j) Offences against other laws applicable to Government Servants.
2) Conduct Amounting to Misdemeanor
a) Disobedience of orders
b) Insubordination
c) Misbehaviour
i) with superior officers
ii) with colleagues
iii) with subordinates
iv) with members of public
d) Misconduct
i) violation of conduct rules
ii) violation of standing orders
iii) intrigues and conspiracy
iv) insolvency

TYPES OF DISCIPLINARY ACTION
Disciplinary action may be informal or formal. Informal disciplinary action may mean assignment to a less desirable work, closer supervision, loss or withholding of privileges, failure of consultations in relevant matters, rejection of proposals or recommendation. It may includes curtailing of his/her authority and diminishing his/her responsibility The reason for taking informal disciplinary action may be that offences are too slight, or too subtle, or too difficult to prove, to warrant direct and formal action.
Formal disciplinary action follows where the offence is serious and can be legally established. In such cases the penalties that are imposed on a member of the service are;
1) Minor Penalties
a) Censure
b) Withholding of promotions
c) Recovery from pay of the whole or part of any loss caused to Government or to a company, association or body of individuals. And
d) Withholding of increments of pay.
2) Major Penalties
a) Reduction to a lower stage in the time scale of pay for a specified period.
b) Reduction to a lower time scale of pay, grade or post, and
c) Compulsory retirement.
In very serious cases of offence, even judicial proceedings against the offender may also be launched.

MODE OF TAKING DISCIPLINARY ACTION
Usually following provisions are made either in the Constitution or in the statute to
check the misuse of power to take disciplinary actions :
a) No employee shall be demoted or dismissed by an officer below in rank to one who had appointed him/her.
b) No employee shall be punished except for a cause, specified in some statute or departmental regulation.
c) No employee shall be punished unless he / she has been given reasonable opportunity to defend his / her case.
d) The employee shall be informed of the charges laid against him / her.
e) Where a board of Inquiry is appointed, it shall consist of not less than two senior officers, provided that at least one member of such board shall be an officer of the service to which the employee belongs.

f) After the inquiry against an employee has been completed and after the punishing authority has arrived at any provisional conclusion in regard to the penalty to be imposed, if the penalty proposed is dismissal, removal, reduction in rank or compulsory retirement, the employee charged shall be supplied with a copy of the report of inquiry and be given a further opportunity to show cause why the proposed penalty should not be imposed on him / her.

CONSTITUTION OF INDIA – DEALING WITH DISCIPLINARY MATTERS

Article 309 provides that the Acts of the appropriate legislature may regulate the recruitment and conditions of service of the persons appointed to public services and posts in connection with the affairs of the Union or of any State. It shall be competent for the President or Governor as the case may be, to make rules regulating and recruitment and conditions of service of public service until provisions are made by an Act of the appropriate legislature.

According to Article 310, every person who is a member of a defence service or the civil service of the Union or an All India Service or holds any post connected with defense or any civil post under the union holds office during the pleasure of the president, and every person who is a member of a civil service of a state or holds a civil post under a state holds office during the pleasure of the Governor of the State.

Notwithstanding that a person holding a civil post under the Union or a State holds office during the pleasure of the President or the Governor of the State, any contract under which a person, (not being a member of a defence service or of an All India Service or of a civil service of the Union or a State) is appointed under the Constitution to hold such a post may, if the President or the Governor deems it necessary in order to secure the services of persons having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed
period that post is abolished or he is required to vacate that post.

Article 311as amended by Forty-second. Amendment provides that no person who is a member of a civil post under the union or a state, shall be dismissed or removed by an authority subordinate to that by which he / she was appointed. No such person is aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he / she has been informed of the charges against him / her given a reasonable opportunity of being heard in respect of those charges. Where it is proposed after such enquiry to impose upon him / her any such penalty, such penalty may be imposed on the basis of the evidence provided during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed. This clause shall not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his / her conviction on a criminal charge or where the authority empowered to dismiss or remove a person or to reduce him / her in rank is satisfied that for some reason to hold such enquiry. Or where the President of the Governor, as the case may be, is satisfied that in the interests of the security of the State, it is not expedient to hold such enquiry. If in respect of any such person as aforesaid, a question arises, whether it is reasonably practicable to hold the enquiry mentioned above, the decision thereon of the authority empowered the dismiss or remove such person or reduce him / her in rank shall be final.

SUCCESSIVE STEPS INVOLVED IN DISPLINARY PROCEEDINGS

The successive steps of the procedure of disciplinary action are:

i) Calling for an explanation from the employee to be subjected to disciplinary action.

ii) If the explanation is not forthcoming or is unsatisfactory, framing of charges;

iii) Suspension of the employee if his / her remaining in the service is likely to prejudice the evidence against him / her.

iv) Hearing of the charges, and giving opportunity to the employee to defend himself / herself;

v) Findings and report;

vi) Giving another opportunity to the employee to defend himself/herself against the purposed punishment.
vii) Punishment order, or exoneration; and
viii) Appeal, if any.

ISSUES AND PROBLEMS

There are various problems concerning the disciplinary proceedings. They are as follows:

i) Lack of knowledge of the Disciplinary Procedure- It has been seen many a time that the appointing authorities as well as employees are unaware of the details of the disciplinary procedures resulting in many problems.

ii) Delays-The time taken to take disciplinary action is very long. When an employee knows of the impending action, he / she becomes more and more irresponsible and problematic. Delays cause hardship to the employees.

i**ii) Lack of fair Play-**There is a tendency that the appellate authority generally supports the decision of his / her subordinates. This defeats the purpose of appeal.

iv) Withholding of Appeal-Most of the officers do not like appeals against their decisions. There is a tendency to withhold appeals.

v) Inconsistency-Disciplinary action should be consistent under the same offence. Otherwise it leads to favoritism, nepotism and corruption.

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UNIT-III
ADMINISTRATIVE DISCRETION

I) ADMINISTRATIVE DISCRETION- CONCEPT

According to COKE-Discretion is a science of understanding to discern between falsity and truth, between right and wrong, and not to do according to will not private affection. This power should be exercised independently by the authorities concerned according to their own assessment.

It should be noted that a statute conferring discretion usually uses the words 'adequate', 'advisable', 'appropriate', 'beneficial', 'competent', 'convenient', 'expedient', 'equitable', 'far', 'reasonable', 'prejudicial', to safety an 'security', 'detrimental', 'necessary', 'wholesome', 'public purpose', etc. or other opposite. All these words involve matter of degree.

