AL-AMEEN COLLEGE OF LAW

VI SEMESTER OF 3 YEARS AND X SEMESTER 5 YEARS LL.B.

ADMINISTRATIVE LAW

DURATION: 3 HOURS **MAX MARKS: 100**

INSTRUCTIONS: 1. Answer all 5 questions.

2. One essay type and one short note question or problem from each unit have to be attempted.

3. Figures to the right indicate marks.

4. Answers should be written either in English or Kannada completely.

UNIT-I

Q.NO.1.(A) " THE RAPID GROWTH AND DEVELOPMENT OF ADMINISTRATIVE LAW IN INDIA HAS BECOME THE FOUNDATION STONE OF MODERN POLITICAL PHILOSOPHY" EXPLAIN. Marks:15

SYNOPSIS:

Introduction
Definition
Nature and scope
Reasons for the growth
Conclusion

Introduction:

Administrative law is the most outstanding legal development arising from confrontation with the complex problems of socio-economic justice in the welfare state. Since many years, in one form or the other, it has been in existence. But under the impact of the philosophy of welfare state, the role and

function of the government have undergone a radical change. The result is that the governmental functions have multiplied by leaps and bounds. Now the state is not merely a police state, exercising sovereign function, but as a progressive democratic state, it seeks to ensure social security and social welfare for the common man.

Definition:

For the study of any branch of law it is desirable to define and delimit the field of study. Dicey defines administrative law as denoting 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 enforce.

Nature and scope:

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

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

Reasons for the growth of Administrative law:

1. **Change in the concept of government**: The rapid growth in administrative law has changed the concepts of the role and function of the modern government. The doctrine of laissez faire has given place to the doctrine of welfare state and this in fact has led to proliferation of administrative powers and functions. The result is that the development of administrative process and administrative law has become the cornerstone of modern political philosophy.
2. **Demand of the people**: there is the constant demand from the people that the government must solve their problems rather than to define their rights. By doing so, the government comes forward to actively help the weaker section of the society to be based on right to equality in reality.

3. **Regulatory measures**: the regulation of the patterns of ownership, production and distribution is considered the responsibility of any good government to ensure the maximum good of the maximum number.
4. **Evolution of socialistic pattern of society**: a welfare state has necessarily to undertake legislation on ever widening front, if the ultimate aim of a socialistic pattern of society operating within the domain of the rule of law is to be evolved by democratic process. The legislative output of parliament and State legislatures calls for trained personnel to implement them. Therefore there is a need for the growth of administration and law regulating administration.
5. **Inadequacy of judicial system**: the inadequacy of the traditional type of judicial system to give that quality and quantity of performance which is required in the 20th century for the functioning of welfare and functional government is the biggest single factor which has led to the growth of administrative process and law. Litigation is no more considered a battle to be won but a disease to be cured. This new challenge has led to the growth of administrative adjudication.
6. **Inadequacy of legislative process**: administrative action has been called upon to fill in the substance of legislation where it is impossible for the legislature to lay down detailed rules in advance. Even when detailed provisions were made, they were found to be defective and inadequate. Eg; rate fixing, licensing, etc. Therefore, inevitable growth of administrative legislative process.
7. **Scope for experimentation in administrative process**: legislation is rigid in character while administrative process is flexible. In administrative process, there is scope for experimentation. Here the rule can be made, tried for some time and if it is found defective, it can be altered or modified within a short period. Administration can change an unsuitable rule without much delay.
8. **Non-technical character of administrative process**: administrative agencies can avoid technicalities. The traditional judiciary is conservative, rigid and technical. The courts cannot decide cases without formality and technicality. Administrative tribunals are not bound to follow the rules of evidence and procedure. They can take practical view of the matter and

decide complex problems as required in view of the socio-economic conditions.

9. **Adoption of preventive measures**: administrative agencies can take preventive measures unlike ordinary courts of law they have not to wait for the parties to come before them with disputes. In many cases these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach.
10. **Policing of preventive measures**: administrative agencies can take effective steps for enforcement of preventive measures e.g. suspension, revocation, cancellation of licences, destruction of contaminated articles, etc. Which are not generally available through ordinary courts of law.
11. **Principles of good governance:** The role model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions.

Conclusion: Therefore there are numerous factors responsible for the growth of administration and administrative law which are the all prevailing features of government today. Nevertheless, modern functional government is the main force behind the growth of administrative law and process.

OR

WHAT ARE ADMINISTRATIVE DIRECTIONS? EXPLAIN IDENTIFICATION OF THEM.

SYNOPSIS:

Meaning
Administrative directions and delegated Legislation: Distinction
Kinds of directions
Identification of Directions
Conclusions

Meaning: Administrative directions are in the nature of instructions which are issued by the government to the various departments. Generally administrative directions are issued by the superior Officers to their sub-ordinates and contain guidelines for exercise of powers.

Administrative authorities issue directions through letters, circulars, orders, memorandums, pamphlets, public notices, press notes, etc.

Administrative directions and delegated Legislation: Distinction

Delegated legislation can be made only when the authority concerned has statutory power to do so. Generally directions are issued under general administrative power of the government, although, sometimes statutory power may also be given to issue directions.

Delegated legislation is binding on both the administration and the individual. A direction is generally not so binding and enforceable,

Kinds of directions:

1. Specific Directions
2. General Directions
   Specific directions are one which is applicable to a particular purpose of a particular case.
   General direction lays down general principles, policies, practices or procedures to be followed in similar cases.

Identification of directions:

Government is in continuous engagement in making legislation in the sense of laying down general norms of public behaviour or administrative behaviour. Government legislation may be classified as either delegated legislation or directs. The terms code, rules, regulations which are used in the field of delegated legislation are also used for directions.

In, Sukhdev Singh Vs. Bhagatram's case the court held that whether a particular piece of government legislation is delegated legislation or direction may be determined on the basis of following factors-

1. If it discloses the statutory provision under which it has been made, then should be regarded as a rule.
2. As to direction it is not essential to disclose the statutory provision under which it has been made.
3. A piece of government legislation may be regarded as a rule if it is has been made under a specific statutory provision which authorises to do so.
4. A piece of government legislation may be regarded as a direction if it has been issued under a specific statutory provision which has authorised to do so. Thus it is the source of power which is determining factor whether a government order is a rule or a direction

Conclusion: the executive function comprises both the determination of the policy as well as carrying it into execution. As the governmental functions have increased, it is necessary for the government to issue Administrative directions for the determination of policy and its uniform application. In this way directions are issued for a variety of purposes.

