administration or quasi-legislative action and commonly known as delegated legislation.
Rule-making action of the administration partakes all the characteristics, which a normal legislative action possesses. Such characteristics may be generality, prospectivity and a behaviour that bases action on policy consideration and gives a right or a disability. These characteristics are not without exception. In some cases, administrative rule-making action may be particularised, retroactive and based on evidence.

(ii) Rule-decision action or quasi-judicial action – Today the bulk of the decisions which affect a private individual come not from courts but from administrative agencies exercising ad judicatory powers. The reason seems to be that since administrative decision-making is also a by-product of the intensive form of government, the traditional judicial system cannot give to the people that quantity of justice, which is required in a welfare State.
Administrative decision-making may be defined, as a power to perform acts administrative in character, but requiring incidentally some characteristics of judicial traditions. On the basis of this definition, the following functions of the administration have been held to be quasi-judicial functions:
1. Disciplinary proceedings against students.
2. Disciplinary proceedings against an employee for misconduct.
3. Confiscation of goods under the sea Customs Act, 1878.
4. Cancellation, suspension, revocation or refusal to renew license or permit by licensing authority.
5. Determination of citizenship.
6. Determination of statutory disputes.
7. Power to continue the detention or seizure of goods beyond a particular period.
8. Refusal to grant 'no objection certificate' under the Bombay Cinemas (Regulations) Act, 1953.
9. Forfeiture of pensions and gratuity.
10. Authority granting or refusing permission for retrenchment.
11. Grant of permit by Regional Transport Authority.
Attributes of administrative decision-making action or quasi-judicial action and the distinction between judicial, quasi-judicial and administrative action.

(iii) Rule-application action or administrative action – Though the distinction between quasi-judicial and administrative action has become blurred, yet it does not mean that there is no distinction between the two. If two persons are wearing a similar coat, it does not mean that there is no difference between them. The difference between quasi-judicial and administrative action may not be of much practical consequence today but it may still be relevant in determining the measure of natural justice applicable in a given situation.
In A.K. Kraipak v. Union of India, the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.
Therefore, administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction where decision is based on policy and expediency. It does not decide a right though it may affect a right. However, it does not mean that the principles of natural justice can be ignored completely when the authority is exercising "administrative powers". Unless the statute provides otherwise, a minimum of the principles of natural justice must always be observed depending on the fact situation of each case.
No exhaustive list of such actions may be drawn; however, a few may be noted for the sake of clarity:
1) Making a reference to a tribunal for adjudication under the Industrial Disputes Act.
2) Functions of a selection committee.

Administrative action may be statutory, having the force of law, or non statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable.

Therefore, at this stage it becomes very important for us to know what exactly is the **difference between Administrative and quasi-judicial Acts.**
Thus broadly speaking, acts, which are required to be done on the subjective satisfaction of the administrative authority, are called 'administrative' acts, while acts, which are required to be done on objective satisfaction of the administrative authority, can be termed as quasi-judicial acts. Administrative decisions, which are founded on pre-determined standards, are called objective decisions whereas decisions which involve a choice as there is no fixed standard to be applied are so called subjective decisions. The former is quasi-judicial decision while the latter is administrative decision. In case of the administrative decision there is no legal obligation upon the person charged with the duty of reaching the decision to consider and weigh, submissions and arguments or to collate any evidence. The grounds upon which he acts and the means, which he takes to inform himself before acting, are left entirely to his discretion. The Supreme Court observed, "It is well settled that the old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action.

(iv) Ministerial action – A further distillate of administrative action is ministerial action. Ministerial action is that action of the administrative agency, which is taken as matter of duty imposed upon it by the law devoid of any discretion or judgment. Therefore, a ministerial action involves the performance of a definitive duty in respect of which there is no choice. Collection of revenue may be one such ministerial action.
1. Notes and administrative instruction issued in the absence of any
2. If administrative instructions are not referable to any statutory authority they cannot have the effect of taking away rights vested in the person governed by the Act.

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UNIT-II
DELEGATED LEGISLATION

One of the most significant developments of the present century is the growth in the legislative powers of the executives. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law it only supplements the law under the authority of legislature. This type of activity namely, the power to supplement legislation been described as delegated legislation or subordinate legislation.

Why delegated legislation becomes inevitable The reasons as to why the Parliament alone cannot perform the jobs of legislation in this changed context are not far to seek. Apart from other considerations the inability of the Parliament to supply the necessary quantity and quality legislation to the society may be attributed to the following reasons :

i) Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required. The Parliament cannot act quickly because of its political nature and because of the time required by theParliament to enact the law.

ii) The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters. The Parliament cannot provide the society with the requisite quality and quantity of legislation because of lack of time. Most of the time of the Parliament is devoted to political matters, matters of policy and particularly foreign affairs.

iii) Certain matters covered by delegated legislation are of a technical nature which require handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject matter. "Parliaments" cannot obviously provide for such matters as the members are at best politicians and not experts in various spheres of life.

iv) Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Accordingly various statutes contain a 'removal of difficulty clause' empowering the administration to remove such
difficulties by exercising the powers of making rules and regulations. These clauses are always so worded that very wide powers are given to the administration.

iv) The practice of delegated legislation introduces flexibility in the law. The rules and regulations, if found to be defective, can be modified quickly. Experiments can be made and experience can be profitability utilized.

However the attitude of the jurists towards delegated legislation has not been unanimous. The practice of delegated legislation was considered a factor, which promoted centralization. Delegated Legislation was considered a danger to the liberties of the people and a devise to place despotic powers in few hands. It was said that delegated legislation preserved the outward show of representative institutions while placing arbitrary and irresponsible power in new hands. But the tide of delegated legislation was high and these protests remained futile.

A very strong case was made out against the practice of Delegated Legislation by Lord Hewart who considered increased governmental interference in individual activity and considered this practice as usurpation of legislative power of the executive. He showed the dangers inherent in the practice and argued that wide powers of legislation entrusted to the executive lead to tyranny and absolute despotism. The criticism was so strong and the picture painted was so shocking that a high power committee to inquire into matter was appointed by the Lord Chancellor. This committee thoroughly inquired into the problem and to the conclusion that delegated legislation was valuable and indeed inevitable. The committee observed that with reasonable vigilance and proper precautions there was nothing to be feared from this practice.

