEFINITION OF LAW**
   Duguit defines law as "essentially and exclusively as social fact."
   Ihering defines law as "the form of the guarantee of the conditions of life of society, assured by State's power of constraint". There are three essentials of this definition. First, in this definition law is treated as only one means of social control. Second, law is to serve social purpose. Third, it is coercive in character.

4. **REALISTIC DEFINITION OF LAW**
   According to Holmes, "Law is a statement of the circumstances in which public force will be brought to bear upon through courts." According to Cardozo, "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law."

SIGNIFICANCE OF LAW

Law is not static. As circumstances and conditions in a society change, laws are also changed to fit the requirements of society. At any given point of time the prevailing law of a society must be in conformity with the general statements, customs and aspirations of its people.

Modern science and technology have unfolded vast prospects and have aroused new and big ambitions in men. Materialism and individualism are prevailing at all spheres of life. These developments and changes

have tended to transform the law patently and latently. Therefore, law has undergone a vast transformation – conceptual and structural.

The idea of abstract justice has been replaced by social justice. The object of law is order which in turn provides hope of security for the future. Law is expected to provide socio-economic justice and remove the existing imbalances in the socio-economic structure and to play special role in the task of achieving various socio-economic goals enshrined in our Constitution. It has to serve as a vehicle of social change and as a harbinger of social justice

SOURCES OF INDIAN LAW

The sources of Law can be broadly divided into two heads.

1. **Primary/Principle Sources of Law**
2. **Secondary Sources of Law**

Primary/Principle Sources of Law

1. **Customs or Customary Law:** Custom is the most ancient of all the sources of law and has held the most important place in the past, though its importance is now diminishing with the growth of legislation and precedent.

The customs may be divided into two classes:

– **Customs without sanction** Customs without sanction are those customs which are non-obligatory and are observed due to the pressure of public opinion. These are called as “positive morality”

– **Customs having sanction**Customs having sanction are those customs which are enforced by the State. It is with these customs that we are concerned here. These may be divided into two classes:

(i) **Legal Customs**: These customs operate as a binding rule of law. They have been recognised and enforced by the courts and therefore, they have become a part of the law of land. Legal customs are again of two kinds:

(a) **Local Customs**: Local custom is the custom which prevails in some definite locality and constitutes a source of law for that place only. But there are certain sects or communities which take their customs with them wherever they go. They are also local customs. Thus, local customs may be divided into two classes: – Geographical Local Customs – Personal Local Customs These customs are law only for a particular locality, section or community.

(b) **General Customs**: A general custom is that which prevails throughout the country and constitutes one of the sources of law of the land.

(ii) **Conventional Customs**: These are also known as “usages”. These customs are binding due to an agreement between the parties, and not due to any legal authority independently possessed by them. Before a Court treats the conventional custom as incorporated in a contract, following conditions must be satisfied:

– It must be shown that the convention is clearly established and it is fully known to the contracting parties. There is no fixed period for which a convention must have been observed before it is recognised as binding.

– Convention cannot alter the general law of the land.

– It must be reasonable.

Requisites of a Valid Custom

A custom will be valid at law and will have a binding force only if it fulfils the following essential conditions, namely: (i) **Immemorial (Antiquity)**: A custom to be valid must be proved to be immemorial; it must be ancient. According to Blackstone, "A custom, in order that it may be legal and binding must have been used so long that the memory of man runs not to the contrary, so that, if anyone can show the beginning of it, it is no good custom".

(ii) **Certainty**: The custom must be certain and definite, and must not be vague and ambiguous.

(iii) **Reasonableness**: A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.

(iv) **Compulsory Observance**: A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.

(v) **Conformity with Law and Public Morality**: A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.

(vi) **Unanimity of Opinion**: The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.

(vii) **Peaceable Enjoyment**: The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.

(viii) **Consistency**: There must be consistency among the customs. Custom must not come into conflict with the other established customs.

Judicial Decisions or Precedents

In general use, the term "precedent" means some set pattern guiding the future conduct. In the judicial field, it means the guidance or authority of past decisions of the courts for future cases. Only such decisions which lay down some new rule or principle are called judicial precedents. Judicial precedents are an important source of law. They have enjoyed high authority at all times and in all countries. This is particularly so in the case of England and other countries which have been influenced by English jurisprudence. The principles of law expressed for the first time in court decisions become precedents to be followed as law in deciding problems and cases identical with them in future. The rule that a court decision becomes a precedent to be followed in similar cases is known as doctrine of stare decisis.

High Courts

(i) The decisions of High Court are binding on all the subordinate courts and tribunals within its jurisdiction. The decisions of one High Court have only a persuasive value in a court which is within the jurisdiction of another High Court. But if such decision is in conflict with any decision of the High Court within whose jurisdiction that court is situated, it has no value and the decision of that High Court is binding on the court. In case of any conflict between the two decisions of co-equal Benches, generally the later decision is to be followed.

(ii) In a High Court, a single judge constitutes the smallest Bench. A Bench of two judges is known as Division Bench. Three or more judges constitute a Full Bench. A decision of such a Bench is binding on a Smaller Bench.

(iii) One Bench of the same High Court cannot take a view contrary to the decision already given by another coordinate Bench of that High Court. Though decision of a Division Bench is wrong, it is binding on a single judge of the same High Court. Thus, a decision by a Bench of the High Court should be followed

by other Benches unless they have reason to differ from it, in which case the proper course is to refer the question for decision by a Full Bench.

(iv) The High Courts are the Courts of co-ordinate jurisdiction. Therefore, the decision of one High Court is not binding on the other High Courts and has persuasive value only.

Supreme Court

The Supreme Court is the highest Court and its decisions are binding on all courts and other judicial tribunals of the country. Article 141 of the Constitution makes it clear that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The words "law declared" includes an obiter dictum provided it is upon a point raised and argued.

However, it does not mean that every statement in a judgement of the Supreme Court has the binding effect. Only the statement of ratio of the judgement is having the binding force.

The expression 'all courts' used in Article 141 refers only to courts other than the Supreme Court. Thus, the Supreme Court is not bound by its own decisions. However, in practice, the Supreme Court has observed that the earlier decisions of the Court cannot be departed from unless there are extraordinary or special reasons to do so (AIR 1976 SC 410). If the earlier decision is found erroneous and is thus detrimental to the general welfare of the public, the Supreme Court will not hesitate in departing from it.