Q .No. 1.b. ADMINISTRATIVE DISCRETION: . MARKS:05

Meaning: Discretion implies power to make a choice between an alternative course of action or inaction. The term itself implies vigilance, care, caution and circumspection.

Coke proclaimed Discretion as a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections.

In short, here the decision is taken by the authority not only on the basis of the evidence but in accordance with policy or expediency and in exercise of discretionary powers conferred on that authority.

In Secy. Of State for Education and Science Vs. Metropolitan Borough Council Tameside.

Lord Diplock said " the very concept of administrative discretion involves a right to choose between more than one possible cause of action on which

there is room for reasonable people to hold differing opinions as to which is to be preferred.

There are different types of discretionary powers conferred on the administration. They range from simple ministerial functions like maintenance of birth and death register regulation of business activity, acquiring property for the public purpose, investigations, seizure, confiscation and destruction of property, externment or detention of a person or subjective satisfaction of the administrative authority and the like.

The need for administrative discretion arises to meet variability of situations in the interests of public. But an administration unrestrained in its power to pursue its socialistic objectives by any and all means considered expedient by the officials of government is anti-thesis of law and is nothing but administrative lawlessness. Administrators who do as they like and who are not bound by considerations capable of rational formulation cannot be said to act within the framework of law.

When discretionary power is conferred on an administrative authority, it must be exercised according to law. When the mode of exercising a valid power is improper or unreasonable, there is an abuse of the power.

There are several forms of abuse of discretion. The excess or abuse of discretion may be inferred from the following circumstances:

a. Acting without jurisdiction
b. Exceeding jurisdiction
c. Arbitrary action.
d. Irrelevant considerations.
e. Leaving out irrelevant consideration
f. Mixed considerations
g. Mala fide
h. Collateral purpose: improper object;
i. Colourable exercise of power;
j. Colourable legislation; fraud on Constitution
k. Non-observance of natural justice;
l. Unreasonableness.

OR

(B) WRITE A NOTE ON DROIT-ADMINISTRATIFF

Introduction:

Dorit Administratiff is a very old system. It was regularly put into practice by Napoleon in the 18th century. Napoleon favoured freedom for the administration and also favoured reforms. He wanted an institution to give relief to the people against the excesses of administration. It was therefore, that in 1799 Conseil d' Etat was established. The main aim of such institution was to resolve difficulties which might arise in the cause of the administration. But with change in time it started exercising judicial powers in matters involving administration. The position involving administration the Conseil d' Etat is final as it receives direct complaints from the citizens.

Meaning: Dorit Administratiff is a branch of law which determines the organisation, powers and duties of public administration.

According to Dicey: Dorit administratiff is that portio9n of French law which determines:

1. The position and liabilities of state officials;
2. The civil rights and liabilities of private individuals in their dealings with officials as representatives of the state; and
3. The procedure by which these rights and liabilities are enforced.

Under the French legal system, known as droit administraiff, there are two types of laws and two sets of Courts independent from each other. The ordinary courts administer the ordinary civil law as between subjects and subjects. The administrative courts administer the law as between subject and the state. An administrative authority or official is not subject to the jurisdiction of ordinary civil courts exercising powers under the civil law in disputes arising between the private individuals. All claims and disputes in which administrative authorities between the private individuals. All claims and disputes in which administrative authorities between the private individuals. All claims and disputes in which administrative authorities or officials are parties do not come within the

scope of the jurisdiction of ordinary courts and they are to be dealt with and decided by administrative tribunals headed by Conseil d' etat.

Conclusion: Conseil d' etat consists of body of men who are on the one side the confidential advisors of the government and on the other decide the cases of the subjects against the administration. In the latter case, they act as uncommitted judges and if necessary condemn the executive act. This has made the institution efficious. However, the researchers state no single institution had done so much for the protection of private citizens against the excesses of administration as has been done by the **:** Conseil d' etat.

UNIT-II

Q.NO.2.(A) WHAT IS DELEGATED LEGISLATION? WHAT ARE MARKS:15

THE CONSTITUTIONAL LIMITATIONS ON THE DELEGATION OF LEGISLATIVE POWER

IN INDIA?

SYNOPSIS:

Introduction
Definition
Constitutional limitations on the delegation of legislative power
Conclusion

Introduction: there is rapid growth of administrative legislation. The function of the executive is to administer the law enacted by the legislature, and in the ideal state, the legislative power must be exercised exclusively by the legislators who are directly responsible to the electorate. As a matter of fact, apart from pure administrative functions, the executive performs many legislative and judicial functions also. Therefore, it is said that delegated legislation is multitudinous that a statute book would not only be incomplete but misleading unless it be read along with delegated legislation which amplifies and supplements the law of the land.

Definition: the term delegated legislation is difficult to define. it is equally difficult to state with certainty the scope of such delegated legislation

Mukhejee rightly says:

“Delegated legislation is an expression which covers a multitude of confusion. It is an excuse for the legislators, a shield for the administrators and a provocation to the constitutional jurists...”

A simple meaning of the expression delegated legislation is a sunder:

“When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation”.

Constitutional limitations on the delegation of legislative power:

Even though there is no specific bar in the Constitution of India against the delegation of legislative power by the legislature to the executive, it is now well settled that essential legislative functions cannot be delegated by the legislature to the executive. Some of the functions which cannot be delegated are also called as impermissible delegation. Some of them are as follows:

1. **Essential legislative functions:** Legislative policy must be laid down by the legislature itself and by entrusting this power to the executive; the legislature cannot create a parallel legislature.
2. **Repeal of law:** Power to repeal a law is essentially a legislative function, and therefore, delegation of power to the executive to repeal a law is excessive delegation and is ultra vires.
3. **Modification:** power to modify the act in its important aspects is an essential legislative function and, therefore, delegation of power to modify an Act without any limitation is not permissible. However, if the changes are not essential in character, the delegation is permissible.
4. **Exemption:** The aforesaid principle applies in case of exemption also, and the legislation cannot delegate the power of exemption to the executive without laying down the norms and policy for the guidance of the latter.
5. **Removal of difficulties:** Under the guise of enabling the executive to remove difficulties, the legislature cannot enact a Henry VIII Clause and

thereby delegate essential legislative functions to the executive, which could not otherwise have been delegated.

