Lecture X

Liability of the Government

The King can do no wrong.

The King must not be under man, but under God and the law, because it is the law that makes the King. —BRACTON

There is no convincing reason why the Government should not place itself in the same position as a private employer subject to the same rights and duties as are imposed by statute. —LAW COMMISSION

SYNOPSIS

1. Introduction
2. Contractual liability
   (*a*) Prior to commencement of Constitution
   (*b*) Constitutional provisions
   (*c*) Requirements
   (*d*) Effect of non-compliance
   (*e*) Effect of valid contract
   (*f*) Quasi-contractual liability: Doctrine of unjust enrichment
   (*g*) Conclusions
   (*h*) Contractual liability and writ jurisdiction
3. Tortious liability
   (*a*) Doctrine of vicarious liability
   (*b*) English law
   (*c*) Indian law
      (*i*) General
      (*ii*) Constitutional provisions
      (*iii*) Sovereign and non-sovereign functions
         (A) Before commencement of Constitution
         (B) After commencement of Constitution
      (*iv*) Test
      (*v*) Conclusions
4. Whether State is bound by statute
   (*a*) General
   (*b*) English law
   (*c*) Indian law
5. Doctrine of public accountability
   (*a*) General
   (*b*) Doctrine explained
   (*c*) Illustrative cases
   (*d*) Personal liability
   (*e*) Limitations

(*f*) Judicial accountability
(*g*) Conclusions
6. Doctrine of estoppel
(*a*) Meaning
(*b*) Nature and scope
(*c*) Illustration
(*d*) Traditional view
(*e*) Modern view
(*f*) Leading cases
(*g*) Estoppel against statute
(*h*) Estoppel and public policy
(*i*) Estoppel and public interest
(*j*) Conclusions
7. Crown privilege
(*a*) General
(*b*) England
(*c*) India
(*i*) Statutory provisions
(*ii*) Leading cases
(*iii*) Right to know
(*iv*) Power and duty of courts
(*v*) Considerations
(*vi*) Test
(*d*) Conclusions
8. Miscellaneous privileges of Government

1. INTRODUCTION

In England, in the eye of law the Government was never considered as an 'honest man'.[1] Wade[2] rightly states: "It is fundamental to the rule of law that the Crown, like other public authorities, should bear its fair share of legal liability and be answerable for wrongs done to its subjects. The immense expansion of governmental activity from the latter part of the nineteenth century onwards made it intolerable for the Government, in the name of the Crown, to enjoy exemption from the ordinary law". English law has always clung to the theory that the King is subject to law and, accordingly, can commit breach thereof. As far as 700 years ago, Bracton had observed: "The King must not be under man, but under God and under the law, because it is the law that makes the King".[3]

Though theoretically there was no difficulty in holding the King liable for any illegal act, there were practical problems. Rights depend upon remedies and there was no human agency to enforce law against

1. Garner: *Administrative Law*, 1963, p. 215.
2. Wade: *Administrative Law*, 1994, pp. 819-20.
3. "*rex non debet esse sub homine sed sub deo et sub lege, quia lex facit regem*

the King. All the courts in the country were his courts and he could not be sued in his own courts without his consent. He could be plaintiff but never be made defendant. No writ could be issued nor could any order be enforced against him. As '*the King can do no wrong*', whenever the administration was badly conducted, it was not the King who was at fault but his Ministers, who must have given him faulty advice. But after the Crown Proceedings Act, 1947, the Crown can now be placed in the position of an ordinary litigant.

In India, history has traced different path. The maxim 'the King can do no wrong' has never been accepted in India. The Union and the States are legal persons and they can be held liable for breach of contract and in tort. They can file suits and suits can be filed against them.

2. CONTRACTUAL LIABILITY

(a) Prior to commencement of Constitution

Before commencement of the Constitution also, the liability of the Government for breach of contract was recognised. East India Company was established in India, essentially for commercial activities. As early as in 1785, in *Moodalay* v. *Morton*[4], the Supreme Court of Calcutta held that the East India Company was subject to the jurisdiction of the municipal courts in all matters and proceedings undertaken by them as a private trading company.

In a number of statutes also, such liability of the Government had been recognised. Thus, the provisions were made in the Government of India Acts of 1833, 1858, 1915 and 1935.

(b) Constitutional provisions

The contractual liability of the Union of India and States is recognised by the Constitution itself.[5] Article 298 expressly provides that the executive power of the Union and of each State shall extend to the carrying on of any trade or business and the acquisition, holding and disposal of property and the making of contracts for any purpose.

Article 299(1) prescribes the mode or manner of execution of such contracts. It reads:

> "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, 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

4. (1785) 1 Bro CC 469: 28 ER 1245.
5. Arts. 294, 298, 299 and 300, Constitution of India.

Governor by such persons and in such manner as he may direct or authorise."