Kinds of Precedents

Declaratory and Original Precedents: According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. An original precedent is one which creates and applies a new rule of law. In the case of a declaratory precedent, the rule is applied because it is already a law. In the case of an original precedent, it is law for the future because it is now applied. In the case of advanced countries, declaratory precedents are more numerous. The number of original precedents is small but their importance is very great.

Persuasive Precedents: A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. A persuasive precedent, therefore, is not a legal source of law; but is regarded as a historical source of law. Thus, in India, the decisions of one High Court are only persuasive precedents in the other High Courts. The rulings of the English and American Courts are persuasive precedents only. Obiter dicta also have only persuasive value.

Absolutely Authoritative Precedents: An authoritative precedent is one which judges must follow whether they approve of it or not. Its binding force is absolute and the judge's discretion is altogether excluded as he must follow it. Such a decision has a legal claim to implicit obedience, even if the judge considers it wrong. Unlike a persuasive precedent which is merely historical, an authoritative precedent is a legal source of law.

Absolutely authoritative precedents in India: Every court in India is absolutely bound by the decisions of courts superior to itself. The subordinate courts are bound to follow the decisions of the High Court to which they are subordinate. A single judge of a High Court is bound by the decision of a bench of two or more judges. All courts are absolutely bound by decisions of the Supreme Court.

In England decisions of the House of Lords are absolutely binding not only upon all inferior courts but even upon itself. Likewise, the decisions of the Court of Appeal are absolutely binding upon itself.

Conditionally Authoritative Precedents: A conditionally authoritative precedent is one which, though ordinarily binding on the court before which it is cited, is liable to be disregarded in certain circumstances.

The court is entitled to disregard a decision if it is a wrong one, i.e., contrary to law and reason. In India, for instance, the decision of a single Judge of the High Court is absolutely authoritative so far as subordinate judiciary is concerned, but it is only conditionally authoritative when cited before a Division Bench of the same High Court.

The doctrine of Stare Decisis

The doctrine of stare decisis means "adhere to the decision and do not unsettle things which are 10 EP-JI&GL established". It is a useful doctrine intended to bring about certainty and uniformity in the law. Under the stare decisis doctrine, a principle of law which has become settled by a series of decisions generally is binding on the courts and should be followed in similar cases. In simple words, the principle means that like cases should be decided alike. This rule is based on public policy and expediency. Although generally the doctrine should be strictly adhered to by the courts, it is not universally applicable. The doctrine should not be regarded as a rigid and inevitable doctrine which must be applied at the cost of justice.

Ratio Decidendi

The underlying principle of a judicial decision, which is only authoritative, is termed as ratio decidendi. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its ratio decidendi. Prof. Goodhart says that ratio decidendi is nothing more than the decision based on the material facts of the case. Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as ratio decidendi and such principle is not only applicable to that case but to other cases also which are of similar nature. It is the ratio decidendi or the general principle which has the binding effect as a precedent, and not the obiter dictum. However, the determination or separation of ratio decidendi from obiter dictum is not so easy. It is for the judge to determine the ratio decidendi and to apply it on case to be decided.

Obiter Dicta

The literal meaning of this Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a particular case and have the force of persuasive precedents only. The judges are not bound to follow them although they can take advantage of them. They sometimes help the cause of the reform of law.

Obiter Dicta are of different kinds and of varying degree of weight. Some obiter dicta are deliberate expressions of opinion given after consideration on a point clearly brought and argued before the court. It is quite often too difficult for lawyers and courts to see whether an expression is the ratio of judgement or just a causal opinion by the judge.

3.Statutes or Legislation

Legislation is that source of law which consists in the declaration or promulgation of legal rules by an authority duly empowered by the Constitution in that behalf. It is sometimes called written law as contrasted with the customary law or unwritten law. Salmond prefers to call it as "enacted law". Statute law or statutory law is what is created by legislation, for example, Acts of Parliament or of State Legislature. Legislation is either supreme or subordinate (delegated).

Supreme Legislation is that which proceeds from the sovereign power in the State or which derives its power directly from the Constitution. It cannot be repealed, annulled or controlled by any other legislative authority. Subordinate Legislation is that which proceeds from any authority other than the sovereign power. It is dependent for its continued existence and validity on some superior authority. The Parliament of

India possesses the power of supreme legislation. Legislative powers have been given to the judiciary, as the superior courts are allowed to make rules for the regulation of their own procedure. The executive, whose main function is to enforce the law, is given in some cases the power to make rules. Such subordinate legislation is known as executive or delegated legislation. Municipal bodies enjoy by delegation from the legislature, a limited power of making regulations or bye-laws for the area under their jurisdiction.

4.Personal Law

In many cases, the courts are required to apply the personal law of the parties where the point at issue is not covered by any statutory law or custom.

In the case of Hindus, for instance, their personal law is to be found in:

(a) The Shruti which includes four Vedas.
(b) The 'Smritis' which are recollections handed down by the Rishi's or ancient teachings and precepts of God, the commentaries written by various ancient authors on these Smritis.

Hindus are governed by their personal law as modified by statute law and custom in all matters relating to inheritance, succession, marriage, adoption, co-parcenary, partition of joint family property, pious obligations of sons to pay their father's debts, guardianship, maintenance and religious and charitable endowments.

The personal law of Mohammedans is to be found in:–

(a) The holy Koran.

(b) The actions, percepts and sayings of the Prophet Mohammed which though not written during his life time were preserved by tradition and handed down by authorised persons. These are known as Hadis.

(c) Ijmas, i.e., a concurrence of opinion of the companions of the Prophet and his disciples.

(d) Kiyas or reasoning by analogy. These are analogical deductions derived from a comparison of the Koran, Hadis and Ijmas when none of these apply to a particular case.

Mohammedans are governed by their personal law as modified by statute law and custom in all matters relating to inheritance, wills, succession, legacies, marriage, dowry, divorce, gifts, wakfs, guardianship and pre-emption.

SECONDARY SOURCES OF INDIAN LAW

1. Justice, Equity And Good Conscience

The concept of "justice, equity and good conscience" was introduced by Impey's Regulations of 1781. In personal law disputes, the courts are required to apply the personal law of the defendant if the point at issue is not covered by any statute or custom.