Again an administrative discretion must not be arbitrary or vague but legal and regular. In England even the refusal of exercising discretionary power, where it imposes a duty to exercise it, gives rise a liability to damages. But in India, there is no such law.

But no doubt, an authority may be compelled in India to exercise his discretion where he has been expressly with such power, through courts.

Discretion in layman's language means choosing from amongst the various available alternatives without reference to any predetermined criterion, no matter how fanciful that choice may be. But the term 'Discretion' when qualified by the word 'administrative' has somewhat different overtones. 'Discretion' in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular.

The problem of administrative discretion is complex. It is true that in any intensive form of government, the government cannot function without the exercise of some discretion by the officials. But it is equally true that absolute discretion is a ruthless master. Discretionary power by itself is not pure evil but gives much room for misuse. Therefore, remedy lies in tightening the procedure and not in abolishing the power itself.

There is no set pattern of conferring discretion on an administrative officer. Modern drafting technique uses the words 'adequate', 'advisable', 'appropriate', 'beneficial', 'reputable', 'safe', 'sufficient', 'wholesome', 'deem fit', 'prejudicial to safety and security', 'satisfaction', belief', 'efficient', 'public purpose', etc. or their opposites. It is true that with the exercise of discretion on a case-to-case basis, these vague generalizations are reduced into more specific moulds, yet the margin of oscillation is never eliminated. Therefore, the need for judicial correction of unreasonable exercise of administrative discretion cannot be overemphasized.

II) JUDICIAL BEHAVIOR AND ADMINISTRATIVE DISCRETION IN INDIA

Though courts in India have developed a few effective parameters for the proper exercise of discretion, the conspectus of judicial behavior still remains halting, variegated and residual, and lacks the activism of the American courts. Judicial control mechanism of administrative discretion is exercised at two stages:

I) at the stage of delegation of discretion;

II) at the stage of the exercise of discretion.

The exercise of discretion must not be arbitrary, fanciful and influenced by extraneous considerations. In matters of discretion the choice must be dictated by public interest and must not be unprincipled or unreasoned. It has been firmly established that the discretionary powers given to the governmental or quasi-government authorities must be hedged by policy, standards, procedural safeguards or guidelines, failing which the exercise of discretion and its delegation may be quashed by the courts. This principle has been reiterated in many cases.

Thus within the area of administrative discretion the courts have tried to fly high the flag of Rule of Law which aims at the progressive diminution of arbitrariness in the exercise of public power.

In India the administrative discretion, thus, may be reveiwed by the court on the following grounds.

I. Abuse of Discretion.

Now a day, the administrative authorities are conferred wide discretionary powers. There is a great need of their control so that they may mot be misused. The discretionary power is required to be exercised according to law. When the mode of exercising a valid power is improper or unreasonable there is an abuse of power. In the following conditions the abuse of the discretionary power is inferred: -

i) Use for improper purpose: - The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose. It will amount to abuse of power.

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

iii) Irrelevant consideration: - The decision of the administrative authority is declared void if it is not based on relevant and germane considerations. The considerations will be irrelevant if there is no reasonable connection between the facts and the grounds.

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

v) Mixed consideration: - Sometimes the discretionary power is exercised by the authority on both relevant and irrelevant grounds. In such condition the court will examine whether or not the exclusion of the irrelevant or non-existent considerations

would have affected the ultimate decision. If the court is satisfied that the exclusion of the irrelevant considerations would have affected the decision, the order passed by the authority in the exercise of the discretionary power will be declared invalid but if the court is satisfied that the exclusion of the irrelevant considerations would not be declared invalid.

vi) Unreasonableness: - The Discretionary power is required to be exercised by the authority reasonably. If it is exercised unreasonably it will be declared invalid by the court. Every authority is required to exercise its powers reasonably. In a case

Lord Wrenbury has observed that a person in whom invested a discretion must exercise his discretion upon reasonable grounds. Where a person is conferred discretionary power it should not be taken to mean that he has been empowered to do

what he likes merely because he is minded to do so. He is required to do what he ought and the discretion does not empower him to do what he likes. He is required, by use of his reason, to ascertain and follow the course which reason directs. He is required to act reasonably

vii) Colourable Exercise of Power: - Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for

some other purpose, It is taken as colourable exercise of the discretionary power and it is declared invalid.

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

Principles of natural justice are also required to be observed.

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

II. Failure to exercise Discretion.

In the following condition the authority is taken to have failed to exercise its discretion and its decision or action will be bad.

i) Non-application of mind: - Where an authority is given discretionary powers it is required to exercise it by applying its mind to the facts and circumstances of the case in hand. If he does not do so it will be deemed to have failed to exercise its discretion and its action or decision will be bad.

ii) Acting under Dictation: - Where the authority exercises its discretionary power under the instructions or dictation from superior authority. It is taken, as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgement and does not apply its mind. For example in **Commissioner of Police v. Gordhandas** the Police Commissioner empowered to grant license for construction of cinema theatres granted the license but later cancelled it on the discretion of the Government. The cancellation order was declared bad as the Police Commissioner did not apply his mind and acted under the dictation of the Government.

III) Imposing fetters on the exercise of discretionary powers: - If the authority imposes fetters on its discretion by announcing rules of policy to be applied by it rigidly to all cases coming before it for decision, its action or decision will be bad. The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and if the authority imposes fetters on its discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it, it will be taken as failure to exercise discretion and its action or decision or order will be bad.

III) ADMINISTRATIVE DISCRETION AND FUNDAMENTAL RIGHTS- Articles 13 to 35 of the constitution of India has guaranteed certain fundamental rights to the people. If the law confers and wide discretionary power on an administrative authority which infringes the fundamental rights guaranteed under the Constitution then such law may be declared ultravires. Articles 32, 226 and 227 of the constitution of India contain strong power to control the administrative authority if they exceed the limit or abuse the powers given to them. The courts have use the fundamental rights as a tool to control to some extent either bestowal of discretionary power on the administration or manner of their exercise.

No law can clothe administrative discretion with a complete finality, for the courts always examine the ambit and even the mode of its exercise for the angle of its conformity with fundamental rights.

The fundamental rights thus provide a basis to the judiciary in India to control administrative discretion to a large extent. There have been a number of cases in which a law, conferring discretionary powers, has been held violative of a fundamental right. The following discussion will illustrate the cases of judicial restraints on the exercise of discretion in India.