I) Delegated Legislation- Austin says, "There can be no law without a legislative act." But when the Legislature, under the pressure of work delegates the legislative power, it results in delegated legislation. The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt, implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot **i)** travel beyond it, or **ii)** run counter to it, or **iii)** certainly change the essential features, the identity, structure or the policy of the Act.

Under the constitution of India, articles 245 and 246 provide that the legislative owers shall be discharged by the Parliament and State legislature. The delegation of gislative power was conceived to be inevitable and therefore it was not prohibited in the constitution. Further, Articles 13(3)(a) of the Constitution of India lays down that law includes any ordinances, order bylaw, rule regulation, notification, etc. Which if found inviolation of fundamental rights would be void. Besides, there are number of judicial pronouncements by the courts where they have justified delegated legislation.

> 'Delegate legislation' is used in two senses. In one sense delegated legislation means the exercise of the power of rule making, delegated to the executive by the legislature. In the second sense, it means the output of the exercise of that power, viz. rule, regulations, orders, ordinances etc. The expression is used were in both senses. Where the emphasis is on the limits of constitutionality of exercise of such power, the term is used in the first sense : where the emphasis is on the output of the concrete rules the term is employed in the second sense.

In simple words, delegated legislation refers to all law making by the authorities other than the legislature i.e., the Central Government, the State Government, Central Board of Revenue and the other administrative bodies and is generally expressed as statutory rules and orders, regulations, by-laws, scheme directions or notifications etc.

II) Nature and Scope of Delegated Legislation-

Nature and Scope of delegated legislation Delegated legislation means legislation by authorities other than the Legislature, the former acting on express delegated authority and power from the later. Delegation is considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power if restored to within proper limits. The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them. It is only a nonessential legislative function that can be delegated and the moot point always lies in the line of demarcation between the essential and nonessential legislative functions.

The essential legislative functions consist in making a law. It is to the legislature to formulate the legislative policy and delegate the formulation of details in implementing that policy. Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated authority cannot be precisely defined and each case has to be considered in its setting.

In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions.

> Now-a day, the Parliament passes only a skeleton and the rest of the parts is left on the administrative agencies to provide through the rule making power delegated to them. For example the Import and Export (Control) Act, 1947 contains only eight sections and delegates the whole power to the administrative agency to regulate to the whole mechanism of import and exports.

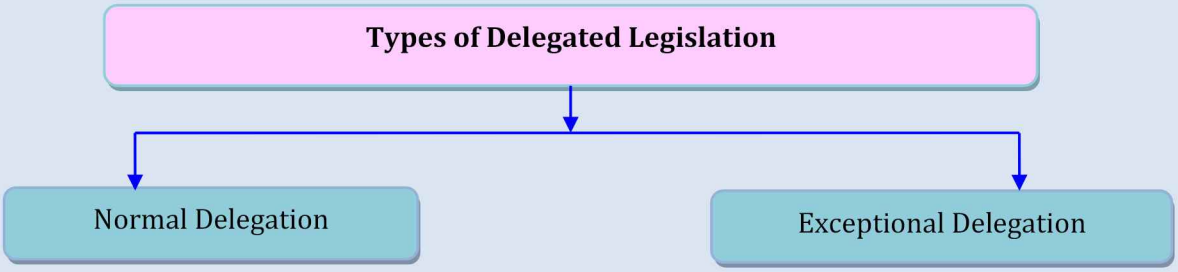
III) Extent of Delegated Legislature Powers- An executive authority can be authorized to modify either existing or future laws but not in any essential feature, while exerting its delegated legislative powers. Exactly, what constitutes an essential feature cannot be enunciated in general terms. But this much is clear that it cannot include a change of policy. When a Legislature is given plenary powers to legislate on a particular subject there must also be an implied power to make law incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power in include in the grant of the power. The primary duty of law-making has to be discharged by the legislate itself, but delegation may be restored to as a subsidiary on an ancillary measure.

IV) Growth History of Delegated Legislation- The Statute of proclamation, 1539 which was repealed in 1547 was perhaps the most striking piece of legislation effected by a Parliament. Under it Henry VIII was given wide power to legislative by proclamation. The next instance was Statute of Sewers in 1531 where Legislative powers were delegated to the Commissioner of Sewers, who was empowered to make drainage scheme and levy rates on land owners. These were outstanding early examples of a technique which the Parliament has always felt able to use.

But it was not the realm of delegation and such were the rare instances and it was not until eighteenth century that we have significant development in the realm of delegation. As Maitland says, "The period before 16th century was the period of private laws a period when Parliament legislated in such detail that many of its measures would today be matters of administrative instructions."

The growth of modern delegated legislation is usually dated from 1834, when the Poor Law Amendment Act gave to the Poor Law Commissioner, who had no responsibility to Parliament, "power to make rules orders for the management of the Poor." This power which lasted for a century remained a leading example of delegation which put, not merely execution but also the formulation of policy into executive hands. But this was a small instance of experiment in bureaucratic Government. It did not invoke any criticism until later part in the century. The publication of all delegated legislation in uniform series under the title of Statutory Rules and Orders began in 1890 and in 1895 the Rules Publication Act made provisions of systematic printing, publication and public notice. In 1891, for instance, the Statutory Rules and Orders were more than twice as extensive as the statute enacted by the Parliament. Laisse faise state of 19th century had given place to social welfare state of the First World War Defence of the Realm Act, 1914. Social progress after 1942 complete separation of Powers was not possible, act. 123 Art. 240. Art. 357. Art. 143.

V) Types of Delegated Legislation- On the basis of the nature of Delegated Legislation the Committee on Minister's powers distinguished the following two types of parliamentary delegation:



Types of delegation of legislative power in India There are various types of delegation of legislative power.

