

Simplified Visual Notes



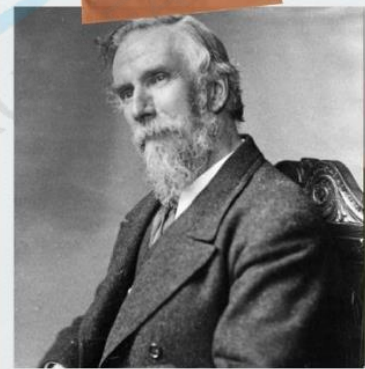
ADMIN LAW



Administrative Law

Definition

- Administrative Law determines the legal status and liabilities of all state officials and defines the rights and liabilities of private individuals in their dealing with public officials.



Sir AV Dicey



Sir Ivor Jennings

- Administrative Law as the Law relating to administration. It determines the organization, powers and duties of administrative authorities.

Administrative Law deals with

Composition of Different organs of administration

Power of Different organs of Administration

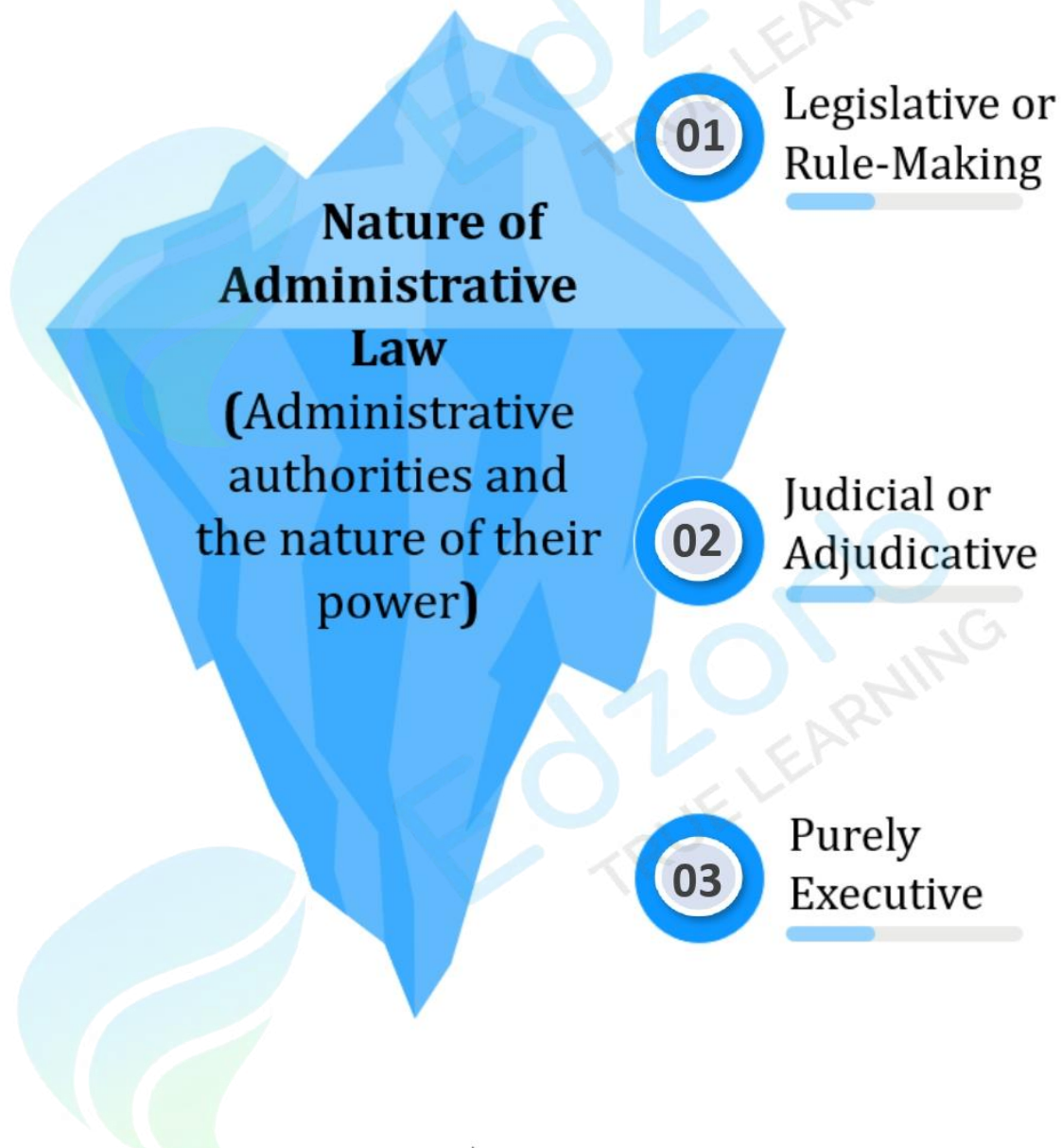


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Nature and Scope of Administrative Law

Nature - Administrative law is study of multifarious powers of administrative authorities and the nature of their power can be studied under the following three heads:

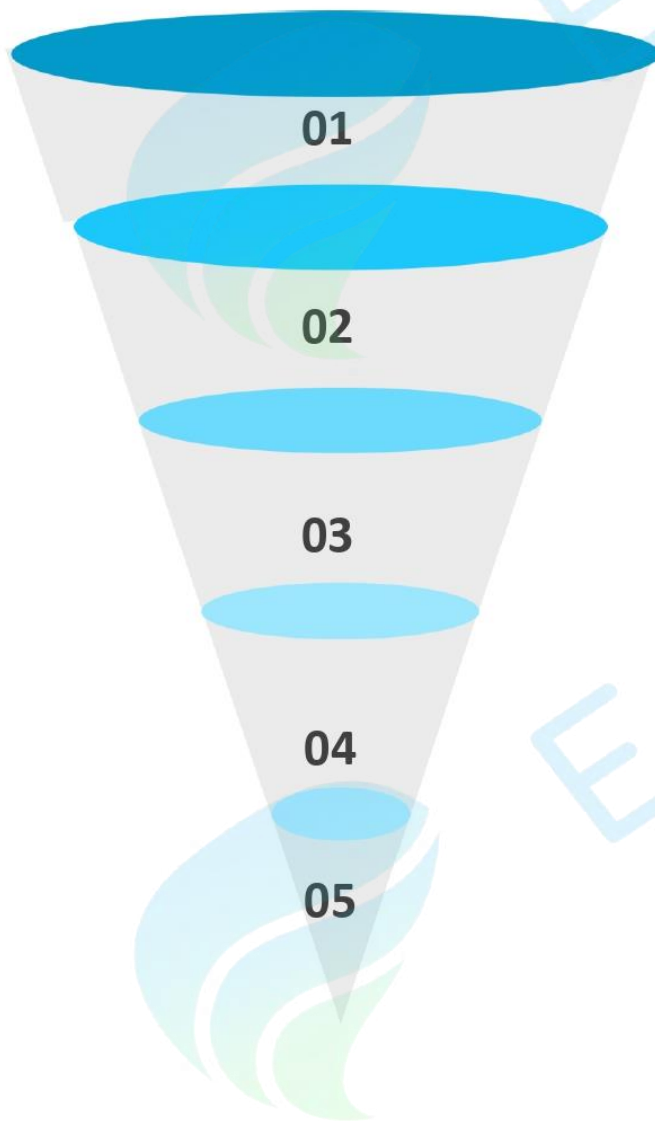


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Friedmann- Administrative law includes the law relating to-



- Power of ordinary courts to supervise the administrative authorities
- The legislative powers of the administration
- The legal liability of public authorities
- The Judicial & Quasi- Judicial powers of Administration
- The Administrative powers of the Administration

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Scope of Administrative Law

- 01 • **Existence of various admin. bodies-** such as, Wage-board, C.B. of Revenue, Commission of Inquiry & Advisory Boards, etc.
- 02 • **Rulemaking power of admin. agencies-** i.e. delegated legislation; safeguard against abuse of power and judicial control.
- 03 • **Judicial functions of admin. agencies (tribunals) -** i.e., claims Industrial Tribunal, the Income Tax Appellate Tribunal performing judicial functions.
- 04 • **Remedies-** Writs of Mandamus, Certiorari, Prohibition etc., injunction, declaration etc. are available to prevent any abuse of power.
- 05 • **Procedural guarantees-** Concept of procedural guarantee include the rules of nature justice.
- 06 • **Govt. Liability-** The Union & State Govts. are liable under torts as well as control for the wrongs committed by their servant and agents.
- 07 • **Public Corporation-** It includes liability and legal responsibility of public corporation

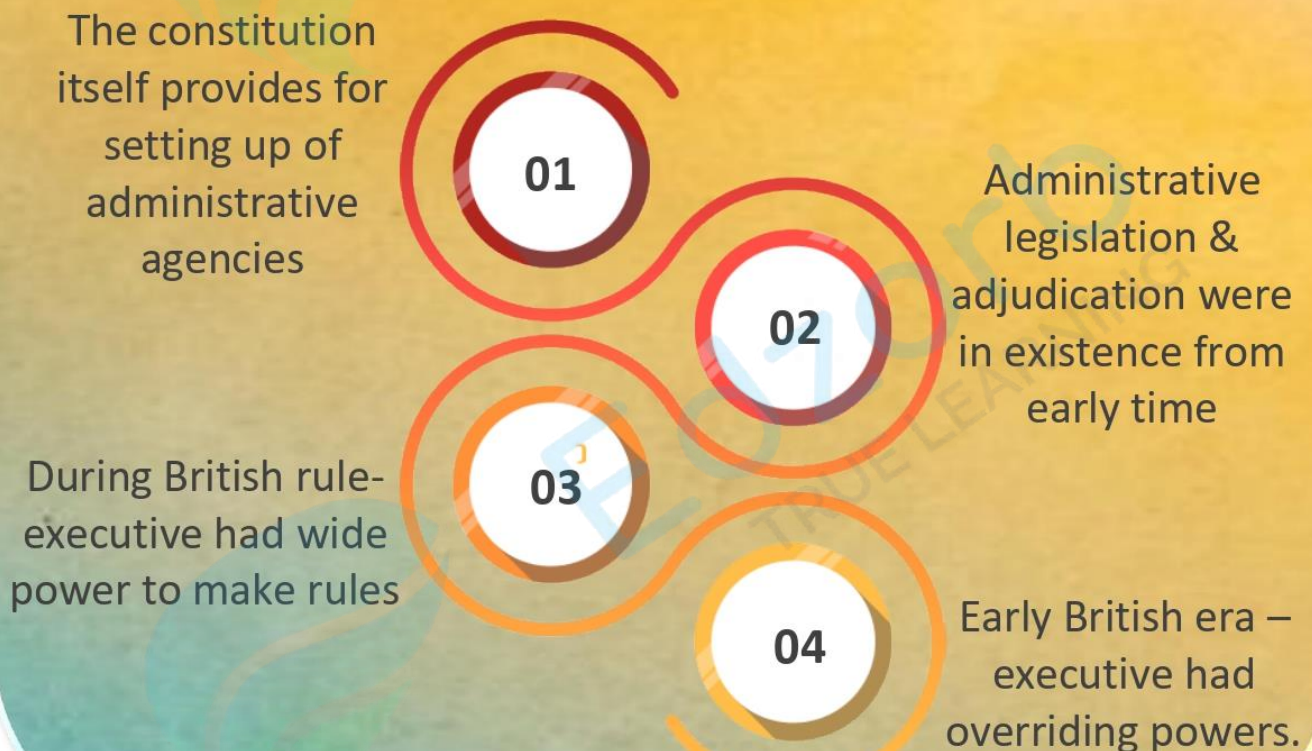
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Growth of Administrative law in India

“Society in the 20th century has become exceedingly complex and governmental functions have multiplied. The change in the scope and character of the Government from negative to positive, that is, from the laissez faire to the public service state has resulted in the concentration of considerable power in the hands of the executive branch of Government.”

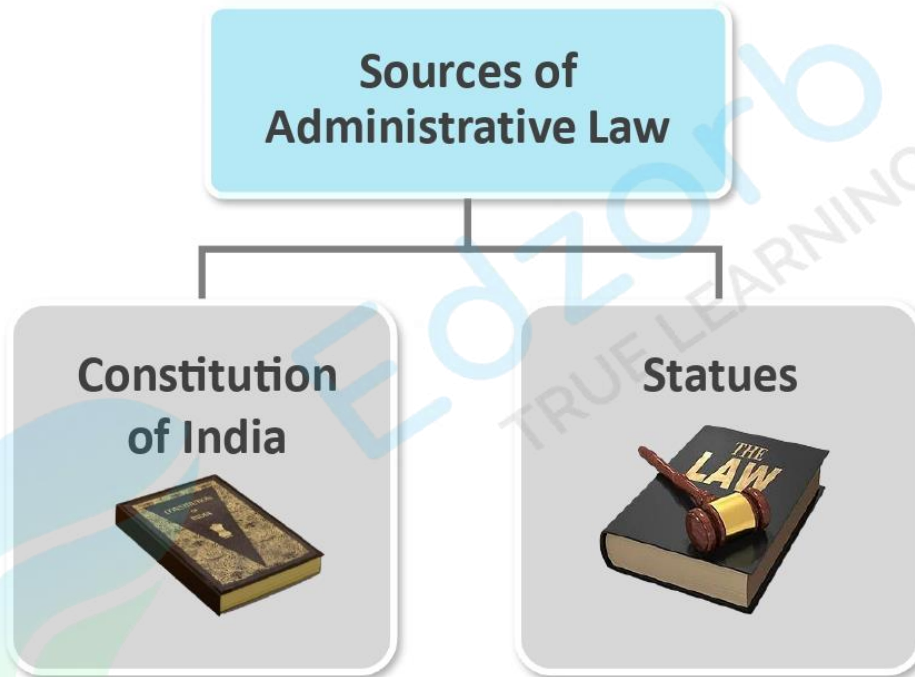
- Law Commission in its XIV Report



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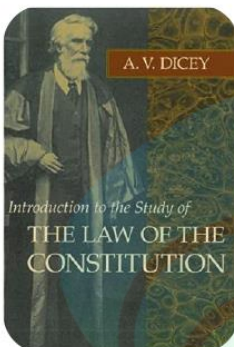
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Sources of Administrative Law:



Is Administrative law inconsistent with Rule of Law?

Rule of Law: Prof. Dicey highlighted following conceptions of the rule of law in his classic book “Introduction to the Study of the Law of the Constitution” published in the year 1885:

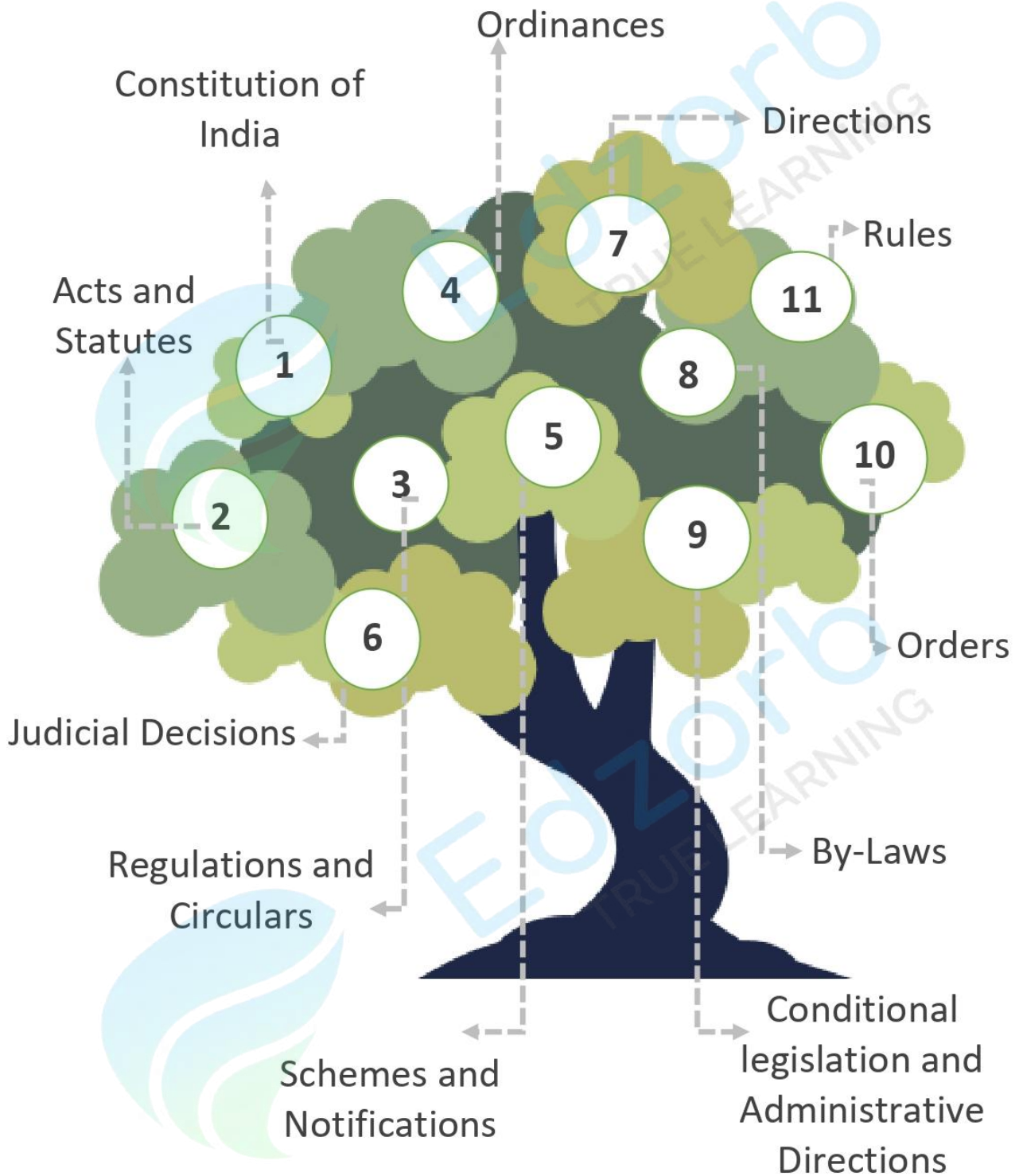


- Absence of Arbitrary Power or Supremacy of Law
- Equality before Law
- Constitution is the result of the ordinary law of the land

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Sources of Administrative Law:



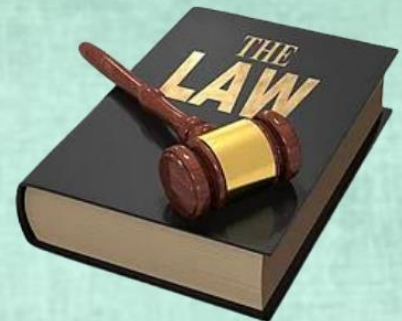
Constitution of India



The Col is the supreme governing body. We observe that there are various areas such as the FR's, writs, directive principles of state policy, executive, legislative & judiciary, position of members of UPC, tribunals etc., which form the basis of rule-making.

Act and Statutes

There are various laws such as Companies Law, Contracts Act, Administrative Tribunal Act, Ombudsman Act, Lokpal & Lokayukta Act which acts as a source of legislation.



Ordinances



When the parliament is not in session, the executive branch under Article 123 and 213 is given the permission to make the ordinances.

Rules

Defined- General Clause Act, 1897. It is the rule made in exercise of power conferred by any enactment. It may be applicable to a particular individual or general public.



Part 1/3

Regulations and Circulars



It signifies the decisions; orders & Acts of the govt. are made known too public. While the administrative rule making, related to the situation where power is given to fix the date for the enforcement of an Act. Exemptions from the rate fixing and prices.

Orders

It covers various types of legislative and quasi-judicial decisions. Specific orders refer to the administrative actions. General administrative rule making forms a part of such rule making source.



Directions



It is an expression of the administrative rule making under the authority of law or the rule made thereunder. These may be mandatory or recommendatory.

By - Laws

Rules made by semi-governmental authorities established under the Acts of the legislature.



Schemes and Notifications



It refers to the situation where the law authorizes the administrative agencies to lay down a framework within which the detailed administrative action is to proceed.

Judicial Decisions

The landmark judgements such as Puttaswamy case related to privacy, Maneka Gandhi vs UoI related to right to travel abroad, Vishakha vs State related to the prevention of sexual harassment of women at workplace, MC Mehta vs UoI related to the control of the environmental pollution, etc.



Conditional legislation and Administrative Directions



The legislature makes the laws but laws the executive bring it into operation when the conditions demanding such operation are obtained. If conditions have been notified bringing the law into operation.