In the absence of any rule of a statutory law or custom or personal law, the Indian courts apply to the decision of a case what is known as "justice, equity and good conscience", which may mean the rules of English Law in so far as they are applicable to Indian society and circumstances.

The Ancient Hindu Law had its own versions of the doctrine of justice, equity and good conscience. In its modern version, justice, equity and good conscience as a source of law, owes its origin to the beginning of the British administration of justice in India.

2. SOURCES OF ENGLISH LAW

Common Law: The Common Law, in this context is the name given to those principles of law evolved by the judges in making decisions on cases that are brought before them. These principles have been built up over many years so as to form a complete statement of the law in particular areas

Law Merchant: The Law Merchant is the most important source of the Merchantile Law. Law Merchant means those customs and usages which are binding on traders in their dealings with each other. But before a custom can have a binding force of law, it must be shown that such a custom is ancient

Principle of Equity: Equity is a body of rules, the primary source of which was neither custom nor written law, but the imperative dictates of conscience and which had been set forth and developed in the Courts of Chancery. The procedure of Common Law Courts was very technical and dilatory. Action at Common Law could be commenced by first obtaining a writ or a process. The writs were limited in number and unless a person was able to bring his case within one of those writs, no action could lie at Common Law.

In some cases, there was no remedy or inadequate remedy at Common Law. The King is considered as the fountain head of justice; when people were dissatisfied or aggrieved with the decision of the Common Law Court, they could always file a mercy petition with the King-in-Council. The King would refer these petitions to his Chancellor. The Chancellor, who was usually a Bishop, would dispose of these petitions not according to the rigid letter of the law but according to his own dictates of commonsense, natural justice and good conscience. The law so administered by the Chancellor came to be known as 'Equity' and such courts as 'Equity Courts'. These 'Equity Courts' acted on number of maxims e.g.,

1. "He who seeks equity must do equity",
2. "He who comes to equity must come with clean hands

Mercantile or Commercial Law

Mercantile Law is related to the commercial activities of the people of the society. It is that branch of law which is applicable to or concerned with trade and commerce in connection with various mercantile or business transactions. Mercantile Law is a wide term and embraces all legal principles concerning business transactions. The most important feature of such a business transaction is the existence of a valid agreement, express or implied, between the parties concerned. The Mercantile Law or Law Merchant is the name given to that part of law which grew up from the customs and usages of merchants or traders in England which eventually became a part of Common Law of England.

Mercantile Law in India

Prior to 1872, mercantile transactions were regulated by the law of the parties to the suit (i.e., Hindu Law, Mohammedan Law etc.). In 1872, the first attempt was made to codify and establish uniform principles of mercantile law when Indian Contract Act, 1872 was enacted. Since then, various Acts have been enacted to regulate transactions regarding partnership, sale of goods, negotiable instruments, etc.

Sources of Indian Mercantile Law

The main sources of Indian Mercantile Law are:

(i) English Mercantile Law: The Indian Mercantile Law is mainly an adaptation of English Mercantile Law. However, certain modifications wherever necessary, have been incorporated in it to provide for local customs and usages of trade and to suit Indian conditions. Its dependence on English Mercantile Law is so much that even now in the absence of provisions relating to any matter in the Indian Law, recourse is to be had to the English Mercantile Law.

(ii) Acts enacted by Indian Legislature or Statute Law: The Acts enacted by the Indian legislature from time to time which are important for the study of Indian Mercantile Law include, (i) The Indian Contract Act, 1872,(ii) The Sale of Goods Act, 1930, (iii) The Indian Partnership Act, 1932, (iv) The Negotiable Instruments Act, 1881, (v) The Arbitration and Conciliation Act, 1996, (vi) The Insurance Act, 1938.

(iii) Judicial Decisions: Judges interpret and explain the statutes. Whenever the law is silent on a point, the judge has to decide the case according to the principles of justice, equity and good conscience. It would

be accepted in most systems of law that cases which are identical in their facts, should also be identical in their decisions.

(iv) Customs and Trade Usages: Most of the Indian Law has been codified. But even then, it has not altogether done away with customs and usages. Many Indian statutes make specific provisions to the effect that the rules of law laid down in a particular Act are subject to any special custom or usages of trade.

JURISPRUDENCE

The word Jurisprudence is derived from the word 'juris' meaning law and 'prudence' meaning knowledge. Jurisprudence is the study of the science of law. The study of law in jurisprudence is not about any particular statute or a rule but of law in general, its concepts, its principles and the philosophies underpinning it.

The meaning of 'jurisprudence' has changed over a period of time as the boundaries of this discipline are not rigid. This amorphous nature is a subject of intense controversy among the scholars.

In England, 'jurisprudence' came close to mean almost exclusively the analysis of the formal structure of law and its concepts because of the analytical exposition done by Bentham and Austin who were its pioneers. But as dissatisfaction with their conception of law grew in the later years and alternative conceptions were offered, the term 'jurisprudence' came to acquire a broader meaning but a concrete delineation of the boundary of the subject has proved elusive.

Howsoever the term jurisprudence is defined; it remains a study relating to law. The word 'law' itself is used to refer more than one thing. Hence one of the first tasks of jurisprudence is to attempt to throw light on the nature of law. However, various theorists define law in their own ways and this leads to a corresponding jurisprudential study. For example, law has two fold aspect: it is an abstract body of rules and also a social machinery for securing order in the community. However, the various schools of jurisprudence, instead of recognizing both these aspects, emphasize on one or the other.

VARIOUS SCHOOLS OF LAW

Austin

Austin was a positivist, meaning that he concerned himself on what the law was instead of going into its justness or fairness. Austin differentiated between 'Law properly so called' and 'laws improperly so called' and said that laws properly so called are general commands but not all of it is given by men for men. A specie of Laws properly so called are given by political superiors to political inferiors.

According to Austin law is the command of sovereign that is backed by sanction. Austin has propagated that law is a command which imposes a duty and the failure to fulfill the duty is met with sanctions (punishment). Thus Law has three main features:

1. It is a command.
2. It is given by a sovereign authority.
3. It has a sanction behind it.

In order to properly appreciate Austin's theory of law, we need to understand his conception of command and sovereign.