Article 14

Article 14 of Indian Constitution declares that "state shall not deny to any person equality before law and equal protection of the laws throughout the territory of India." Thus this Article speaks about the "equality before law and equal protection of the laws." In addition to this provision the right to

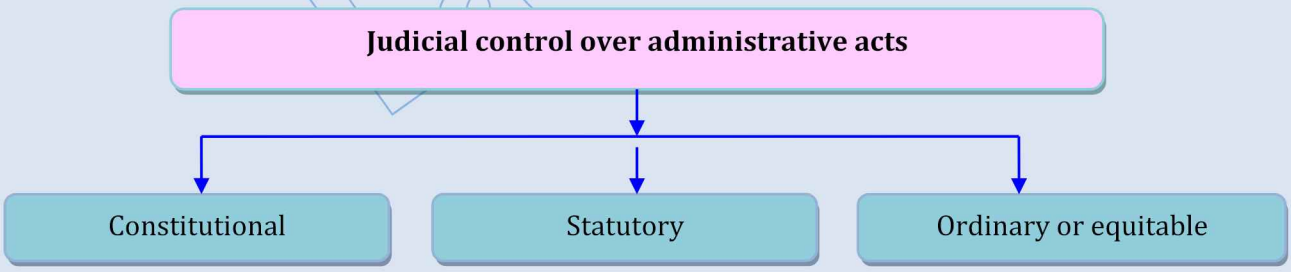
equality has been again accepted under Arts 15 and 16. Under Article 15 there is a provision for the prohibition of discrimination on the ground of religion, race, caste, sex or place of birth. Upon these grounds state shall not impose any liability or disability of any kind. Similarly under article 16 equality of opportunity has been granted to all citizens in the matters of public employment. Equality before law English concept. Equality before law simply prohibits class legislation, it does not prohibit classification. Equal protection clause is part of American Constitution also.
Nainsukhds Vs State of U.P., it was held that a law which provided for election on the basis of separate electorates for members o fdifferent religions and communities was unconstitutional.

Administrative discretion and Article 19-
There are seven fundamental rights guaranteed to the citizens of India under Article, 19, which are as follows:

(a) Freedom of speech and Expression
(i) Freedom of Assembly
(iii) Freedom to form Association
(iv) Freedom of Movement
(v) Freedom to reside and to settle
(vi) Freedom to acquit, hold and dispose of property
(This fundamental right has been omitted by Constitution 44th Amendment Act 1978)
(vii) Freedom of profession, occupation, trade or business.

The restriction on act- 19 must be constitutionally valid and must satisfy the following two tests:
(i) The restriction must be for the purpose mentioned in clause 2 to 6 of Article 19.
(ii) The restriction must be reasonable.
The reasonable restrictions are open to judicial review.

IV) PROVISIONS OF JUDICIAL CONTROL OVER ADMINISTRATIVE ACTS- The broad principles on which the exercise of discretionary powers can be controlled, have now been judicially settled. These principles can be examined under two main heads:
a) where the exercise of the discretion is in excess of the authority, i.e., ultra vires;
b) where there is abuse of the discretion or improper exercise of the discretion.
In India, the provisions of judicial can be grouped into following three heads:



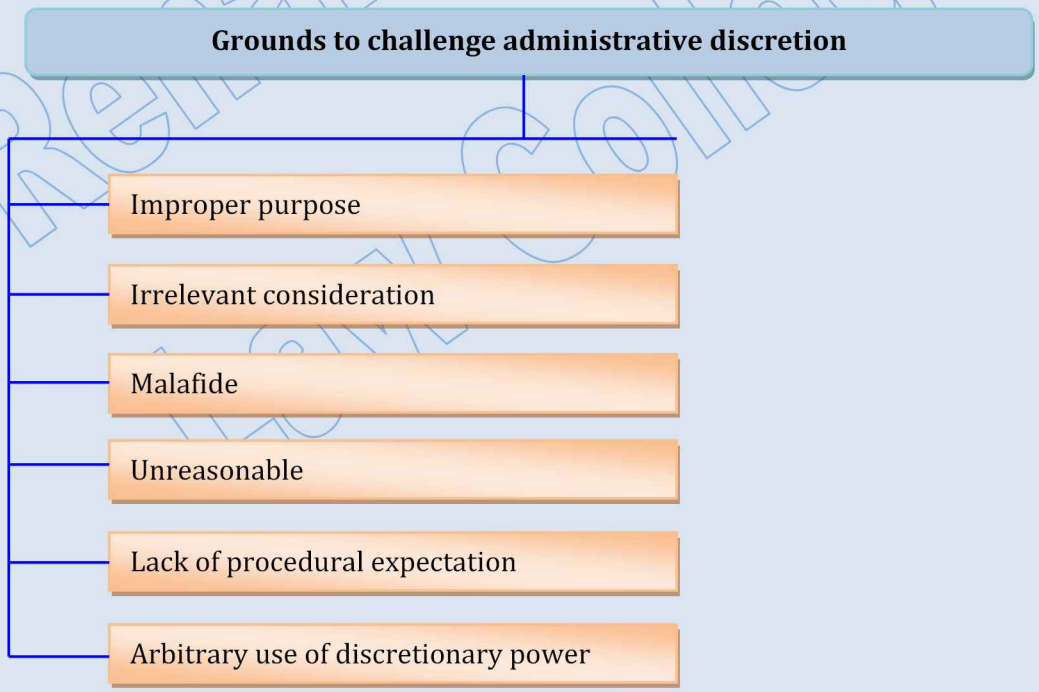
(1) Constitutional- Article 32, 226, 227 of COI.
(2) Statutory Review- There are some acts which provide for an appeal from statutory tribunal to the High-Court on the point of law for example Workmen's Compensation Act 1923.
(3) Ordinary or Equitable- The following are the ordinary or equitable modes to control an administrative discretion.
(a) Injunction
(b) Declaration
(c) Suit for damages.

(a) Injunction- A Judicial process by which one who has invaded or is threatening to invade the rights legal or equitable of another, is restrained from continuing or committing such wrongful act. Injunction section 36 to 42 of the Specific Relief Act 1963.
Regulate by the Code of Civil Procedure 1908 (Se 37 of the Specific Relief Act.) retrain from doing, a particular thing until the suit is disposed of or until further orders of the Court. An interlocutory application, preserve the status Quo pending trial and judicial discretion of the court.