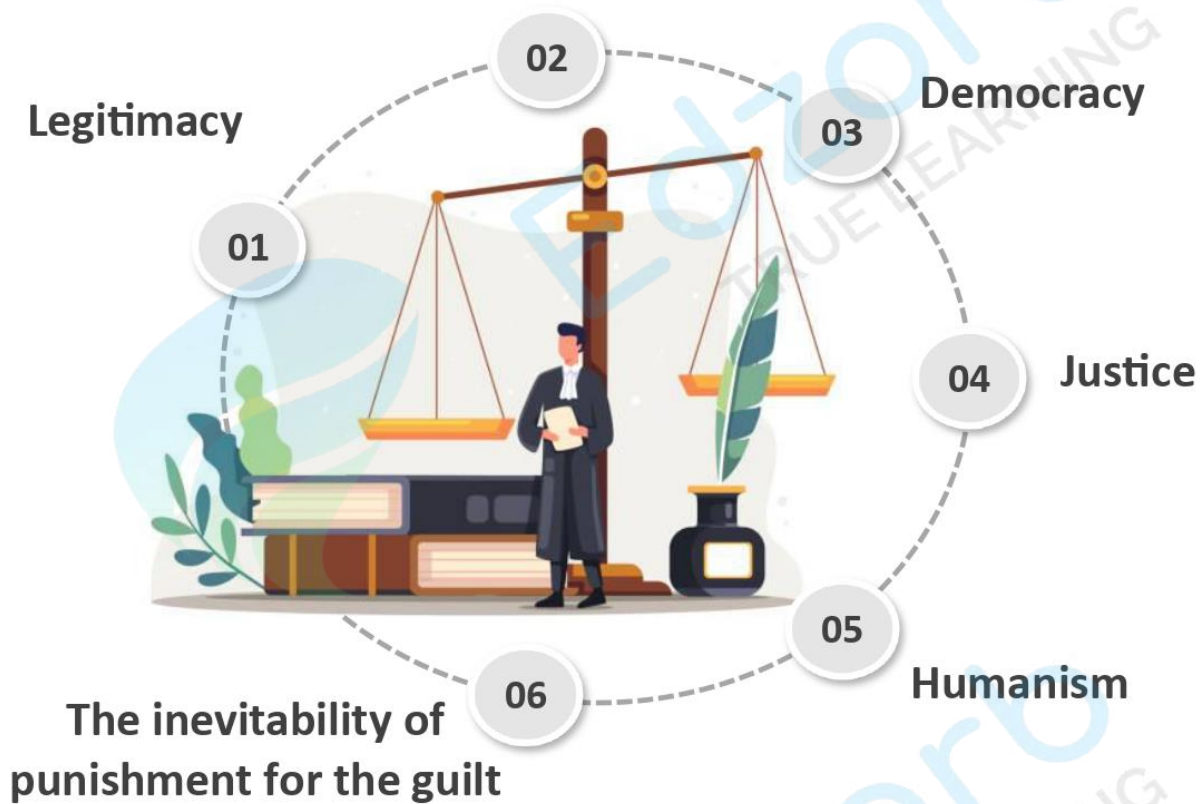
Reasons for the growth of Administrative Law:

Category	The following are the reasons for the growth of administrative law:
Concept of Welfare State	<ul style="list-style-type: none"> ● The concept was developed during the 10th and 20th century. According to this concept, the State administration is to achieve maximum welfare of the masses.
Inadequate Judicial System	<ul style="list-style-type: none"> ● Judiciary was slow, costly, unexpected, complex and formalistic in nature. ● To solve above problems, need for tackling arose and as a result, industrial tribunals and labour tribunals and labour courts were established. ● These tribunals are not courts but executive authorities having judicial powers.
Inadequate Legislative	<ul style="list-style-type: none"> ● The legislature has no time to legislate upon the day-to-day ever-changing needs of the society. Detailed procedures made by the legislature were found to be defective and inadequate. All these resulted in the delegation of some of the legislative

	powers to the administrative authorities.
Scope of Experimentation	<ul style="list-style-type: none"> • As the administrative law is not codified law, so there is enough scope of modification. • As per the modification it as per the requirement of the state's machinery. Hence, it is more flexible and the rights legislating the procedure need not be followed again and again.
Increasing demand from people	<ul style="list-style-type: none"> • There was an increase in the demand from the people because merely defining the rights of the citizens was not sufficient but state needs to solve problems as well.
To take preventive measures	<ul style="list-style-type: none"> • Administrative authorities can take preventive measures like licensing, rate fixing etc. They can also take effective measures for the enforcement of preventive measures.
Increasing population	<ul style="list-style-type: none"> • Increase in the population creates a burden upon the legislative processes to implement various laws for various needs of the growing population.

Principles of Administrative Law

Equality of Citizens before the Law



“The goal of administrative law is to ensure that the individual and the state are placed on a plane of equality before the Bar of Justice “.

Bernard Schwartz

Administrative Law and Rule of Law:

The administrative law and rule of law are not opposed to each other but on the other hand go parallel with a common objective of achieving an orderly government.

Administrative
Law

Rule of Law



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Relationship b/w Administrative Law & Constitutional Law:

It's logically impossible to distinguish administrative from constitutional law and all attempts to do so are artificial.

-Keith

Both Constitutional Law & Administrative Laws:

- Establish & regulate the institutions of government within states.



- Encompass the internal governance of supranational legal orders.

Supremacy of Constitutional Law:



Did you Know?

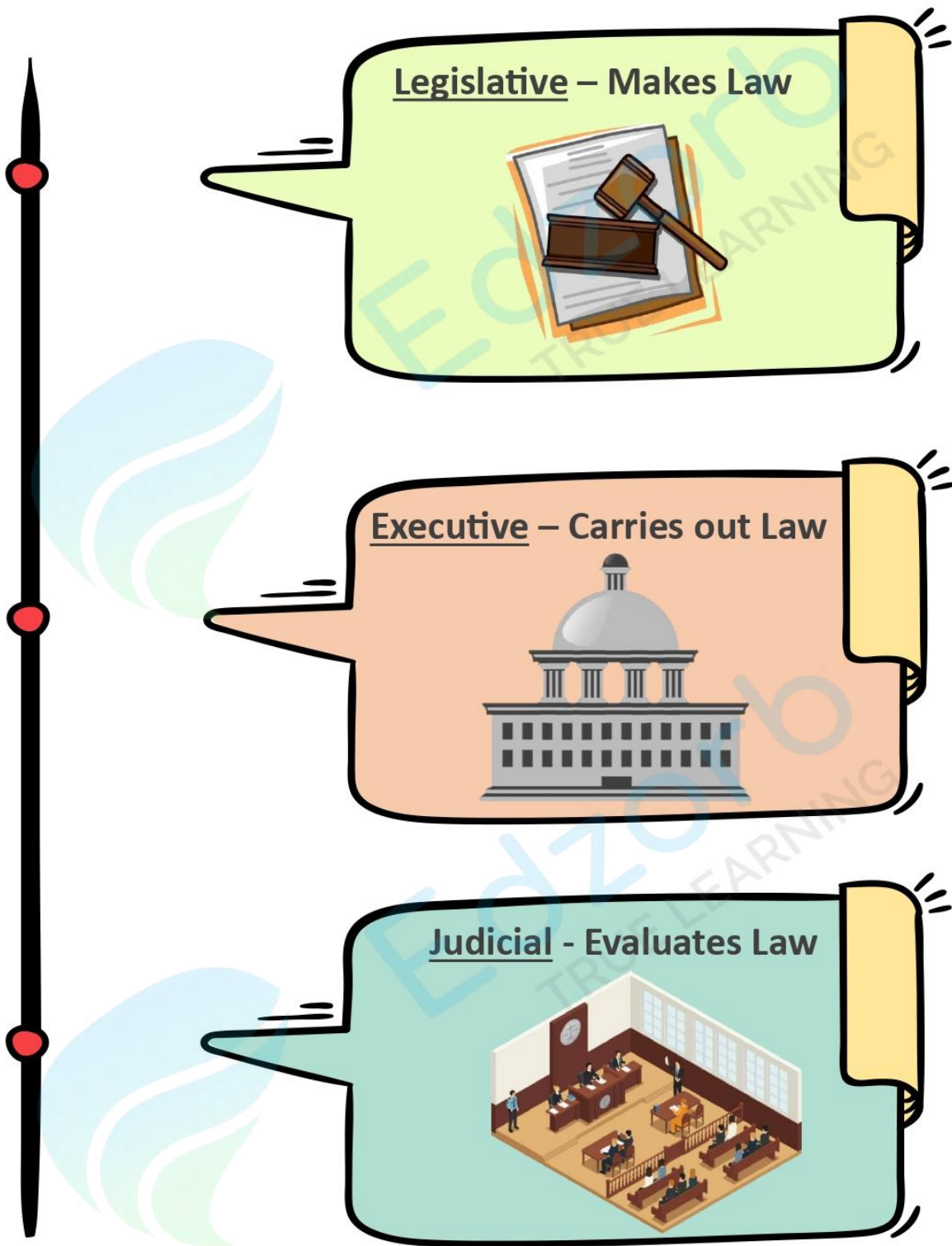
The disciplines of the Constitutional & administrative law may overlap with each other at a certain place which is known as **water shades in administrative law.**



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Three Pillars of Administrative Law



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Droit Administratif

- The **French body of administrative law.**
- **Meaning:** A body of rules which **determine the organization, powers and duties of public administration** and regulate the relation of the administration with the citizen of the country.



Conseil d'Etat is the highest Admin. court.

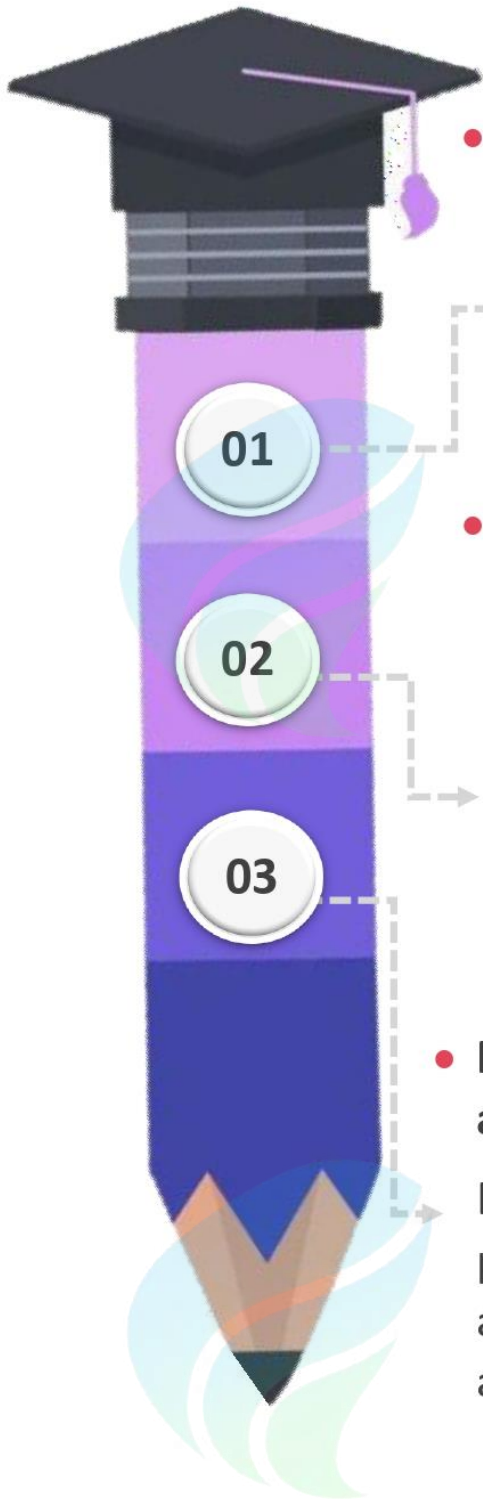
Features of the Administratif in France:

Features	Explanation
Jurisdiction	• Matters concerning the State and administrative litigation falls within the jurisdiction of administrative courts.
Rules to be followed	• Those deciding these matters follow rules developed by the administrative courts.
During Conflict.	• Any conflict of jurisdiction between ordinary courts and administrative court, it is decided by the tribunal des conflits.

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Rules and Principles of Droit Administration:



- **Rules of Droit Administratif**

These are related to the appointment and dismissal, status, salaries, duties etc. of the administrative officials.

- **Rules dealing with the operation of public services to meet needs of the citizens**

These services may be operated either wholly by public officials or under the supervision of other agencies to provide the public utility services.

- **Rules dealing with the administrative adjudication**

Deals with any adjudication done to a private citizen by the administrative authority, it could be decided by the administrative courts.

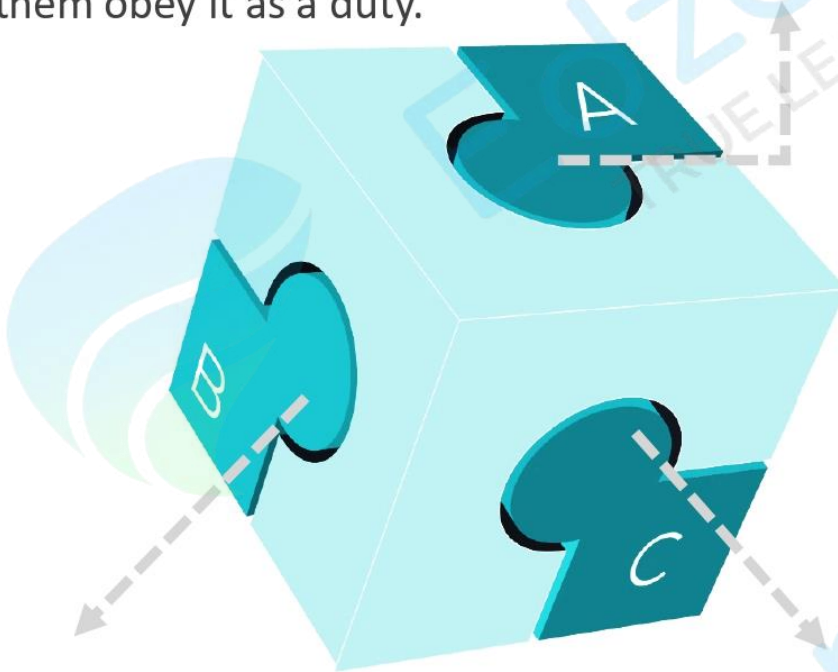
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Principles of Droit Administrative

Principle 1

- The power of the administration to act *Suo-moto* (on its own) and to impose its decisions directly on the subjects, to make them obey it as a duty.



Principle 2

- The power of the administration to take decisions and execute them '*suo moto*'.
- It may be exercised only within the ambit of law.
- It prevents the arbitrariness of the individual liberties against any arbitrariness.

Principle 3

- The existence of a specialized administrative jurisdiction.

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Doctrine of Separation of Power



Aristotle: The doctrine of separation of power can be traced from me.

Montesquieu: I am French Jurist and I formulated it for the first time.



In India, we have **three organs to function properly as below:**

Judiciary

- Powers to make judgments on law



Parliament

- Powers to make & change law



Executive Govt.

- Powers to put law into action



Separation of power means all the three organs should not interfere in the working of each other.

The theory of the separation of powers signifies the following three different things:



Same person should not form part of more than one of the three organs

One organ of the government should not interfere with any other

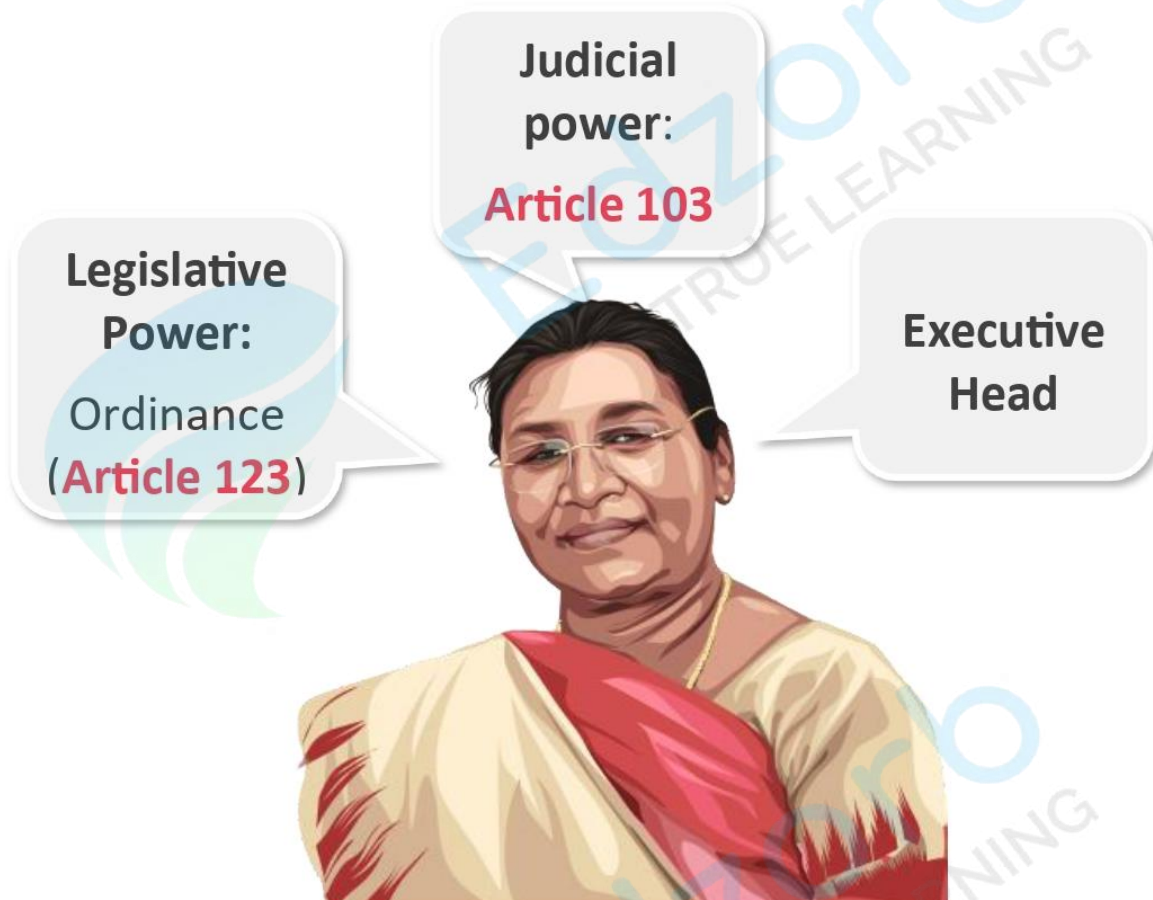
One organ should not exercise the functions assigned to any other

Separation of Powers as Dilutory Doctrine of Administrative Law

Despite the safeguards it gives against tyranny, the modern-day societies find it very difficult to apply it rigidly. In principle the countries go for separation of powers and dilution of powers simultaneously.

Doctrine of Separation of Power in India

The doctrine has **not been accepted in the Constitution of India in absolute form.**



Some traces of Separation of Power in Indian Constitution

- **Article 50** provides that the state should take steps to **separate judiciary from the executive** in all the state of the Union.
- In addition to it, the functions of the differentiated parts or branches of the government have been sufficiently differenced.



Modern View in Indian Law

Kesvanand Bharati Vs State of Kerala 1973, Supreme Court

Both the supremacy of the constitution and separation of powers are parts of **the basic structure of the Indian Constitution.**

Did you Know?

In the constituent Assembly, Prof. K. T. Shah, who was a member of the Constituent Assembly made a proposal to incorporate the doctrine of separation of powers into the constitution, but the Assembly did not accept it.