6. **Retrospective operation:** The legislature has plenary power of law making and in India, parliament can pass any law prospectively or retrospectively subject to the provisions of the Constitution. But this principle cannot be applied in the case of delegated legislation. Giving an Act retrospective effect is essentially a legislative function and it cannot be delegated.
7. **Future Acts:** The legislature can empower the executive to adopt and apply the laws existing in other States, but it cannot delegate the power by which the executive can adopt the laws which may be passed in future, as this is essentially a legislative function.
8. **Imposition of tax:** the legislature cannot empower the executive by which the jurisdiction of courts may be ousted. This is a pure legislative function.
9. **Offences and penalty:** the making of a particular act into an offence and prescribing punishment for it is an essential legislative function and cannot be delegated by the legislature to the executive. However, if the legislature lays down the standards or principles to be followed by the executive is defining an offence and provides the limits of penalties, such delegation is permissible.
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OR

" DELEGATION MAY BE ASSAILED WHEN IT IS ULTRA VIRES THE ENABLING ACT". DISCUSS WITH THE HELP OF DECIDED CASES

SYNOPSIS:

Introduction
Controls of delegated legislation
Ultra vires
Conclusion

Introduction:

Due to the complexities and exigencies of intensive form of government, the institution of delegated legislation has come to stay. In almost all the countries the technique of delegated legislation used at a large scale and some legislative powers are delegated by the legislature to the executive. Delegation of legislative powers to the executive has to be conceded within the permissible limits. However, there is inherent danger of abuse of the legislative power by

the executive authorities. The need, therefore, is that of controlling the delegate in exercising his legislative powers. Therefore, today the question is not whether delegated legislation is desirable or not, but it is what controls and safeguards can be introduced so that the power conferred is not misused or misapplied.

The controls which are exercised over delegated legislation may be divided into three categories:

1. Judicial control
2. Legislative control
3. Procedural control
    1. Judicial control or Doctrine of ultra vires:
    2. In the control mechanism, judicial control has emerged as the most outstanding controlling measure. Judicial control over delegated legislation is exercised by applying two tests:

(a) Substantive ultra vires and
(b) Procedural ultra vires.

Ultra vires means beyond power or authority or lack of power. An act may be said to be ultra vires when it has been done by a person or a body of persons which is beyond his, its or their power, authority or jurisdiction.

When an act of Legislature enacts in an excess of power, conferred on the Legislature by the Constitution, the legislation is said to be ultra vires the Constitution. On the same principle, when a sub ordinate legislation goes beyond what the delegate is authorised to enact he acts ultra vires. This is known as substantive ultra vires.

Substantive ultra vires means that the delegated legislation goes beyond the scope of the authority conferred on it by parent statute or by the constitution. It is a fundamental principle of law that a public authority cannot act outside the powers i.e, ultra vires.

Procedural ultra vires: when a subordinate legislation fails to comply with procedural requirements prescribed by the parent Act or by a general law, it is known as procedural ultra vires. For eg: publication and consultation.

Power delegated by statue is limited by its terms and subordinate to the objects. The delegate must act in good faith, reasonably, intra vires the

power granted and on relevant considerations. All his decisions, whether characterised as legislative, administrative or quasi judicial, must be in harmony with Constitution, parent Act and other laws of the land. They must be reasonably related to the purposes of the enabling legislation. Judicial control over delegated legislation is exercised by applying the doctrine of ultra vires in a number of circumstances.

1. Where parent act is ultra vires the Constitution.
2. Where parent Act delegated essential legislative functions
3. Where delegated legislation is inconsistent with parent Act
4. Where delegated legislation is inconsistent with general law.
5. Where delegated legislation is unconstitutional
6. Unreasonableness
7. Mala fide Bad faith
8. Sub delegation
9. Exclusion of judicial review
10. Retrospective effect.

Sometimes a parent Act or delegating statute may be Constitutional and valid and delegated legislation may be inconsistent with the parent Act, yet the delegated legislation may be held invalid on the ground that it contravenes the provisions of the Constitution. It may seem paradoxical that a delegated legislation can be struck down on this ground because if the parent Act is constitutional and delegated legislation be ultra vires the Constitution? It was this argument which the Supreme Court was called down to consider in ***Narendra Kumar Vs. Union of India***. In this case the valididity of the Non-Ferroous Metal Control Order 1958 issued under Section 3 o0f the Essential Commodities Act 1955 was challenged as unconstitutional. The petitioners had not challenged the validity of the parent Act. It was argued that if the enabling Act was not considered unconstitutional, the rules made there under could be held to be unconstitutional. Rejecting this extravagant argument, the Supreme court held that even though a parent Act might not be unconstitutional, an order there under can still be unconstitutional and can be challenged as violative of the provisions of the Constitution.

In ***Dwarka Prasad Vs. State of U.P. the U.P. Coal Control Order,*** 1953 was issued under the Essential Supplies. Even though the parent Act was constitutional Clause 3(2)(b) of the order was held Ultra vires by the Supreme court being violative of Article 19(1) not (i)(g) of the Constitution of India.

In ***Air India Vs. Nergesh Meerza***, a regulation framed by Air India provide that services of an Air Hostess could be terminated if she because pregnant was held arbitrary, unreasonable and violative of Articles 14 and 15 of the Constitution.

Conclusion:

It is however, well settled that while considering constitutional validity or vires of delegated legislation, one should start with the presumption of constitutionality of the provision and it will be for the party challenging the validity of subordinate legislation to satisfy the court that it is unconstitutional. Moreover, if two constructions are possible, one which leave constitutionality of law should be preferred than the other which would make it ultra vires.

Q.no. 2.b. CONDITIONAL LEGISLATION: **Marks:05**

Meaning: 'Conditional Legislation' may be described as a statute that provides controls but specifies that they are to go into effect only when a given administrative authority fulfils the existence or conditions defined in the statute.

Nature and Scope: In conditional legislation, legislature makes the law. It is full and complete. No legislative function is delegated to the executive. But the said Act is not brought into force and it is left to the executive to bring the Act into operation on fulfilment of certain conditions or contingencies and for that reason the legislation is called conditional legislation or contingent legislation. A statute may be conditional and its taking effect may be made to depend upon some subsequent event.

Classification: Conditional legislation may be classified into three categories:

i. Where the legislation is full and complete but leaves its future applicability to the executive authority.
ii. Where the legislation is enforced but leaves the power ti withdraw from operation of the Act in a given area or in given situation to the executive authority; and
iii. Where the legislation leaves it to the executive authority to grant benefit of the Act to one class depriving the rival class of such benefits.