(b) Declaration Action – A declaratory action denotes a judicial remedy, which conclusively determines the rights and obligations of public and private persons and authorities, without the addition of any coercive decree. It is merely a definition of rights and obligations. It does not prescribe any further relief nor any sanction against the defendant. It simply results in the removal of the existing doubts regarding the legal rights of the plaintiff.

(c) Suit for damages – Whenever any wrong is done to an individual by some wrongful negligent acts of the public authorities, such individual may file a suit for damages against such authority> The principles determining the quantum of damages are the same that govern the private individuals.

V) GROUNDS TO CHALLENGE ADMINISTRATIVE DISCRETION - In India, the provisions of judicial can be grouped into following three heads:



VI) Case Laws –

For reference –

i) RD Shetty Vs. International Airport Authority, 1979
ii) Himmatlal Vs. Police Commissioner, Ahmadabad, 1973

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ACTION OF STATE & ITS LIABILITY

I) ACTION OF STATE AND ITS LIABILITY

Remedies for Actions of the administration is available to the individual against the State. However, they do not provide full redress to the aggrieved individual. Private citizens access to the ordinary courts and the ordinary legal remedies may be qualified by the existence of certain privileges and immunities enjoyed by the state. These privileges immunities though justified in the days in which they originated, are hardly justified in a democratic society. However, the state does enjoy and it may be necessary for it to enjoy certain privileges and immunities.

Administrative law is engaged in the process of redefining such privileges and immunities with a view to reconciling them with the needs of modern times. The Constitution clearly says that the executive power of the Union and of each state extends to 'the carrying on for any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose'. The Constitution therefore, provides that a Government may sue or may be sued by its name. Similar provisions to be found in the Code of Civil Procedure. The above provisions do not, however, enlarge or restrict the extent of State liability; they merely provide the method of redress. The extent of liability will be discussed separately.

II) Privileges and Immunities of the Administration in Suits

The various privileges available to the Government under various statutes are as follows: -

I. Immunities from the operation of the statute.

In England the rule is that its own laws do not bind the Crown unless by express provision or by necessary implication they are made binding on it. Thus in England the statutes are not binding on the crown unless by express provision or by necessary implication, they are made binding thereon. Its basis is the maxim " the King can do on wrong.

This rule was followed even in India till 1967. In India the present position is that the statute binds the State or Government unless expressly or by necessary implication it has exempted or excluded from its operation. In case the State has been exempted from the operation of the statute expressly, there is no difficulty in ascertaining whether the statute is binding on the State or not but it becomes a difficult issue in case where the State is exempted from the operation of the statute by necessary implication. However, where the statute provides for criminal prosecution involving
imprisonment, the statute is deemed to be excluded from the operation of the statute necessary implication.

III) PRIVILEGES AND IMMUNITIES UNDER THE CIVIL PROCEDURE CODE, 1908.

Section 80 (1) provides that no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered in the manner provided in the section. The section is mandatory and admits of no exception. Thus, the requirement of notice is mandatory.

However, it is to be noted that if a public officer acts without jurisdiction, the requirement of notice is not mandatory. Its object appears to provide the Government or the public officer an opportunity to consider the legal position thereon and settle the claim without litigation. The Government may waive the requirement of notice; the waiver may be express or implied.

The requirement of notice causes much inconvenience to the litigants especially when they seek immediate relief against the Government. To minimize the hardships to the litigants a new Clause (20 was inserted in S.80 of the C.P.C by the Civil Procedure Code Amendment Act, 1970. The clause provides that the Court may grant leave to a

person to file a suit against the Government or a public officer without serving the two-month's notice in case where relief claimed is immediate and urgent. Before granting this exemption the Court is required to satisfy itself about the immediate and urgent need.

It is to be noted that S.80 of the C.P.C does not apply to a suit against a statutory Corporation. Consequently in case the suit is filed against the statutory Corporation. Consequently, such notice is not required to be given in cases the suit is filed against statutory Corporation.

S.80 does not apply with respect to a claim against the Government before the claim Tribunal under the Motor Vehicle Act.

S.80 of the C.P.C. does not apply to a writ petition against the Government or a public officer, the requirement of notice as provided under S.80 of the C.P.C is not required to be complied with.

S.82 of the C.P.C. also provide privilege to the Government. According to this section where in a suit by or against the Government or the public officer, a time shall be specified in the decreed within which shall be satisfied and if the decree is not satisfied writhing the time so specified and within three months from the date of the decree. Where no time is so specified, the Court shall report the case from the orders of the Government,. Thus a decree against the Government or a public officer is not executable immediately. The Court is required to specify the time within which the decree has to be satisfied and where no such time has been specified, three moths from the date of the decree will be taken to be the time within which is to be satisfied. If the decree is not satisfied within such time limit the Court shall report the case for the orders of the Government.

IV) PRIVILEGES UNDER THE EVIDENCE ACT (PRIVILEGES TO WITHHOLD DOCUMENTS).

In England the Crown enjoys the privilege to withhold from producing a document before the Court in case the disclosure thereof is likely to jeopardize the public interest. In Duncon v. Cammel Laird Co. Ltd. (1942 AC 624)The Court held that the Crown is the sole judge to decide whether a document is a privileged one and the court cannot review the decision of the Crown. However, this decision has been overruled

in the case of Conway v. Rimmer. (1968 AC 910) In this case the Court has held that it is not an absolute privilege of the Crown to decide whether a document is a privileged one. The court can see it and decide whether it is a privileged one or not.

In India S. 123 provides that no one shall be permitted to give any evidence derived from unpublished official records relating to any affair of State except with the permission of the officer at the Head thinks fit.

Only those records relating to the affairs of the State are privileged, the disclosure of which would cause injury to the public interest. To claim this immunity the document must relate to affairs of state and disclosure thereof must be against interest of the State or public service and interest.

The section is based on the principle that the disclosure of the document in question would cause injury to the public interest And that in case of conflict between the public interest and the private interest, the private interest must yield to the public interest.

The Court has power to decide as to whether such communication has been made to the officer in official confidence. For the application of S.124 the communication is required to have made to a public officer in official confidence and the public officer must consider that the disclosure of the communication will cause injury to the public interest.

According to S.162 a witness summoned to provide a document shall, if it is in his possession or power, bring it to the Court, not with outstanding any objective which there may be to its production or to its admissibility. The Court shall decide on the validity of any such objection. The court, if it sees fit, may inspect the document, unless it refers to the matters of State or take other evidence to enable it to determine on its admissibility. If for such purpose it is necessary to cause any document to be translated the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the direction, he shall be held to have committed an offence under S.166 of the Indian Penal Code.