(c) Requirements

Reading the aforesaid provision, it becomes clear that Article 299 lays down the following conditions and requirements which must be fulfilled in contracts made by or with the Union or a State:

(1) All such contracts must be expressed to be made by the President or the Governor as the case may be;

(2) All such contracts are to be executed by such persons and in such manner as the President or the Governor may direct or authorise; and

(3) All such contracts made in the exercise of the executive power are to be executed on behalf of the President or the Governor as the case may be.

(1) A contract to be valid under Article 299(1), must be in writing. The words '*expressed to be made*' and '*executed*' in this article clearly go to show that there must be a formal written contract executed by a duly authorised person.[6] Consequently, if there is an oral contract, the same is not binding on the Government.[7] This does not, however, mean that there must be a formal agreement properly signed by a duly authorised officer of the Government and the second party. The words '*expressed*' and '*executed*' have not been literally and technically construed. In *Chatturbhuj Vithaldas* v. *Moreshwar Parashram*[8], speaking for the Supreme Court, Bose, J. observed:

> "It would, in our opinion, be disastrous to hold that the hundreds of Government officers who have daily to enter into a variety of contracts, often of a petty nature, and sometimes in an emergency, cannot contract orally or through correspondence and that every petty contract must be effected by a ponderous legal document couched in a particular form...."

In *Union of India* v. *Rallia Ram*[9], tenders were invited by the Chief Director of Purchases, Government of India. *R*'s tender was accepted. The letter of acceptance was signed by the Director. The question before the Supreme Court was whether the provisions of Section 175(3) of the Government of India Act, 1935 (which were in *pari materia* with Article 299(1) of the Constitution of India) were complied with. The Court held

6. *Karamshi Jethabai* v. *State of Bombay*, AIR 1964 SC 1714.
7. *Id.* see also *Chatturbhuj* v. *Moreshwar* (*infra*).
8. AIR 1954 SC 236 (243).
9. AIR 1963 SC 1685.

that the Act did not expressly provide for execution of a formal contract. In absence of any specific direction by the Governor-General, prescribing the manner or mode of entering into contracts, a valid contract may result from the correspondence between the parties. The same view was reiterated by the Supreme Court in *Union of India* v. *N.K. (P) Ltd.*[10], wherein the court observed:

> "It is now settled by this court that though the words 'expressed' and 'executed' in Article 299(1) might suggest that it should be by a deed or by a formal written contract, a binding contract by tender and acceptance can also come into existence if the acceptance is by a person duly authorised on this behalf by the President of India."

(2) The second requirement is that such a contract can be entered into on behalf of the Government by a person authorised for that purpose by the President or the Governor as the case may be. If it is signed by an officer who is not authorised by the President or Governor, the said contract is not binding on the Government and it cannot be enforced against it.

In *Union of India* v. *N.K. (P) Ltd.*[10], the Director was authorised to enter into a contract on behalf of the President. The contract was entered into by the Secretary, Railway Board. The Supreme Court held that the contract was entered into by an officer not authorised for the said purpose and it was not a valid and binding contract.

In *Bhikraj Jaipuria* v. *Union of India*[11], certain contracts were entered into between the Government and the plaintiff-firm. No specific authority had been conferred on the Divisional Superintendent, East India Railway to enter into such contracts. In pursuance of the contracts, the firm tendered a large quantity of foodgrains and the same was accepted by the Railway Administration. But after some time, the Railway Administration refused to take delivery of goods. It was contended that the contract was not in accordance with the provisions of Section 175(3) of the Government of India Act, 1935 and, therefore, it was not valid and not binding on the Government. The Supreme Court, after appreciating the evidence — oral as well as documentary — held that the Divisional Superintendent acting under the authority granted to him could enter into the contracts. The Court rightly held that it was not necessary that such authority could

10. (1973) 3 SCC 388 (394): AIR 1972 SC 915 (919); see also *D.G. Factory* v. *State of Rajasthan*, (1970) 3 SCC 874: AIR 1971 SC 141.
11. AIR 1962 SC 113: (1962) 2 SCR 880.

be given 'only by rules expressly framed or by formal notifications issued in that behalf'.[12]

In *State of Bihar* v. *Karam Chand Thapar*[13], the plaintiff entered into a contract with the Government of Bihar for construction of an aerodrome and other works. After some work, a dispute arose with regard to payment of certain bills. It was ultimately agreed to refer the matter for arbitration. The said agreement was expressed to have been made in the name of the Governor and was signed by the Executive Engineer. After the award was made, the Government contended in civil court that the Executive Engineer was not a person authorised to enter into contract under the notification issued by the Government, and therefore, the agreement was void. On a consideration of the correspondence produced in the case, the Supreme Court held that the Executive Engineer had been '*specially authorised*' by the Governor to execute the agreement for reference to arbitration.

(3) The last requirement is that such a contract must be expressed in the name of the President or the Governor, as the case may be. Thus, even though such a contract is made by an officer authorised by the Government in this behalf, it is still not enforceable against the Government if it is not expressed to be made '*on behalf of*' the President or the Governor.

In *Bhikraj Jaipuria*[11], the contracts entered into by the Divisional Superintendent were not expressed to be made on behalf of the Governor-General. Hence, the Court held that they were not enforceable even though they were entered into by an authorised person.