In the leading case of ***Field Vs. Clark,*** the President was empowered to suspend the operation of an Act permitting free import of certain products in the U.S. on being satisfied that the duties imposed upon such products were reciprocally unequal and unreasonable. The Supreme Court held the Act valid on the ground that the Act was complete and the President was a mere agent of Congress to ascertain and declare the contingency upon which the will of the Congress was to take effect. The court quoted "the Legislature cannot delegate its powers to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law intends to make its own action depend. To deny this would be to stop the wheels of Government".

Conclusion: it is submitted that in view of the rapid growth of Administrative Law and acceptance of the doctrine of delegated legislation, now it is not necessary to stick to the artificial distinction between delegated legislation and conditional legislation. Conditional legislations is a form of delegation and a very common instance of delegated legislation.

OR

WRITE A NOTE ON SUB-DELEGATION.

Meaning: When a statute confers some legislative powers on an executive authority and the latter further delegates those powers to another subordinate authority or agency, it is called 'sub delegation'.

Thus, what happens in sub delegation is that a delegate further delegates. This process of the delegation may go through many stages. If we may call the enabling Act the 'Parent' and the delegated and the sub delegated legislation

the ‘children’, the parent in his own life time may beget descendants upto four or five degrees.

Object: The necessity of sub-delegation is sought to be supported, inter alia, on the following grounds:

1. Power of delegation necessarily carries with it power of further delegation: and
2. Sub-delegation is ancillary to delegated legislation; and any objection to the said process is likely to subvert the authority which the legislature delegates to the executive.

Sub-delegation of legislative power can be permitted either when such power is expressly conferred by the statute or may inferred by necessary implication.

Express power: where a statute itself authorises an administrative authority to sub-delegate its powers, no difficulty arises as to its validity since such sub-delegation is within the terms of the statute itself.

Thus in ***Central talkies Ltd. Vs. Dwarka Prasad***, the UP Control of Rent and Eviction Act 1947 provided that no suit shall be file for the eviction of a tenant without permission either of a District Magistrate or any officer authorised by him to perform any of his functions under the Act. An order granting permission by the Additional District Magistrate to whom the powers were delegated was held valid.

Implied power: Even if there is no provision in the parent Act about su-delegation of power by the delegate, the same may be inferred by necessary implication.

In **States Vs. Bareno**, the parent Act conferred on the President the power to make regulations concerning exports and provided that unless otherwise directed the functions of the President should be performed by Board of Economic welfare. The Board sub-delegated the power to its Executive Director, who further sub-delegated it to his assistant, who in turn delegated it to some officials. The court held all the Sub-delegations valid.

Conclusions: Sub-delegation at several stages removed from the source dilutes accountability of the administrative authority and weakens the safeguards

granted by the Act. It becomes difficult for the people to know whether the officer is acting within his prescribed sphere of authority. It is therefore, necessary to limit in some way the degrees to which the sub-delegation may proceed.

UNIT-III

Q.NO.3.(A) "AUDI ALTERM PARTEM IS SINE QUA NON OF FAIR HEARING". DISCUSS WITH THE HELP OF DECIDED CASES

Marks:15

SYNOPSIS:

Introduction
Definition of natural justice
Meaning
Doctrine explained
Conclusion

Introduction: Natural justice is an important concept in administrative law. Natural justice is envisaged in administrative law for ensuring fair exercise of power by administrative agencies. Fair exercise of the power of administration is possible when the power is used according to fair procedure. The universal rule of fair procedure is audi alteram partem-Hear the other party. Thus, hearing means natural justice or fairness . the principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined.

Meaning of Natural Justice: It is not possible to define precisely and scientifically the expression natural justice. Yet the principles of natural justice are accepted and enforced. In Ridge Vs. Baldwin case Lord Reid in his historic decision observed: "in modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that because something cannot be cut and dried or nicely weighed or measure therefore it does not exist".

Audi alteram partem: Rule of hearing doctrine explained:

The audi alteram partem rule means that no should be condemned unheard. This the second fundamental principle of natural justice and hence a basic requirement of rule of law. According to de Smith" A party is not to suffer in person or in purse without an opportunity of being heard". It is the first principle of civilised jurisprudence and is accepted by the laws of Men and God. In short the principle is that before an order is passed against any person reasonable opportunity of being heard must be afforded to him. Generally, the maxim includes two ingredients (i) notice and (ii) hearing.

(i) **Notice:** A basic principle of natural justice is that before any action is taken, the affected person must be given notice to show cause against the proposed action and seek his explanation. It is a sine qua non of fair hearing. Any order passed without giving notice is against the principles of natural justice and is void ab intio. It is not enough that notice in a given case be given. It must be adequate also. The question of adequacy of notice depends upon the facts and circumstances of each case. However, a notice in order to be adequate must contain the following;

1. Time, place and nature of hearing.
2. Legal authority and jurisdiction under which hearing is to be held.
3. Matter o fact and Law as regards changes.

b. Reasonable opportunity: More over. The notice must give a reasonable opportunity to comply with the requirements mentioned in it. ***In state of Madhya Pradesh and others Vs. Makers Development Service Pvt Ltd.*** The High Court declared the entire Act invalid without issuing notice or calling upon the State Government to file its counter. The Supreme Court held that the order of the high court is liable to be set aside.

ii) **Hearing:** the second requirement of the audi alteram partem maxim is that the party concerned must be given an opportunity of being heard before any adverse action is taken against him.

In the leading case of ***Copper Vs. Wandsworth Board of Works.*** The Board had power to demolish any building without giving an opportunity of hearing if it was erected without prior permission. The

Board issued an order under which the house of the plaintiff was demolished. The action was brought against the Board because it had used that power without giving the owner an opportunity of being heard. Although the action of the Board was not in violation of the statutory provision, the court held that Board's power was subject to the qualification that no man can be deprived of his property without having an opportunity of being heard.

In ***Maneka Gandhi Vs. Union of India*** the passport of the petitioner was impounded by the Government of India in public interest. No opportunity was afforded to the petitioner before taking the impugned action. The Supreme Court held that the order was violative of the principles of natural justice.

In Olga Tellis Vs. Bombay municipal Corporation under the statue the Commissioner was empowered for removal of construction without notice. However, the Court held that it was merely an enabling provision and not a command not to issue notice before demolition of structure. The discretion was, therefore, required to be exercised according to the principles of natural justice. In the same way when admissions were given to certain students, but the candidates who were so admitted were not impelled aspirants. The court ruled that their admissions were not to be cancelled behind their back.