S. 162 apply not only to the official documents but also to the private documents. It is for the Court to decide as to whether a document is or is not a record relating to the affairs of the State. For this purpose the Court can take evidence and may inspect the document itself.

Period of Limitation for Suit Against Government

Art 149 of the First Schedule of the Limitation Act of 1890 prescribed a longer period of limitation for suits by or on behalf of the State. The Act of 1963 contains a similar provision under Art 112. The Article applies to the Central Government an all the State Governments including the Government of the State of Jammu land Kashmir. This longer limitation period was based on the common law maxim nulla tempus occur it rein, that is, no time affects the Crown. The longer period of limitation, however, does not apply to appeals and applications by Government.

Under s 5 of the Limitation Act, it is provided that an appeal or application may be admitted after the expiry of the period of limitation if the court is satisfied that there was sufficient cause for the delay. It was held that the government was not entitled to any special consideration in the matter of condo nation of delay.

Immunity from Promissory Estoppel

Estoppel is a rule whereby a party is precluded from denying the existence of some state of facts, which he had previously asserted and on which the other party has relied or is entitled to rely on. Courts, on the principle of equity, to avoid injustice, have evolved the doctrine of promissory estoppels. The doctrine of promissory estoppel or equitable estoppel is firmly established in administrative law. The doctrine represents a principle evolved by equity to avoid injustice. Application of the doctrine against government is well established particularly where it is necessary to prevent manifest injustice to any individual. The doctrine of promissory estoppel against the Government also in exercise of its Government, public or executive functions, where it is necessary to prevent fraud or manifest injustice. The doctrine within the aforesaid limitations cannot be defeated on the plea of the executive necessity or freedom of future executive action. The doctrine cannot, however, be pressed into aid to compel the Government or the public authority "to carry out a representation or promise.

a) which is contrary of law; or

b) which is outside the authority or power of the Officer of the Government or of the public authority to make."

LIABILITY OF STATE OR GOVERNMENT IN CONTRACT

Article 298 provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition holding and disposal property and the making of contracts for any purpose. Article 299 (I) lays down the manner of formulation of such contract. Article 299 provides that all contracts in the exercise of the executive power of the union or of a State shall be expressed to be made by the President or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorize.

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

A contract with the Government of the Union or State will be valid and binding only if the following conditions are followed: -

1. The contract with the Government will not be binding if it is not expressed to be made in the name of the President or the Governor, as the case may be.
2. The contract must be executed on behalf of the President or the Governor of the State as the case may be. The word executed indicates that a contract with the Government will be valid only when it is in writing.
3. A person duly authorized by the President or the Governor of the State, as the case may be, must execute the contract.

The above provisions of Article 299 are mandatory and the contract made in contravention thereof is void and unenforceable.

In India the remedy for the branch of a contract with Government is simply a suit for damages. The writ of mandamus could not be issued for the enforcement of contractual obligations. But the Supreme Court in its pronouncement in Gujarat State Financial Corporation v. Lotus Hotels, ((1983) 3 SCC 379) has taken a new stand and held that the writ of mandamus can be issued against the Government or its instrumentality for the enforcement of contractual obligations.

Quasi-Contractual Liability

According to section 70 where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered. If the requirements of Section 70 of the Indian Contract act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.

Section 70 is not based on any subsisting contract between the parties but is based on quasi-contract or restitution. Section 70 enables a person who actually supplies goods or renders some services not intending to do gratuitously, to claim compensation from the person who enjoys the benefit of the supply made or services rendered. It is a liability, which arise on equitable grounds even though express agreement or contract
may not be proved.

Section 65 of the Indian Contract Act.

If the agreement with the Government is void as the requirement of Article 299 (1) have not been complied, the party receiving the advantage under such agreement is bound to restore it or to make compensation for it to the person form whom he has received it. Thus if a contractor enters into agreement with the Government for the construction of go down and received payment therefore and the agreement is found to be void as the requirements of Article 299 (1) have not been complied with, the Government can recover the amount advanced to the contractor under Section 65 of the Indian Contract act. Action 65 provides that when an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it to make compensation for it to the person from whom he received it.

SUIT AGAINST STATE IN TORTS

Before discussing tortuous liability, it will be desirable to know the meaning of 'tort'. A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation. The word 'tort' has been defined in Chambers Dictionary in the following words; ***"Tort is any wrong or injury not arising out of contact for which there is remedy by compensation or damages."***

Thus, tort is a civil wrong, which arises either out of breach of no contractual obligation or out of a breach of civil duty. In other words, tort is a civil wrong the only remedy for which is damages. The essential requirement for the arising of the tort is the beach of duty towards people in general. Although tort is a civil wrong, yet it would be wrong to think that all civil wrongs are torts. A civil wrong which arises out for the breach of contact cannot be put in the category of tort as it is different from a civil wrong arising out of the breach of duty towards public in general.

LIABILITY FOR TORTS

In India immunity of the Government for the tortious acts of its servants, based on the remnants of old feudalistic notion that the king cannot be sued in his own courts without his consent ever existed. The doctrine of sovereign immunity, a common law rule, which existed in England, also found place in the United States before 1946 Mr. Justice Holmes in 1907 declared for a unanimous Supreme Court:

"A sovereign is exempt from suit not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends."

Today, hardly, anyone agrees that the stated ground for exempting the sovereign from suit is either logical or practical.

VICARIOUS LIABILITY OF THE STATE

When the responsibility of the act of one person falls on another person, it is called vicarious liability. Such type of liabilities is very common. For example, when the servant of a person harms another person through his act, we held the servant as well as his master liable for the act done by the servant. Here what we mean is essentially the vicarious liability of the State for the torts committed by its servants in the exercise of their duty. The State would of course not be liable if the acts done were necessary for protection life or property. Acts such as judicial or quasi-judicial decisions done in good faith would not invite any liability. There are specific statutory provisions which the administrative authorities from liability. Such protection, however, would not Extent malicious act. The burden of proving that an act was malicious would lie on the person who assails the administrative action. The principles of law of torts would apply in the determination of what is a tort and all the defences available to the respondent in a suit for tort would be available to the public servant also.

In India Article 300 declares that the Government of India or a of a State may be sued for the tortious acts of its servants in the same manner as the Dominion of India and the corresponding provinces could have been sued or have been sued before the commencement of the present Constitution. This rule is, however, subject to any such law made by the Parliament or the State Legislature.