Case Laws: for reference

- **Delhi Laws Act, 1951**
- **Rama Javaya Vs State of Punjab, 1955**
- **Ramkrishna Dalmiya Vs Justice Tendulkar, 1959**
- **Indira Gandhi Vs Raj Narain Singh, 1973**

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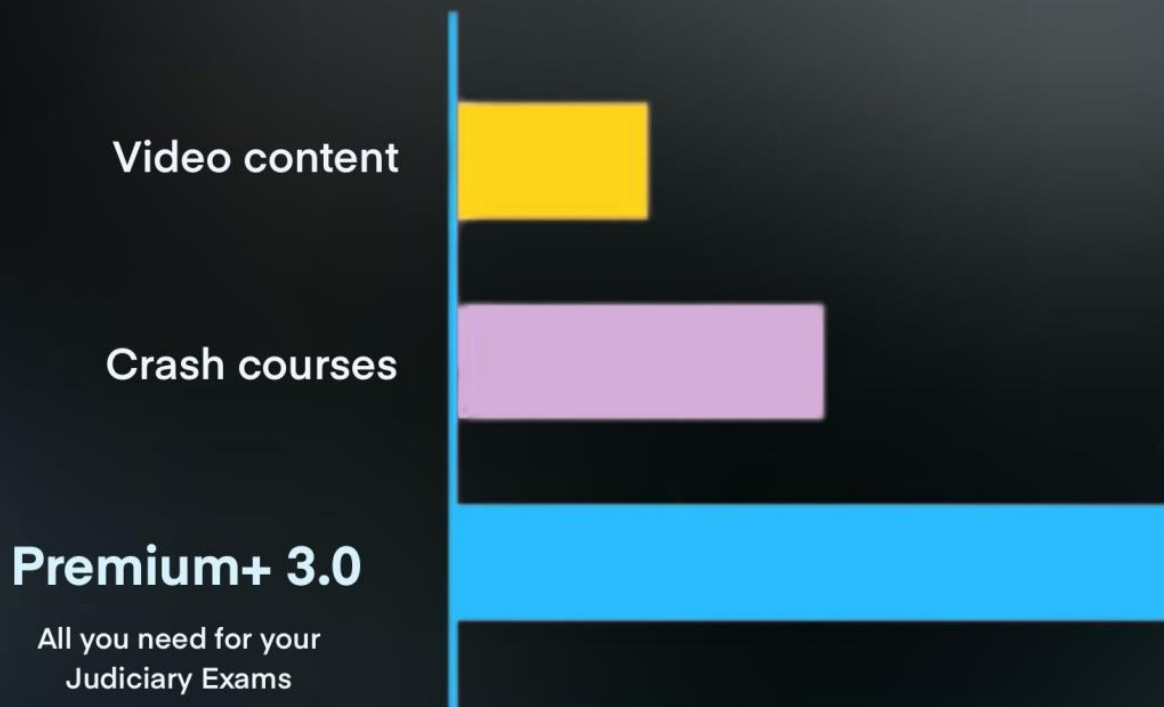
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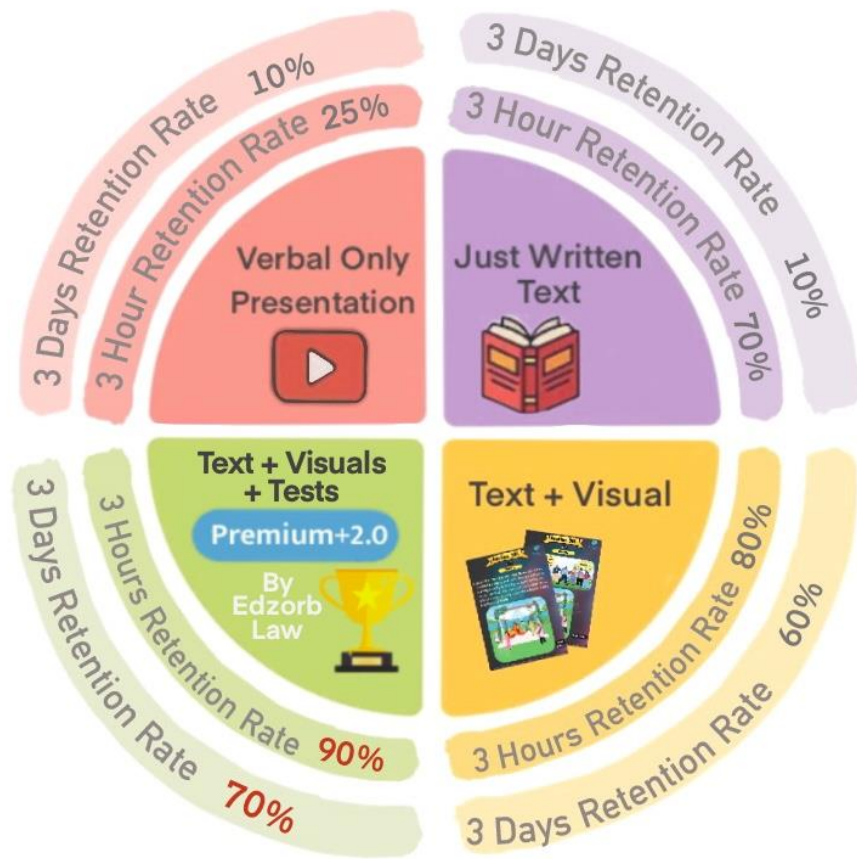
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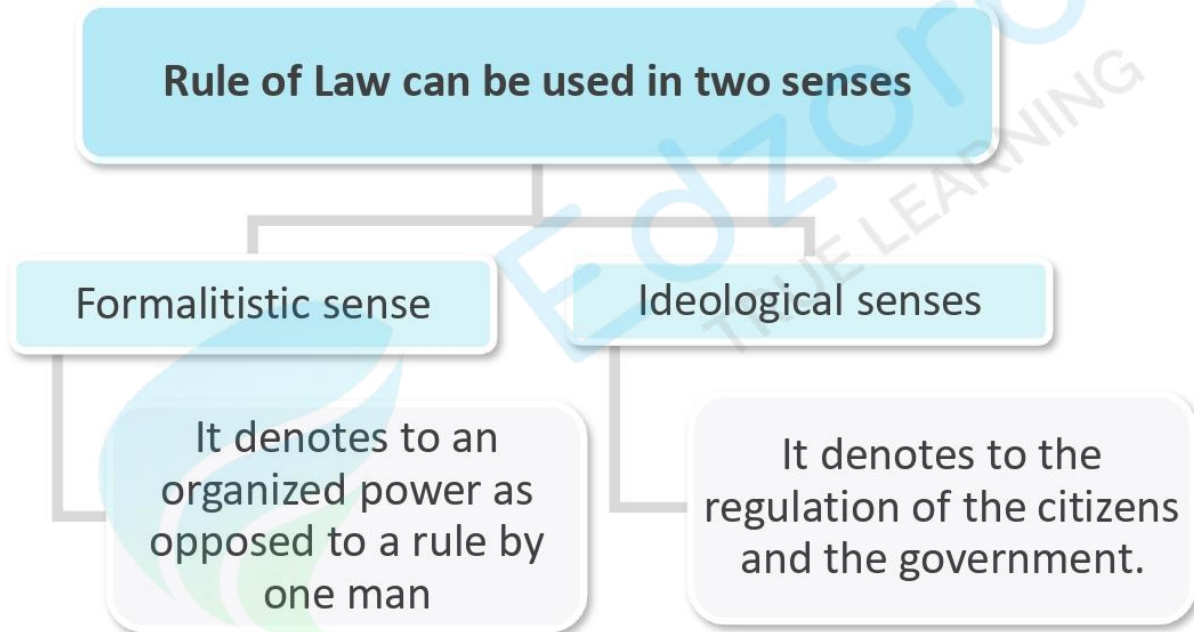


Rule of Law

Rule of Law- The term “The Rule of Law” is derived from the Latin phrase “**La legality**”, which refers to a government based on principles of law and not of man.

Did you Know?

Edward Coke originated this concept when he said ***that the king must be under the God and Law*** and thus vindicated the supremacy of law over the pretensions of the executive.



Dicey on Rule of Law:

Rule of Law by
Prof. A.V. Dicey



Every person is subject to
the law made by the
legislature and **nobody is
over and above law**

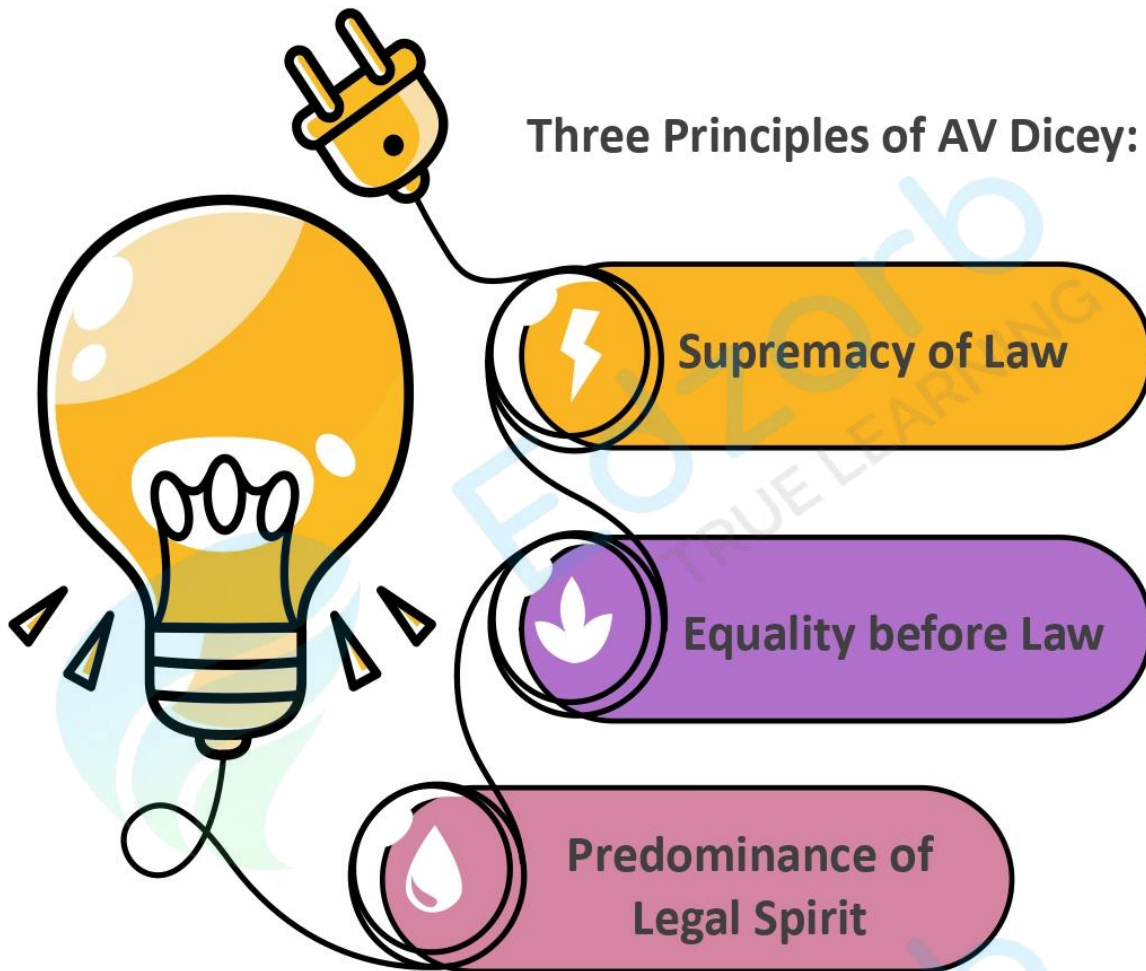
Prof. Dicey highlighted **following conceptions** of the **rule of law** in his classic book “**Introduction to the Study of the Law of the Constitution**” published in the year 1885:



Prof. AV Dicey

3 Rule of Law folds-

- Absence of Arbitrary Power or Supremacy of Law
- Equality before Law
- Constitution is the result of the ordinary law of the land.



Criticism of Dicey's view

- Dicey's views on Rule of Law have been criticized by the modern writers.
- He was not right when he saw that there is no administrative law in England because even during his time Crown and its servants enjoyed special privileges.
- Later on, Dicey recognized his mistake by observing that there exists in England a vast body of administrative law.

Rule of Law in India



Indira Gandhi

Vs



Raj Narain

In **Kesavanand Bharati Vs State of Kerala**, the view was that the Rule of Law is a basic intent of the 'Constitution apart from democracy.

Observation: The rule of law postulates the pervasiveness of the spirit of law that throughout the whole range of government is the sense of excluding arbitrary official action in the sphere.



Mathew. J

The provisions of the Constitution were enacted with a view to ensure the rule of law.



Modern concept of Rule of Law

Modern
concept of Rule
of Law



in consonance with
the need of modern
welfare society

**Formulated by International
Commission of Jurists**

Conclusion- A new approach to the concept of rule of law by emphasizing the fair play and justice in every walk of administrative action and access to judicial remedies for all including socially and economically weaker sections of the society.

Did you Know?

This concept is also known as **Delhi Declaration 1959**. It was later on confirmed as Lagos in 1961.



Exceptions to Rule of Laws: -

Executive Discretionary Power



Immunities and Privileges

Article 72, 161, 85, 356, 200, etc.

- Public officials like ministers, local authorities, public officers etc. have many powers, immunities & privileges which ordinary citizens don't have.

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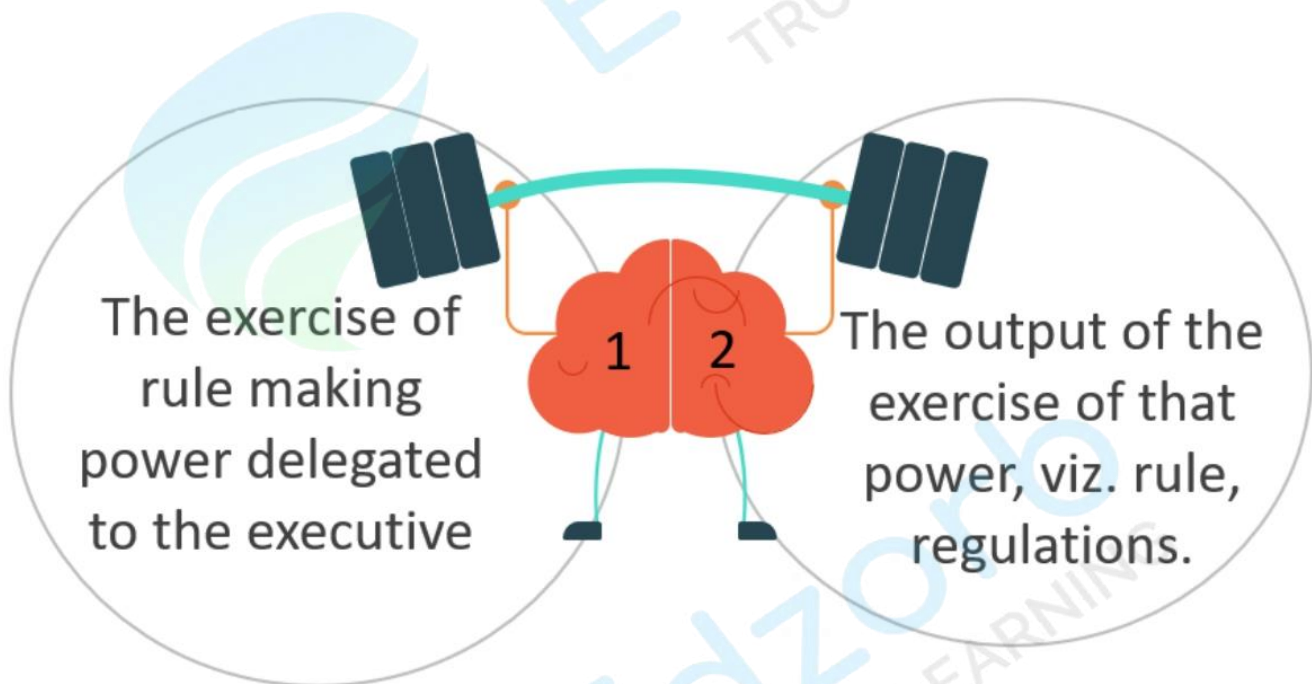
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Delegated Legislation

There can be no law without a legislative act.

-Austin

‘Delegate legislation’ is used in two senses.



- In simple words, **delegated legislation** refers to **all law making by the authorities other than the legislature** and is generally expressed as statutory rules and orders, regulations, by-laws, scheme directions or notifications etc.

You have lot of work to do.
You must delegate your
law-making power.



Nature and Scope of Delegated Legislation

Nowadays, Parliament
passes only the
skeleton of Law

Rest of the parts
is left on the
administrative



Food for thought

The **Import and Export (Control) Act, 1947** contains only 8 sections & delegates the whole power to the administrative agency to regulate to the whole mechanism of import & exports.



History of Delegated Legislation

Constitution of India

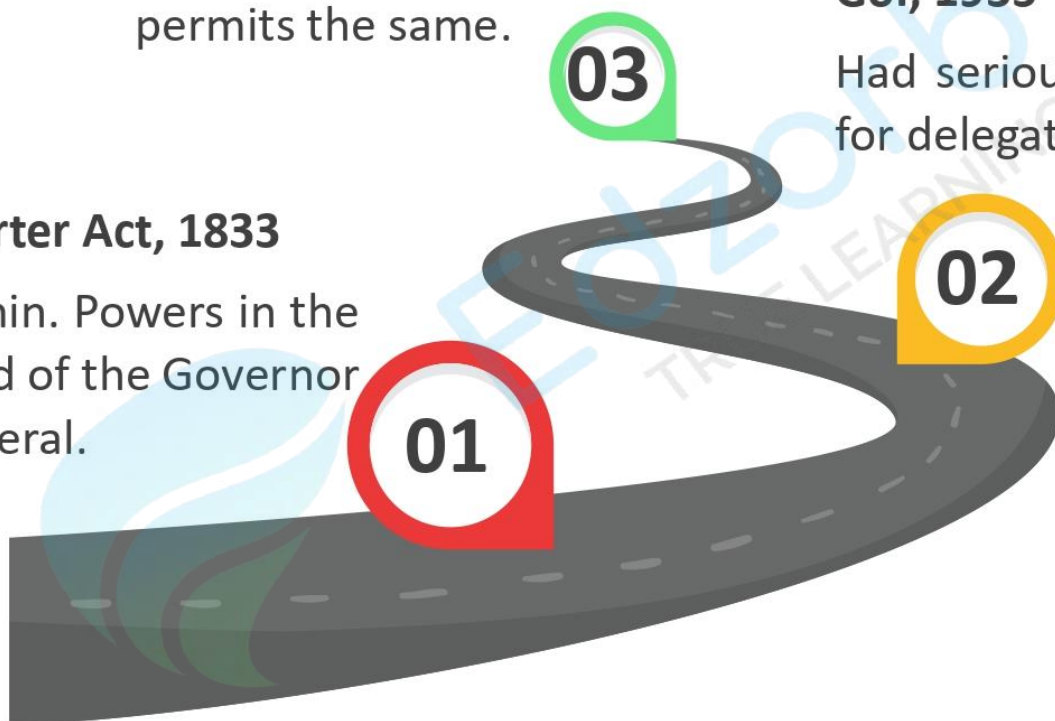
No traces of delegated legislation. However, it permits the same.

Gol, 1935

Had serious plan for delegation.

Charter Act, 1833

Admin. Powers in the hand of the Governor General.



Types of Delegated Legislation

Normal Delegation

Exceptional Delegation

Subordinate Legislation:

- In subordinate legislation, the process consists of discretionary elaboration of rules and regulations.
- 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.

Executive:

Certain powers delegated by the legislature

01

Municipal:

Make special laws i.e. Bye-Laws for districts under their control

02

Colonial:

Legislation by self - Govt. bodies

05

Legislation

Judicial:

Rules for their own procedure

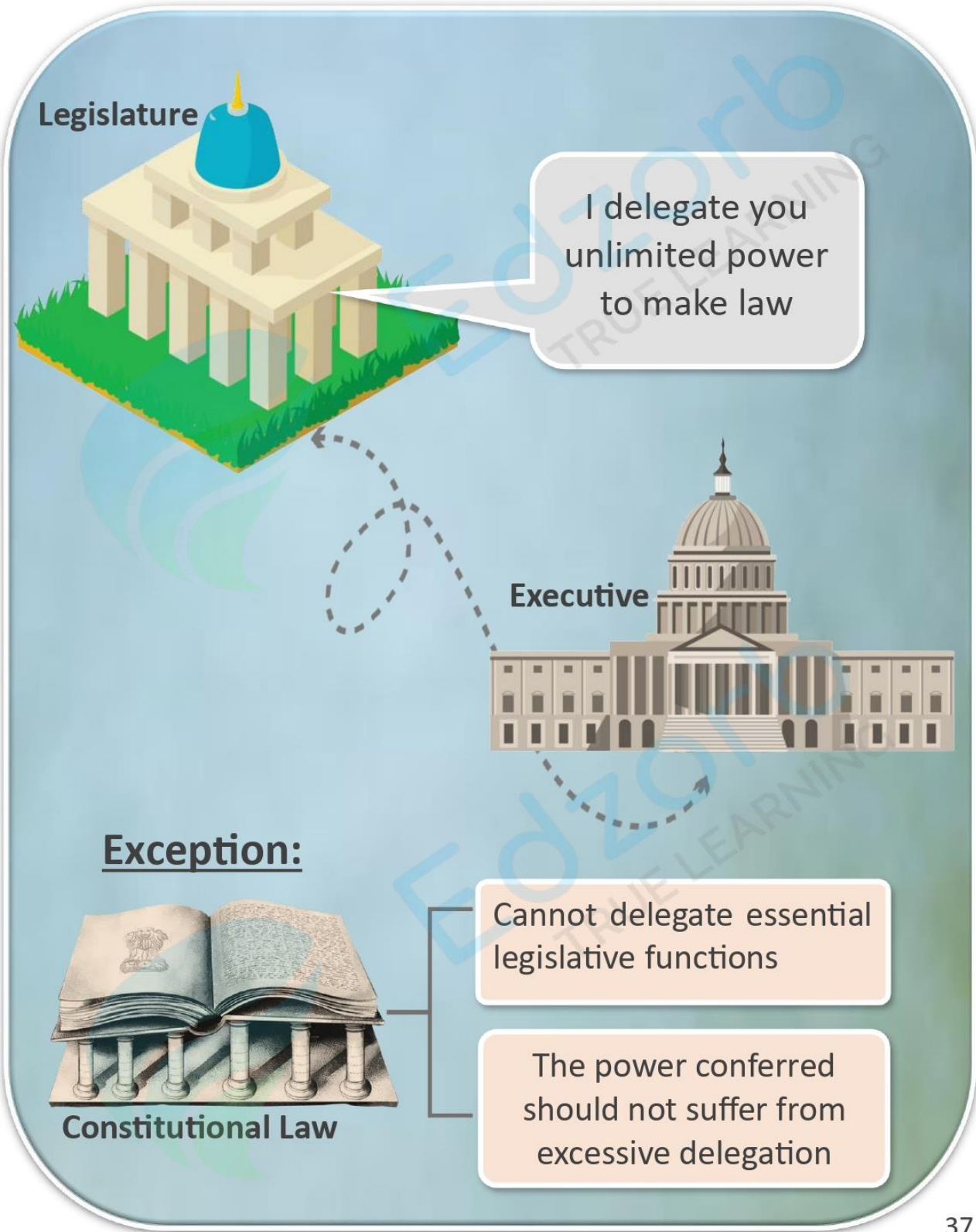
03

04

Autonomous:

Autonomous bodies have a power to make bye-laws for its regulation

Constitutional Limits of Legislative Delegation



The following non-essential powers can be delegated:



Power to extent the duration of the statutes



Adopt the existing statute with the incidental changes



Power to promulgate rules



Power to select persons on whom the tax is to be laid

Conditional Legislation:

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





“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.”