In *Karamshi Jethabhai* v. *State of Bombay*[14], the plaintiff was in possession of a cane farm. An agreement was entered into between the plaintiff and the Government for supply of canal water to the land of the former. No formal contract was entered into in the name of the Governor but two letters were written by the Superintending Engineer. The Supreme Court held that the agreement was not in accordance with the provisions of Section 175(3) of the Government of India Act, 1935 and, consequently, it was void.

Similarly in *D.G. Factory* v. *State of Rajasthan*[15], a contract was entered into by a contractor and the Government. The agreement was

12. AIR 1962 SC 113(118). But ultimately the Court found that the contracts were not expressed to be made on behalf of the Governor-General and hence were unenforceable.
13. AIR 1962 SC 110.
14. AIR 1964 SC 1714.
15. (1970) 3 SCC 874: AIR 1971 SC 141. See also *K.P. Chowdhary* v. *State of*

signed by the Inspector General of Police, in his official status without stating that the agreement was executed 'on behalf of the Governor'. In a suit for damages filed by the contractor for breach of contract, the Supreme Court held that the provisions of Article 299(1) were not complied with and the contract was not enforceable.

(d) Effect of non-compliance

The provisions of Article 299(1) are mandatory and not directory and they must be complied with. They are not inserted merely for the sake of form, but to protect the Government against unauthorised contracts. If, in fact, a contract is unauthorised or in excess of authority, the Government must be safeguarded from being saddled with liability to avoid public funds being wasted. Therefore, if any of the aforesaid conditions is not complied with, the contract is not in accordance with law and the same is not enforceable by or against the Government[16]. Formerly, the view taken by the Supreme Court was that in case of non-compliance with the provisions of Article 299(1), a suit could not be filed against the Government as the contract was not enforceable, but the Government could accept the liability by ratifying it.[17] But in *Mulamchand* v. *State of M.P.*[18], the Supreme Court held that if the contract was not in accordance with the constitutional provisions, in the eye of law, there was no contract at all and the question of ratification did not arise. Therefore, even the provisions of Section 230(3) of the Indian Contract Act, 1872[19] would not apply to such a contract and it could not be enforced against the government officer in his personal capacity.

M.P., AIR 1967 SC 203.

16. *Bhikraj Jaipuria*, (*supra*); *B.K. Mondal*, (*infra*); *K.P. Chowdhary* v. *State of M.P.*, AIR 1967 SC 203; *New Marine Coal Co.* v. *Union of India*, AIR 1964 SC 152; *Chatturbhuj*, (*supra*) at p. 243 (AIR).

17. *Chatturbhuj*, (*infra*), *B.K. Mondal*, (*infra*); *Laliteshwar Prasad* v. *Bateshwar Prasad*, AIR 1966 SC 580; *K.C. Thapar*, (*supra*);
Section 196 of the Indian Contract Act, 1872 reads:
"Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify then, the same effects will follow as if they had been performed by his authority."

18. AIR 1968 SC 1218.

19. Section 230 reads:
"In absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them."
Such a contract shall be presumed to exist in the following cases:
(1) & (2) * * *
(3) Where the principal, though disclosed cannot be sued."

(e) Effect of valid contract

If the provisions of Article 299(1) are complied with, the contract is valid and it can be enforced by or against the Government and the same is binding on the parties thereto[20]. Article 299(2) provides that neither the President nor the Governor shall be personally liable in respect of any contract executed for the purpose of the Constitution or for the purpose of any enactment relating to the Government of India. It also grants immunity in favour of a person making or executing any such contract on behalf of the President or the Governor from personal liability.

(f) Quasi-contractual liability: Doctrine of unjust enrichment

As discussed above, the provisions of Article 299(1) of the Constitution [Section 175(3) of the Government of India Act, 1935] are mandatory and if they are not complied with, the contract is not enforceable in a court of law at the instance of any of the contracting parties. In these circumstances, with a view to protecting innocent persons, courts have applied the provisions of Section 70 of the Indian Contract Act, 1872 and held the Government liable to compensate the other contracting party on the basis of quasi-contractual liability. What Section 70 provides is that if the goods delivered are accepted or the work done is voluntarily enjoyed, then the liability to pay compensation for the enjoyment of the said goods or the acceptance of the said work arises. Thus, where a claim for compensation is made by one person against another under Section 70, it is not on the basis of any subsisting contract between the parties, but on the basis of the fact that something was done by one party for the other and the said work so done has been voluntarily accepted by the other party[21]. Thus, Section 70 of the Contract Act prevents 'unjust enrichment'. This doctrine is explained by Lord Wright in *Fobrosa* v. *Fairbairn*[22] in the following words:

> "[A]ny civilised system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is, to prevent a man from retaining the money of, or some benefit derived from, another which is against conscience that he should keep. Such remedies in English Law are generally different from remedies in contract or in tort, and are now recognised to fall within