Conclusion: therefore, if a show cause notice is issued and the explanation is considered before taking action under the statutory provisions, the rules of natural justice cannot be said to have been violated on the ground that more opportunity should have been afforded as a huge amount was at stake.

OR

EXPLAIN PERSONAL BIAS AND PECUNIARY BIAS WITH REFERENCE TO DECIDED CASES.

SYNOPSIS:

Introduction
Meaning of bias
Types of bias
Conclusion

Introduction: Natural justice has meant many things to many to many writers, lawyers, jurists and systems of law. It has many colours, shades, shapes and forms. Rules of natural justice are not embodied rules and they cannot be imprisoned within the strait jacket of a rigid formula. It is well established that rules of natural justice are not rigid rules; they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case

The concept pf natural justice entails two principles:

(i) Nemo judex in causa sua: No man shall be judge in his own cause or the deciding authority must be impartial and without bias-Rule against Bias.
(ii) Audi alteram partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard or that there must be fairness on the part of deciding authority- Rule of hearing or fair hearing.

Types of bias: bias appears in various forms which may affect the decision in variety of ways. The various types of bias are:

(i) pecuniary bias
(ii) Personal bias
(iii) Subject matter bias
(iv) Departmental bias; and
(v) Policy bias

The first principle of natural justice is rule against bias. It means that the deciding authority must be impartial and neutral. It is well settled principle of law that justice should not only be done but be seen to be done. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle is applicable not only to judicial proceedings but also to quasi judicial as well as administrative proceedings. A decision which is a result of bias is a nullity and the trial is coram non-judice.

(i) **Pecuniary bias:** pecuniary means money or monetary interest. The least pecuniary interest in the subject matter of litigation will disqualify any person from acting as a judge. According to Griffith and Street " a pecuniary interest, however slight, will disqualify, even though it is not proved that the decision is in any affected.

In ***Dr.Bontham Case***: Dr.Bontham, a doctor of Cambridge University was fined by the College of physicians for practising in the city of London without the licence of the college. The statute under which the college acted provided that the fines should go half to the Kind and half to the college. The claim was disallowed by the Judge as the College had financial interest in its own judgement and was a judge in its own cause.

In ***Jeejeebhoy Vs. Asst. Collector. Thana*** the chief Justice reconstituted the Bench on objection that one of the members of the Bench was a member of the Co-operative Society for which the land in dispute had been acquired.

In Vishakapatanam Co-op Motor transport Ltd. Vs. Bangaruraju a co-operative society wanted a permit. The Collector was the President of that society and at the same time he was also Chairman of the Regional Transport Authority granting permit in favour of the society. The decision was quashed by the Court as it was in violation of the principles of natural justice.

(ii) **Personal Bias:** The second type of bias is a personal one. A number of circumstances may give rise to personal bias. Here a judge may be a relative, friend or business associate of a party. He may have some personal grudge, enmity or grievance or professional rivalry against such party. In view of these factors, there is every likelihood that the judge may be biased towards one party or prejudiced towards the other.

In ***Mineral Development Ltd. Vs. State of Bihar*** the petitioner were granted mining licence for 99 years in 1947. But the Minister who had political rivalry with the petitioners cancelled the licence. This action of the government was challenged on the ground of personal bias. The challenge was accepted by the court and it was held that

there was personal bias against the petitioners and the Minister was disqualified from taking any action against the petitioners.

In ***A.K.Kraipak Vs. Union of India*** one Naquishband was candidate for selection to the Indian Foreign Service and was also a member of the Selection Board. Naquishbund did not sit on the Selection Board when his name was considered. Naquishbund was recommended by the Board and he was selected by the Public Service Commission. The candidates who were not selected challenged the selection of Naquishbund on the ground that the principles of natural justice were violated. The Supreme Court quashed the selection. The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to seek is whether there is a reasonable ground for believing that he was likely to have been biased.

Conclusion: to known whether the bias has occurred or not it becomes very difficult hence the test of real likelihood of bias was given a broader content. Reasonable apprehension in the mind of a reasonable man is necessary. Such reasonable apprehensions must be based on cogent materials. Moreover, there must be reasonable evidence to satisfy that there was a real likelihood of bias.

Q.No. 3.(B) WHEN THE PRINCIPLES OF NATURAL JUSTICE CAN BE EXEMPTED. MARKS:05

Though the rules of natural justice, namely, nemo judex in causa sua and audi alteram partem, have now a definite meaning and connotations in law, and their content and implications are well understood and firmly established, they are nonetheless not statutory rules. Each of these rules yields to and changes with the exigencies of different situations. They do not apply in the same manner to situations which are not alike. These rules are not cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable but flexible. These rules can be adopted

and modified by statutes and statutory rules and also by the constitution of the tribunal is governed.

There are, however, situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place, the apprehended danger and so on.

Circumstances: in the following cases, the principles of natural justice may be excluded:

1. Where a statute either expressly or by necessary implication excludes application of natural justice.
2. Where the action is legislative in character, plenary or subordinate
3. Where the doctrine of necessity applies;
4. Where the facts are admitted or undisputed;
5. Where the inquiry is of confidential nature;
6. Where preventive action is to be take;
7. Where prompt and urgent action is necessary
8. Where nothing unfair can be inferred by non-observance of natural justice.

Conclusion: Inference of exclusion of natural justice should not be readily made unless it is irresistible, since the courts act on presumption that the legislature intends to observe the principles of natural justice and those principles do not supplant but supplement the law of the land. Therefore, all statutory provisions must be read, interpreted and applied so as to be consistent with the principles of natural justice.

OR

WHETHER BDA HAS STATUTORY POWERS TO DEMOLISH ANY BUILDING WITHOUT ANY NOTICE IF IT WAS CONSTRUCTED WITHOUT PRIOR PERMISSION. X'S HOUSE IS CONSTRUCTED WITHOUT PERMISSION. THE AUTHORITY DEMOLISHED THE HOUSE OF 'X'. ADVICE 'X'.

Natural justice is an important concept in Administrative law. Natural justice has meant many things to many writers, layers, jurists and systems of law. It has many colours, shades, shapes and forms.