Case Law on the tortious liability of the State

=P.and O. Steam Navigation v. Secretary of State for India. **(5 Bom HCR App 1.)**

=State of Rajasthan v. Vidyawati, (AIR 1962 SC 933)

=Kasturi Lal v. State of U. P. (**AIR 1965 SC 1039)**

Damages

It may happen that a public servant may be negligent in the exercise of his duty. It may, however, be difficult to recover compensation from him. From the point of view of the aggrieved person, compensation is more important than punishment. Therefore, like all other employers the State must be made vicariously liable for the wrongful acts of its servants The Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of the personal liberty. Hence they are coming forward with the pronouncements holding the Government liable for damages even in those cases where the plea of sovereign function could have negative the governmental liability.

Personal liability for abuse of power is a recent phenomenon

"In modern sense the distinction between sovereign and non-sovereign power does not exist. It all depends on the nature of power and manner of its exercise. Legislative supremacy under the Constitution arises out of Constitutional provisions. Similarly the executive is free to implement and administer the law. One of the tests to determine if the legislative or executive functions sovereign in nature is whether the State is answerable for such actions in courts of law, for instance,

acts such as defense of the country, raising armed forces and maintain it, making peace or war, foreign-affairs, power external sovereignty and are political in nature. Therefore, they are not amenable to the jurisdiction of ordinary civil court. The State is immune from being sued as the jurisdiction of the courts in such matters is impliedly barred."

But there the immunity ends. No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner, as it is sovereign. No legal or political system today can place the State above law, as it is unjust and unfair for a citizen to be deprived of his property illegally by the negligent act of officers of State. The modern social thinking and judicial approach is to do away with archaic State protection and place the State or the Government at par with other juristic legal entity. Any watertight compartmentalization of the functions of the State as sovereign or non-sovereign is not sound. It is contrary to modern jurisprudence. But with the conceptual change of statutory power being statutory duty for sake of society and the people, the claim of a common man cannot be thrown out

merely because it was done by an officer of the State official and the rights of the citizen are require to be reconciled so that the rule of law in a welfare State is not shaken. *It is unfortunate that no legislation has been enacted to lay down the law to torts in India. For that law, our courts have to draw from the English common law. Since the law of contract and the law of Sale of Goods and now the law of consumer protection have been enacted, it is high time that our Parliament enacts a law and thereby comes out of the legislative inertia.. The law in India on State liability has developed in the last two decades through judicial process. It has made the State liable for the torts of its servants. The courts have, however, developed such a law without expressly overruling some of the earlier decision, which defined the State liability in very narrow terms.*

SUITS AGAINST GOVERNMENT

I) Contractual Liability of the Government- Articles 294, 298, 299 and 300 of the constitution of India, deal with the contractual liability of the Government. Art 294 provides for succession by the present Governments of the Union and the states the property, aspects rights liabilities and obligations vested in the former Government. Art. 298 authorizes the Government to enter into contracts for the purpose of carrying out of the functions of the State. Article 299 provides essential formalities which a Government contract must fulfill and Article 300 deals with the procedure and the manner in which suits or proceedings against or by the Government may be instituted.

It should be noted here that a Government contract in order to be valid must also fulfill the requirements of section 10 of the Indian Contract Act which deals with the essentials of a valid contract, beside fulfilling the requirements of Art, 299 (1) of the constitution. Similarly sections 73, 74 of the Indian Contract Act which contain the Principles for determining the quantum of damages also apply.

II) Application of the doctrine of waiver to the Government contract-

Since the requirements of Art, 299 are mandatory; these cannot be waived by the Government.

Privileges of the Government under the Civil Procedure Code and Evidence Act- Under Civil Procedure Code, the privilege available to the Government as compared to an individual is under section 80 of the Civil Procedure Code according to which no suit shall be instituted against the Government or against a public officer in respect of any act purporting to be done b such public officer capacity, until the expiration of two months next after notice in writing in the manner provided in the section.

III) Liability of the Government for Tort- English law-The immunity of the Crown from any civil Criminal liability is based upon an ancient and fundamental principle of the English Constitution that "The King can do no wrong". Earlier an action for a personal wrong will not lie against the sovereign. As such the crown cannot be sued for the tortuous acts of its servant.
Indian Law. In India the liability of the Government for the torts of their servants was accepted quite earlier than in England. In p. & o. Steam Navigation Co. Vs. The Secretary of State for India it was held that the Government is liable for the tortuous act of its servants.
According to Article 300 of the Indian Constitution, the Government of India and a State Government may sue and be sued in relation to their respective affairs in the like cases as Union of India and the corresponding Provinces or Indian Sates might sue or be sued if the constitution had not been passed.

IV) Case Laws –

For reference –

i) New Marine Coal Co. Vs. Union of India, 1969
ii) Mahaveer Auto Stores Vs. Indian Oil Corporation, 1980

UNIT-IV
GOVERNMENT PRIVILEGES IN LEGAL PROCEEDINGS

RIGHT TO KNOW

Government openness is a sure technique to minimize administrative faults. As light is a guarantee against theft, so governmental openness is a guarantee against administrative misconduct. Openness in government is gaining lot of foothold in recent years. It is a topic of growing importance in administrative law. The goal of open government is being pursued by U.S.A, Aaustralia Newzealand and other liberal democracies of the world. Openness in government is bound to act as a powerful check on the abuse of power by the government. The objective of openness in government is ensured by giving access to by the individual to governmental information so that governmental activity is not shrouded in mistery and secrecy. American Constitution, the oldest written constitution of the world, does not contain specific right to information. However, the US Supreme Court has read this right into the First amendment of the Constitution and granted access to information where there is a tradition of openness to information in question and where access contributes to the functioning of the particular process involved.

Administrative Procedure Act, 1946 (APA) was the first enactment, which provided a limited access to executive information. The Act was vague in language and provided many escape clauses. Taking these deficiencies into consideration the Congress in 1966 passed **Freedom of Information Act, 1966**, which gives every citizen a legally enforceable right of access to government files and documents, which the administrators may be tempted to keep confidential. If any person is denied this right, he can seek injunctive relief from the court.

1. Information specifically required by executive order to be kept secret in the interests of national defense or foreign policy.
2. Information related solely to internal personal use of the agency
3. Information specifically exempted from disclosure by statute.
4. Information relating to trade, commercial or financial secrets.
5. Information relating to inter-agency on intra-agency memorandums or letters.
6. Information relating to personal medical files.
7. Information complied for law enforcement agencies except to the extent available by law to a party other than the agency.