20. *State of Bihar* v. *Abdul Majid*, AIR 1954 SC 245; *State of Assam* v. *K.P. Singh*, AIR 1953 SC 309.
21. *Chatturbhuj*, (*supra*) at p. 301; *B.K. Mondal*, (*infra*); *Mulamchand*, (*supra*).
22. (1942) 2 All ER 122: (1943) AC 32.

a third category of the common law which has been called quasi-contract or restitution.''[23]

The doctrine applies as much to corporations and the Government as to private individuals. The provision of Section 70 may be invoked by the aggrieved party if the following three conditions are satisfied. The first condition is that a person should lawfully do something for another person or deliver something to him. The second condition is that in doing the said thing or delivering the said thing he must not intend to act gratuitously; and the third is that the other person for whom something is done or to whom something is delivered must enjoy the benefit thereof. If these three conditions are satisfied, Section 70 imposes upon the latter person the liability to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Thus, in *State of W.B.* v. *B.K. Mondal*[24], at the request of a government officer, the contractor constructed a building. The possession was obtained by the officer and the building was used by the Government, but no payment was made to the contractor. It was contended that as the provisions of Article 299(1) of the Constitution had not been complied with, the contract was not enforceable. The Supreme Court held that the contract was unenforceable but the Government was liable to pay to the contractor under Section 70 of the Indian Contract Act, 1872 on the basis of quasi-contractual liability. Gajendragadkar, J. (as he then was) rightly stated: ''In a sense it may be said that Section 70 should be read as supplementing the provisions of Section 175(3) of the Act.''[25]

(g) Conclusions

It is submitted that the following observations of Bose, J.[26] lay down correct law on the point: ''We feel that some reasonable meaning must be attached to Art. 299(1). We do not think the provisions were inserted for the sake of mere form. We feel they are there to safeguard Government against unauthorised contracts. If in fact a contract is unauthorised or in excess of authority it is right that Government should be safeguarded. On the other hand, an officer entering into a contract on behalf of Government can always safeguard himself by having recourse to the proper form.

23. *Id.* at p. 135 (AER); see also *Mulamchand* v. *State*, (*supra*).
24. AIR 1962 SC 779: 1964 Supp (1) SCR 876.
25. *Id.* at p. 789 (AIR). See also *Mulamchand* v. *State of M.P.*, (supra); *Piloo Dhunjishaw* v. *Mun. Corpn., Poona*, (1970) 1 SCC 213: AIR 1970 SC 1213; *Hansraj Gupta* v. *Union of India*, (1973) 2 SCC 637: AIR 1973 SC 2724.
26. *Chatturbhuj Vithaldas* v. *Moreshwar Parashram*, AIR 1954 SC 236: 1954 SCR 817.

In between is a large class of contracts, probably by far the greatest in numbers, which, though authorised, are for one reason or other not in proper form. *It is only right that an innocent contracting party should not suffer because of this and if there is no other defect or objection we have no doubt Government will always accept the responsibility. If not, its interests are safeguarded as we think the Constitution intended that they should be.*"[27] (emphasis supplied)

(h) Contractual liability and writ jurisdiction

If a person enters into a contract with the Government and is entitled to certain benefits thereunder, he can approach a court of law. The question, however, is as to whether he can file a petition under Article 32 or under Article 226 of the Constitution of India. In *R.K. Agarwal* v. *State of Bihar*[28], the Supreme Court classified cases of breach of contract in three categories:

(*i*) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(*ii*) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Acts or Rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(*iii*) Where the contract entered into between the State and the person aggrieved is not statutory but purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

The first type of obligations were held to be enforceable under Article 226 of the Constitution by applying the doctrine of promissory estoppel.

The second category covers those cases where the contract is entered into between an individual and the State in the exercise of some statutory power. In these cases, the breach complained of is of a statutory obligation. In such cases, an action of public authority is challenged and hence, a petition is maintainable.

27. *Chatturbhuj Vithaldas* v. *Moreshwar Parashram*, AIR 1954 SC 236, 243: 1954 SCR 817.
28. (1977) 3 SCC 457: AIR 1977 SC 1496.

With regard to the third category of cases, the rights of the parties flow from mere terms of the contract entered into by the State and a party to such contract cannot invoke writ jurisdiction of the Supreme Court under Article 32 or of a High Court under Article 226 of the Constitution of India.

3. TORTIOUS LIABILITY

(a) Doctrine of vicarious liability

Since the State is a legal entity and not a living entity, it has to act through human agency, i.e. through its servants. When we discuss the tortious liability of the State, it is really the liability of the State for the tortious acts of its servants that has to be considered. In other words, it refers to when the State can be held vicariously liable for the wrongs committed by its servants.

Vicarious liability refers to a situation where one person is held liable for act or omission of other person. Winfield[29] explains the doctrine of vicarious liability thus: "The expression 'vicarious liability' signifies the liability which *A* may incur to *C* for damage caused to *C* by the negligence or other tort of *B*. It is not necessary that *A* shall have participated in any way in the commission of the tort nor that a duty owed in law by *A* to *C* shall have been broken. What is required is that *A* should stand in a particular relationship to *B* and that *B*'s tort should be referable in a certain manner to that relationship". Thus, the master may be held liable for the torts committed by his servant in the course of employment.