1. Skeleton delegation In this type of delegation of legislative power, the enabling statutes set out broad principles and empowers the executive authority to make rules for carrying out the purposes of the Act.
A typical example of this kind is the Mines and Minerals (Regulation and Development) Act, 1948.
2. Machinery type This is the most common type of delegation of legislative power, in which the Act is supplemented by machinery provisions, that is, the power is conferred on the concerned department of the
Government to prescribe –
i) The kind of forms
ii) The method of publication
iii) The manner of making returns, and
v) Such other administrative details
In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature. The exceptional type covers cases where –
i) the powers mentioned above are given , or
ii) the power given is so vast that its limits are almost impossible of definition, or
iii) while limits are imposed, the control of the courts is ousted.
Such type of delegation is commonly known as the Henry VIII Clause.
An outstanding example of this kind is Section 7 of the Delhi Laws Act of 1912
by which the Provincial Government was authorized to extend, with restrictions and modifications as it thought fit any enactment in force in any part of India to the Province of Delhi. This is the most extreme type of delegation, which was impugned in the Supreme Court in the Delhi Laws Act case. A.I.R. 1951 S.C.332. It was held that the delegation of this type was invalid if the administrative authorities materially interfered with the policy of the Act, by the powers of amendment or restriction but the delegation was valid if it did not effect any essential change in the body or the policy of the Act.
That takes us to a term "**bye-law**" whether it can be declared ultra vires ? if so when ? Generally under local laws and regulations the term bye-law is
used such as

i) public bodies of municipal kind
ii) public bodies concerned with government, or
iii) corporations, or
iv) societies formed for commercial or other purposes.
The bodies are empowered under the Act to frame bye-laws and regulations for carrying on their administration.

There are five main grounds on which any bye-law may be struck down as ultra vires. They are :
a) That is not made and published in the manner specified by the Act, which authorises the making thereof;
b) That is repugnant of the laws of the land;
c) That is repugnant to the Act under which it is framed;
d) That it is uncertain ; and
e) That it is unreasonable.

VI) Subordinate Legislation

In subordinate legislation the process consists of discretionary elaboration of rules and regulations. In England the power of the Parliament are supreme as such all the legislation other than those made by British Parliament are recognized as subordinate. Subordinate legislation has its origin in the delegation of the power of Parliament to inferior authorities and are subject to control of the sovereign legislation.

Types of Subordinate Legislation

(i) Colonial Legislation

(ii) Executive

(iii) Municipal

(iv) Judicial

(v) Autonomous

Types of Subordinate Legislation

(i) Colonial Legislation- The legislation by the self government bodies like colonies and other dependence of the Crown are regarded as colonial legislation. The legislative powers of such bodies are subject to the control of the Imperial Legislation.

(ii) Executive- Though the main function of the Executive is to administer, but it has been provided with certain subordinate legislative powers which have been expressly delegated to it by Parliament, or pertain to it by the Common Law Statute.

(iii) Municipal- Municipal authorities are entrusted by the law with limited and subordinate powers of establishing special for the districts under their control. The special laws so-established by the Municipal authorities are known as: Bye-laws", and this type of legislation is known as municipal.

(iv) Judicial- In England the judicature also possesses the like delegated legislative powers. The higher courts are empowered to make rules for the regulation of their own procedure.

(v) Autonomous- Though the great bulk of enacted laws is promulgated by the State; the autonomous bodies have been entrusted with a power to make bye-laws for its regulation.

VII) The constitutional limits of Legislative delegation- There are two constitutional limits of legislative delegation-

The constitutional limits of Legislative delegation

(i) The power of delegation is subject to certain limitations the legislature cannot delegate essential legislative functions which consist in determining the legislative policy.

The following non-essential functions may be delegated-

(a) The power to extent the duration of the statutes, having regard to the local conditions.

(b) The power to adopt the existing statutes, with the incidental changes in the name, place etc. and to apply them to a new area, without modifying the underlying policy of the statute.

(c) The power to promulgate rules if such rules to be laid before the Parliament before they would come into force.

(d) The power to select persons on whom the tax is to be laid, to determine the rates for different classes of goods or to amend the schedule of exemptions.

(ii) the power conferred on an subordinate authority should not suffer from excessive delegation and whether the power so conferred suffer from excessive delegation should be decided with references to the fact whether the delegation has gone beyond the limits of permissible delegation.

VIII) Conditional Legislation-

When an appropriate legislature enacts a law and authorities an outside authority to bring it into force in such area or at such time as it may decide, that is conditional legislation.

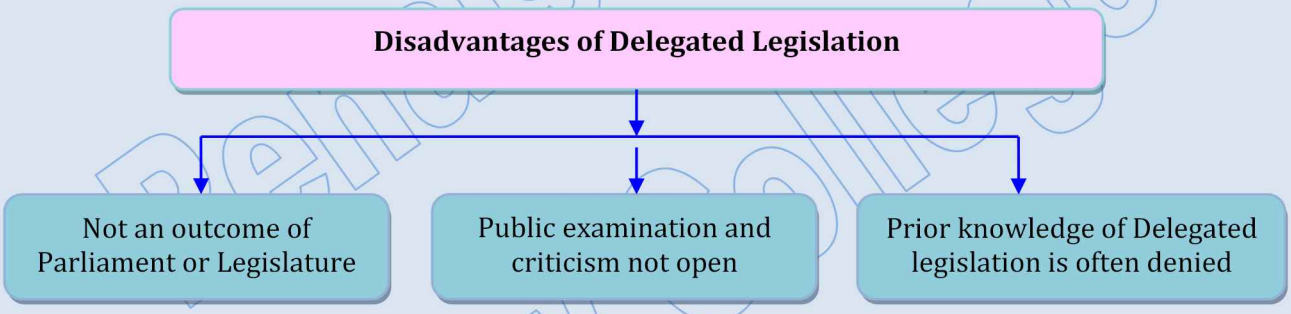
Frequently the legislature enacts a law conditionally leaving it to the Executive to decide as to-

(i) When will it come into force:
(ii) The period during which it is to be implemented or suspended : and
(iii) The place where it should be applied.