Command

It is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. Command requires the presence of two parties- the commander (political superior) and the commanded (political inferior).

Sovereign

In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey some other authority habitually. According to Austin, the sovereign is the source of all laws.

Sanction

Is the evil consequence that follows on the violation of a command. To identify a law, the magnitude of the sanction is not relevant but the absence of sanction disentitles an expression of the sovereign from being a law in Austinian sense. Sanction should not also be confused with a reward that might be on offer if a given conduct is followed or refrained from. Reward confers a positive right whereas a sanction is a negative consequence.

Criticism of Austin's Command Theory of law

1. Welfare states pass a number of social legislations that does not command the people but confer rights and benefits upon them. Such laws are not covered under the command theory.

2. According to Austin the sovereign does not have to obey anyone but the modern states have their powers limited by national and international laws and norms. For example, the Government of India cannot make laws that are violative of the provisions of the Constitution of India.

3. Austin does not provide for judges made laws. He said that judges work under the command of the sovereign but in reality judges make positive laws as well.

4. Since the presence of sovereign is a pre-requisite for a proposition to called law, Austin did not recognize international laws as such because they are not backed by any sovereign.

Roscoe Pound

Roscoe Pound a distinguished American legal scholar was a leading jurist of 20th century and was one of the biggest proponents of sociological jurisprudence which emphasized taking into account of social facts in making, **interpretation** and application of laws.

Roscoe Pound drew a similarity between the task of a lawyer and an engineer and gave his theory of social engineering. The goal of this theory was to build such a structure of society where the satisfaction of maximum of wants was achieved with the minimum of friction and waste. Such a society according to Roscoe Pound would be an 'efficient' society. Realisation of such a social structure would require balancing of competing interests. Roscoe Pound defined interests as claims or wants or desires which men assert de facto, and about which law must do something, if organised societies are to endure. For any legal order to be successful in structuring an efficient society, there has to be:

1. A recognition of certain interests- individual, public and social.

2. A definition of the limits within which such interest will be legally recognized and given effect to.

3. Securing of those interests within the limits as defined.

Roscoe Pound's classification of interests are as follows:

1. **Individual interest**: These are claims or demands determined from the standpoint of individual's life and concern. They are-

(i) Interest of personality: This includes physical integrity, freedom of will, honor and reputation, privacy and freedom of conscience.

(ii) Interest in domestic relations: This includes relationships of parents, children, husbands and wives.

(iii) Interest of substance: This includes interests of property, freedom of association, freedom of industry and contract, continuity of employment, inheritance and testamentary succession.

2. **Public interest**: These interests are asserted by individual from the standpoint of political life. They are:

(i) Interests of the state as a juristic person: It includes integrity, freedom of action and honour of the state's personality, claims of the politically organized society as a corporation to property acquired and held for corporate purposes.

(ii) Interests of the state as guardian of social interest.

3. **Social interests**: These are claims or demands thought of in terms of social life and generalized as claims of the social group. It is from the point of view of protecting the general interest of all members of the society. Social interests include-

(i) Social interest in the general security: This includes general safety, peace and order, general health, security of acquisition and transaction.

(ii) Social interest in the security of social institutions such as domestic, religious, political and economic institutions.

(iii) Social interest in general morals like laws dealing with prostitution, gambling, bigamy, drunkenness.

(iv) Social interest in the conservation of social resources like the natural and human resource. This social interest clashes to some extent with the individual interest in dealing with one's own property as on pleases.

(v) Social interest in general progress. It has three aspects- economic, political and cultural.

(vi) Social interest in individual life. It involves self-assertion, opportunity and conditions of life. Society is interested in individual life because individuals are its building blocks.

Having given various interest recognized by law, Roscoe Pound applied himself to figure out to balance competing interests. He said that interests should be weighed on the same plane. According to him one cannot balance an individual interest against a social interest, since that very way of stating them may reflect a decision already made. Thus all the interests should be transferred to the same place, most preferably to the social plane, which is the most general, for any meaningful comparison.

Criticism of Roscoe Pound's theory of law

1. Pound said that interest pre-exist laws and the function of legal system should be to achieve a balance between competing interests but we see that a lot of interests today are a creation of laws.

2. The theory does not provide any criteria for the evaluation of interest. It is not interests as such, but the yardstick with reference to which they are measured that matter. It may happen that some interest is treated as an ideal in itself by a society, in which case it is not the interest as an interest, but as an ideal that will determine the relative importance between it and other interests.

3. Pound's theory of balancing interests can be effectuated most effectively by judges because the judges get to translate the activity involved in the cases before them in terms of interests and select the ideal with reference to which the competing interests are to be measured. Thus his theory gives more importance to judiciary in comparison to the legislature.

John William Salmond

John William Salmond was a law professor in New Zealand who later also served as a judge of the Supreme Court of New Zealand. He made seminal contribution in the field of jurisprudence, law of torts and contracts law.

Salmond claimed that the purpose of law was the deliverance of justice to the people. Salmond also necessitated the presence of the state for implementation of laws just like Bentham and Austin.

Salmond differentiated between 'a law' and 'the law' and said that the former refers to the concrete and the latter to the abstract. According to him this distinction demands attention for the reason that the concrete term is not co-extensive with the abstract in its application. In its abstract application we speak of civil law, the law of defamation, criminal law etc. Similarly we use the phrases law and order, law and justice, courts of law. In its concrete sense, on the other hand, we talk about specific laws like the Indian Penal Code or the Right to Information Act.

According to Salmond law is the body of principles which are recognized and applied by the state in the administration of justice. His other definition said that law consists of a set of rules recognized and acted on in courts of justice. 'Law' in this definition is used in its abstract sense. The constituent elements of which the law is made up are not laws but rules of law or legal principles.

Criticism of Salmond's theory.
1. Salmond's assertion that justice is the end and law is only a medium to realize it does not always hold true because there are a number of laws that can be called 'unjust'. Example POTA,SARFAESI etc

2. The pursuit of justice is not the only purpose of law, the law of any period serves many ends and these ends themselves change with the passage of time.

3. There is a contradiction when Salmond says that the purpose of law is the administration of justice but limits 'jurisprudence' to the study of the 'first principles' of civil law of a national legal system because justice is a universal concept, the jurisprudential analysis of law should not be constrained by national boundaries.