Disadvantages of Delegated Legislation:

- Not an outcome of Parliament or Legislature
- Public examination & criticism not open
- Prior knowledge of Delegated legislation is often denied



Modes of controlling Delegated Legislation:

Parliamentary control

- By laying the rules before Parliament;
- By Parliament scrutinizing the rules.

Procedural control

- Prior consultation of interests
- Prior publicity of rules
- Post-natal publicity of rules

Judicial control

- Doctrine of Ultra vires
- Use of prerogative writs

Administrative Discretion

- 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.

Administrative discretion refers to the **flexible exercising of judgment and decision making power allowed to public administrators.**



Administrative Discretion and Fundamental Rights

FUNDAMENTAL RIGHTS (Articles 13 to 35)



Administrative Discretion infringing Fundamental Rights

- 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 ultra vires.

- **Articles 32, 226 and 227** contain strong power to control the administrative authority if they exceed the limit or abuse the powers given to them.

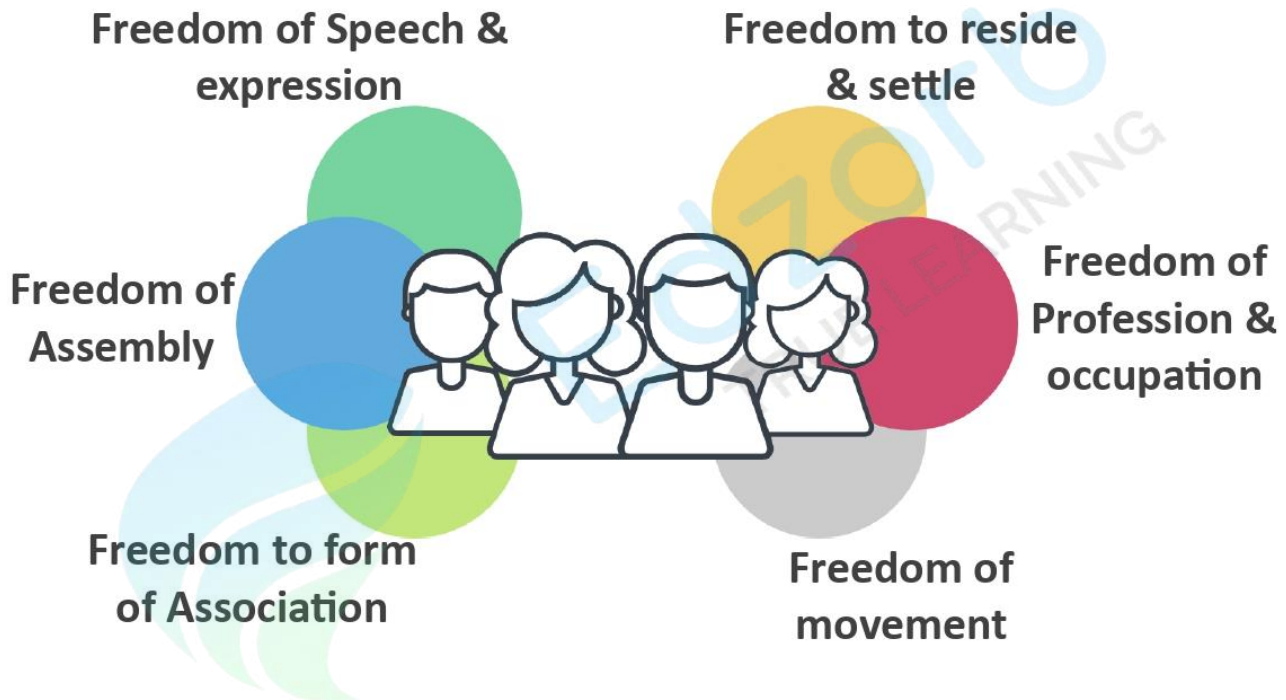
Right to Equality (**Article 14-16**)

Article of Constitution	Explanation
Article 14	<ul style="list-style-type: none"> • “The state shall not deny to any person equality before law and equal protection of the laws throughout the territory of India.”
Article 15	<ul style="list-style-type: none"> • Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth.
Article 16	<ul style="list-style-type: none"> • Equality of opportunity must be granted to all citizens in the matters of public employment.

Nain Sukh Das Vs State of U.P.

A law which provided for election on the basis of separate electorates for members of different religions and communities was unconstitutional.

Administrative discretion and **Article 19**



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



Provisions of Judicial control over administrative acts



- **Constitutional:** **Article 32, 226**
- **Statutory:** Statute providing for appeal
- **Equitable:** Injunction, Declaration, Suit for damages

Grounds to challenge administrative Discretion:



Case Laws – For reference –

- **RD Shetty Vs. International Airport Authority, 1979**
- **Himmatlal Vs. Police Commissioner, Ahmadabad, 1973**

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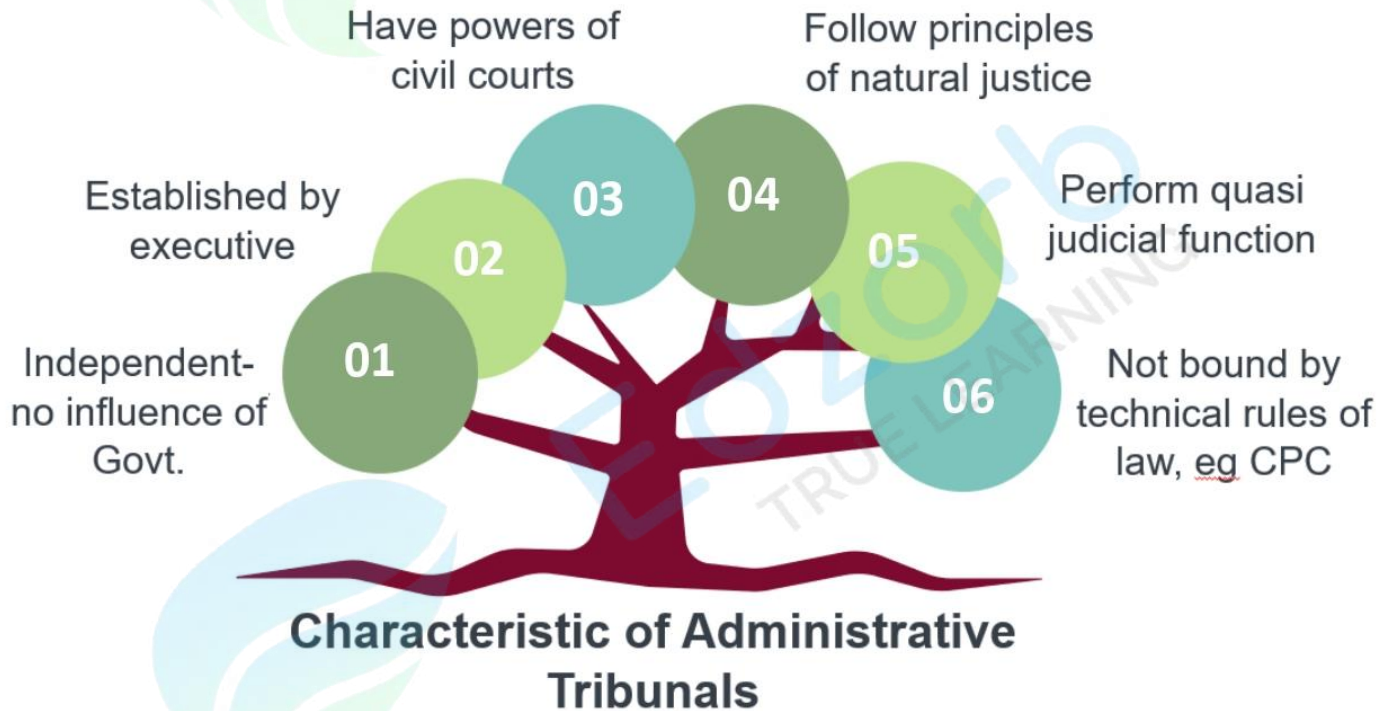
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Administrative Tribunal

- **Administrative Tribunals** are **agencies created by specific enactments to adjudicate upon controversies** that may arise in the course of the implementation of the substantive provisions of the relative enactments.

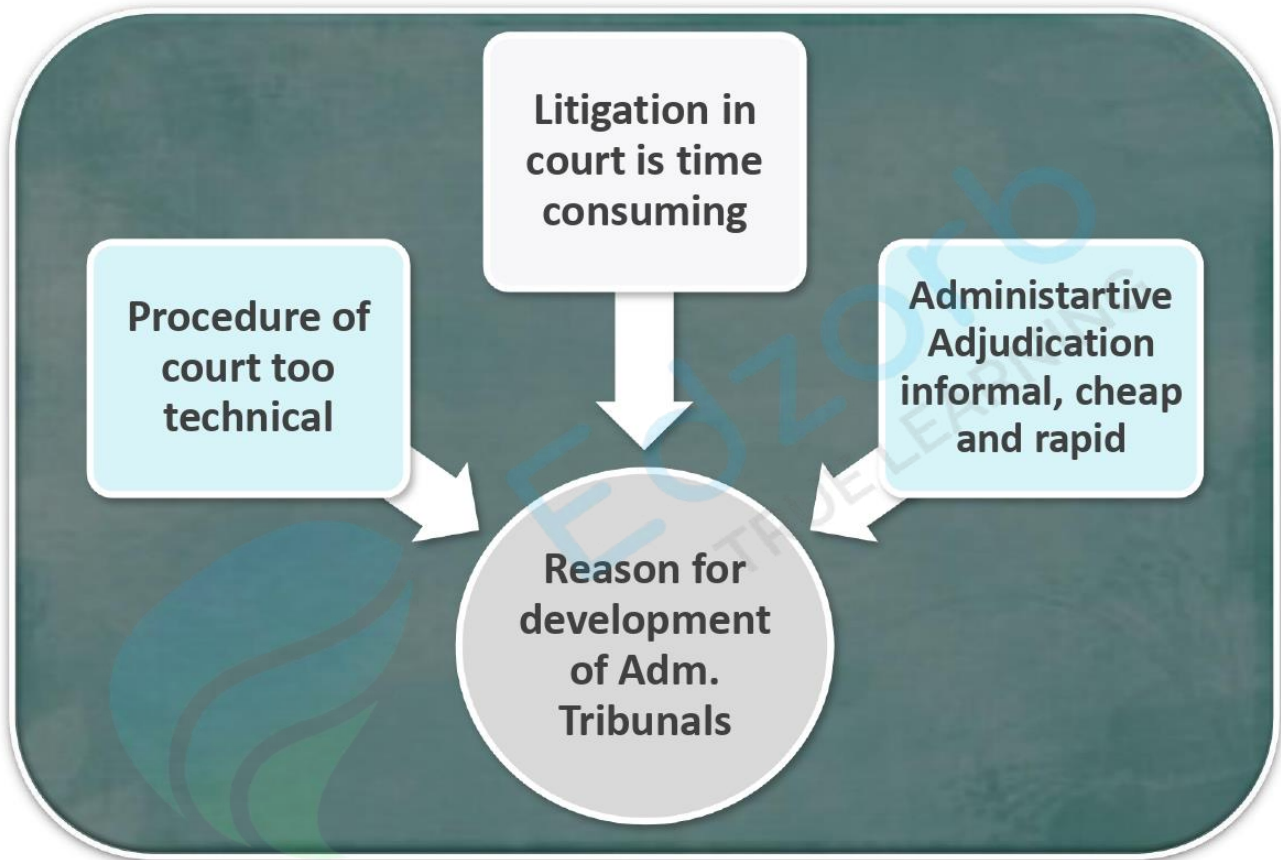


Characteristics of Administrative Tribunals



Administrative Tribunal Vs Court

Basis	Court	Administrative Tribunal
Law policy	<ul style="list-style-type: none"> The court first ascertains facts and applies law to these facts. 	<ul style="list-style-type: none"> They proceed with a controlled fact finding and an uncontrolled application policy.
Uniform Procedure	<ul style="list-style-type: none"> The Courts follows a uniform, the fixed statutory procedure 	<ul style="list-style-type: none"> There is no uniform procedure which the tribunals are required to follow.
Function	<ul style="list-style-type: none"> The Court exercises only judicial functions 	<ul style="list-style-type: none"> It undertakes various other administrative functions
Scope	<ul style="list-style-type: none"> All Courts are tribunals but all tribunals are not courts 	<ul style="list-style-type: none"> Tribunals are wider than court



Types of Administrative Tribunal

- Industrial Tribunal
 - Claim Tribunal
 - Copyright Board
 - Election Tribunal
 - Central Administrative Tribunal
 - Income Tax Appellate Tribunal
-

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017

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must withstand the test
Article 19(1)(a). Freedom of press means
There can be no restriction in the press.
Articles or newspapers or magazines or
relatives of the press.
to exercise the right of the
the
be imposed on the
but those restrictions must stand in the interest of
democratic organisation
In *Bennett Case* and *Union of*
India (1972), the *Supreme Court*
the freedom of the press embraces the right of the



1 1/3
3

Ques 1

* Rule of Convenience
* maxim vigilantibus jura subveniunt

Sec. 21 (1), of Code of Civil procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied:

Court of first Instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2.

* provision arising Art. 16, 335, 338, 340, 341 & 342

Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing majorly on financial and social aspects. (So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.)

* Indira Sawhney case
* Balaji vs State of Mysore
9

1 1/3
3

Ques 3

No, a remand order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statute. In case of Venkatarma v Angathayammal it is held that

2
1
3

an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not?

If its decision does not entirely depend on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

(ii) Right of Pandarashen lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

11/5
3

Ques 5

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been

stated that requisite conditions should be fulfilled to apply principle of res judicata as between defendant and that are:

Start with Sec 9 of CPC along with explanation
Meaning of Civil Suit
Kehar Singh vs Custodian General
Shankar Narayan Potti vs K. Sreedevi

- 1) There must be conflict of interest between the defendants concerned
- 2) it must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
- 3) the question between plaintiff the defendants must have been finally decided.
- 4) the co-defendants were necessary or proper party in former suit. (Joindammal by LRs is Vaidgarathan)

Section 10 CPC

Res judicata

- suit ^{which} is finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

Res judicata

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

Res subjudice

- A suit which is pending in a competent court
- In res subjudice, case is pending in court
- subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent justice

Res Estoppel

- In this a person cannot be allowed to change his position if he makes another to believe in good faith
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

→ Sec 115 IEA
→ Pickard vs Sears

2/3

* Sec 11 CPC
Maxims & Nemo debet bis vexari
Pro Una Causa
Eadem
Causa
Marohar Lal v/s Seth Hirah Lal



Ques 2 (a) Right of private defence of property extend to causing of death

Such right of private defence of property extending to cause death is dealt under Sec 103 of Indian Penal Code. It permits a person to extend its right of private defence to cause death only under certain circumstances as mentioned under the provision of the Code. Such circumstances are

1. When robbery is committed

2. When offence of housebreaking by night is committed

3. When mischief by fire is committed on any building, tent or vessel, which is used as human dwelling or as a place for the custody of property

4. If when theft, mischief or house trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be consequence, if such right of private defence is not exercised.

This right commences as soon as a reasonable apprehension of danger to body arises from an attempt, or threat to commit offence, although offence may not have committed but not until there is that reasonable apprehension. The right lasts as long as reasonable apprehension exist

Ammer Martin v State of Kerala.

S.

104

S. 103 should also be mentioned

* Case law without principal users

S. 105



And in case person refuses to such transfer, he has to relinquish all the benefit so transferred and such benefits shall be reverted back to transferor or his representative

Such property is reverted back when

- transfer is gratuitous
- transfer has before election died or became incapable of fresh transfer
- In all cases where transfer is for consideration

Owner of property has choice either to elect by express mode or impliedly from contract.

Express election is final & conclusive in nature

In case where owner has full knowledge of circumstance and he being aware of his duty to elect accepts the benefit, it is implied that he has chosen in favour of transaction

But such owner has to signify his confirmation or dissent from transfer within 1 year after date of transfer.

There are certain exceptions to it -

• This doctrine is based on equity. If two rights are endowed on a person under any instrument in a manner that one right is more preferable than other, he is bound to elect or chose only one of them.

This doctrine is based on maxim, qui approbat non reprobatur which means one cannot approbate

(d) missing :-

Include Cooper v/s

Cooper v/s

Cooper v/s

Landmark Case on

election

Should mention it at top

Remarks:



- ① Answer not in Answer format rather on notes format.
- ② Don't copy things from Internet. The Answer on Internal & External aid was exact copy.
- ③ Missed out on lot of Questions.
- ④ Next time copies won't be evaluated if they are not in Answer format.
- ⑤ Always mention the section no. on top & not at last.



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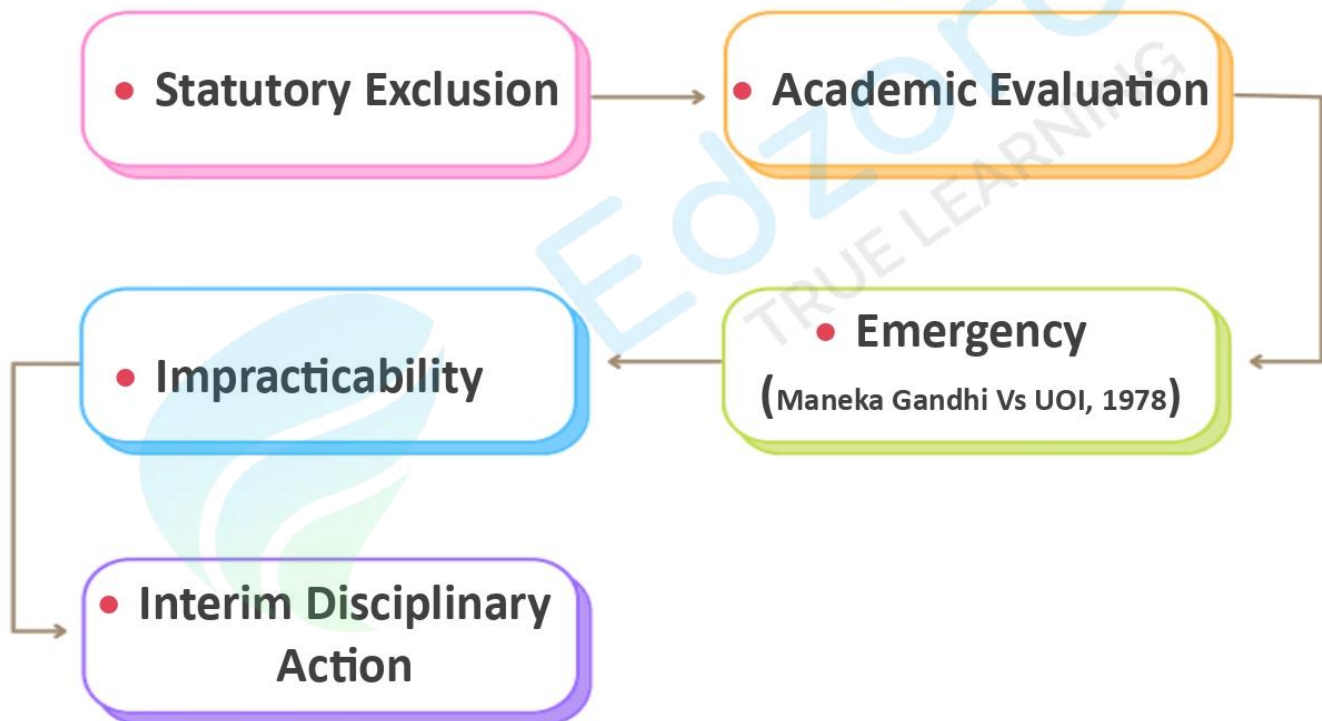
Principles of Natural Justice

“Natural Justice” is a concept of common law and signifies certain fundamental rules of judicial procedure.