After investigating the operation of this Act, Congress in 1974 amended it. Amendments provided:
(i) For disclosure of "any reasonably segregably portion" of otherwise exempted records;
(ii) For mandatory time limit of 10 to 30 days for responding to information requests;
(iii) For rationalized procedure for obtaining information, appeal and cost. Statistics show that maximum (80%) use of this act is being made by business executives their lawyers an editors, authors, reporters and broadcasters whose job is to inform the people have made very little use of this Act.

The judiciary In USA shares the same concern of the Congress, which is reflected in the Freedom of Information Act, 1966. Justice Douglas observed: "Secrecy in government is fundamentally antidemocratic, perpetuating bureaucratic errors. Open discussing based on full information debate on public issues is vital to our national health." In order to provide access to Federal government meetings, the Congress passed **Sunshine Act, 1977**

In England the thrust of the legislations on 'information' but secrecy the present law is contained in the Official secrets acts, 1911, 1920 and 1939. Keeping in view the desirability of openness of governmental affairs in a democratic society, the **Franks Committee** recommended a repeal Section 2 of the 1911 Act and its replacement by the Official information Act. The proposals restricted criminal sanctions to defined areas of major importance: wrongful disclosures of **(i)** information of major

national importance in the fields of defense security foreign relations, currency and reserves, **(ii)** cabinet documents, and **(iii)** information facilitating criminal activity or violating the confidentiality of information supplied to the government by or about individuals, and these of information for private gains.
In 1993, the government in England published a white paper on 'open government' and proposed a voluntary code of practice of providing information. This code is voluntary and thus cannot be equated to statutory law on access to information.

The local government (Access to Information) Act, 1985 is the only statutory law providing legal right to information against local's governors. The Act provides for greater public access to meetings and documents of the major local councils. However, this Act leaves much to the discretion of the councils and mentions at least fifteen categories of exempted information. **I**ndividual seeking information has no adequate legal redress. It is certainly strange that a democratic country should be so secretive. It appears that this situation cannot last long because of mounting popular pressure and citizens charter**.**

The Official Secrets Act, 1923 in India makes all disclosures and use of official information a criminal offence unless expressly authorized.
Courts in India and England have rejected the concept of conclusive right of the government to withhold a document. But still there is too much secrecy, which is the main cause of administrative faults. India Constitution does not specifically provide for the right to information as a fundamental right though the constitutional philosophy amply supports it. In the same manner arts. 19 (a) freedom of thought and expression and 21 right to life and personal liberty would become redundant if information is not freely available Art. 39(a), (b), (c) of the Constitution make provision for adequate means of livelihood, equitable distribution of material esources of the community to check concentration of wealth and means of production. As today information is wealth, hence, need for its equal distribution cannot be over emphasized. Taking a cue from this Constitutional philosophy, the Supreme Court of India found a habitat for freedom of information in Arts. 19(a) and 21 of the Constitution. It is heartening to note that the highest Bench in India while recognizing the efficacy of the 'right to know' which is a sine qua not of a really effective participatory democracy raised the simple 'right to know' to the status of a fundamental right.
In ***S. P. Gupta v. Union of India,*** the court held that the right to know is implicit in the right of free speech and expression guaranteed under the Constitution in Article 19 (1) (a). The right to know is also implicit in Article 19(1)(a) as a corollary to a free press, which is included in free speech and expression as a fundamental right. The Court decided that the right to free speech and expression includes **(i)** Right to propagate one's views, ideas and their circulation **(ii)** Right to seek, receive and impart information and ideas **(iii)** Right to inform and be informed **(iv)** Right to know **(v)** Right to reply and **(vi)** Right to commercial speech and commercial information.
Furthermore, by narrowly interpreting the privilege of the government to withhold documents under Section 123 of the Evidenced Act, the Court has widened the scope for getting information from government file. In the same manner by narrowly interpreting the exclusionary rule of art. 72 (2) of the Constitution, the Court ruled that the Court could examine the material on which cabinet advice to the President is based. However, this judicial creativity is no substitute for a constitutional or a statutory right to information. With the judicial support, the right to information has now become a cause of public action and there is a strong demand for a formal law on freedom of information. States of Goa, Tamil Nadu and Rajasthan have, since 1997,
enacted laws ensuring public access to information, although with various restraints and exemptions. There is a pressure on the Central Governments also to enact law-granting right to information. Various drafts were submitted from consideration by empowered bodies like the Press Council of

India and by independent citizens' groups. but the Freedom of Information Bill, which has finally reached Parliament in 1999, has disappointed almost all who campaigned for its introduction.

This Press Council of India Bill, 1996 had provided three exemptions, which included:
(1) Information, disclosure of which will have prejudicial effect on sovereignty and integrity of India, security of State and friendly relations with foreign states, public order, investigation of an offence which leads to incitement to an offence;
(2) Information which has no relationship to any public activity and would constitute a clear and unwarranted invasion of personal privacy;
(3) Trade and commercial secrets protected by law.
However, the information, which cannot be denied to Parliament or State Legislator, shall not be denied to any citizen. Present government bill tightens all these exemptions while adding several more. One such exemption is in respect of cabinet papers, including records of deliberations of Council of Ministers, Secretaries and other officers. This would make the conduct of all officers of stat immune from public scrutiny. Another exemption relates to the legal advice, opinion or recommendations made by an executive decision or policy formulation this confers too far-reaching immunity on officials. However, in one respect the bill marks a definitive advance over the initial draft in doing away with the exemption on information connected to the management of personnel of public authorities. This makes information available relating to recruitment process on public agencies, which is often riddled with corruption and nepotism. The bill is highly inadequate in respect of credible process of appeal and penalties for denial of information. The jurisdiction f the courts has been ruled out since the bill makes provision for an administrative appeal only. The officers who would deal with the requests for information are totally unencumbered by the prospects of any penalty for willful denial of any access. Nevertheless, in spite of these limitations, the proposed Bill is a right step in the right direction.
Right to know also has another dimension. The Bhopal gas tragedy and its disaster syndrome could have been avoided had the people known about the medical repercussions and environmental hazards of the deadly gas leaked from the Union Carbide chemical plant at Bhopal.
In India bureaucrats place serious difficulties in the way of the public's legitimate access to information. The reason for this can be found in colonial heritage.
Today in India secrecy prevails not only in every segment of governmental administration but also in public bodies. Statutory or non-statutory. There is a feeling everywhere that it pays to play safe. Even routine reports on social issues continue to be treated as confidential long after the you are submitted. What is given out is dependent on the whims of a minister or a bureaucrat. The result is that there is no debate on important matters and no feedback to the government on the reaction of the people. The stronger the efforts at secrecy, the greater the chance of abuse of authority by functionaries. There is need for administrative secrecy in certain cases. No one wants classified documental concerning national defiance and foreign policy to be made public till after the usual period of 35 years is over. Secrecy may also be claimed for other matters enumerated in the Freedom of Information Act, 1966. But the claims of secrecy, generally by the government and public bodies, may play havoc with the survival of democracy in India. Some legislation, therefore, is necessary which recognizes the right to know, makes rules fro the proper 'classification of information' and makes the government responsible to justify secrecy. This will not only strengthen the concept of open government, but also introduce accountability in the system of government., Outside the government, there is no justification for secrecy in public undertakings except within a very limited area of economic espionage. Sometime there appears to be a conflict between the right to know and the right to privacy of public figures through whom the machinery of government moves. Our experience in India suggests that a public figure should not be allowed protection against exposure of his private life, which has some relevance to the public duties on the plea that he has a right to privacy. Right to privacy should not be allowed as a pretext to suppress information.