Hans Kelson
Hans Kelson was an Austrian philosopher and jurist who is known for his 'Pure Theory of Law'. Kelsen believed that the contemporary study and theories of law were impure as they were drew upon from various other fields like religion and morality to explain legal concepts. Kelson, like Austin was a positivist, in that he focused his attention on what the law was and divested moral, ideal or ethical elements from law. He discarded the, notion of justice as an essential element of law because many laws, though not just, may still continue as law.

Kelsen described law as a "normative science' as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. The laws of natural science are capable of being accurately described, determined and discovered whereas the science of law is knowledge of what law ought to be. Like Austin, Kelsen also considered sanction as an essential element of law but he prefered to call it 'norm'. According to Kelsen, 'law is a primary norm which stipulates sanction'.

According to Kelsen, 'norm (sanction) is rules forbidding or prescribing a certain behaviour'. He saw legal order as the hierarchy of norms having sanction, and jurisprudence was the study of these norms which comprised legal order. Kelsen distinguished moral norm with legal norm and said that though moral norms are 'ought' prepositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

According to Kelsen, we attach legal-normative meaning to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelsen as 'Grundnorm'. Thus, Kelsen's pure theory of law is based on pyramidical structure of hierarchy of norms which derive their validity from the basic norm.

Criticism of Kelsen's Pure Theory
1. The Pure Theory also did not give the timeframe for which the effectiveness should hold for the

requirement of validity to be satisfied. Validity is a matter to be determined in the context of a given point of time and depends on what judges are prepared to accept at that moment as imparting lawquality.

2. International law does not sit well with Kelsen's Pure theory. He advocated a monist view of the relationship between international and municipal law

Jeremy Bentham

Jeremy Benthamwas the pioneer of analytical jurisprudence in Britain. According to him 'a law' may be defined as an assemblage of signs, declarative of volition, conceived or adopted by a sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or a class of persons, who in the case in question are or are supposed to be subject to his power. Thus, Bentham's concept of law is an imperative one.

The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. The justification for having laws is that they are an important means of ensuring happiness of the members of community generally. Hence, the sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

Bentham said that every law may be considered in eight different respects:

1. **Source**: The source of a law is the will of the sovereign, who may conceive laws which he personally issues, or adopt laws previously issued by sovereigns or subordinate authorities, or he may adopt laws to be issued in future by subordinate authorities. Sovereign according to Bentham is any person or assemblage or person to whose will a whole political community is supposed to be in a disposition to pay obedience, and than in preference to the will of any other person.

2. **Subjects**: These may be persons or things. Each of these may be active or passive subjects, i.e., the agent with which an act commences or terminates.

3. **Objects**: The goals of a given law are its objects.

4. **Extent**: Direct extent means that a law covers a portion of land on which acts have their termination; indirect extent refers to the relation of an actor to a thing.

5. **Aspects**: Every law has 'directive' and a 'sanctional' part. The former concerns the aspects of the sovereign will towards an act-situation and the latter concerns the force of a law. The four aspects of the soverign will are command, prohibition, non-prohibition and non-command and the whole range of laws are covered under it. These four aspects are related to each other by opposition and concomitancy.

6. **Force**: The motivation to obey a law is generated by the force behind the law.

7. **Remedial appendage**: These are a set of subsidiary laws addressed to the judges through which the judges cure the evil (compensation), stop the evil or prevent future evil.

8. **Expression**: A law, in the ultimate, is an expression of a sovereign's will. The connection with will raises the problem of discovering the will from the expression.

Criticism of Bentham's theory of law

1. Due to Bentham's strait-jacketing of laws into an imperative theory- all laws have to be either command or permission, it does not take proper account of laws conferring power like the power to make contracts, create title etc.

2. Bentham did not give a fair treatment to custom as a source of law. He said customs could never be 'complete'.

3. Bentham's theory did not allow for judge made laws and hoped that such laws would be gradually eliminated by having 'complete laws'.

GENERAL CLAUSES ACT

The General Clauses Act, 1897 is a consolidating Act. It consolidates the General Clauses Act, 1868 and theGeneral Clauses Act, 1887. Before the enactment of the General Clauses Act, 1868, provisions of Interpretation Act, 1850 were followed.

The General Clauses Act 1897 belongs to the class of Acts which may be called as interpretation Acts. An interpretation Act lays down the basic rules as to how courts should interpret the provisions of an Act ofParliament. It also defines certain words or expressions so that there is no unnecessary repetition of definition of those words in other Acts. In other words, an Interpretation Act provides a standard set of definitions or extended definitions of words and expressions commonly used in legislation (and is thus an Actof wide application). It also provides a set of rules which regulate certain aspects of operation of other enactments.

Key Definitions
Section 3 of the General Clause Act provides that in this Act, and in all Central Acts and Regulations madeafter the commencement of this Act, unless there is anything repugnant in the subject or context,—

(1) "Abet", with its grammatical variations and cognate expressions, shall have the same meaning as in theIndian Penal Code.

(2) "Act", used with reference to an offence or a civil wrong, shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

(3) "Affidavit" shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;

(4) "Barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland;

(7) "Central Act" shall means an Act of Parliament and shall include
(a) An Act of the Dominion legislature or of the Indian Legislature passed before the commencement of the Constitution, and
(b) An Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislative capacity;

(8) "Central Government" shall,-
(a) In relation to anything done before the commencement of the Constitution, mean the Governor General or the Governor General in Council, as the case may be; and shall include,-
(i) In relation to functions entrusted under sub-section (1) of Section 124 of the Government of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and
(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of section 94 of the said Act; and