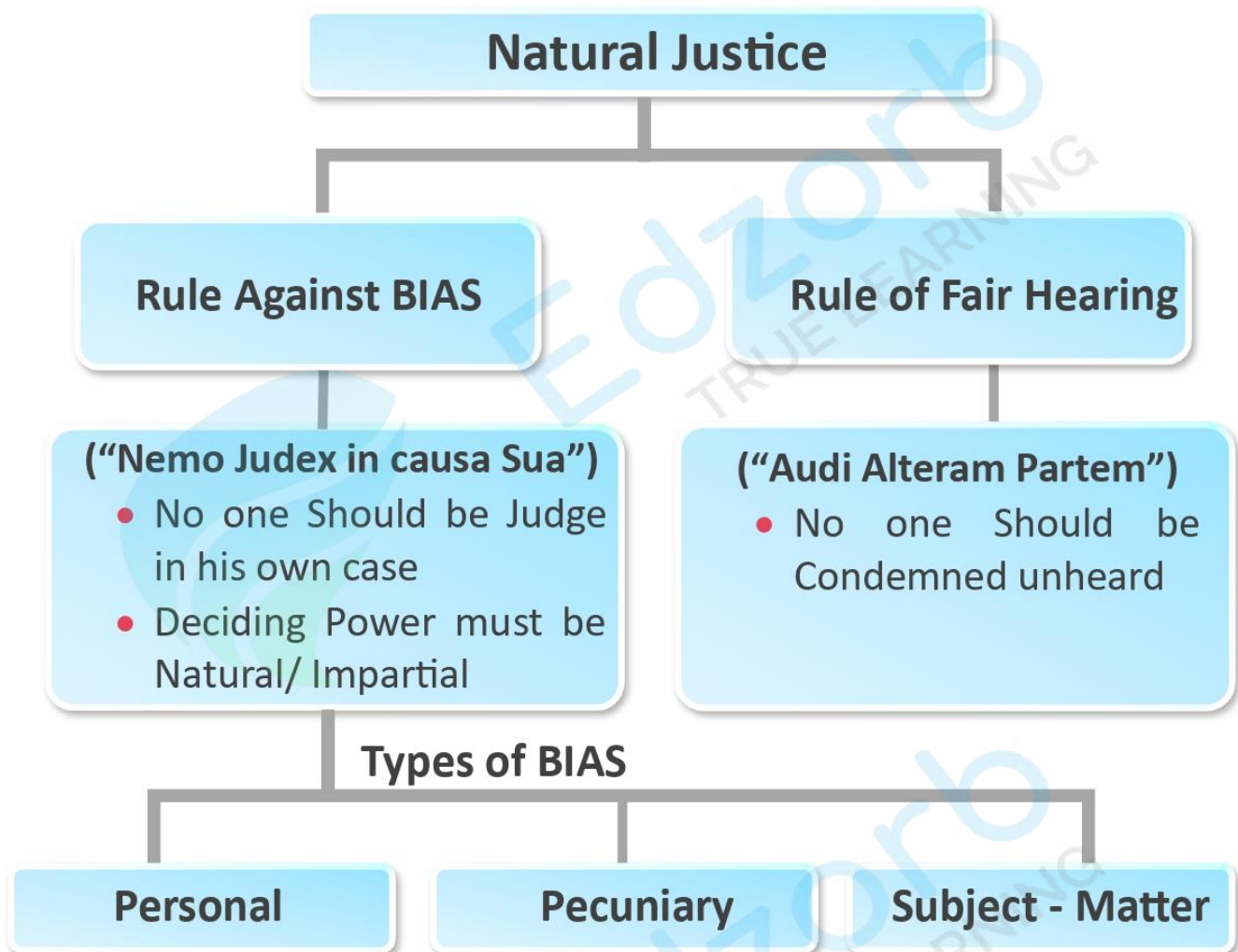
PRINCIPLES OF NATURAL JUSTICE



Exception to Principle of Natural Justice



Natural Justice



Rule against Biasness

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





Types of Biasness:



Personal Bias - There is a certain relationship between the adjudicating authority and of the parties.

Pecuniary Bias- Where the judge has pecuniary interest in the results of the proceedings.

Subject-matter Bias- If a judge himself is a party or has some direct connection with the subject of the litigation.

Department Bias- When the function of judge and prosecutor are combined in one department.

Rule of Being Heard

Doctrine of Audi Alterum Partem: It means no person should be condemned unheard.



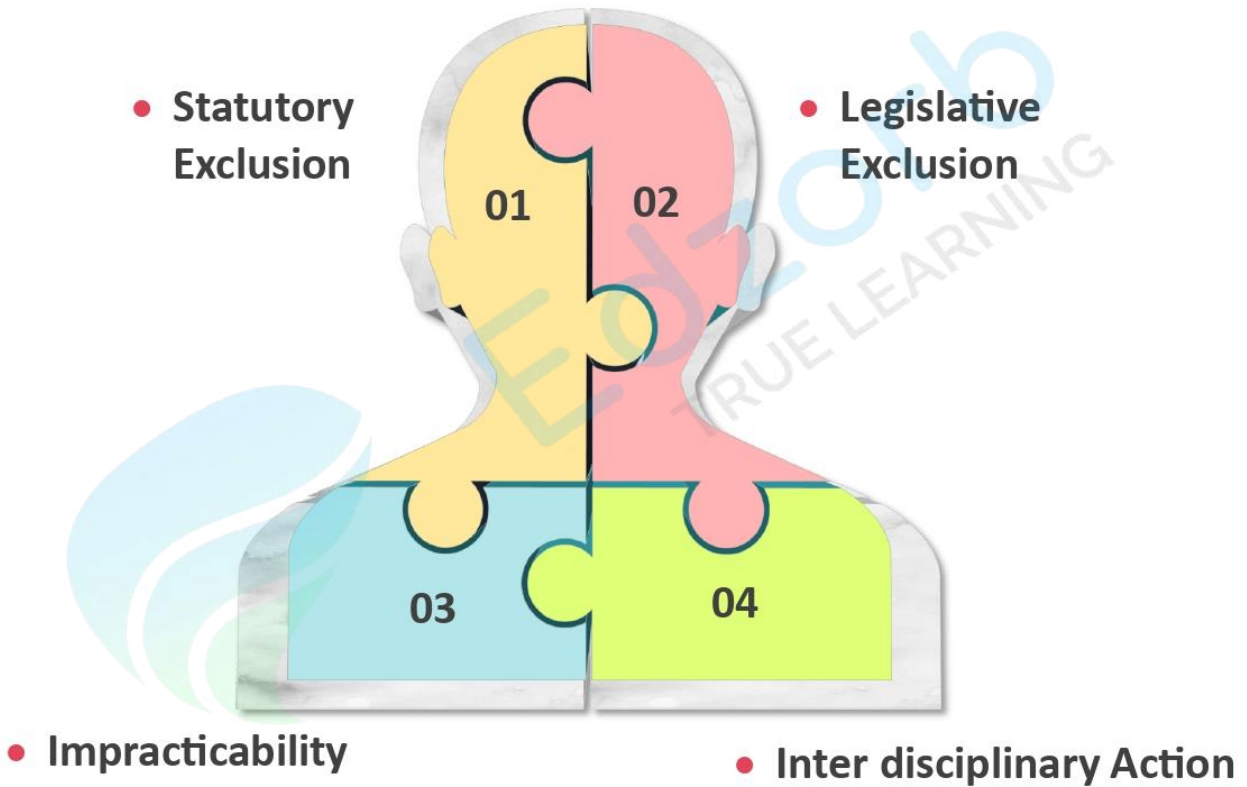
R. Radha Krishna Vs Osmania University

- **Facts:** The university cancelled the whole M.B.A. entrance examination because of mass copying.
- *Decision was challenged on the ground that the candidates were not given a hearing.*
- **Held:** Notice and hearing to all candidates is not possible in this kind of action which is taken as disciplinary measures.

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Exclusion of Principle of Audi Alteram Partem:

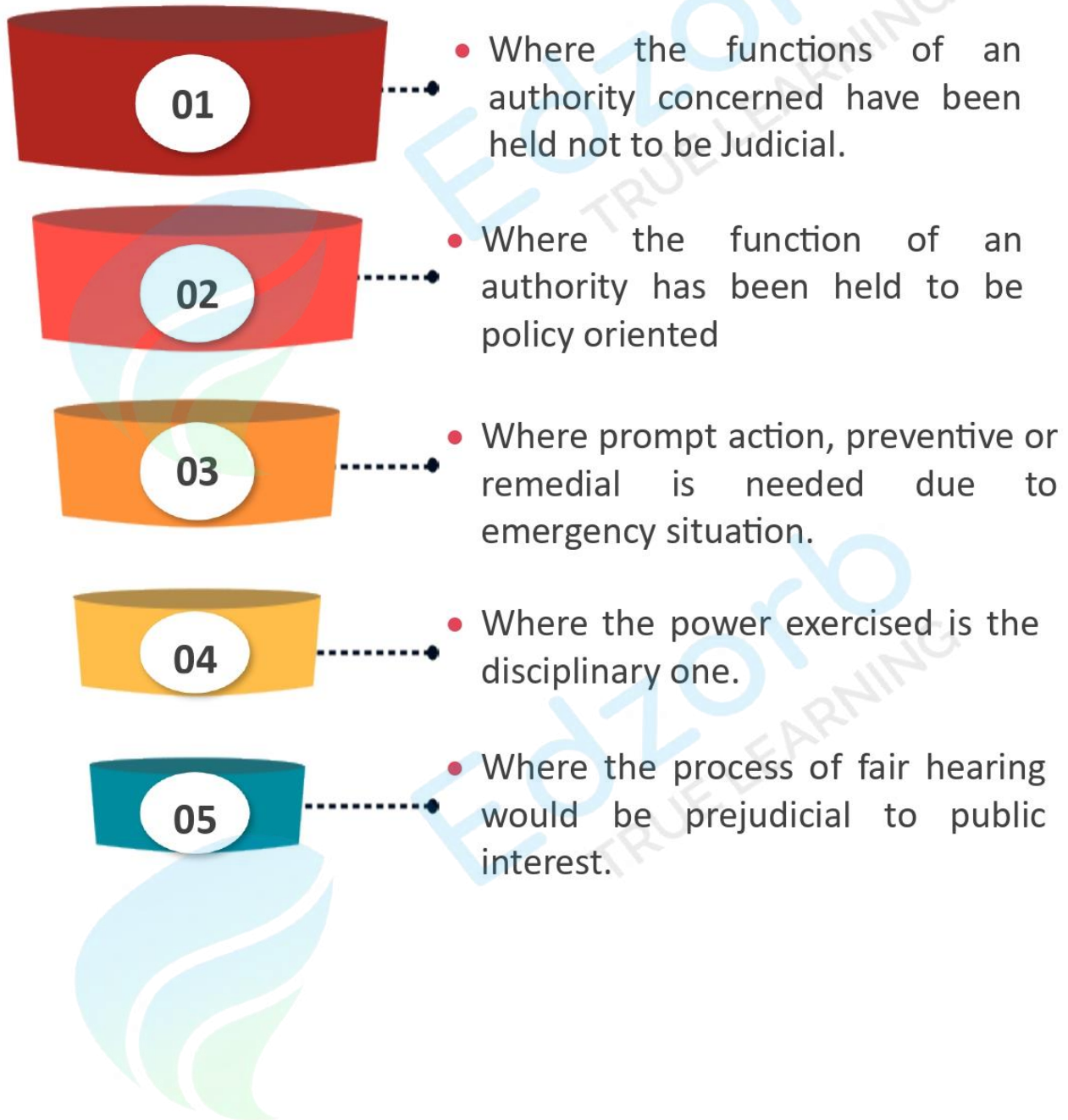


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Exception to the Rule of Audi Alteram Partem:

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



Suits against Government

Contractual Liability of the Government-

Article 298:

The Government can enter into contracts for the purpose of carrying out of the functions of the State.



Essential formalities which a government contract must fulfill (**Article 299**):

“All Contracts made 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,

All such contracts and all assurances of property shall be executed on behalf of the President or the Governor by such person and in such manner as he may direct or authorize”.

Thawardas pherumal and another Vs Union of Indi 1955, SC

It is well settled that governments can only be bound by contracts that are entered into in a particular way and which are signed by the proper authority.

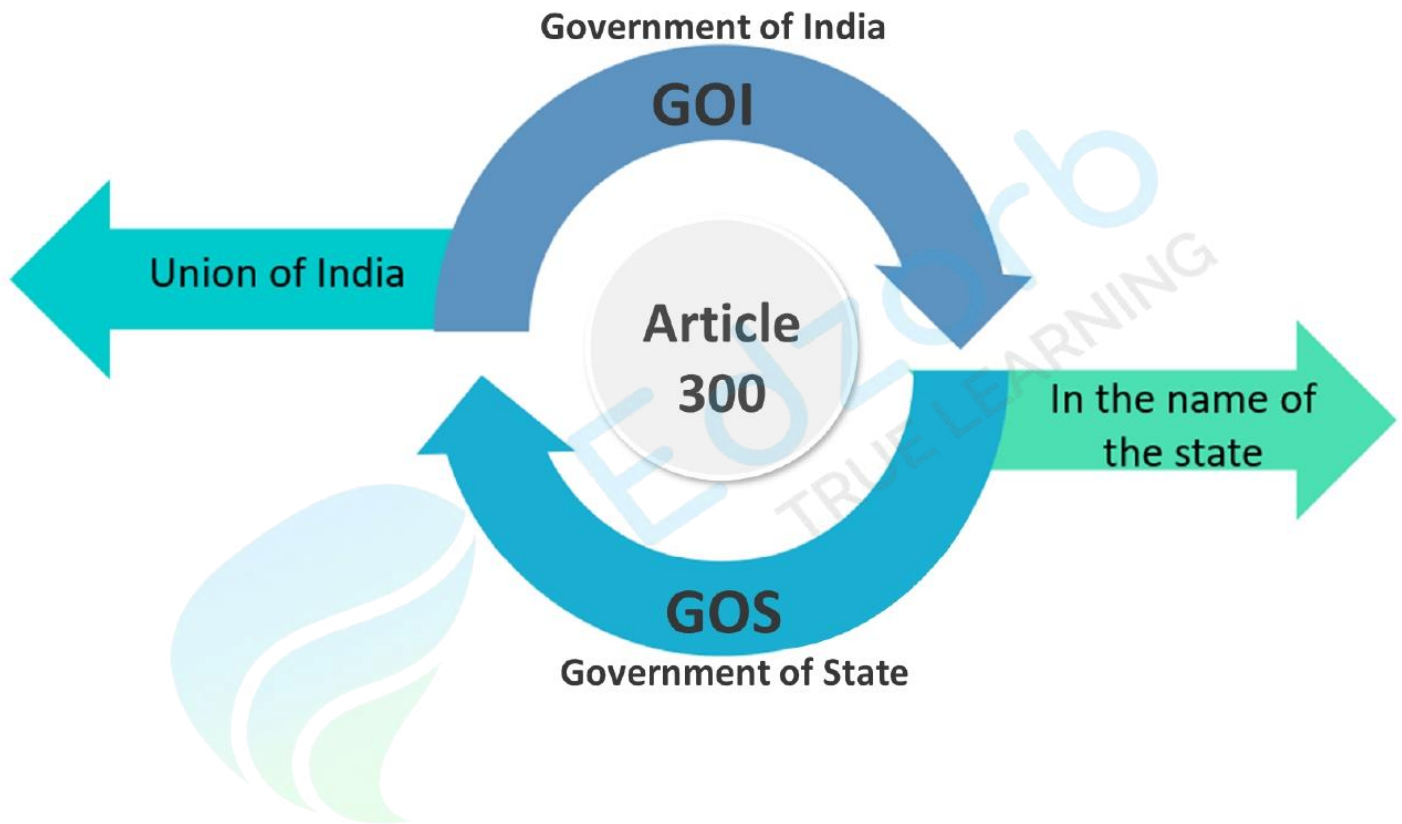
Did you Know?

Section 80 of CPC provides that no suit shall be instituted against the Government until the expiration of two months next after notice in writing in the manner provided in the section.



Liability of Government under Torts:

English law	Indian Law
The crown cannot be sued for the tortuous acts of its servant	The liability of the Government for the torts of their servants was accepted quite earlier than in England.



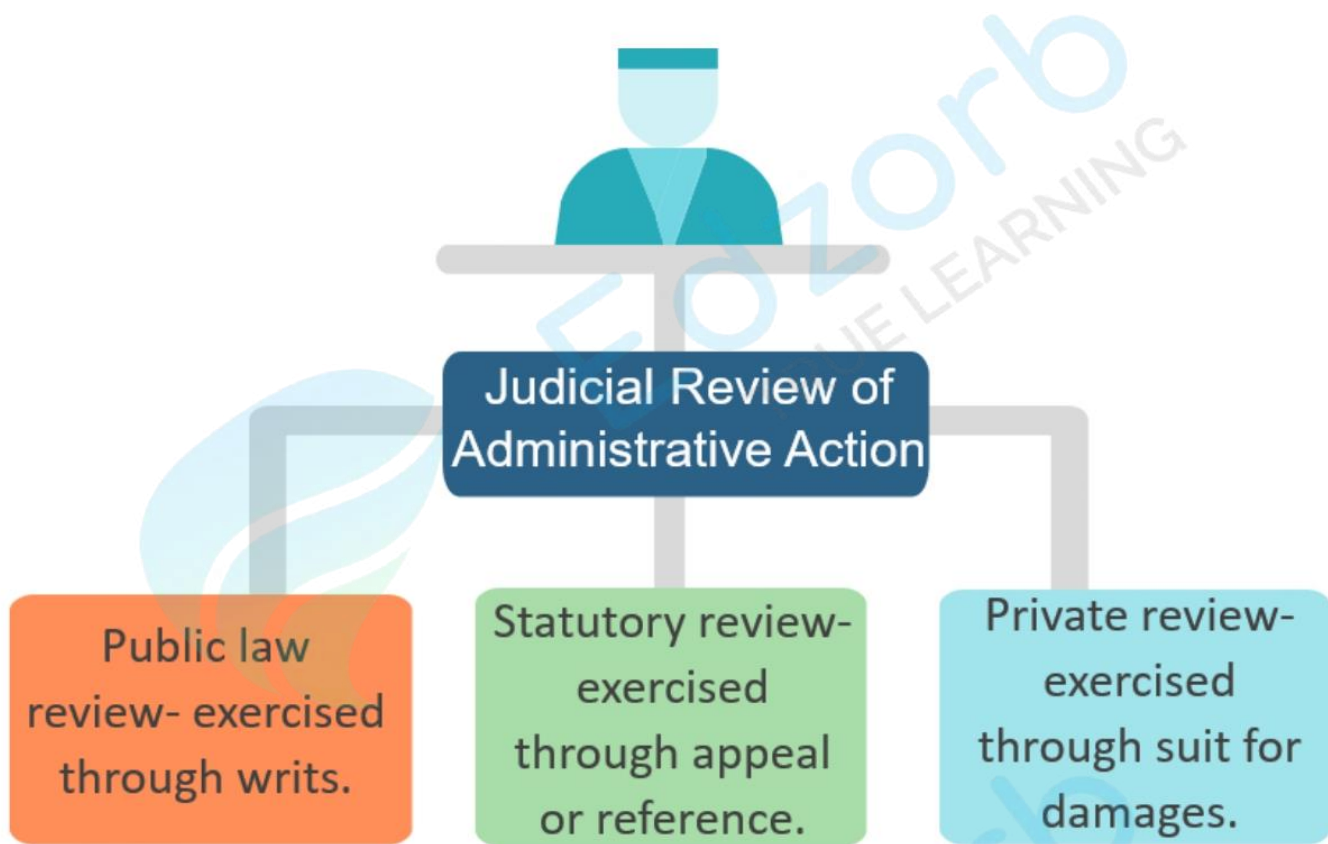
For reference –

- a) **New Marine Coal Co. Vs. Union of India, 1969**
- b) **Mahaveer Auto Stores Vs. Indian Oil Corporation, 1980**

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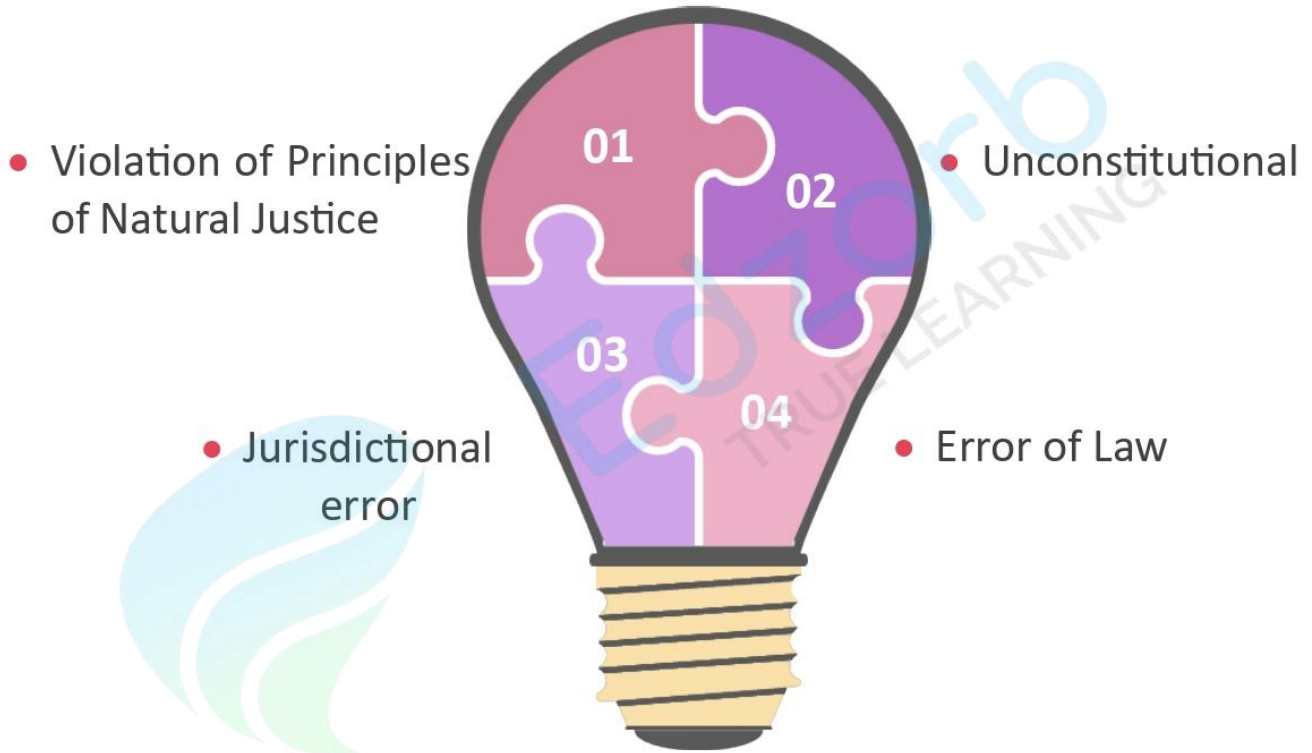
Judicial Review



Scope of Judicial Review

Where the decisions of administrative bodies are purely of administrative nature, the scope of judicial review is limited but it is not so where the decision of quasi-judicial nature.