OMBUDSMAN

Ombudsman

After independence setting up of a democratic system of Government raised tremendous hopes and high expectations among people. From a purely regulatory and police administration, the government came to be entrusted with the responsibility of economic and social transformation and that too in a hurry. The state entered economic field in a big way and a number of regulations were brought into play to promote socialistic pattern of the society and to ensure distributive justice.

The Gandhian principle that, "that governments is the best which governs the least was substituted by a government which was as the American saying goes, a 'big government' affecting the lives of citizens from cradle to grave if not from conception itself. The committee on "Prevention of Corruption" (popularly known as the **Santhanam Committee)** in its report gave special attention to create machinery in the government, which should provide quick and satisfactory redress of public grievances.

I) Ombudsman- the increasing discretionary powers of the administration in the modern welfare State affect the day to-day life of the people. This tremendous increase in the discretionary powers of administration has generated the possibilities of misuse of the powers by administration at the same time. The complaints of mal-administration, corruption, nepotism, administrative inefficiency, negligence, bias etc. have increased. It was felt necessary to evolve an adequate and effective mechanism to keep the administration under control. And this search has produced the idea of "**Ombudsman"** which means a "watch dog of the administration" or "the protector of the little man" This institution of "Ombudsman" was first developed in Sweden in 1809. Lateron it was copied by Norway and New Zeeland in 1962.

Unique characteristics of Ombudsman-

(i) The Ombudsman is an independent and non-partisan officer of the legislative who supervises the administration.

(ii) He deals with specific complaints from the public against. Administrative injustice mal-administration, (or may proceed on his own information in similar circumstances).

He has the power to investigate, criticize and report back to the legislature, but not to reserve administrative action.

II) Position of Ombudsman in India- In all India Lawyers Conference held in 1962, sri M.C. Setalvad gave the idea of establishing an institution similar to that of an Ombudsman. In 1966, the Administrative Reforms Commission recommended the office of Lokpal similar to that of the Ombudsman for the following reasons-

(i) Since a democratic Government is a Government of the people, by the people and for the people, it has an obligation to satisfy the citizen about its functioning and to offer them adequate means for the ventilation and redress of their grievances.

(ii) The existing institution of judicial review and Parliamentary control are inadaquate in view of ever expanding range of Governmental activities, most of which are discretionary.

On the basis of the recommendation made by the Administrative Reform Commission the Lokpal and Loakayukta Bill was prepared by the Government and placed in the Parliament in 1969 but it lapsed owning to dissolution of Lok sabha.

The Administrative Reforms Commission, which recommended the Office of Lokpal, formulated the following principle;

(i) Lokpal should be demonstrably independent and impartial.
(ii) His investigations and proceedings should be conducted in private and should be informal in character.
(iii) His appointment should, as far as possible, be non political.
(iv) His status should be equivalent with the highest judicial functions in India.
(v) He should deal with the matters involving acts of injustice, corruption and favoritism.

The Bill defined misconduct by providing that a public man will e deemed to have committed misconduct if he directly or indirectly allows his position to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favor to himself or to another person or cause harm or undue hardship to another person. It further provided that the public man will be liable to be punished if he is motivated by 'motives of personal interest' or if he abuses or attempts to abuse his position to cause harm or undue hardship, to any other person. Even ex-Ministers and ex-M. Ps. are within the ambit of Lokapal if their misconduct is not more than five-years old.

***Note**: Please refer latest Lokpal Bill/Act.*

III) Appointment of Lokpal- According to the Lokpal Bill of 1977, the Lokpal is to be appointed by the President in consultation with the Chief Justice of India and the speaker of Lok sabha and the leader of opposition in the Lok Sabha. He is appointed for five years. He can not be re-appointed for more than next one term nor any employment under the Government be given to him after his term. He can be removed from his office during his term only on the enquiry which is to be held by a sitting or retired Judge of the Supreme Court in the same manner as there is provision for the removal of a Judge under judges (Enquiry) Act, 1968. The enquiry report is to be placed before both the house of the Parliament and each house has to pass an address for his removal by a majority of its total membership and a majority of not less than two-third of its members present and voting.

IV) Qualifications- The Bills lays down the following negative qualifications:
(i) He shall not be a member of Parliament or of State Legislature
(ii) If he is holding office of profit or trust, he shall resign before he takes charge of the office of Lok pal.
(iii) If he related to any political party he will sever his relations from it.
(iv) If he attends to a profession he will leave it.
(v) If he is carrying on any trade or occupation he will break off his relations with its management.

V) Salary- The salary, pension and other perquisites of the Lok pal equal to that of the Chief-Justice-of India.

VI) Functions and Powers of Lok pal- The Lok pal may investigate any action taken by or with the approval of a Minister or secretary, being action taken in the exercise of his administrative functions, if any case where-
(a) A written complaint in duly made to the Lok pal by a person who claims to have sustained injustice in consequence of maladministration in connection with such action or who affirms that such action has resulted in favor being unduly shown to any person or his accrual of persona benefit or gain to the Minister or to the secretary, as the ease may be, or
(b) Information has came to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in the clause.

VII) Matters not with in the jurisdiction of Lok pal- The Lok pal shall not conduct an investigation in respect on any of the following matters-