(b) In relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,-
(i) in relation to Functions entrusted under clause (1) of article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause;
(ii) In relation to the administration of a Part C State before the Commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-governor or the Government of

a neighboring State or other authority acting within the scope of the authority acting within the authority given to him or it under Article 239 or Article 243 of the Constitution, as the case may be; (and)
(iii) In relation to the administration of a Union territory, the administrator thereof acting within the scope of the authority given to him under article 239 of the Constitution;
(9) "Chapter' shall mean a Chapter of the Act or Regulation in which the word occurs;
(10) "Chief Controlling Revenue Authority" or "Chief Revenue Authority" shall mean
(a) In a State where there is a Board of Revenue, that Board;
(b) In a State where there is a Revenue Commissioner, that Commissioner;
(c) In Punjab, the Financial Commissioner; and
(d) Elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Constitution, the Central Government, and in relation to other matters, the state Government, May by notification in the Official Gazette, appoint;
(11) "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the casemay be, and elsewhere the chief officer-in-charge of the revenue-administration of a district;
(13) "Commencement" used with reference to an Act or regulation, shall mean the day on which the Act or regulation comes into force;
(14) "Commissioner" shall mean the chief officer-in-charge of the revenue administration of a division;
(15) "Constitution" shall mean the Constitution of India;
(17) "District Judge" shall mean the Judge of a principal civil court of original jurisdiction, but shall not includea High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;
(18) "document" shall include any matter written, expressed or described upon any substance by means ofletters, figures or marks, or by more than one of those means which is intended to be used, or which may beused, forthe purpose of recording that matter;
(19) "Enactment" shall include a regulation (as hereinafter defined) and any regulation of the Bengal, Madrasor Bombay Code, and shall also include any provision contained in any Act or in any such regulation as Aforesaid;
(21) "Financial year" shall mean the year commencing on the first day of April;
(22) A thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is donenegligently or not;
(23) "Government" or "the Government" shall include both the Central Government and any State Government;
(24) "Government securities" shall mean securities of the Central Government or of any State Government,but in any Act or regulation made before the commencement of the Constitution shall not include securitiesof the government of any Part B State;
(25) "High Court", used with reference to civil proceedings, shall mean the highest civil court of appeal (notincluding the Supreme Court) in the part of India in which the Act or regulation containing the expression operates;
(26) "Immovable property" shall include land, benefits to arise out of land, and things attached to the earth, orpermanently fastened to anything attached to the earth;
(27) "Imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code;
(28) "India" shall mean-
(a) as respects any period before the establishment of the Dominion of India, British India together with all territories of Indian Rulers then under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, and the tribal areas;
(b) as respects any period after the establishment of the Dominion of India and before the commencement of the Constitution, all territories for the time being included in that Dominion; and
(c) as respects any period after the commencement of the Constitution, all territories for the time being comprised in the territory of India;
(29) "Indian law" shall mean any Act, ordinance, regulation, rule, order, bye-law or other instrument which before the commencement of the Constitution had the force of law in any Province of India or part thereof, orthereafter has the force of law in any Part A State or Part C State or Part thereof, but does not include anyAct of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under suchAct;
(32) "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force;

(35) "Month" shall mean a month reckoned according to the British calendar;
(36) "Movable property" shall mean property of every description, except immovable property;
(37) "Oath" shall include affirmation and declaration in the case of persons by law allowed to affirm or declareinstead of swearing;
(38) "Offence" shall mean any act or omission made punishable by any law for the time being in force;
(39) "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State;
(41) "Part A State" shall mean a State for the time being specified in Part A of Schedule I to the Constitution,as in force before the Constitution (Seventh Amendment) Act, 1956, "Part B State" shall mean a State for thetime being specified in Part B of that Schedule and "Part C State" shall mean a State for the time beingspecified in Part C of that Schedule or a territory for the time being administered by the President under theprovisions of article 243 of the Constitution;
(42) "Person" shall include any company or association or body of individuals, whether incorporated or not;
(43) "Political Agent" shall mean,-
(a) in relation to any territory outside India, the Principal Officer, by whatever name called, representing the Central Government in such territory; and
(b) in relation to any territory within India to which the Act or regulation containing the expression does not extend, any officer appointed by the Central Government to exercise all or any of the powers of a Political Agent under that Act or regulation;
(48) "Public nuisance" shall mean a public nuisance as defined in the Indian Penal Code;
(49) "Registered", used with reference to a document, shall mean registered in 6[India] under the law for thetime being in force for the registration of documents;
(50) "Regulation" shall mean a Regulation made by the President under article 240 of the Constitution andshall include a Regulation made by the President under article 243 thereof and a regulation made by theCentral Government under the Government of India Act, 1870, or the Government of India Act, 1915, or theGovernment of India Act, 1935;
(51) "Rule" shall mean a rule made in exercise of a power conferred by any enactment, and shall include a Regulation made as a rule under any enactment;
(60) "State Government"-
(a) As respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorized at the relevant date to exercise executive government in the corresponding Acceding State, and in a Part C State, the Central Government;
(b) As respects anything done after the commencement of the Constitution and before the Commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor in a Part B State, the Rajpramukh, and in a Part C State, the Central Government;
(c) As respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union Territory, the Central Government; and shall, in relation to functions entrusted under Article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article;
(66) "Year" shall mean a year reckoned according to the British calendar.

General Rule of Construction

Rule of Construction is a rule used for interpreting legal instruments, especially contracts and statutes. Very few states have codified the rules of construction. Most states treat the rules as mere customs not having theforce of law.

Judges usually makes a construction of an unclear term in a document at issue in a case that involves adispute as to its legal significance. The judge examines the circumstances surrounding the provision, laws, other writings, and verbal agreements dealing with the same subject matter, and the probable purpose of the unclear phrase in order to conclude the proper meaning of such words. Once the judge has done so, thecourt will enforce the words as construed. However, for language that is plain and clear, there cannot be a construction.

When ambiguous language is given its exact and technical meaning, and no other equitable considerations or reasonable implications are made, there has been a strict or literal construction of the unclear term.

A liberal construction permits a term to be reasonably and fairly evaluated so as to implement

the object and purpose for which the document is designed. This does not mean that the words will be strained beyond their natural or customary meanings.

Example
Ejusdem Generic is an example of rule of construction.
Ejusdem Generis Rule states that where a law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed.