The doctrine of vicarious liability is based on two maxims:

(*i*) *Respondeat superior* (let the principal be liable); and

(*ii*) *Qui facit per alium facit per se* (he who does an act through another does it himself).

As early as in 1839,[30] Lord Brougham observed:

> "The reason that I am liable is this, that by employing him I set the whole thing in motion; and what he does, being done for my benefit and under my direction, I am responsible for the consequences of doing it."

The doctrine of vicarious liability is based on 'social convenience and rough justice'.[31]

---

29. *The Law of Tort*, 1971, p. 525.

30. *Duncan* v. *Finlater*, (1839) 6 Cl & F 894 (910).

31. Per Lord Pearce in *ICI Ltd.* v. *Shatwell*, (1965) AC 656 (686). *See also* Salmond: *The Law of Torts*, 1973 p. 461; Winfield: *The Law of Tort*, 1971, p. 525.

There is no reason why this doctrine should not be applied to the Crown in respect of torts committed by its servants. In fact, if the Crown is not held vicariously liable for such torts, the aggrieved party, even though it had sustained a legal injury, would be without any effective remedy, inasmuch as the government servant may not have sufficient means to satisfy the judgment and decree passed against him.[32]

(b) English law

In England, under common law, absolute immunity of the Crown was accepted and the Crown could not be sued in tort for wrongs committed by its servants in the course of their employment. The rule was based upon the well-known maxim of English law "the King can do no wrong". In 1863, in *Tobin* v. *R.*[33], the court observed: "If the Crown were liable in tort, the principle (the King can do no wrong) would have seemed meaningless". But with the increase of governmental functions, the immunity afforded to the Crown in tortious liability proved to be incompatible with the demands of justice. The practice of general immunity was very much criticised by Prof. Dicey[34], by the Committee on Ministers' Powers[35] and by the House of Lords in *Adams* v. *Naylor*[36]. Dicey gave what he described as an 'absurd example'. "If the Queen were herself to shoot the P.M. through the head, no Court in England could take cognizance of the act". Really, the meaning of the maxim "the King can do no wrong" would mean "King has no legal power to do wrong." But the English Law never succeeded in distinguishing effectively between the King's two capacities—personal and political.[37] The time had come to abolish the general immunity of the Crown in tort, and in 1947, the Crown Proceedings Act was enacted. This Act placed the Government in the same position as a private individual. Now, the Government can sue and be sued for tortious acts.

32. It should be borne in mind that what we are discussing here is the immunity of the State from the doctrine of vicarious liability and not the immunity of the government servants from his personal liability to compensate the aggrieved party. Of course, some statutes grant such immunity to the government servant in respect of an act done by him in good faith in the official capacity, e.g. S. 40, Indian Arms Act, 1950; S. 159, Bombay Police Act, 1951, etc.
33. (1863) 14 CBNS 505. See also *Feather* v. *R.*, (1865) 6 B & S 257; *Bainbridge* v. *Post Master-General*, (1906) 1 KB 178; *Royster* v. *Cavey*, (1946) 2 All ER 646; *Adams* v. *Naylor*, (1946) 2 All ER 241: (1947) KB 204: (1946) AC 543.
34. *Law and the Constitution*, 10th Edn., pp. 24-26.
35. Cmd. 4060 (1932), p. 112.
36. (1946) AC 543: (1947) KB 204: (1946) 2 All ER 241.
37. Wade: *Administrative Law*, 1994, p. 821.

(c) Indian law

(i) General

So far as Indian law is concerned, the maxim "the King can do no wrong" was never fully accepted. Absolute immunity of the Government was not recognised in the Indian legal system even prior to the commencement of the Constitution and in a number of cases, the Government was held liable for tortious acts of its servants.

(ii) Constitutional provisions

Under Article 294(*b*) of the Constitution, the liability of the Union Government or a State Government may arise 'out of any contract *or otherwise*'. The word '*otherwise*' suggests that the said liability may arise in respect of tortious acts also. Under Article 300(1), the extent of such liability is fixed. It provides that the liability of the Union of India or a State Government will be the same as that of the Dominion of India and the Provinces before the commencement of the Constitution. It is, therefore, necessary to discuss the liability of the Dominion and the Provinces before the commencement of the Constitution of India.

(iii) Sovereign and non-sovereign functions

(A) Before commencement of Constitution

The English law with regard to immunity of the Government for tortious acts of its servants is partly accepted in India also. As observed by the High Court of Calcutta in *Steam Navigation Co.*[38], 'as a general rule this is true, for it is an attribute of sovereignty, and a universal law that a State cannot be sued in its own courts without its consent'. Thus, a distinction is sought to be made between 'sovereign functions' and 'non-sovereign functions' of the State. In respect of the former, the State is not liable in tort, while in respect of the latter, it is. Let us try to understand the distinction between sovereign and non-sovereign functions with reference to some concrete cases on the point:

Peninsular and Oriental Steam Navigation Co. v. *Secretary of State*[39] is considered to be the first leading case on the point. In this case, a servant of the plaintiff-company was taking a horse-driven carriage belonging to the company. While the carriage was passing near the government dockyard, certain workmen employed by the Government, negligently dropped an iron piece on the road. The horses were startled and one of them was injured. The plaintiff-company filed a suit against

38. *Peninsular and Oriental Steam Navigation Co.* v. *Secretary of State*, (1861) 5 Bom HCR App 1.