The English law recognises two principles of natural justice:

1. No man shall be a judge in his own cause.
2. Hear the other side, or both the sides must be heard.

In this case, the second requirement i,e audi alteram partem has to be observed and accordingly every person must be given an opportunity of being heard before any adverse action if taken against him.

In the historic case of ***Copper Vs. Wandsworth Board of works*** it is quite similar to the facts as mentioned above. In this case the defendant Board had power to demolish any building without giving any opportunity of hearing if it was erected without prior permission. The Board demolished the house of the plaintiff under this provision. The action of the Board demolished the house of the house of the plaintiff under this provision. The court held that the Board's power was subject to the qualification that no man can be deprived of his property without having an opportunity o9f being heard.

My advice to X, to is file a case against the BDA authorities as they have violated the principles of Natural justice.

UNIT IV

Q.NO. 4(A). EXPLAIN THE VARIOUS GROUNDS FOR EXERCISING JUDICIAL CONTROL OVER "ADMINISTRATIVE DISCRETION" IN INDIA WITH HELP OF DECIDED CASES.

ADMINISTRATIVE DISCRETION:

Meaning: Discretion implies power to make a choice between an alternative course of action or inaction. The term itself implies vigilance, care, caution and circumspection.

Coke proclaimed Discretion as a science or understanding to discern between falsity and truth, between right and wrong, between shadows sand substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections.

In short, here the decision is taken by the authority not only on the basis of the evidence but in accordance with policy or expediency and in exercise of discretionary powers conferred on that authority.

In Secy. Of State for Education and Science Vs. Metropolitian Borough Council Tameside. Lord Diplock said " the very concept of administrative discretion involves a right to choose between more than one possible cause of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred.

There are different types of discretionary powers conferred on the administration. They range from simple ministerial functions like maintenance of birth and death register regulation of business activity, acquiring property for the public purpose, investigations, seizure, confiscation and destruction of property, experiment or detention of a person or subjective satisfaction of the administrative authority and the like.

The need for administrative discretion arises to meet variability of situations in the interests of public. But an administration unrestrained in its power to pursue its socialistic objectives by any and all means considered expedient by the officials of government is anti-thesis of law and is nothing but administrative lawlessness. Administrators who do as they like and who are not bound by considerations capable of rational formulation cannot be said to act within the framework of law.

When discretionary power is conferred on an administrative authority, it must be exercised according to law. When the mode of exercising a valid power is improper or unreasonable, there is an abuse of the power.

There are several forms of abuse of discretion. The excess or abuse of discretion may be inferred from the following circumstances:

a. Acting without jurisdiction
b. Exceeding jurisdiction
c. Arbitrary action.
d. Irrelevant considerations.
e. Leaving out irrelevant consideration
f. Mixed considerations

g. Mala fide
h. Collateral purpose: improper object;
i. Colourable exercise of power;
j. Colourable legislation; fraud on Constitution
k. Non-observance of natural justice;
l. Unreasonableness.

OR

EXAMINE THE SCOPE OF WRIT OF MANDAMUS FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTION.

SYNOPSIS:

Introduction
Kinds of writs
Mandamus for judicial review of administrative action
Conclusion

Introduction:

Due to increase in governmental functions, administrative authorities exercise vast powers in almost all the fields if these powers are abused then the subjects will be left without proper and effective control an individual would be without remedy even though injustice is done to him. The Indian legal systems follow the maxim ubi jus ibi remedium. In fact right and remedy are two sides of the same coin and they cannot be dissociated from each other.

The remedies available to an individual aggrieved by any action of an administrative authority may be classified as follows:

1. prerogative remedies
2. constitutional remedies
3. statutory remedies
4. equitable remedies
5. common law remedies
6. parliamentary remedies
7. cousel d' etat
8. ombudsman and
9. self help.

The expression prerogative writ is not scientifically defined. However, it is a formal order in writing issued in the name of the sovereign, court or an authority commanding the person to whom it is issued to do or refrain from doing some act specified therein. The high prerogative writs played a very important role in upholding the rights and liberties of subjects and providing effective safeguard against arbitrary exercise of power by public authorities.

In India, the founding fathers were aware of the part played by the prerogative writs in England, therefore they made specific provisions in the Constitution itself empowering the Supreme Court and High courts to issue writs.

In India, the courts exercise various kinds of writs for the enforcement of Fundamental Rights they are as follows:

1.Habeas Corpus writ.

2.Writ of Mandamus

3. Writ of prohibition

4. Writ of quo Warranto

5. Writ of Certiorari

Mandamus and judicial review of administrative action:

A writ of mandamus is a royal command issued in the name of the Crown from the court of King's Bench to the subordinate court or inferior tribunal, a corporation, a board or any other person requiring it or him to perform a public duty imposed by the Constitution, a statue or by common law.

Object:

- The primary object of mandamus is to supply defect of justice.
- It seeks to protect right of a citizen by requiring enforcement and fulfilment of imperative duty created by law.
- It promotes justice.
- The courts can correct all errors which tend to the oppression of the subject and grant him appropriate relief.

Conditions:

- The petitioner must have legal right. A person is said to be aggrieved only if he is denied **a legal right.**
- The second requirement for a writ of mandamus is that the opposite party must have **legal duty.** A legal duty must have been imposed on the authority and the performance of that duty should be imperative, not discretionary or optional.
- The petition for a writ of mandamus must be preceded by a demand of justice and its refusal.
- An application for mandamus must have been made in good faith and not for any ulterior motive or oblique purpose.
- Mandamus may be refused if alternative remedy is available to the applicant.

Constitutional provisions for exercising writ jurisdiction:

Q.No.4. (B) DISTINGUISH BETWEEN COURT AND TRIBUNAL.

In today's trend the executive performs ministerial functions and along with this it also performs many quasi-legislative and quasi-judicial functions also. As the governmental functions have increased the function of adjudication of disputes is the exclusive jurisdiction of the ordinary courts of law, in reality. Now, many judicial functions have come to be performed by the executive. It also seeks to ensure social security and social welfare for the common masses. Therefore administrative tribunals are, therefore, established to decide various quasi-judicial issues in place of ordinary courts of law.

According to supreme court the expression Tribunal as used in Article 136 does not mean the same thing as court but includes, with its ambit, all adjudicating bodies, provided they are constituted by the state and are invested with judicial as distinguished from administrative or executive functions.

Distinction between Tribunal and court:

An administrative tribunal is similar to a court in certain aspects. Both of them are constituted by the state, invested with judicial powers and have a permanent existence. But at the same time, it must not be forgotten that an administrative tribunal is not a court. The line of distinction between a court and tribunal in some cases is indeed fine through real.