Retrospective Amendments
The General Clauses Act, 1897 was enacted on March 11, 1897 to combine and expand the General Clauses Act, 1868 and 1887. The general definitions provided under the Act are applicable to all Central Actsand Regulation where there is no definition in the Act.
Where legislation is not specifically mentioned to come into force on a prescribed date, it shall be implemented on the day that it receives the assent of the Governor General before the commencement of the Indian Constitution and thereafter of the President. The regulation shall come into force instantly on theending of the day prior to its commencement unless expressly provided. Where any Central legislation or anyregulation enacted after the commencement of this Act repeals any Act made or yet to be made, unlessanother purpose exists, the repeal shall not:
□□Renew anything not enforced or prevailed during the period at which repeal is effected or;
□□Affect the prior management of any legislation that is repealed or anything performed or Undergone or;
□□Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any Legislation so repealed or;
□□Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
□□Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.
In any Central legislation or regulation framed subsequent to the enforcement of the legislation, it shall be essential to revive any legislation either entirely or partly repealed expressly to provide the purpose. Furthermore, if the present legislation or any Central enactment or regulation made subsequent to the enactment, repeals or restructure with or without amendments of the prior legislation, then the indication in any other legislation or any other mechanism to the provision that has been repealed shall be interpreted asindication to the provision that has been re-enacted.

If any Central legislation or regulation made after the implementation of any legislation or procedure is ordered or permitted to be performed or taken in any Court or office on a particular day or within specified time, then if the Court or office is not opened on that day or last day of the specified period, the legislation or proceedings shall be deemed to be performed or taken in due time if it is performed or taken on the subsequent day afterward the Court reopens.

Powers and Functionaries

Powers conferred to be exercisable from time to time
(1) Where, by any Central Act or Regulation made after the commencement of this Act, any power is conferred, then unless a different intention appears that power may be exercised from time to time as occasion requires.
(2) This section applies also to all Central Acts and Regulations made on or after the fourteenth day of January, 1887.[Section 14]

Power to appoint to include power to appoint ex officio
Where, by any Central Act or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made afterthe commencement of this Act, may be made either by name or by virtue of office. [Section 15]

Power to appoint to include power to suspend or dismiss

Where, by any Central Act or Regulation, a power to make any appointment is conferred, then, unless a different intention appears, the authority having for the time being power to make the appointment shall alsohave power to suspend or dismiss any person appointed whether by itself or any other authority in exerciseof that power. [Section 16]

Substitution of functionaries
(1) In any Central Act or Regulation, made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the function of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed.
(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. [Section 17]

Successors
(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations' havingperpetual succession, to express its relation to the functionaries or corporations.
(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. [Section 18]

Officials chiefs and sub-ordinates
(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for thepurpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies orsubordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty ofthe superior.
(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. [Section 19]

Power to make Orders, Rules made under Enactments.
Section 21 of the General Clause Act deals with power to issue, to include power to add to, amend, vary orrescind notifications, orders, rules or bye-laws.
It says where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctionand conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

ADMINISTRATIVE LAW

INTRODUCTION

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

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

According to **Albert Venn Dicey**, the great British constitutional scholar, administrative law relates to that portion of a nation's legal system which determines the legal status and liabilities of all state officials, which defines the rights and liabilities of private individuals in their dealings with public officials, and which specifies the procedure by which those rights and liabilities are enforced.

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

Need for Administrative Law

The modern state typically has three organs- legislative, executive and judiciary. Traditionally, the legislature was tasked with the making of laws, the executive with the implementation of the laws and judiciary with the administration of justice and settlement of disputes.

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

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

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

Sources of Administrative Law

There are four principal sources of administrative law in India

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

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

3. Ordinances, Administrative directions, notifications and Circulars: Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. The ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.
4. Judicial decisions: Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortuous acts of Governments servants lay down administrative law which guide their future conduct.

Administrative Discretion
It means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.
The government cannot function without the exercise of some discretion by its officials. It is necessary because it is humanly impossible to lay down a rule for every conceivable eventuality that may arise in dayto-day affairs of the government. It is, however, equally true that discretion is prone to abuse. Therefore there needs to be a system in place to ensure that administrative discretion is exercised in the right manner.

Judicial Control over Administrative Actions
Any country which claims to have a rule of law cannot have a government authority which has no checks on its power. Administrative organs have wide powers and their exercise of discretion can be vitiated by a number of factors. Therefore, the government must also provide for proper redressed mechanism. For India, it is of special significance because of the proclaimed objectives of Indian polity to build a socialistic pattern of society that has led to huge proliferation of administrative agencies and processes.
In India the modes of judicial control of administrative action can be conveniently grouped into three heads:

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

Judicial Review
The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.
MansukhlalVithaldas Chauhan v State of Gujarat, AIR 1997, the Supreme Court held that while exercising the power of judicial review it does sit as a court of appeal but merely reviews the manner in which the decision was made, particularly as the court lacks the expertise to correct the administrative decision and if a review of the administrative decision is permitted, it will be substituting its own decision which itself may be fallible. The court is to confine itself to the question of legality.
Its concern should be:
1) whether a decision making authority exceeding its power?
2) committed an error of law?
3) committed a breach of rules of natural justice?
4) reached a decision which no reasonable tribunal would have reached, or
5) abused its power?

Judicial review is exercised at two stages:

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

Any law can be challenged on the ground that it is violative of the Constitution and therefore laws conferring administrative discretion can thus also be challenged under the Constitution. In the case of delegated legislation the Constitutional courts have often been satisfied with vague or broad statements of policy, but usually it has not been so in the cases where administrative discretion has been conferred in matters relating to fundamental rights.

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

Administrative Discretion and Article 14

Article14 of the Constitution of India provides for equality before law. It prevents arbitrary discretion being vested in the executive. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. Right to equality affords protection not only against discretionary laws passed by legislature but also prevents arbitrary discretion being vested in the executive. Often executive or administrative officer of government is given wide discretionary power.

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

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

In State of West Bengal v. Anwar Ali, AIR 1952 SC 75 it was held that in so far as the Act empowered the Government to have cases or class of offences tried by special courts, it violated Article 14 of the Constitution. The court further held the Act invalid as it laid down “no yardstick or measure for the grouping either of persons or of cases or of offences” so as to distinguish them from others outside the purview of the Act. Moreover, the necessity of “speedier trial” was held to be too vague, uncertain and indefinite criterion to form the basis of a valid and reasonable classification.

Administrative Discretion and Article 19

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

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

In Hari v. Deputy Commissioner of Police, AIR 1956 SC 559, the Supreme Court upheld the validity of section 57 of the Bombay Police Act authorizing any of the officers specified therein to extern convicted persons from the area of his jurisdiction if he had reasons to believe that they are likely to commit any offence similar to that of which they were convicted. This provision of law, which apparently appears to be a violation of the residence, was upheld by court mainly on the considerations that certain safeguards are available to the externee, i.e., the right of hearing and the right to file an appeal to the State Government against the order.