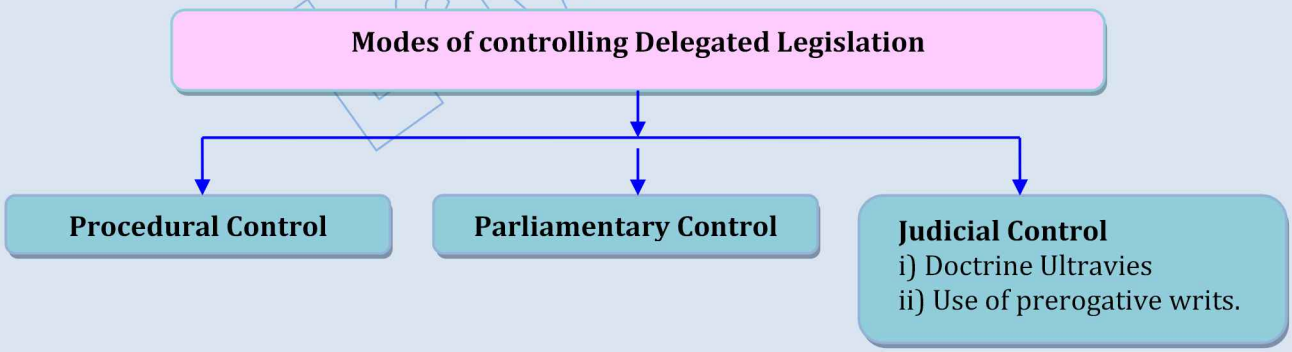
In other words, Conditional Legislation may be defined as a statute that provides control but specifies that they are to go into effect only when a given administrative authority finds the existence of conditions defined in the statute itself. The operation of law follows the fulfillment of the condition. Generally the date of the commencement of an Act may be left entirely to the discretion of the Government and it is laid down that:

"It shall come into force on such date as the Central Government may be notification in the Official Gazette appoint and different dates may be appointed for different provisions of the Act."

In a conditional legislation the law is complete in itself and certain conditions are laid down as to how when the law would be applied by the delegatee. The delegatee has only to be satisfied if it going to do, is in conformity with the condition laid down in the law. On the other hand, in a delegated legislation only same broad principles and policies are laid down and the details have to be filled up by the delegate, namely, the State Government.



X) MODES OF CONTROLLING DELEGATED LEGISLATION-



Modes of control over delegated legislation The practice of conferring legislative powers upon administrative authorities though beneficial and necessary is also dangerous because of the possibility of abuse of powers and other attendant evils. There is consensus of opinion that proper precautions must be taken for ensuring proper exercise of such powers. Wider discretion is most likely to result in arbitrariness. The exercise of delegated legislative powers must be properly circumscribed and vigilantly scrutinized by the Court and Legislature is not

by itself enough to ensure the advantage of the practice or to avoid the danger of its misuse. For the reason, there are certain other methods of control emerging in this field.
The control of delegated legislation may be one or more of the following types: -
1) Procedural;
2) Parliamentary; and
3) Judicial

Judicial control can be divided into the following two classes: -
i) Doctrine of ultra vires and
ii) Use of prerogative writs.

Control of Delegate Le legislation by means of Procedure- The following requirements are made necessary for the exercise of the delegated authority under different statutes so that procedural safeguards are ensured.

i) The Doctrine of ultra vires---- The chief instrument in the hands of the judiciary to control delegated legislation is the "Doctrine of ultra vires."
The doctrine of ultra vires may apply with regard to

i)procedural provision; and

ii) substantive provisions.
The procedural control mechanism operates in following three components:-

(i) Prior consultation of interests likely to e affected by delegated legislation.
(ii) Prior publicity of proposed rules and regulations
(iii) Post-natal publicity of delegated legislation

(a) Parliamentary Control over Delegated Legislation
(i) By laying the rules on the table of Parliament; and
(ii) By a Committee of Parliament acrutinishing the rules so laid.
In U.S.A. the control of Congress over delegated is very limited because neither the technique of 'lying' is extensively used nor there is any Congressional Committee to scrutiny it.
In England, due to concept of supremacy of Parliament, the control exercised by the Parliament over and administrative rule making is very broad and effective. This Parliamentary control operates though 'laying' techniques. Under the provisions of statutory Instruments Act, 1946, all administrative rule making is subject to the control of the Parliament through the Select Committee on statutory Instruments.

In India, the Parliamentary control of delegated legislation follows the same patterns as in England. Like Standing Committee in House of Commons in Britain he further said that such committee would examine delegated legislation and would bring to the notice of Parliament whether delegated legislation has exceeded the original intention of Parliament or has departed from it or has affected any fundamental principle.

(i) By laying rule on the table of Parliament ; and
(ii) By a committee of Parliament scrutinizing the rules so made.

(i) By laying rule on the table of Parliament

(a) Laying with no further direction
(b) Laying subject to annulment
(c) Laying, Subject to affirmative resolution
(d) Laying with deferred operation
(e) Laying with immediate effect but requiring affirmative resolution as a condition for continuance

(ii) By a committee of Parliament scrutinizing the rules so made

The main function of these committees is to examine the merits of the executive legislation against which petitions are presented.

Main functions of Committees – According to Rule 223, the main functions of the Committee shall be to examine:

(a) Whether the rules are in accordance with the general objects of the Act;
(b) Whether the rules contain any matter which could more properly be dealt the Act;
(c) Whether it contains imposition of tax;
(d) Whether is directly or bars the jurisdiction of the Court;
(e) Whether it is retrospective;
(f) Whether it involves expenditure from the Consolidated Fund;
(g) Whether there has been unjustified delay in its publication or laying;
(h) Whether, for any reason, it requires further elucidation.

Parliament, being supreme, can certainly make a law abrogating or repealing by implication provisions of any preexisting law and no exception can be taken on the ground of excessive delegation to the Act of the Parliament itself.

(a) Limits of permissible delegation When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority.

The primary duty of law making has to be discharged by the legislature itself but delegation may be reported to as a subsidiary or ancillary measure.

(Edward Mills Co. Ltd. v. State of Ajmer, (1955) 1. S.C.R. 735)

Mahajan C.J. in Hari Shankar Bagla v. State of Madya Pradesh, A.I.R. 1954 S.C. 555 : (1955) 1.S.C.R. 380 at p. 388 observed :

"The Legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control and given cases and must provide a standard to guide the officials of the body in power to execute the law".