- A court of law is a part of the traditional judicial system.
- On the other hand, an administrative tribunal is an agency created by a statute and invested with judicial powers.
- The court derives its powers from judiciary.
- Whereas an administrative tribunal derives its powers from executive as well as judiciary.
- Ordinary civil courts have judicial powers to try all suits of a civil nature.
- Whereas an administrative tribunal have powers to try cases in special matters statutorily conferred.
- Judges of ordinary courts of law are independent of the executive in respect of their tenure, terms and conditions of service, etc.
- Whereas an administrative tribunal are entirely in the hands of the Government in respect of those matters.
- In a court of law it is generally presided over by an officer trained in law.
- But members of administrative tribunals may not be trained as well in law.
- The court of law is bound by all the rules of evidence and procedure .
- But the administrative tribunal is not bound by those rules unless the relevant statue imposes such an obligation.
- The court must decide all the questions objectively on the basis of the evidence and materials produced before it.
- But an administrative tribunal may decide questions taking into account the departmental policy or expediency, hence the decisions may be subjective.
- The court of law is bound by precedents, principles of re judicata and estoppels.

- Administrative tribunal is not strictly bound by them.

OR

GIVE A NOTE ON RIGHT TO INFORMATION.

The modern trend is towards more open government. Democracy expects openness and openness is a concomitant of a free society. Now, a days the right to know is part and parcel of freedom of speech and expression and is thus a fundamental right guaranteed under Article 19 of the constitution. It is also equally paramount consideration that justice should not only be done but also be publicly recognised as having been done.

Recently, however the parliament enacted the freedom of Information Act, 2005. The object of the Act as reflected in the Preamble states that it has been enacted " to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration.

The act requires all public authorities to maintain records and furnish requisite information relating to their working to people seeking such information. Thus, the present trend is towards transparency and openness which are absolutely necessary for accountability of public institution.

UNIT V

Q.NO.5.(A) EXPLAIN 'PUBLIC CORPORATIONS'. WHAT ARE THEIR FUNCTIONS? EXPLAIN WITH HELP OF ILLUSTRATIONS.

SYNOPSIS:

Introduction
Definition
Characteristics
Functions along with illustrations
Conclusion

Introduction:

The modern world aims at welfare state. it seeks to ensure social security and social welfare for the common mass. Now the states also participates in trade, commerce and business in order to achieve the object of socialist, democratic, republic, constitutional protection is afforded to State monopoly and hence necessary provisions are incorporated in the Constitution itself by laying down the Directive Principles of State policy.

Article 39(b) states ownership and control of material resources of the community should be so distributed to subserve the common good.

Article 39(c) states that operation of economic system should not result in concentration of wealth and means of production to the common deteriment.

The political philosophy of the 20th and 21st centuries has therefore impelled the government to enter into trade and commerce with a view to making such enterprises pursue public interest and making them answerable to the society at large.

Definition:

No statute or court has ever attempted ***in Dhanoa Vs. Municipal Corp. Delhi a corporation is defined thus:***

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

Object:

Under our Constitution, public sector plays key role in the economic development of the country. It has been said that certain functions are so vital to the nation that it is proper not to leave them to private enterprises. They should be run and managed by the state, either through

its own department or by government companies or by creating public sector undertakings.

Characteristics:

1. A corporation is established by or under a statute. It possesses a separate legal entity with perpetual succession and a common seal.
2. There may be several members or shareholders of a corporation.
3. A corporation does not neither soul nor body, it acts through natural persons.
4. A corporation can possess, hold and dispose of property.
5. An appropriate government may issue directives relating to policy matters. The corporations are bound by them.

Functions of public corporations:

The constitution of the corporations and their functions, powers and duties may be understood by a study of the actual working of a few public corporations:

Reserve Bank of India: (RBI)

It was constituted under the RBI Act 1934, and it was nationalized in the year 1948. It is a separate legal entity and hence can sue and be sued. It was primarily established to regulate the credit structure, to carry on banking business and to secure monetary stability in the country. It is managed by the Board o Directors, consisting of Governor and the Deputy Governors and number of directors. The salaries of the governor and Deputy Governors are fixed by the board with the approval of the Central government. They are eligible for a term of five years and can be re-employed. The RBI has extensive powers over the Banking business in India. It grants licences without which no company can carry on banking business. It grants licences without which no company can carry on banking business. Before granting of such licence it can inquire into the affairs of the company to satisfy itself. It can cancel a licence on the ground that the conditions specified therein have not been complied with. It has to send reports to the Government. The RBI has very wide discretionary powers. It determines the policy relating to bank advances, frames proposals for amalgamation of two or more Banks.

Life Insurance Corporation of India (LIC):

It was established under the Life Insurance Corporation of India Act, 1956. It shares certain characteristics with the other corporations. It is a body corporate with perpetual succession and a common seal. It has power to acquire, hold and dispose of property. It can sue and be sued. The corporation was established to carry on life insurance business and given the privilege of carrying on this business to the exclusion of all other persons and institutions. The Central Government may give directions in writing in the matters of policy involving public interest. 95% of the profits are to be reserved for the policy holders and the balance is to be utilised as the Central Government may decide.

OR

EXPLAIN THE CONCEPT OF OMBUDSMAN. TRACE THE DEVELOPMENT IN INDIA.

SYNOPSIS:

Meaning
Importance
Historical growth
Powers and duties
Merits and demerits
Position in India

Meaning:

Ombudsman means 'a delegate, agent, officer or commissioner.

Garner: describes him as an officer of parliament, having his primary function, the duty of acting as an agent for parliament, for the purpose of safeguarding citizens against abuse or misuse of administrative power by the executive.

Importance:

The administrator is not a super-administrator to whom the individual can appeal when he is dissatisfied with the discretionary decisions of a public official in the hope that he may obtain a more favourable decision. Hence ombudsman is a suitable person to appeal for his dissatisfaction.

Historical growth:

The institution of Ombudsman originated in Sweden in 1809 it has been accepted in other countries including Denmark, Finland, New Zealand, England, Australia and India. In India, the institution of ombudsman is called as Lokpal or Lokayukta.