Grounds of Judicial Review



Exclusion of Judicial Review



- It should be noted that judicial review of an administrative action may be **excluded by legislation**.
- An administrative action cannot be reviewed judicially where statute provide so.



Indira Nehru Gandhi Vs Shri Raj Narain AIR 1975 SC 2299

- The **rule of law** is the basis for democracy and judicial review.
- Free and fair elections is a **basic structure** of the Constitution which cannot be destroyed or damaged by amendment of the Constitution.

Did you Know?

In **L.Chandra Kumar vs Union of India, 1997** it was held by SC that Judicial Review is part of basic structure of structure of Constitution of India





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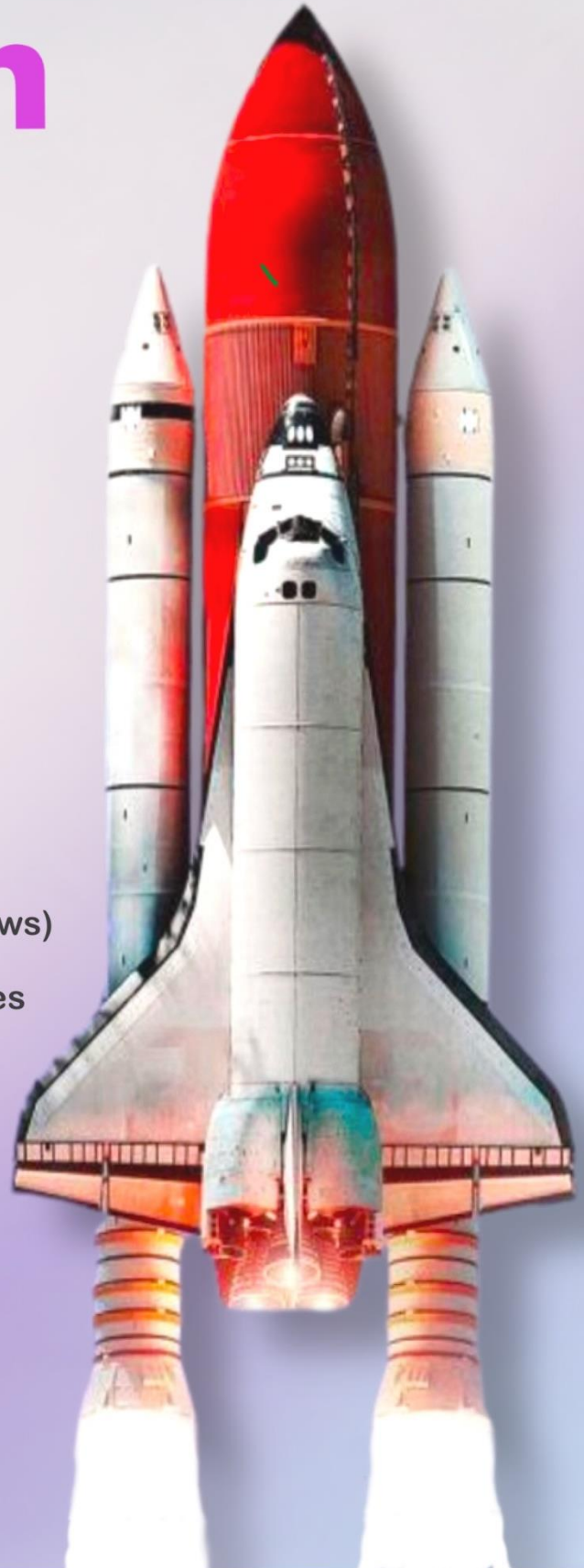
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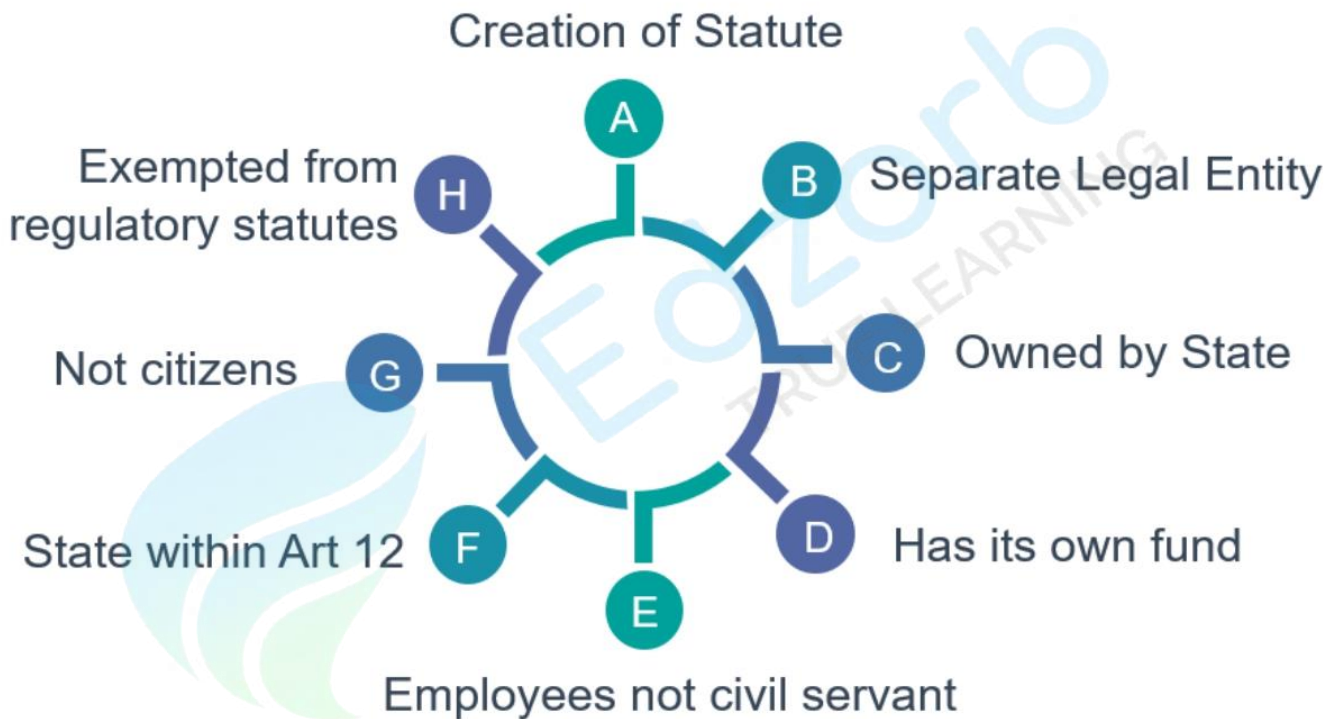


Public Corporation

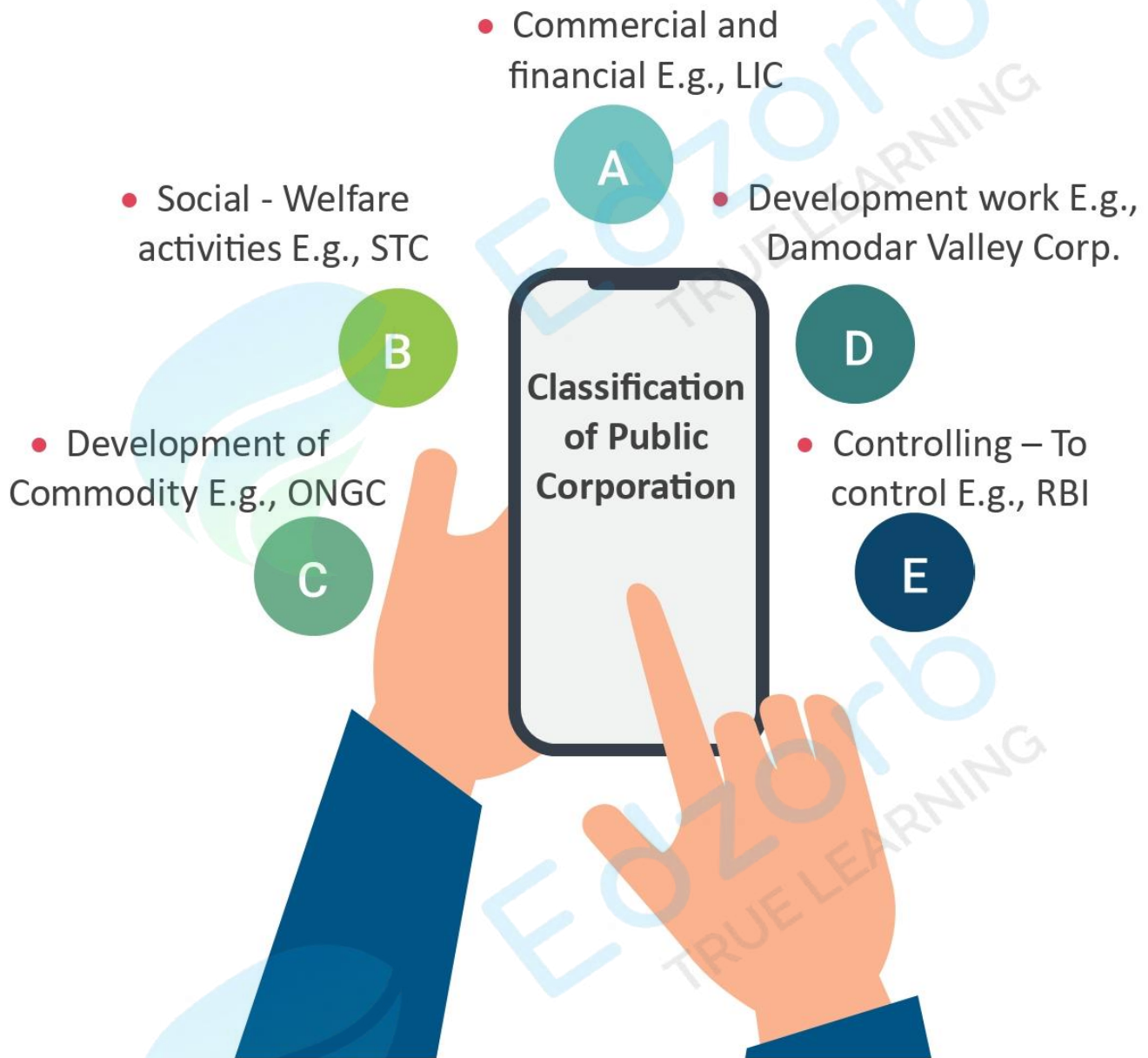
“The modern public corporation is a compromise between nationalization and private enterprise; the institution is essentially an instrument devised of administering some particular enterprise in the public interest.”

- Garner

Essential Features of Public Corporation

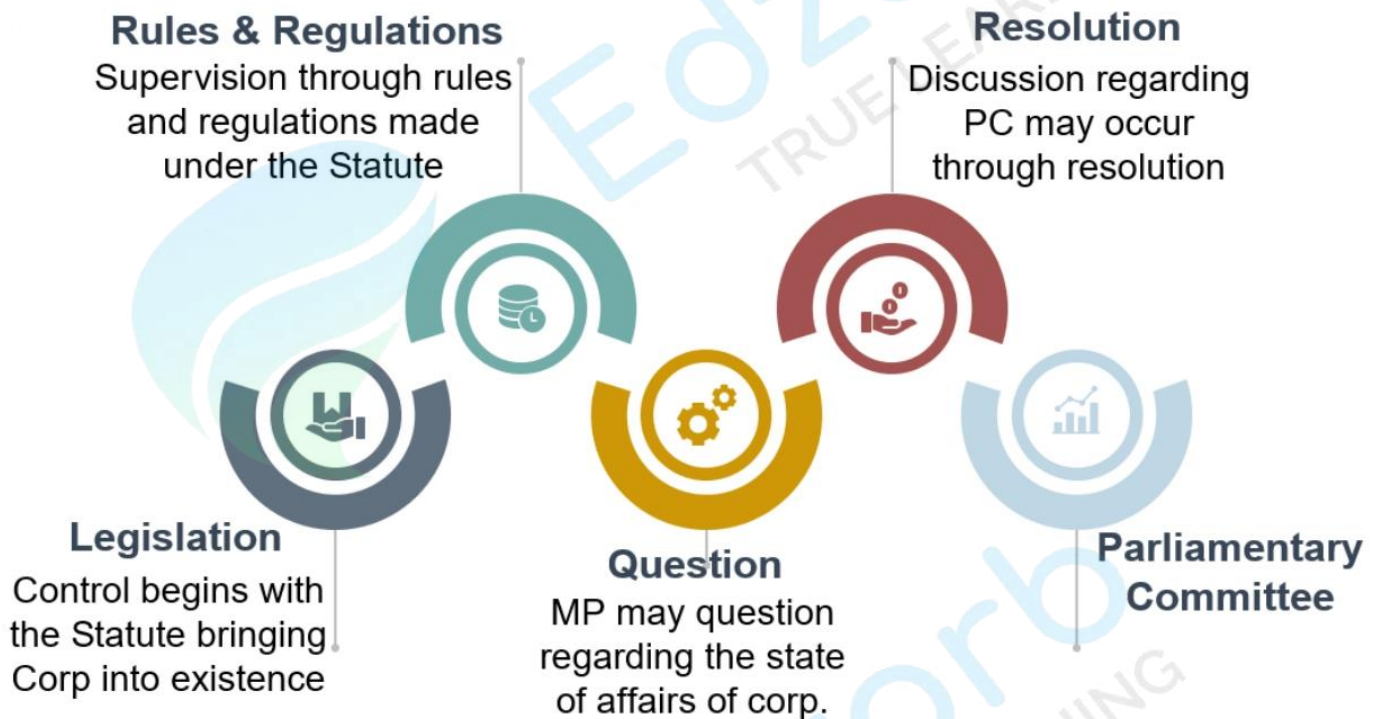


Classification of Public Corporation

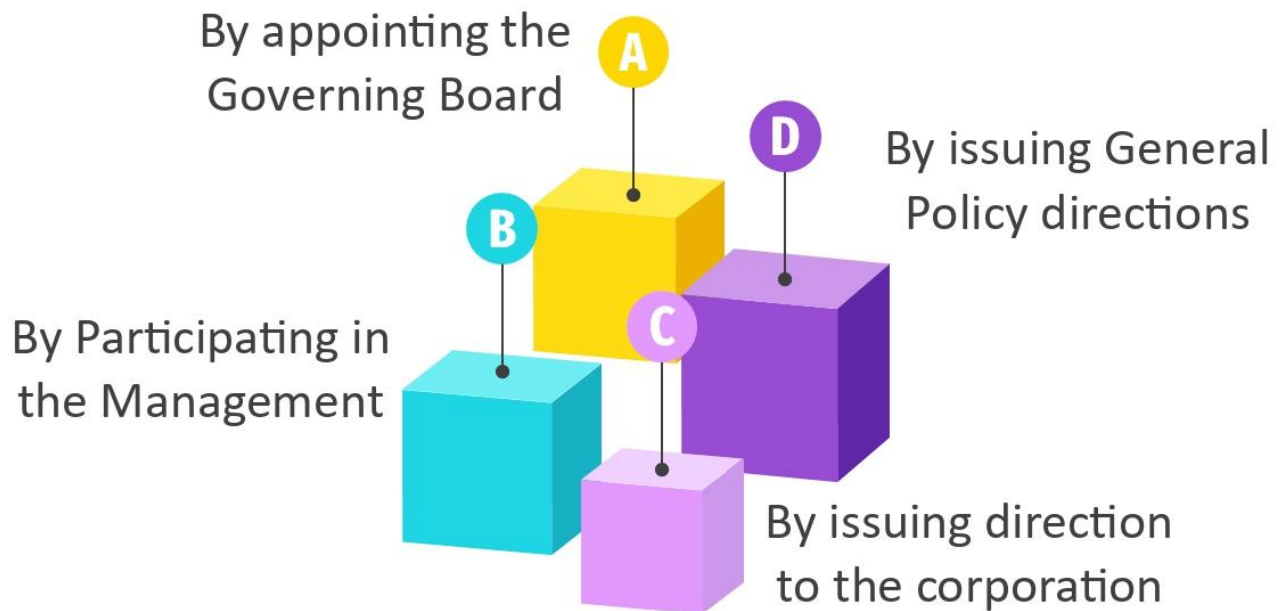


Control over Public Corporation

- **Parliamentary Control:** It is implied in **statutory corporation as they owe their origin and continued existence to a statute.**



- **Government Control:** The general Government **control over the working of the Corporation** to ensure the affairs of the statutory corporations are being conducted in the best interest of the society.



- **Judicial Control:** A **statutory corporation is a 'State'**. Hence, it is subject to writ jurisdiction under Article 32 and **Article 226** of the Constitution.



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Constitutional Remedies

Article 32:

Writ Jurisdiction
of SC

Article 136:

Special Leave Petition
of SC

Article 227:

Superintendence
Power of HC

Article 226:

Writ Jurisdiction
of HC



Article 32 Vs Article 226

Basis	Article 32	Article 226
Fundamental Right	<ul style="list-style-type: none"> It is FR 	<ul style="list-style-type: none"> It is constitutional right.
Suspension	<ul style="list-style-type: none"> President suspends it during emergency 	<ul style="list-style-type: none"> It cannot be suspended.
Discretion	<ul style="list-style-type: none"> No discretion of SC 	<ul style="list-style-type: none"> Discretion of HC, may refuse the remedy.

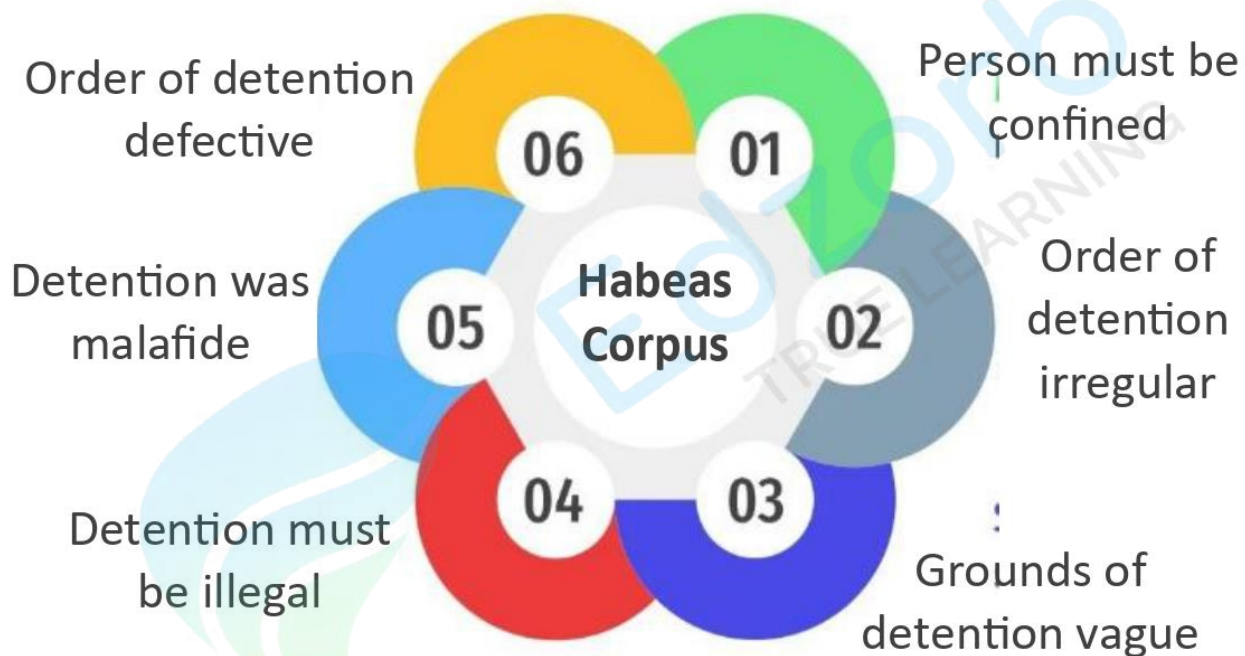
Types of Writs

Writ of Habeas Corpus:

- It is a latin term which literally means **to have the body**".
- Through this, the people could secure their release from illegal arrest and person arrested may be presented before Magistrate within 24 Hours of his arrest.