39. (1861) 5 Bom HCR App 1.

the defendant and claimed Rs 350 as damages. The defendant claimed immunity of the Crown and contended that the action was not maintainable. The High Court of Calcutta held that the action against the defendant was maintainable and awarded the damages. The court pronounced:

> "There is a great and clear distinction between acts done in the exercise of what are usually termed as sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them."

Holding the Government liable, the court further observed: "The Secretary of State is liable for damages occasioned by the negligence of servants in the service of Government, if the negligence is such as would render an ordinary employer liable."[40]

From the aforesaid observations of the court, it is clear that the court classified the acts of the Secretary of the State into two categories — (*i*) sovereign acts; and (*ii*) non-sovereign acts. In respect of the former category of acts, the Secretary of State was not liable, but in respect of the latter category of acts, he was. As the impugned act fell within the second category, the action was maintainable.

(*B*) *After commencement of Constitution*

In *State of Rajasthan* v. *Vidhyawati*[41], a jeep was owned and maintained by the State of Rajasthan for the official use of the Collector of a district. Once the driver of the jeep was bringing it back from the workshop after repairs. By his rash and negligent driving of the jeep a pedestrian was knocked down. He died and his widow sued the driver and the State for damages. A Constitution Bench of the Supreme Court held the State vicariously liable for the rash and negligent act of the driver. The court after referring to the *Steam Navigation Co.* did not go into the wider question as to whether the act was a sovereign act or not. But it held that the rule of immunity based on the English law had no validity in India. After the establishment of a Republican form of Government under the Constitution there was no justification in principle or in public interest, that the State should not be held liable vicariously for the tortious acts of its servants.

It is submitted that the law has been rightly laid down by the Supreme Court in *Vidhyawati*. Unfortunately, however, within a very short time, a clear departure was made in *Kasturi Lal*[42] and the efficacy of the law

40. (1861) 5 Bom HCR APP 1, 14-15.
41. AIR 1962 SC 933 (940).
42. *Kasturi Lal* v. *State of U.P.*, AIR 1965 SC 1039: (1965) 1 SCR 375.

laid down in *Vidhyawati* was considerably watered down by the Supreme Court.

In *Kasturi Lal* v. *State of U.P.*,[43] a certain quantity of gold and silver was attached by police authorities from one *R* on suspicion that it was stolen property. It was kept in Government *malkhana* which was in the custody of a Head Constable. The Head Constable misappropriated the property and fled to Pakistan. *R* was prosecuted but acquitted by the court. A suit for damages was filed by *R* against the State for the loss caused to him by the negligence of police authorities of the State. The suit was resisted by the State. Following the ratio laid down in *Steam Navigation Co.*, the Supreme Court held that the State was not liable as police authorities were exercising 'sovereign functions'. Speaking for a Constitution Bench of the court, Gajendragadkar, C.J. observed:

> "If a tortious act is committed by a public servant and it gives rise to a claim for damages, the question to ask is: Was the tortious act committed by the public servant in discharge of statutory functions which are referable to, and ultimately based on, the delegation of the sovereign powers of the State to such public servant? If the answer is in the affirmative, the action for damages for loss caused by such tortious act will not lie. On the other hand, if the tortious act has been committed by a public servant in discharge of duties assigned to him not by virtue of the delegation of any sovereign power, an action for damages would lie."[44]

Distinguishing *Vidyawati*, the court held that; "when the government employee was driving the jeep car from the workshop to the Collector's residence for the Collector's use, he was employed on a task or an undertaking which cannot be said to be referable to, or ultimately based on, the delegation of sovereign or governmental powers of the State.... In fact, the employment of a driver to drive the jeep car for the use of a civil servant is itself an activity which is not connected in any manner with the sovereign power of the State at all. *That is the basis on which the decision must be deemed to have been founded...*"[45] (emphasis supplied). Thus, as observed by the Supreme Court in a subsequent case[46]: "the shadow of sovereign immunity still haunts the private law, primarily, because of absence of legislation."

43. AIR 1965 SC 1039: (1965) 1 SCR 375.
44. *Id.* at p. 1046 (AIR).
45. *Id.* at p. 1048 (AIR).
46. *Nagendra Rao* v. *State of A.P.*, (1994) 6 SCC 205 (226).

It appears that the Supreme Court itself was satisfied that *Kasturi Lal* did not lay down correct proposition of law and in these circumstances, in subsequent cases either the court did not refer *Kasturi Lal* at all or *conveniently* distinguished it by describing it as 'not relevant'.