Powers and duties:

- The Ombudsman inquires and investigates into complaints made by citizens against abuse of discretionary power, maladministration or administrative inefficiency and takes appropriate actions.
    - They have very wide powers they have access to departmental files.
    - The complainant is not required to lead any evidence before the ombudsman to prove his case. It is the duty of the ombudsman to satisfy himself whether or not the complainant was justified.
    - The ombudsman can act suo motu.
    - The ombudsman can grant relief to the aggrieved person as unlike the powers of a civil court, his powers are limited.

    Merits and demerits:

        - Ombudsman institution is successful in those countries which have a comparatively small population.
        - But this institution is not useful in populous countries, like U.S.A or India.
        - It is easy for a single man to dispose of complainants in small countries.
        - It is not easy for a single man to dispose of complainants in populous countries.
        - It is more suitable for small countries as the prestige and personal contact would be more easier.
        - The prestige and personal contact would be lost if there are a number of officers who has always to depend upon a large staff and subordinate officers.
        - This institution is suitable for non-democratic countries.
        - This institution is not suitable for democratic countries as this institution is accusatorial and inquisitorial institution and it does

not fit into the Indian Constitution because we have an independent judiciary.

Conclusion: Indian parliament so far has not enacted any Act though a proposal to constitute an institution of Ombudsman (lokpal) was made by the Administrative Reforms Commission as early as 1967. But some States, however, have enacted statutes and appointed Lokayukta.

Q.no.5. (B) EXPLAIN 'SPECIAL LEAVE PETITION'

Introduction: Administrative law provides for control over the administration by an outside agency strong enough to prevent injustice to the individual while leaving the administration adequate freedom to enable it to carry on effective government. Due to the increase in governmental functions, administrative authorities exercise vast powers in almost all fields, hence there could be abuse of powers and lead to totalitarian State. This abuse could also be contrary to the fundamental concept of Indian Legal system. Due to the rapid growth of administrative law has brought into existence many administrative tribunals and adjudicatory bodies. They are invested with wide judicial and quasi judicial powers thereby necessitating effective control. Hence certain remedies are available to an individual aggrieved by any action of an administrative authority. One such remedy is Constitutional remedy. With this object in mind, the framers of the Constitution have conferred very wide and extensive powers on the supreme court.

Some of the remedies available to a person aggrieved by an action of administrative authority are as follows:

1. **Articles 132 to 135** of the Constitution deal with appellate powers of the Supreme court in Constitutional matters and in civil and criminal cases.
2. **Article 139-A** enable the Supreme Court to withdraw or transfer cases from one court to another Court.
3. **Article 136** of the Constitution of India confers extraordinary powers on the Supreme court to grant special leave to appeal from any

judgement, decree, determination, sentence or order passed by any court or tribunal. It reads as under:

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

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

Nature and scope: this provision confers very wide and plenary powers on the Supreme Court. The article commences with the words " Notwithstanding anything in this Chapter" which means that the Supreme court can grant special leave and hear appeals even though no statute has provided such an appeal, or under the relevant statute an alternative remedy is available, or an order passed by the tribunal is made final. Further it is the discretionary power of the court. The party cannot approach the Supreme court under Article 136 as of right.

Extent and applicability: it is very wide and comprehensive

Under what circumstances the supreme courts may grant leave:

1. When the tribunal has acted in excess of jurisdiction or has failed to exercise jurisdiction vested in it.
2. When there is error apparent on the face of the record.
3. Where the order is against the principles of natural justice.
4. Where irrelevant considerations have been taken into account or relevant considerations have been ignored.
5. Where the findings of the tribunals are perverse.
6. Where there is miscarriage of justice.

Under what circumstances Supreme Court may refuse leave:

- It should be exercised only in exceptional circumstances.
- Finding of fact is challenged.
- The matter falls within the discretionary of the authority.
- Where a new point is raised for the first time before the Supreme court

- Where the petitioner is unable to show the presence of special circumstances to grant special leave.

OR

EXPLAIN THE PRIVILEGES OF GOVERNMENT TO WITHHOLD DOCUMENTS.

Introduction: in every democratic society, it is of utmost importance that the citizens get sufficient information and knowledge about the functioning of the Government. Democracy cannot survive without accountability to public. Discovery assists parties and the court to discover the truth. The very integrity of judicial system and public confidence depend on full disclosure of facts.

In England, Crown has the Special privilege of withholding disclosure of documents, referred to as 'Crown Privilege'. It can refuse to disclose a document or to answer any question if in its opinion such disclosure or answer would be injurious to public interest. This doctrine is based on the well known maxim Solus populiest suprema lex (public welfare is the highest way).

In India the basic principle is incorporated in section 123 of the Evidence Act 1872, ' no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit". Section 123 confers a great advantage on the Government in as much as inspite of non-production of relevant evidence before the court, no adverse inference can be drawn against it in the claim of privilege is upheld by the court.

State of Punjab Vs. Sodhi Sukhdev Singh is a leading case on this subject.

One S, a district and Session Judge was removed from service by the president of India. In pursuance of the representation made by him, he was reemployed. Thereafter, he filed a suit for declaration that the order of removal was illegal, void and inoperative. He also claimed arrears of salary. He filed an application for production of certain documents. The state claimed privilege. The Supreme court by majority held that the documents in question were protected under section 123 of the Evidence Act 1872 and could be withheld from production on the ground of public interest.

The court has to consider two things:

Whether the evidence derived from it being given was in the public interest

As he thinks fit which is the latter part of Section 123 need not deter the court from deciding the question afresh as Section 162 authorises the court to determine the validity of the objection finally.

Some of the miscellaneous privileges of government:

Under Section 80 of the C.P.C. no suit can be instituted against the Government until the expiration of two months after a notice in writing has been given.

Rule 5-B of order 27 of the said code casts duty on the court in suits against Government to assist in arriving at a settlement.

Rule 8-A of Order 27 of the said code provides that no security shall be required from the Government.

Order 27-A provides that in a suit or appeal in which substantial question of law as to interpretation of Constitution is involved, the court shall issue notice to Attorney General if the question of Law concerns the central government and to Advocate General of the State if such question relates to State Government.

Under Section 82 of the said Code, when a decree is passed against the Union of India or a State, it shall not be executed unless it remains unsatisfied for a period of three months from the date of such decree.

Under Article 112 of the Limitation Act 19963, any suit by or on behalf of the Central government or any state Government can be instituted within the period of 30 years.

Conclusion: the modern trend is towards more open government. The right to know is part and parcel of freedom of speech and expression and is this a fundamental right guaranteed under Article 19 of the Constitution.

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