Therefore the extent to which delegation is permissible is well settled. The legislature cannot delegate its essential legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its delegates its subsidiary powers in that behalf. (Vasant lal Maganbhai Sanjanwala v. State of Bombay, A.I.R. 1961 S.C. 4)

The guidance may be sufficient if the nature of things to be done and the purpose for which it is to be done are clearly indicated. The case of Hari Shankar Bagla v. State of Madhya Pradesh, A.I.R. 1954 S.C. 465: (1955) 1 S.C.R. 380 is an instance of such legislation.
The policy and purpose may be pointed out in the section conferring the powers and may even be indicated in the preamble or else where in the Act.

(b) Excessive delegation as a ground for invalidity of statute In dealing with the challenge the vires of any State on the ground of Excessive delegation it is necessary to enquire whether - The impugned delegation involves the delegation of an essential legislative functions or power, and In Vasant lals case (A.I.R. 1961 S.C. 4). Subba Rao, J. observed as follows;
"The constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another.
But, in view of the multifarious activities of a welfare State, it (the legislature) cannot presumably work out all the details to sit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a powerful executive may unduly overstep the limits of delegation. It may
a) not lay down any policy at all;
b) declare its policy in vague and general terms;
c) not set down any standard for the guidance of the executive;
d) confer and arbitrary power to the executive on change or modified the policy laid down by it with out reserving for itself any control over subordinate legislation.
The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation.
It is for a Court to hold on a fair, generous and liberal construction of on impugned statute whether the legislature exceeded such limits.

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PRINCIPLES OF NATURAL JUSTICE

I) Principles Of Natural Justice –

The concept of natural justice is the backbone of law and justice. In the quest for justice the principles of natural justice have been utilized since the dawn of civilization. Principles of natural justice trace their ancestry to ancient civilization and centuries long past. Initially natural justice was conceived as a concomitant of universal natural law. Judges have used natural justice as to imply the existence of moral principles of self evident and unarguable truth. To justify the adoption, or continued existence, of a rule of law on the ground of its conformity to natural justice in this sense conceals the extent to which a judge is making a subjective moral judgment and suggests on the contrary, an objective inevitability.

Natural Justice used in this way is another name for natural law although devoid of at least some of the theological and philosophical overtones and implications of that concept. This essential similarity is clearly demonstrated by Lord Esher M.R's definition of natural justice as, " the natural sense of what right and wrong." 1 (Voinet v Barrett, (1885) 55, L.J. Q. B, 39, 41). Most of the thinkers of fifteenth to eighteenth century considered natural law and justice as consisting of universal rules based on reason and thus were immutable and inviolable. The history of natural law is a tale of the search of mankind for absolute justice and its failure. Again and again in the course of the last 2500 years the idea of natural law has appeared in some form or the other, as an expression for the search for an ideal higher than positive law.
(W.G. Friedman, Legal Theory 95. 5th ed. 1967).
Greek thinkers laid the basis for natural law. The Greek philosophers traditionally regarded law as closely to both justice and ethics.

Roman society was highly developed commercial society and Natural law played a creative and constructive role, thereby *jus civil*, was adopted to meet new demands.
Similarly in the middle Ages, the Christian legal philosophy, considered natural law founded on reasons and a reflection of eternal laws. In the seventeenth and eighteenth century, the authority of church was challenged and natural law was based on reason and not divine force.
The use of natural law ideas in the development of English law revolves around two problems: the idea of the supremacy of law, and, in particular, the struggle between common law judges and parliament for legislative supremacy on one hand, and the introduction of equitable considerations of "Justice between man and man" on the other. The first ended in a clear victory for parliamentary supremacy and the defeat of higher law ideas; the latter, after a long period of comparative stagnation, is again a factor of considerable influence in the development of the law.
A number of cases are evidenced with the beginning of seventeenth century wherein a statute was declared void and not binding for not being inconformity with the principles of Natural Justice.
The concept of natural justice can be traced from Biblical Garden of Eden, as also from Greek, Roman and other ancient cultures like Hindu. The Vedic Indians too were familiar with the natural theory of law. The practice of confining the expression natural justice to the procedural principles (that no one shall be judge in his own case and both sides must heard) is of comparatively recent origin and it was always present in one way or the other form. The expression was used in the past interchangeably with the expressions Natural Law, Natural enquiry, the laws of God, Sampan jus and other similar expressions. (H.H. Marshall, Natural Justice 5 (1959) London).
Thus, the widespread recognition, in many civilizations and over centuries the principle of natural justice belong rather to the common consciousness of the mankind than to juridical science.

CONCEPTUAL FORMULATION

A comprehensive definition of natural justice is yet to be evolved. However, it is possible to enumerate with some certainty the main principles constituting natural justice in modern times. English and Indian courts have frequently resorted to such alternatives to natural justice as "fair play in action", (Ridge V. Baldwin, (1963) 2 all E.R. 66; Wisemen V. Borneman (1969), 3 all E.R. 215; Mohinder Singh Gill V. Chief Election Commissioner, A. I. R 1978 S.C. 851.) Common fairness, (R.V. Secretary of State for the Home Department, exp. Hose ball, (1977) 1 W.L..R 766, 784). or the fundamental principles of a fair trail.(Tameshwar V The Queen, (1957) A. C. 476-486; Maneka Gandhi V Union of India A. I. R 1978 S.C 597).

In Spackman's case, (Spackman V. Plumstead District Board of Works, (1885) 10 App case 229, 240). Earl of Selborne, L.C observed that no doubt in the absence of
special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not the judge in the proper sense of the word but he must give the parties an opportunity of being heard before him and stating their case and their view. There would be no decision within the meaning of the statute, if there were anything of that sort done contrary to essence of justice.

Emphasizing for observance of natural justice again is Lesson's case, (LessonV. General Council of Medical Education (1889) US Ch. D 366, 383. Brown C.J using the term 'natural justice' stressed that the statute imparts that substantial element of
natural justice must be found to have been present at the enquiry. The accused person must have notice of what he is accused and must be given an opportunity of being heard.

The courts took these procedural safeguards in the past among different words. Conveying meaning i.e. the eternal justice or natural justice. The list of the words is long which were as :

Substantial justice;
The essence of justice;
Fundamental justice;
Universal justice and
Rational justice etc.