- **Grounds of Habeas Corpus:**



Writ of Mandamus

Mandamus is an order issued by the **King 's Bench Division of compel the performance of a public duty.**



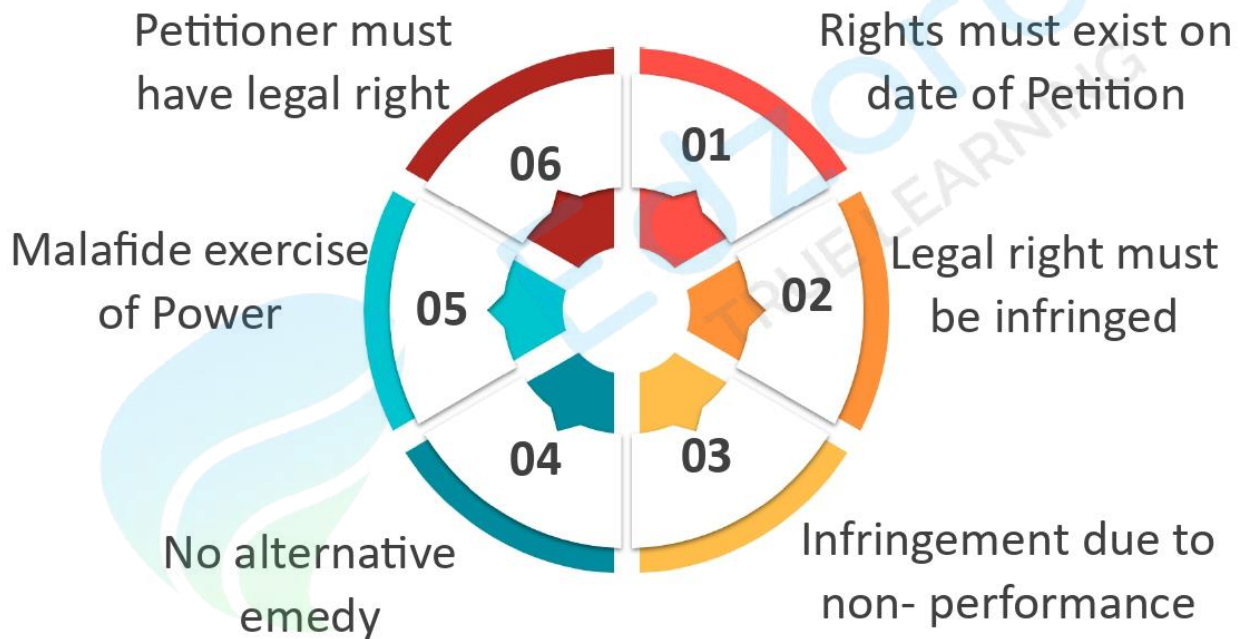
• Who can apply for Mandamus:

Mani Subrat Jain Vs State of Haryana

1977

- No one can ask for a mandamus **without a legal right**.
- The legal right must be **judicially enforceable** and legally protected.
- A person can be said to be aggrieved only when a person is denied a legal right by someone who **has a legal duty to do something or to abstain from a doing something**.

• Grounds of Mandamus



• **Grounds on which Mandamus may be refused**



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Writ of Certiorari

It enables a **Superior Court, a court of record, to correct the orders and the decisions of inferior courts and inferior Tribunals** discharging judicial functions.

Writ of Certiorari – An order by the court directing to send up the records in given case for its review.



- It is well settled that **writ of certiorari** be issued against-



- a. Any judicial or quasi-judicial authority acting in judicial manner;
- b. Any other authority which performs judicial functions and acts in a judicial manner.

- **Grounds of writ of certiorari:**

- **Jurisdictional error**
(Excess, Absence or Abuse of Jurisdiction)

- Error of law apparent on face

- Violation of Principle of Natural Justice



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Writ of Prohibition

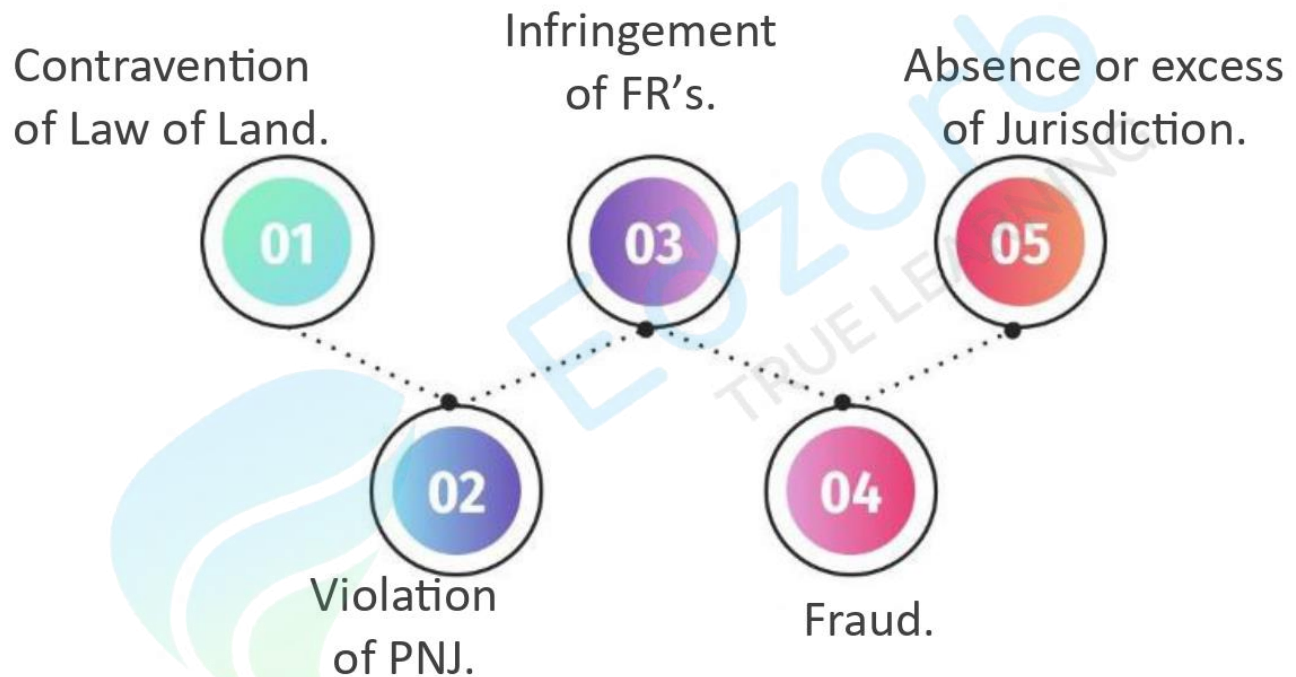
Prohibition is issued from a **superior court to inferior court** forbidding it to perform an act outside its jurisdiction.

Did you Know?

The writ of prohibition lies only when the inferior court or tribunal has not made a decision where as the writ of certiorari lies when the court or tribunal has made a decision.



• Grounds of Writ of Prohibition



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Writ of Quo Warranto

This is issued **with a view to restraining a person from acting in a public office** to which he is not entitled.

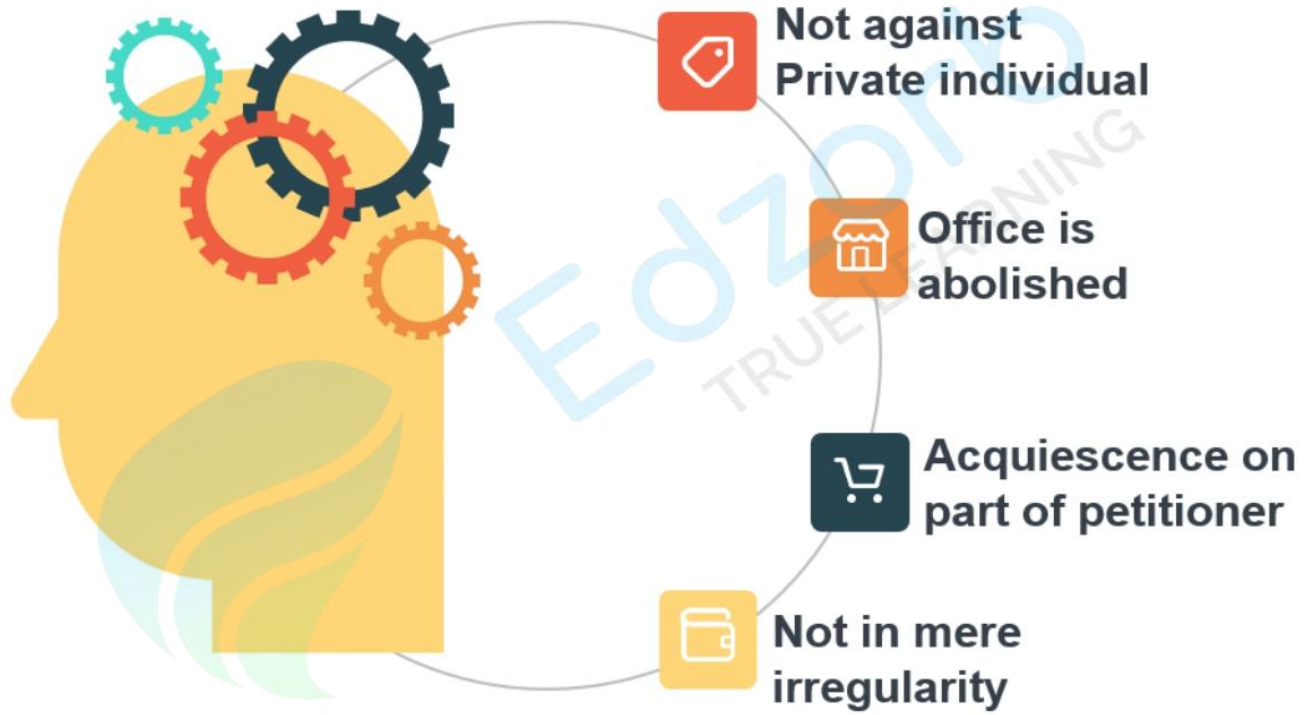


Did you Know?

The writ of Quo warranto basically means "By what authority". This writ may be called in for by a private person, although he is not personally aggrieved.



- Condition when the writ of quo-warranto will not lie



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Ombudsman

Ombudsman - Public official appointed to investigate citizen's complaint against mal-administration of public authority.



Ombudsman:

The idea of "Ombudsman" means a "watch dog of the administration" or "the protector of the little man". This institution was first developed in Sweden in 1809. Later on it was copied by Norway and New Zealand in 1962.

Unique characteristics of Ombudsman:

01

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

02

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

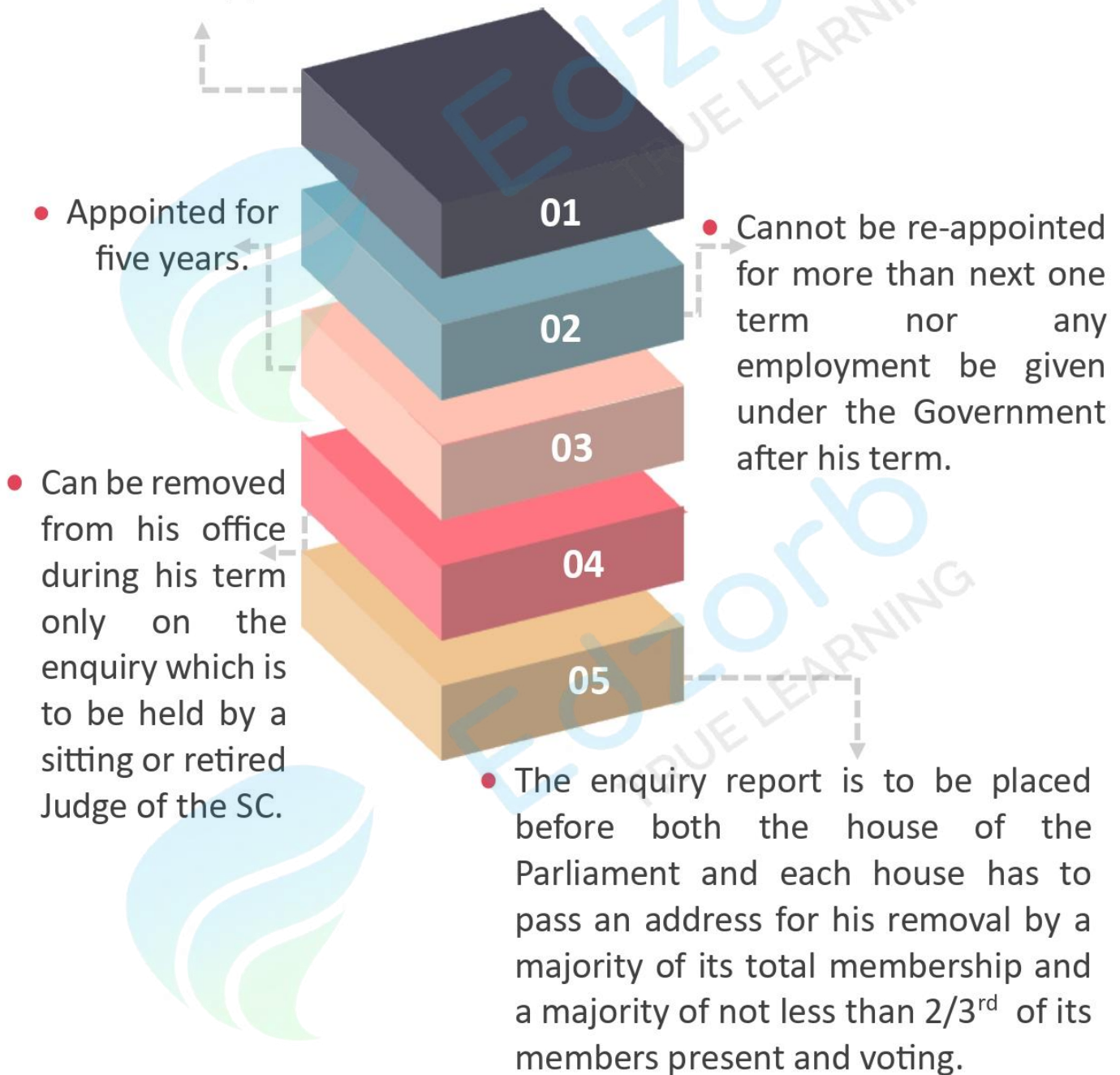
03

- Deals with specific complaints from the public against administrative injustice mal-administration.



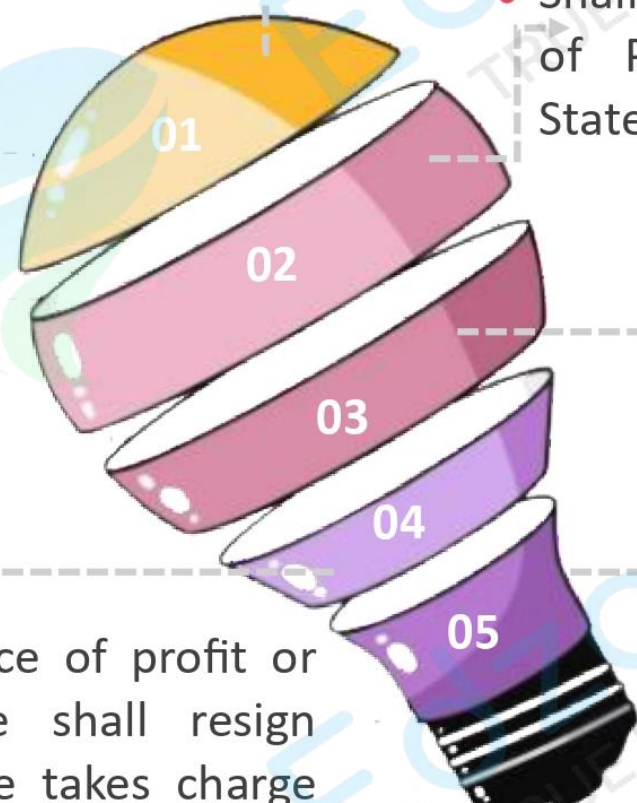
Appointment of Lokpal:

- The Lokpal is to be appointed by the President in consultation with the CJI and the speaker of LS and the leader of opposition in the LS.



Qualifications to be Lokpal

The Bills lays down the following negative qualifications:

- Carry on any trade or occupation he will break off his relations with its management.
 - Shall not be a member of Parliament or of State Legislature
 - Related to any political party he will sever his relations from it.
 - Hold office of profit or trust, he shall resign before he takes charge of the office of Lokpal.
 - Attends to a profession he will leave it.
- 

Functions and Powers of Lokpal:

The Lokpal 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 written complaint in duly made to the Lokpal by a person who claims to have sustained injustice in consequence of mal-administration 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 personal benefit or gain to the Minister or to the secretary, or

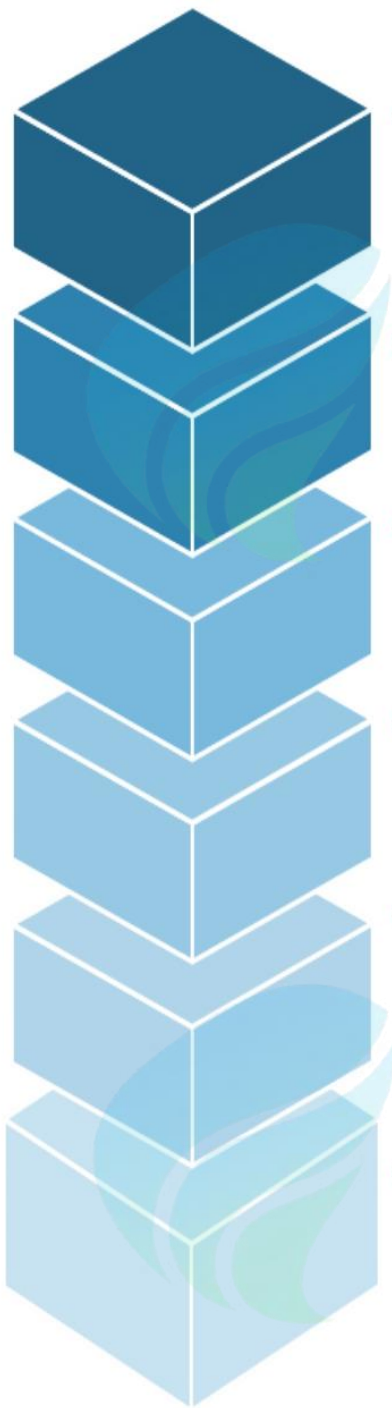


- Information has come to his knowledge otherwise than on a complaint under clause (a) that such action is of the nature mentioned in the clause.



Matters not within the jurisdiction of Lokpal:

The Lokpal shall not conduct an investigation in respect on any of the following matters:



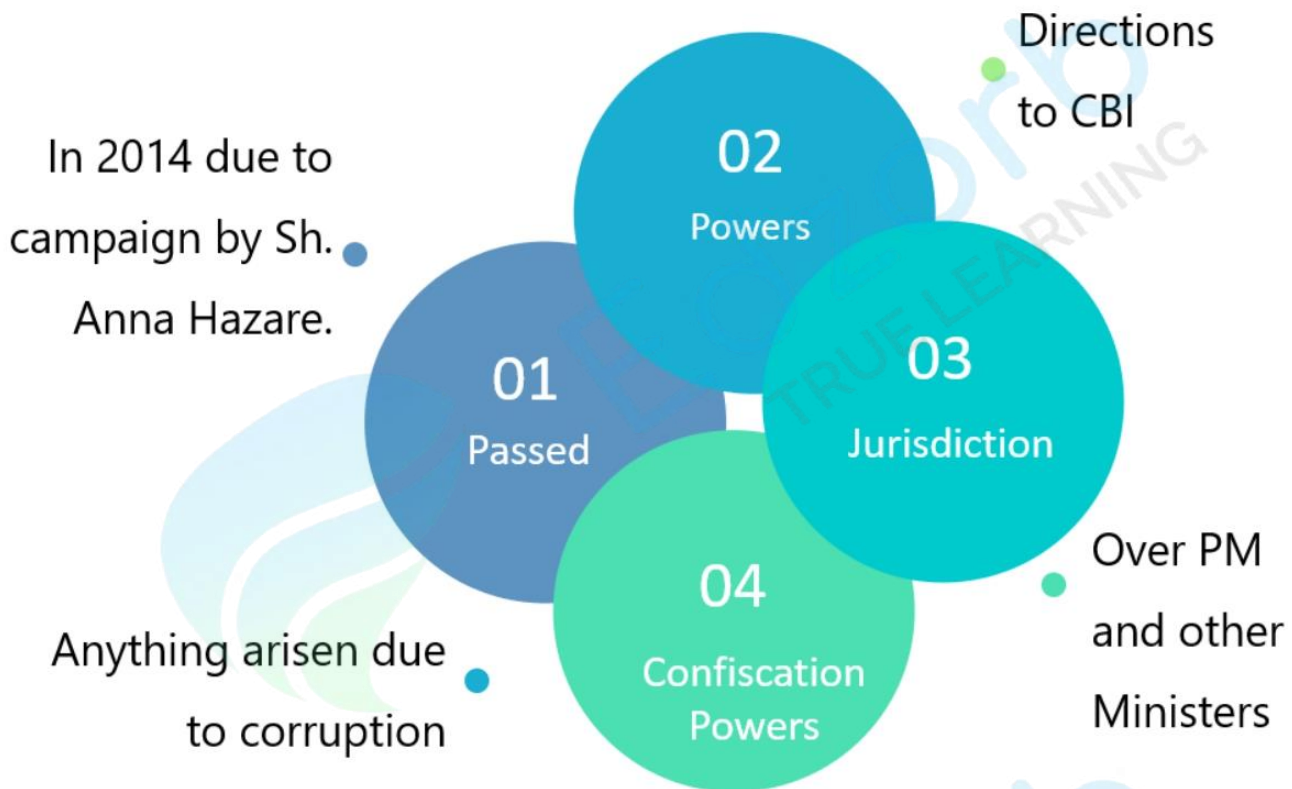
- Action taken in a matter certified by a Union Minister as affecting the relations with foreign states;
- Action taken under the Extradition act 1963 or the Foreigner's Act, 1946;
- Action taken for the purpose of investigating crime or protecting the security of the state;
- Action taken for the determination whether a matter shall go to court or not;
- Action taken in matters which arise out of the terms of contract governing purely commercial relations of the administration.
- Actions taken in respect of appointment, removal etc. or public servants;

Concept of Sweden brought to India:

- **Dr. LM Singhvi**, To set office of Omb. In campaign 1963-65.
- **Adm. Reform Comission, 1996**, recommended the appointment of Lokpal & Lokayuta.
- **Late Mr. MC Setalvad**, asked student to study about the concept of Omb. In India.
- **Late Mr. KM Munshim**, recommended appointment of Ombudsman for the parliamentary inquiry.
- **Gajendragadkar CJI**, in 1963 made recommendation for its adoption.