Thus, in *State of Gujarat* v. *Memon Mahomed Haji Hasan*[47], certain goods of the respondent were seized by the Customs Authorities under the provisions of the Customs Act, 1962, *inter alia* on the ground that they were smuggled goods. An appeal was filed against that order by the respondent. During the pendency of the appeal the goods were disposed of under an order passed by the Magistrate. The appeal filed by the respondent was allowed and the order of confiscation was set aside and the authorities were directed to return the goods. In an action against the Government, the Supreme Court held that the Government was in a position of a bailee and was, therefore, bound to return the goods. The court observed:

> "Just as a finder of property has to return it when its owner is found and demands it, so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, *the position of the State Government until the order became final would be that of a bailee.*"[48]
>
> (emphasis supplied)

The same view was again reiterated by the Supreme Court in *Basavva Patil* v. *State of Mysore*[49]. It is, however, worthwhile to note that in *Basavva Patil*, the court did not refer to any of the three cases, namely: *Vidhyawati*, *Kasturi Lal* or *Memon Mahomed*. In *Basavva Patil*, some ornaments were stolen from the house of the appellant. They were recovered by the police authorities in the course of investigation and produced before the criminal court. The goods were retained by the police authorities under the order of the court. The goods were, however, stolen from police custody before the disposal of the case. After the final disposal of the criminal proceedings, the appellant applied under the Code of Criminal Procedure, 1898[50], for return of the ornaments or their equivalent value. The application of the appellant was rejected by the Magis-

47. AIR 1967 SC 1885: (1967) 3 SCR 938.
48. *Id.* at p. 1889 (AIR).
49. (1977) 4 SCC 358: AIR 1977 SC 1749.
50. S. 517.

trate on the ground that the goods had not reached the custody of the court. The said order was confirmed by the Sessions Court and the High Court of Mysore. The Supreme Court set aside the orders passed by the courts below and ordered the State to pay cash equivalent of the property to the appellant.

It is true that in this case, the application was filed under the Code of Criminal Procedure and thus, the proceedings were criminal in nature, but in almost similar circumstances in *Kasturi Lal* the civil action failed on the ground that the act involved was a 'sovereign function'. It is also important to note that *Kasturi Lal* was not even referred to by the Supreme Court, though the High Court[51] had decided the matter relying on *Kasturi Lal*.

A reference may also be made to a decision of the Supreme Court in *Nagendra Rao* v. *State of A.P.*[52] In that case, certain goods were ordered to be confiscated. Confiscation having been set aside, the appellant sued for return of goods or for realisation of price. The trial court decreed the suit but the High Court set aside the decree. The appellant approached the Supreme Court.

Allowing the appeal and setting aside the judgement of the High Court, the Supreme Court held that when the confiscation was held to be illegal, the appellant was entitled to the price of the goods with interest thereon. Referring to *Memon Mahomed Haji, B.K.D. Patil* and several English and Indian decisions, the Court observed that sovereign immunity cannot be a defence where the State is involved in commercial activities nor it can apply where its officers are guilty of interfering with life and liberty of a citizen not warranted by law. In such cases, the State is vicariously liable and morally, legally and constitutionally bound to compensate and indemnify the wronged person.

The Court also stated that distinction between sovereign and non-sovereign power no more exists. It all depends on the nature of the power and manner of its exercise. No civilised 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. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modern jurisprudential thinking. The demarcating line between sovereign and

51. *Basavva Patil* v. *State*, 1971 Cr LJ 566 (Mys); *see also* B.B. Pande: "*Governmental Liability for the Goods lost in Custody*"; (1977) 4 SCC (Jour.), p. 13.
52. (1994) 6 SCC 205.

non-sovereign powers for which no rational basis survives has largely disappeared. *Since the doctrine has become outdated and sovereignty now vests in the people, the State cannot claim any immunity and if a suit is maintainable against the officer personally, there is no reason to hold that it would not be maintainable against the State.*[53]

(emphasis supplied)

(iv) Test

From the above discussion, the principle which emerges is that if the function involved is a 'sovereign function', the State cannot be held liable in tort, but if it is a 'non-sovereign function', the State will be held liable. But the difficulty lies in formulating a definite test or criterion to decide to which category the act belongs. In fact, it is very difficult to draw a distinction between the two. "The watertight compartmentalisation of the State's functions into sovereign and non-sovereign or governmental and non-governmental is unsound and highly reminiscent of the *laissez faire* era."[54]

Thus, on the one hand, it could have been argued in *Kasturi Lal*, that the act of keeping another's goods was that of a bailment, which could be undertaken by a private person also and in fact, in *Memon Mahomed* on similar facts, the impugned act was held to be a bailment. On the other hand, in *Vidhyawati*, it could have been argued that as the vehicle was maintained for the use of a Collector, who was an administrator and also a District Magistrate and had police duties to perform, it was a 'sovereign function'.[55]

The test whether the act in question could have been performed only by the Government or also by a private individual is also not helpful in deciding the issue. In a welfare State, the governmental functions have increased and today, not all the functions performed by the Government are sovereign functions; e.g. commercial activities like the running of the Railways.