So the term natural justice has very impressive ancestry and has been retained all over the world with some modifications. The very basic thing, which emerges from it, is**. Fairness in the administration of justice**, more than any other legal principle is not susceptible to concise definition. It has a different meaning in different countries. History and tradition shape and distort it. To judge these divergent procedures according to a common standard of fairness is therefore no easy matter. What fair means will surely irritate governments and plague jurists. Fair hearing, some say it constitutes as fifth freedom supplementing freedom of speech and religion, freedom from want and fear. Robert Jackson, J., remains us that procedural fairness and regularity are of indispensable essence of liberty.

The concept of natural justice is not fixed one but has been changing from time, keeping its spirit against tyranny and injustice. Despite the many appellations applied to it and the various meanings attributed to it, through the ages, one thing remains constant. It is by its very nature a barrier against dictatorial power and therefore has been and still is an attribute of an civilized community that aspires to preserve democratic freedom. (Rene Dussault, "Judicial Review of Administrative Action in Quebec," Can Bar Rev. 79 (1967). The concept of natural justice is flexible and has been interpreted in many ways to serve the ends of justice.

Thus the doctrine of natural justice is the result of a natural evolution.

- Natural Justice is rooted in the natural sense of what is right and wrong. It mandates the Adjudicator or the administrator, as the case may be, to observe procedural fairness and propriety in holding/conducting trail, inquiry or investigation or other types of proceedings or process.

- The object of Natural Justice is to secure Justice by ensuring procedural fairness. To put it negatively, it is to prevent miscarriage of Justice.
- The term "Natural Justice" may be equated with "procedural fairness" or "fair play in action".
- It is concerned with procedure and it seeks to ensure that the procedure is just, fair and reasonable.
- It may be regarded as counterpart of the American "Due Process".

Co-relationship between Law and Natural Justice.

(a) Law is the means, Justice is the end. Law may be substantive as well as procedural.

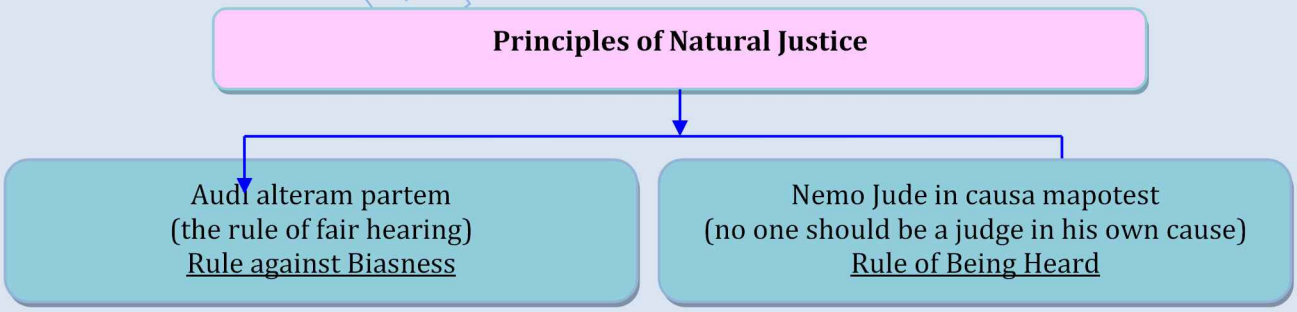
(b) Natural Justice also aims at Justice. It, however, concerns itself only with the procedure. It seeks to secure justice by ensuring procedural fairness. It creates conditions for doing justice.

(c) Natural justice humanizes the Law and invests the Law with fairness.

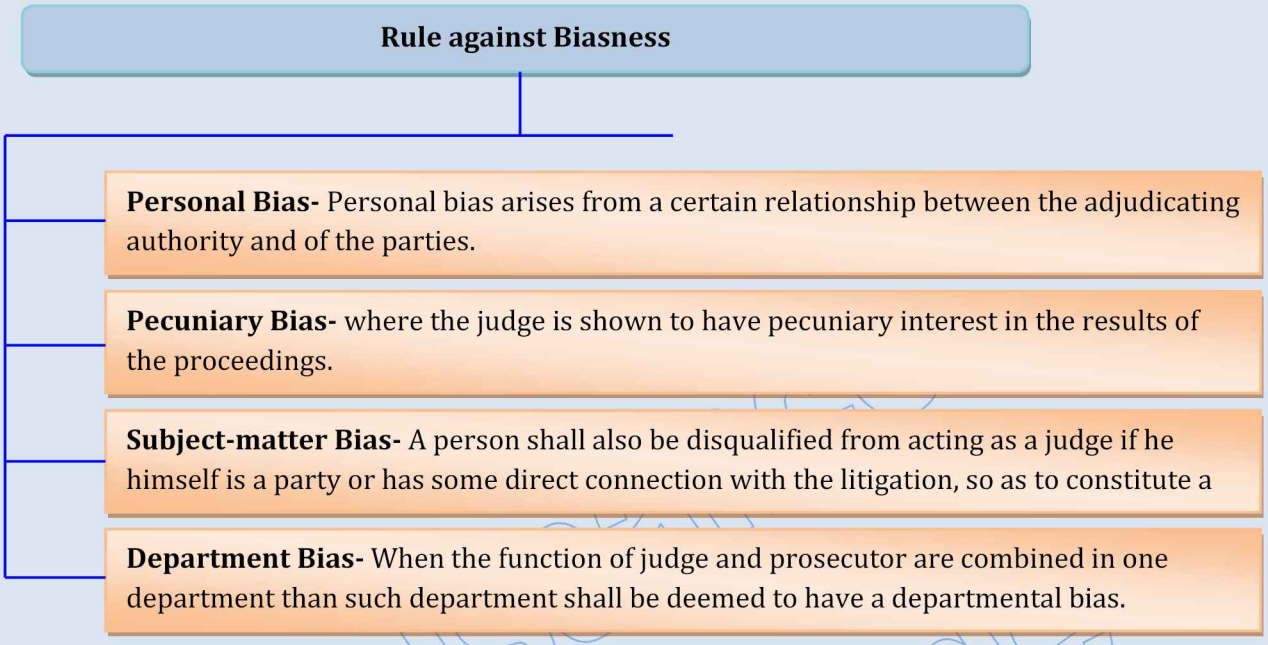
(d) Natural Justice supplements the Law but can supplant the Law.