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

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

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

(a) Abuse of discretion

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

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

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

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

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

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

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

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

(b)Non-application of mind

(i) Acting under dictation: Where the authority exercises its discretionary power under the instructions or dictation from superior authority it is taken as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgment and does not apply its mind.

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

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

(B) Statutory

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

(i) Statutory appeals: There are some Acts, which provide for an appeal from statutory tribunal to the High Court on point of law. e.g. Section 30 Workmen's Compensation Act, 1923.

(ii) Reference to the High Court or statement of case: There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court. Under Section 256 of the Income-tax Act, 1961 where an application is made to the Tribunal by the assessee and the Tribunal refuses to state the case the assessee may apply to the High Court and if the High Court is not satisfied

about the correctness of the decision of the Tribunal, it can require the Tribunal to state the case and refer it to the Court.

(C) Ordinary or Equitable

Apart from the remedies as discuss above there are certain ordinary remedies, which are available to person against the administration, the ordinary courts in exercise of the power provide the ordinary remedies under the ordinary law against the administrative authorities. These remedies are also called equitable remedies and include:

1. Injunction

An injunction is a preventive remedy. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. In India, the law with regard to injunctions has been laid down in the Specific Relief Act, 1963.

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

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

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

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

2. Declaratory Action

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

3. Action for damages

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

Principles of Natural Justice

One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system.In India; the principles of natural justice are derived from Article 14 and 21 of the Constitution. The courtshave always insisted that the administrative agencies must follow a minimum of fair procedure, i.e. principles of natural justice. The concept of natural justice has undergone a tremendous change over a period of time. In the past, it was thought that it included just two rules: rule against bias and rule of fair hearing. In the course of time many sub-rules were added.

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

Bias can be of the following three types:

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

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

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

(1) Partiality or connection to the issue
(2) Departmental bias
(3) Prior utterances and pre-judgment of issues
(4) Acting under dictation

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

(a) Right to notice: Hearing starts with the notice by the authority concerned to the affected person. Consequently, notice may be taken as the starting point of hearing. Unless a person knows the case against him, he cannot defend himself. Therefore, before the proceedings start, the authority concerned is required to give to the affected person the notice of the case against him. The proceedings started without giving notice to the affected party, would violate the principles of natural justice. The notice is required to be served on the concerned person properly. However, the omission to serve notice would not be fatal if the notice has not been served on the concerned person on account of his own fault.

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

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

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

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

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

(e) Speaking orders: Reasoned decision may be taken to mean a decision which contains reason in its support. When the adjudicatory bodies give reasons in support of their decisions, the decisions are treated as reasoned decision. It is also called speaking order. In such condition the order speaks for itself or it tells its own story. Reasoned decision introduces a check on the administrative powers because the decisions need to be based on cogent reasons.

Exceptions to Natural Justice

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

1. Statutory Exclusion: The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principles of natural justice, the provision is treated as mandatory and the authority is bound by it. Where the statute is silent as to the observance of the principle of natural justice, such silence is taken to imply the observance thereto. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision. Even if there is no provision under the statute for observance of the principle of natural justice, courts may read the requirement of natural justice for sustaining the law as constitutional.

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

In Maneka Gandhi v. Union of India (AIR 1978 SC 597) the Supreme Court observed that a passport may be impounded in public interest without compliance with the principles of natural justice but as soon as the order impounding the passport has been made, an opportunity of post decisional hearing, remedial in aim, should be given to the person concerned. In the case, it has also been held that "public interest" is a justiciable issue and the determination of administrative authority on it is not final.

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

In Abhay Kumar v. K. Srinivasan AIR 1981 Delhi 381 an order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus. The rules of natural justice were not applicable in such case.

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

5. Impracticability: Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice. In P. Radhakrishna v. Osmania University, AIR 1974 AP 283, the entire M.B.A. entrance examination was cancelled on the ground of mass copying

EFFECT OF FAILURE OF NATURAL JUSTICE

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

Generally speaking, a voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the courts, that is, it has legal effect up to the time it is quashed.

On the other hand, a void order is no order at all from its inception; it is a nullity and void ab initio. In most cases a person affected by such an order cannot be sure whether the order is really valid or not until the court decided the matter.

Therefore, the affected person cannot just ignore the order treating it as a nullity. He has to go to a Court for an authoritative determination as to the nature of the order is void. For example, an order challenged as a nullity for failure of natural justice gives rise to the following crucial question: Was the authority required to follow natural justice?

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

The most significant case in the series is Nawabkhan v. Gujarat. Section 56 of the Bombay Police Act, 1951 empowers the Police Commissioner to extern any undesirable person on certain grounds set out therein. An order passed by the Commissioner on the petitioner was disobeyed by him and he was prosecuted for this in a criminal court. During the pendency of his case, on a writ petition filed by the petitioner, the High Court quashed the internment order on the ground of failure of natural justice. The trial court then acquitted theappellant. The government appealed against the acquittal and the High Court convicted him for disobeying the order. The High Court took the position that the order in question was not void ab initio; the appellant had disobeyed the order much earlier than date it was infringed by him; the High Court's own decision invalidating the order in question was not retroactive and did not render it a nullity from its inception but it was invalidate only from the date the court declared it to be so by its judgment. However, the matter came in appeal before the Supreme Court, which approached the matter from a different angle. The order of internment affected a Fundamental Right (Article 19) of the appellant in a manner which was not reasonable. The order was thus illegal and unconstitutional and hence void. The court ruled definitively that an order infringing a constitutionally guaranteed right made without hearing the party affected, where hearing was required, would be void ab initio and ineffectual to bind the parties from the very beginning and a person cannot be convicted for non observance of such an order. The Supreme Court held that where hearing is obligated by statute which affects the fundamental right of a citizen, the duty to give the hearing sound in constitutional requirement and failure to comply with such a duty is fatal.

LIABILITY

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

Liability of State or Government in Contract

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

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

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

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

Effect of a valid contract with Government

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

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

Suit against State in Torts

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

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

Liability of the Public Servant

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

Liability of Public Corporation

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