The Lokpal and Lokayukta Act, 2013:



Did you Know?



Retired Supreme Court Judge **Pinaki Chandra Ghose** is appointed as first Lokpal of India on 23.03.2019.



Reference: Administrative Law by I.P. Massey; 9th Ed., 2017

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Central Vigilance Commission (CVC):

Establishment	<ul style="list-style-type: none"> • 1964
Purpose	<ul style="list-style-type: none"> • To address corrupt practices within the government.
Composition	<ul style="list-style-type: none"> • A Central Vigilance Commissioner - Chairperson; • Not more than two Vigilance Commissioners – Members
Appointment	<ul style="list-style-type: none"> • President on recommendation of a committee consisting of the Prime Minister (Chairperson) and other members.
Limitations	<ul style="list-style-type: none"> • It is only an advisory body. • Central Government Departments are free to either accept or reject CVC's advice in corruption cases.

Did you Know?



- **Shri PK Srivastava** is Chief Vigilance Commissioner.
- Smt. Droupadi Murmu, administered the oath of office to Sh. P. K. Srivastava as CVC on **29th May 2023** at the Rashtrapati Bhavan.



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Public Interest Litigation:

Introduction

- **Meaning:** Litigation filed in a court of law, for the protection of “Public Interest”, such as Pollution, Terrorism, Road safety, Constructional hazards etc. Any matter where the interest of public at large is affected can be redressed by filing a Public Interest Litigation in a court of law.
- The power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.
- The court can itself take cognizance of the matter and proceed Suo-motu or cases can commence on the petition of any public spirited individual.



Did you Know?

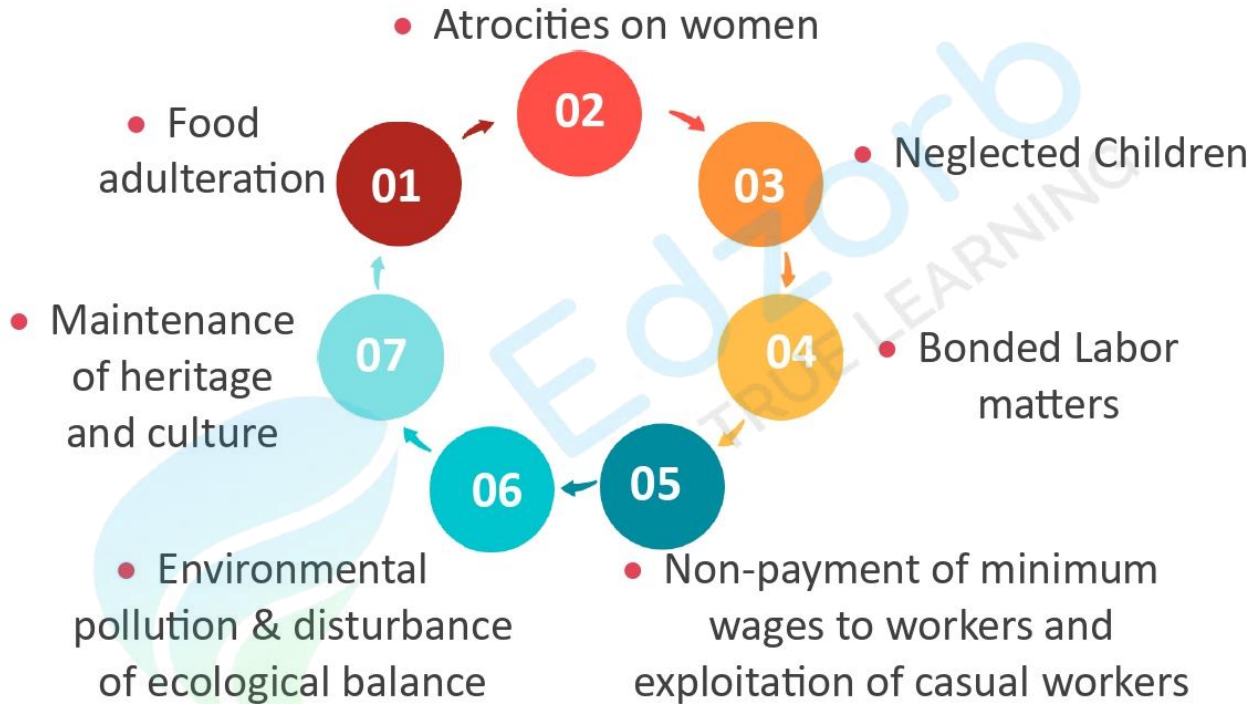
The 'PIL' has been borrowed from **American jurisprudence**.

It was designed to provide legal representation to previously unrepresented groups like the poor, the racial minorities, un-organized consumers, citizens who were passionate about the environmental issues, etc.



Examples of PIL:

Some of the matters which are entertained under PIL are:



Genesis and Evolution of PIL in India:

1. PIL Introduced:

Kamagar Sabha Vs Abdul Thai 1976, Mumbai

- **Justice Krishna Iyer** - The seeds of the concept of public interest litigation were initially sown in India.

2. First reported case of PIL:

Hussainara Khaton Vs State of Bihar (1979)

Held: - Focused on the inhuman conditions of prisons and under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners.



3. A new era of the PIL movement was heralded –

S.P. Gupta Vs Union of India.

Held: - by Justice P.N. Bhagwati- “any member of the public or social action group acting bonafide” can invoke the Writ Jurisdiction of the High Courts (under article 226) or the SC (under Article 32) seeking redressal against violation of legal or constitutional rights of persons who due to social or economic or any other disability cannot approach the Court.

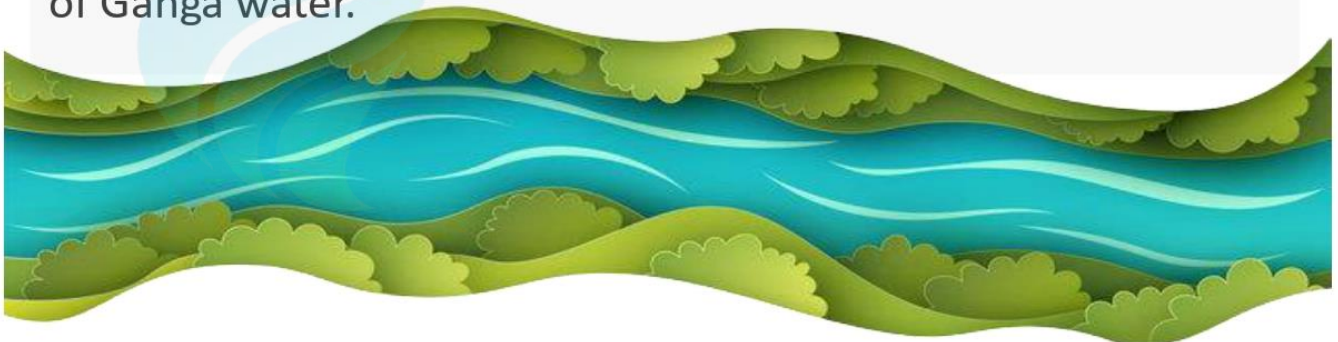
4. By the **S.P. Gupta Vs Union of India** judgment in PIL became a potent weapon for the enforcement of “public duties” where executive action or misdeed resulted in public injury.



M.C Mehta vs. Union of India

Facts: The Public Interest Litigation brought against Ganga water pollution so as to prevent any further pollution of Ganga water.

Held: - Supreme Court held that petitioner although not a riparian owner is entitled to move the court for the enforcement of statutory provisions, as he is the person interested in protecting the lives of the people who make use of Ganga water.



Factors Responsible for the Growth of PIL in India



- The character of the Indian Constitution
- India has some of the most progressive social legislations
- The liberal interpretation of locus standi
- Judicial innovations to help the poor and marginalized

In PIL cases where the petitioner is not in a position to provide all the necessary evidence, either because it is voluminous or because the parties are weak socially or economically, courts have appointed commissions to collect information on facts and present it before the bench.



Who Can File a PIL and Against Whom?

Any citizen can file a public case by filing a petition:

- Under **Article 32** of the Indian Constitution, in the Supreme Court.
- Under **Section 133** of the Criminal Procedure Code, in the Court of Magistrate.
- Under **Article 226** of the Indian Constitution, in the High Court.
- A PIL can be filed against a State/ Central Govt., Municipal Authorities, and not any private party.



Significance of PIL:

The aim of PIL is to give to the common people access to the courts to obtain legal redress.



- An important instrument of social change and for maintaining the Rule of law and accelerating the balance between law and justice.



- The original purpose was to make justice accessible to the poor and the marginalized.



- It is an important tool to make human rights reach those who have been denied rights.



- It democratizes the access of justice to all.



- It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc.



- An important tool for implementing the concept of judicial review.

Certain Weaknesses of PIL:



- Give rise to the problem of competing rights.
- It could lead to overburdening of courts with frivolous PILs by parties with vested interests.
- Cases of Judicial Overreach by the Judiciary.
- Inordinate delays in the disposal of PIL.

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017

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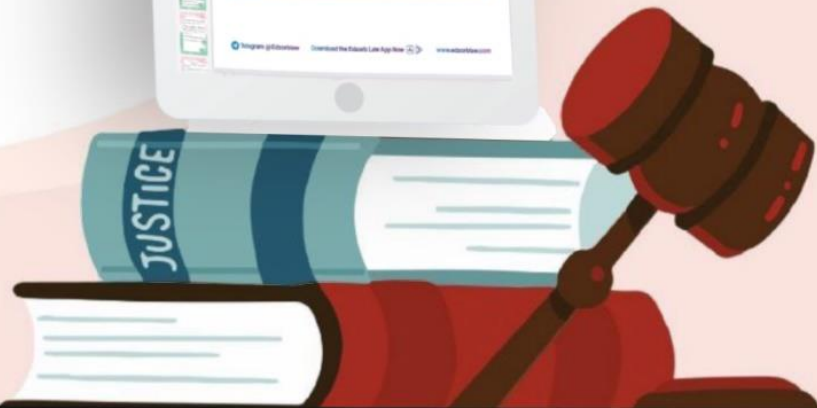


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Doctrine of Legitimate Expectations:

Introduction:

“A man should keep his words. All the more so when the promise is not a bare promise but is made with the intention that the other party should act upon it.”

Doctrine of Legitimate Expectation:

- The doctrine of ‘Legitimate Expectations’ is the tool incorporated by the Court to review the administrative action.
- This doctrine pertains to the relationship between an individual and a public authority.



- According to this doctrine, the public authority can be made accountable in lieu of a ‘legitimate expectation’.
- A person may have a reasonable or legitimate expectation of being treated in a certain way by the administrative authorities owing to some consistent practice in the past or an express promise made by the concerned authority.



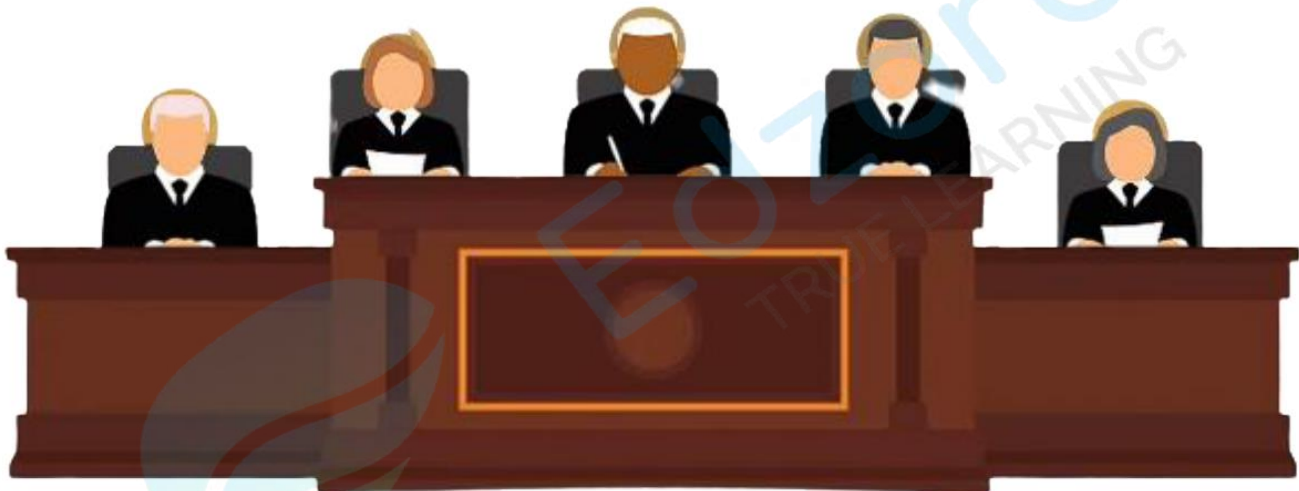
Origin of Doctrine of Legitimate Expectations:

The first attempt to establish the principles of the doctrine was made -

Civil Service Unions & Others Vs Minister for the Civil Service

Held: - The decision by the public authority should affect the person such that:

- His rights or obligations are altered, which are enforceable by or against him
- He is deprived of some benefit or advantage which he had been permitted by the authorizing body in the past and which he could have legitimately expected to enjoy until a valid ground for withdrawal of the same was communicated to him.



Origin & Development of Doctrine of L.E. in India:

The Doctrine of Legitimate Expectation was firstly discussed in the case -

State of Kerala Vs K.G. Madhavan Pillai

Held: - Herein, a sanction was issued for the respondents to open new aided schools; however, an Order was issued 15 days later to keep the previous sanction in abeyance.

- This Order was challenged by the respondents in lieu of violation of principles of natural justice.
- The Supreme Court ruled that the sanction had entitled the respondents with legitimate expectation and the second order violated principles of natural justice.

Food Corporation of India Vs Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71,

Held: -

- The duty to act fairly on part of public authorities, entitles every citizen to have legitimate expectation to be treated in a fair manner.
- It is imperative to give due importance to such an expectation in order to satisfy the requirement of non-arbitrariness in state action or otherwise it may amount to abuse of power.
- Such a reasonable or legitimate expectation may not be a directly enforceable legal right but failure in taking it into account may deem a decision arbitrary.
- To decide whether an expectation is a legitimate one is contextual and has to be decided on a case-by-case basis.

Circumstances for the formation of legitimate expectation:

Madras City Wine Merchants Vs State of Tamil Nadu (1994) 5 SCC 509

Held: - Circumstances which may lead to the formation of legitimate expectations were:

- If there was some explicit promise or representation made by the administrative body.
- That such a promise was clear and unambiguous
- The existence of a consistent practice in the past which the person can reasonably expect to operate in the same way.

P.T.R. Exports (Madras) Pvt. Ltd. & Others Vs Uol & others, AIR 1996 SC 3461

Held: - That the doctrine of legitimate expectations has no role to play when the appropriate authority is empowered to take a decision under an executive policy or the law itself and that the Government is not restricted from evolving new policy on account of 'legitimate expectations' as and when required in public interest.

M.P. Oil Extraction Vs State of M.P. (1997) 7 SCC 592

The doctrine of legitimate expectations operates in the realm of public law and is considered a substantive and enforceable right in appropriate cases.

Held: It was held that the industries had a legitimate expectation with regards to past practice and the renewal clause, that the agreements are renewed in a similar manner.

National Buildings Construction Corporation Vs S.Raghunathan

Held: The Court while elaborating on the doctrine, stated that the doctrine has its genesis in the administrative law and that Government departments ought not to act in an unfettered manner guided by abuse of discretion.

Bannari Amman Sugars Ltd. Vs CTO

Held: That guarding legitimate expectation should not come at the cost of non-fulfillment of an overriding public interest, so to say that in case a legitimate expectation of a person is not fulfilled, the decision-making body can hide behind the veil of 'overriding public interest'.

Article 14 and Legitimate Expectation:

- The doctrine's use has essentially been embedded into **Article 14** of the Constitution and thus 'non-arbitrariness and unreasonableness' have been made the necessary qualifiers for assessing as to whether there was a denial of legitimate expectation or not.
- For the doctrine to grow individually, it is necessary that lower standards are set as qualifiers which undoubtedly may run its own risks like a too much judicial intervention.

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017

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Doctrine of Proportionality:

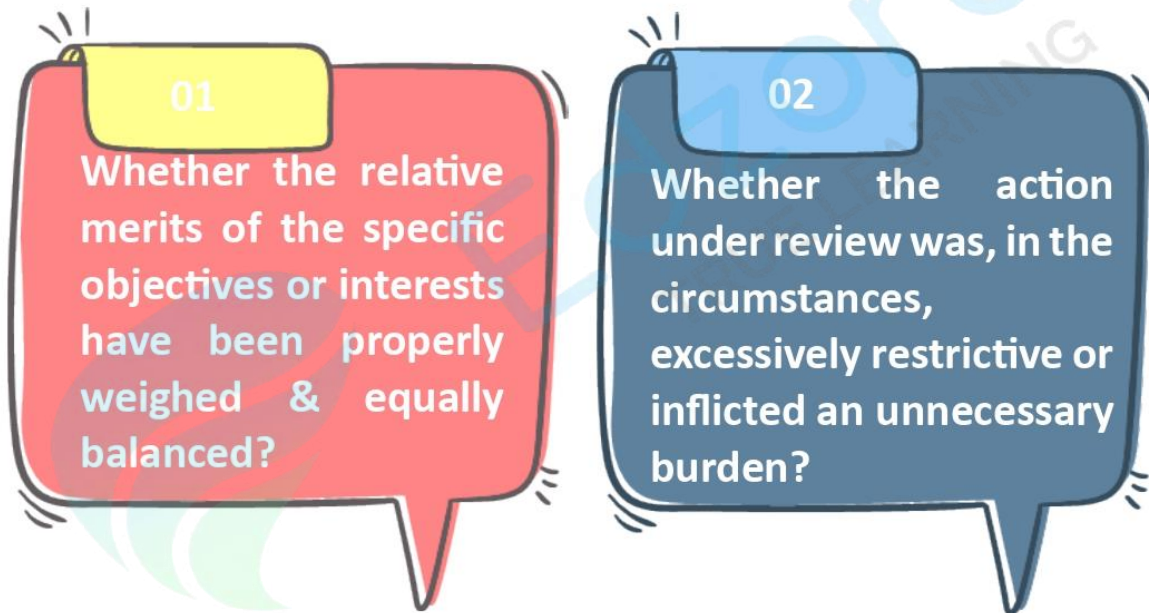
- Doctrine of proportionality is applicable in cases where rights are violated by administrative action and the courts scrutinize administrative conduct specifically and go to the courts about the accuracy of the authority's choices.
- Irrationality as a ground and legitimate expectation to challenge of any decision was developed by the Court in *Associated Provincial Picture House v. Wednesbury*, later came to be known as "Wednesbury test" to determine 'irrationality' of an administrative action decision of the administrative authority shall be deemed to be irrational



- If it is beyond the authority of law,
- If it is not based on evidence,
- If it is based on irrelevant consideration,
- If it is so absurd in its violation of logic or established moral standards that no reasonable person may make such a decision on the facts and circumstances in question

Grounds of Doctrine of Proportionality:

When evaluating an administrative action on the grounds of proportionality courts typically consider two issues, namely:



Union of India Vs G. Ganayutham

Held: The Supreme Court held that rule of proportionality is fully applicable in constitutional adjudication where the court has to decide on the reasonableness of a restriction on the exercise of fundamental rights. The court considers:

- Whether the measure was necessary to achieve the desired objective?
- Whether the measure was suitable for achieving the desired objective?
- Whether it nonetheless imposed excessive burdens on the individual?

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