(e) Natural Justice operates in areas not specifically covered by the enacted law. An omission in statute, likely to deprive a procedure of fairness, may be supplied by reading into the relevant provision the appropriate principle of Natural Justice.

"Natural Justice" is a concept of common law and signifies certain fundamental rules of judicial procedure. The branch of principles of Natural Justice will prevent justice from being seen to be done.



II) Rule against Biasness- Rule against Biasness denotes than an administrative authority acting in a quasi judicial manner must be impartial, fair and free from biasness.



III) Doctrine of Audi Alteram Partem- Doctrine of Audi Alterm Paltem is fundamental rule of natural justice which denotes 'right to be heard'. The doctrine of Audi alteram partem signifies the fact that no man should be condemned unheard. It is said that even Adam and Eve were given the benefit of this by the Almighty before they punish for disobeying His Command. Since the reason of the rule is that party shall have an adequate opportunity of rebutting the case against him it might be that this notice ought to inform the party of the case which has to meet.

Stages of or ingredients of fair hearing are as follows:-

1. 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.

2. Hearing: An important concept in Administrative law is that of natural justice or right to fair hearing. A very significant question of modern Administrative law is, where can a right to hearing be claimed by a person against whom administrative action is prepared to be taken?

In **Ridge vs. Baldwin**, the appellant was a chief constable. He was dismissed by the Watch Committee under Section 191 (4) of the Municipal Corporation Act, 1882. This decision of dismissal was taken by the Committee in his absences and even without giving him charge sheet. The action was challenged on the ground that the committee passing the order of dismissal, did not observe the principle of natural and the whole action was taken without given him an opportunity of being heard. The Court of appeal dismissed the action and held that the Watch Committee was not bound to follow the principle of natural justice.

IV) Exception to the Rule of Audi Alteram Partem-

Under the following circumstances the application of the rule of Audi alteram Partem may be excluded wholly or partly-

(i) Where the functions of an authority concerned have been held not to be Judicial.
(ii) Where the function of an authority have been held to be policy oriented.
(iii) Where prompt action, preventive or remedial is needed due to emergency situation.
(iv) Where the power exercised is disciplinary one, the rule audi alteram Partem does not apply.

Where the process of fair hearing would be prejudicial to public interest the rule alteram partem is excluded. Such situation may cover the cases of Defence or state secrets.

V) Case- In R. Radha Krishna Vs. Osmania University, the university cancelled the whole M. B. A. entrance examination because of mass copying. The decision of the university was challenged o the ground that the candidates were not given a hearing. It was held that notice and hearing to all candidates is not possible in this kind of action which is taken as disciplinary measures to solve a problem which has assumed national social proportion.

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.

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. 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 not 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 constitution.

Emergency: In exceptional cases of urgency or emergency where prompt and preventive action is required the principle 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, e.g., where a person who is dangerous to peace in the so morality e.g. Where a person who is dangerous to peace in the society is required to be detained or extended or where a building which is dangerous to the human lives is required to be demolished or a trade which is dangerous to the society is required to be prohibited, a prompt action is required to be taken in the interest of public and hearing before the action may delay the administrative action and thereby cause injury to the public interest and public safety. Thus in such situation dine social necessity requires exclusion of the pre-decisional hearing. 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.

Bhagwatil J, for majority referring to audi alteram partem which mandates that no one shall be condemned unheard, remarked:

"Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice and ever the year it has grown into a widely pervasive rule affecting large areas of administrative action. Thus the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world. In the United States, the right to an administrative bearing is regarded as essential requirement of fundamental fairness and in England too it has been held that fair play in action demands that before any prejudicial or adverse action is taken against a person he must be given an opportunity to be heard."

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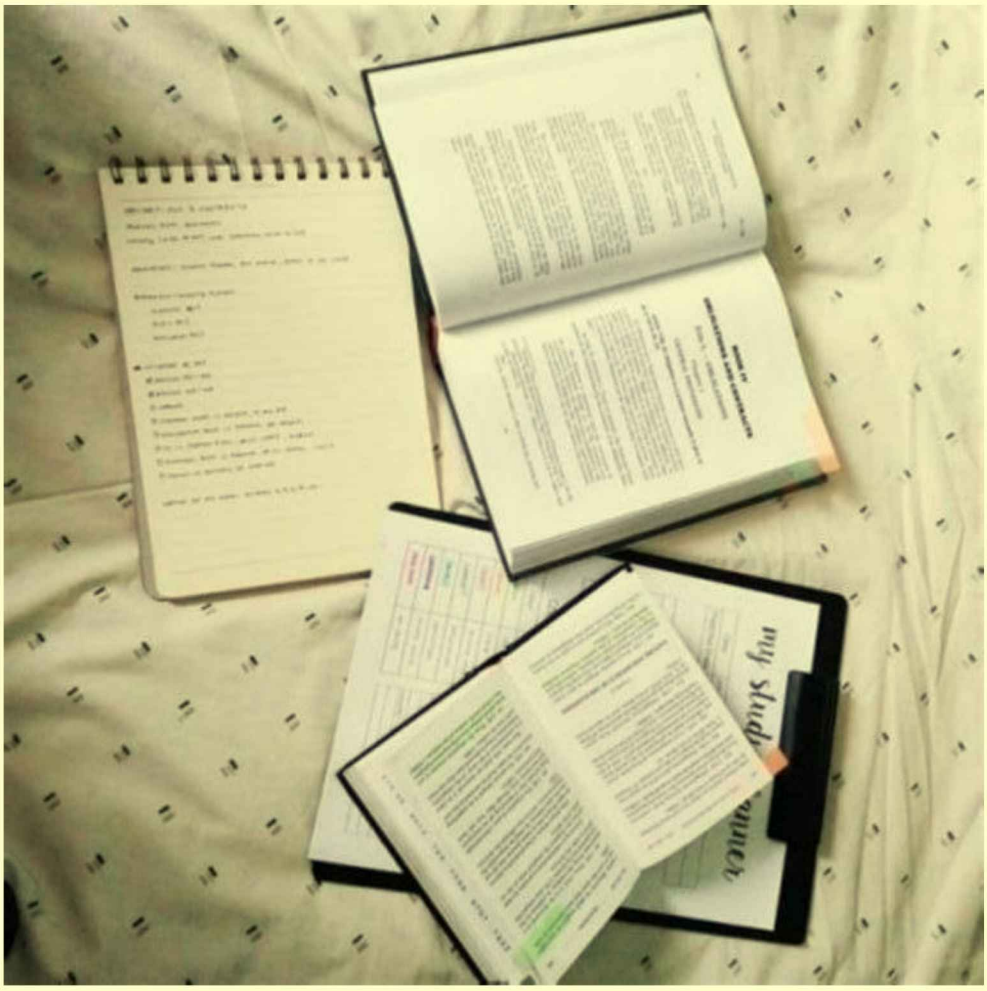

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CIVIL SERVICES IN INDIA

Administrative capability is a major and crucial factor in the success or failure of development efforts. Administrative modernization has been increasingly recognized as an integral part of the development process. As the ability to assume new tasks, to cope with complexity, to solve novel problems, to modernize resources, etc., depends upon the administrative capacity based on increased professionalization, bureaucratization, modernization and administrative talent. This highlights the role of public and personnel administration.

The quality of the institutions run by Government is dependent to a great extent upon the quality of the employees engaged in their operation. The efficient personnel administration can generate development, dynamism and modernization and ultimately lead to nation building through lubricating and optimizing the capacity and capability of personnel within the Government machinery. The functionaries in public administration can be categorized as "civil services" on the one hand and "public services" on the other. In the current literature on the subject:

- The term "civil service" denotes the entire group of personnel under the employment of governmental system only, mainly the central government and the state governments.
- The term "public service" is used for government employees, quasi-government employees, as well as employees of local bodies.

The Civil Service personnel can be further categorized as follows:

- All operatives who work on the ground level have to directly interact with the common man for rendering a variety of services and performing regulatory functions They belong mostly to Group 'D' and partly to Group 'C' services and are known as the "cutting edge" of administration.
- The supervisory level and the middle executive level. They are a whole range of technical and non-technical personnel who belong to the Group 'B' services and shade into higher stages of Group "c" at the one end and the lower stages of Group 'A' at the other.
- Executive-cum-management levels constitute mostly Group 'A' service personnel comprising a whole range of non technical uni- functional services, scientific and technical services and the All India services. The top most layers of these services constitute the potential reservoir of policy makers and top management. Those moving into these policies and to management levels require training in policy analysis, police formulation, strategic planning, evaluation etc.

Functions of Civil Services

Advice. One of the primary functions of civil service is to offer advice to the political executive. Ministers rely on the advice of their senior officials who are reservoirs of information and organized knowledge concerning the subject matters, which they administer. The political executive necessarily depends upon the civil personnel. For the information that he needs in formulating his own Programme. In the course of administration many problems arise which are usually worked out in the first instance by the civil service and the reported to the political overhead, if at all, for approval or merely for information.

Programme and Operational Planning. In its broad sense planning is a responsibility of the political executive; planning the periodic adjustments of the revenue structure is a responsibility of the Minister for Finance. But there is a field wherein civil servants also Performa the function of planning, and this is the field of Programme planning. As we know the legislature passes (to draw a framework for the implementation of policy) an Act in general terms to execute and implement the policy for which certain rules and regulations are required. The civil servants, who put that law into execution, determine the specific steps to be taken in order to bring to fruition a policy or a law already agreed upon. Besides, assisting the ministers in the formulation of policy and drawing a framework of plan,

the civil services are required to participate in the execution of plan. This is termed as operational planning.

Production. Civil Service exists to perform services in the broadest sense of the term. Its primary purpose is production. Every official responsible for running administration needs work standards to enable him to determine whether his organization is reasonably effective, whether his subordinate employees are competent and whether levels of efficiency and output are rising or falling**.**

Delegated Legislative Powers. Due to the emergence of the welfare state, the activities of the State have got multiplied. The Legislature is neither competent nor has the time to cope with enormous and complex legislation which has consequent grown up. Hence it delegates power of making law to the executive. It passes the bills in skeleton form bearing the details for the executive to fill. The permanent heads of the department evidently performs this job.

Administrative Ad judicatory Power. This is another important power, which has been entrusted to the executive due to rapid technological developments and the emergence of the welfare concept of the State. Administrative adjudication means vesting judicial and quasi-judicial powers with and administrative department or agency. In India this power has been mostly given to the administrative heads. Public administration is the basic infrastructure that sustain as modern society. Therefore, the structure of civil administration and the competence of its higher civil servants have always been critical **determinants in fueling vitality to drive the wheels of progress in any country.**

DISCIPLINARY ACTION AGAINST PUBLIC SERVANTS

A distinction needs to be drawn between disciplinary action of civil or criminal procedure. The former deals with the fault committed in office violating, the internal regulations or rules of the administration while the latter is concerned with the violation of law to be dealt with by civil and criminal courts. The following matters are covered in the Conduct Rules. More strictness is observed in those services where
more discretion is involved:

i) Maintenance of correct behaviour official superiors,
ii) Loyalty to the State.
iii) Regulation of political activities to ensure neutrality of the personnel,
iv) Enforcement of a certain code of ethics in the official, private and domestic life.
v) Protection of the integrity of the officials by placing restrictions on investments, borrowings, engaged in trade or business, acquisition or disposal of movable and immovable valuable property, acceptance of gifts and presents, and
vi) Restriction on more than one marriage.

CAUSES OF DISCIPLINARY PROCEEDINGS

The following are the various causes of disciplinary proceedings.

1) Acts Amounting to Crimes

a) Embezzlement
b) Falsification of accounts not amounting to misappropriation of money
c) Fraudulent claims (e.g. T.A.)
d) Forgery of documents
e) Theft of Government property
f) Defrauding Government
g) Bribery
h) Corruption
i) Possession of disproportionate assets