It is also said that if the act in question is statutory, it may be regarded as a sovereign function, but it is a non-sovereign function if it is non-statutory. But this test is also defective. An activity may be regarded as sovereign even though it has no statutory basis (power to enter into a treaty with a foreign country) and conversely, it may be regarded as

53. (1994) 6 SCC 205(235-36).

54. Alice Jacob: "*Vicarious Liability of Government in Torts*", 1965, 7 JILI p. 246 (247); see also *Nagendra Rao* v. *State of A.P.*, (1994) 6 SCC 205 (235).

55. Jain and Jain: *Principles of Administrative Law*, 1986, p. 775.

non-sovereign even though it has a statutory basis (running of Railways).[56]

Moreover, sometimes a particular act may be held to be a sovereign function by one court but non-sovereign by another. For example, running of the Railways was held to be a sovereign function by the High Court of Bombay,[57] but non-sovereign by the High Court of Calcutta[58] and this may lead to further uncertainty in law.

Further, the traditional doctrine of sovereign immunity has no relevance in the modern age when the concept of sovereignty itself has undergone drastic change. The old and archaic concept of sovereignty no longer survives. Sovereignty now vests in the people. Hence, even such actions of the Government which are solely concerned with relations between two independent States are now amenable to scrutiny by courts.[59]

Sometimes the distinction between sovereign and non-sovereign functions is categorised as regal and non-regal functions. The former is confined to legislative, executive and judicial power whereas the latter can be characterised as analogous to private company. In the former, the Government is not liable but in the latter, it is liable.[60]

Again, the concept of public interest has also undergone change. No legal or political system today can place the State above law and can deprive its citizens of life, liberty or property by negligent acts of its officers without providing any remedy.[61]

Even if the governmental functions can be classified into one or the other category, the principle is unsatisfactory from yet another viewpoint. Generally in a civil action in tort, the principal idea is to compensate the aggrieved person and not to penalize the wrongdoer or his master. And if in compensating the aggrieved party, the wrongdoer or his master has to pay damages, the resultant burden on the latter is merely incidental and not by way of penalty. It is, therefore, absurd and really inhumane to hold that the Government would not be liable if a military truck supplying meals to military personnel struck a citizen, but it would be liable

56. *Id.*, see also *Assn. Pool* v. *Radhabai*, AIR 1976 MP 164; *Satya Narain* v. *Distt. Engineer*, AIR 1962 SC 1161.
57. *Bata Shoe Co.* v. *Union of India*, AIR 1954 Bom 129.
58. *Maharaja Bose* v. *G.G.-in-Council*, AIR 1952 Cal 242; Ultimately, in *Union of India* v. *Ladulal Jain*, the Supreme Court held it to be a non-sovereign function, AIR 1963 SC 1681; see also *Satya Narain* v. *Distt. Engineer*, AIR 1962 SC 1161; *Shyam Sunder* v. *State of Rajasthan*, (1974) 1 SCC 690: AIR 1974 SC 890.
59. *Nagendra Rao* v. *State of A.P.*, (1994) 6 SCC 205, 227, 234.
60. *Id.* at p. 234 (SCC).
61. *Id.* at p. 235 (SCC).

if such an accident occurred when the truck carried coal to an army headquarters.

(*v*) ***Conclusions***

Recent judicial trend is, undoubtedly, in favour of holding the State liable in respect of tortious acts committed by its servants. In cases of police brutalities, wrongful arrest and detention, keeping the undertrial prisoners in jail for long periods, committing assault or beating up prisoners, etc. the courts have awarded compensation to the victims or to the heirs and legal representatives of the deceased. As a matter of fact, the courts have severely criticised the inhuman attitude adopted by the State officials.[62]

So far as *Kasturi Lal* is concerned, it was a case decided by a Bench of five Judges and all earlier as well as subsequent cases were decided by a Bench of less than five Judges. In these circumstances, *Kasturi Lal* could not be overruled and though technically it can be said to be a *good law*, looking to *Memon Mahomed, Basavva Patil, Nagendra Rao* and other cases, it is clear that the *ratio* laid down in *Kasturi Lal* is watered down substantially.

The Law Commission also stated: "The old distinction between sovereign and non-sovereign functions should no longer be invoked to determine liability of the State."[63]

Prof. Friedman also stated: "It is increasingly necessary to abandon the lingering fiction of a legally indivisible State, and of a feudal conception of the Crown, and to substitute for it the principle of legal liability where the State, either directly or through incorporated public authorities engages in activities of a commercial, industrial or managerial character. *The proper test is not an impracticable distinction between governmental or non-governmental functions but the nature and form of the activity in question.*[64] (emphasis supplied)

It is submitted that the following observations of the Law Commission lay down correct proposition of law:

> "There is no convincing reason why the Government should not place itself in the same position as a private employer subject to the same rights and duties as are imposed by statute."[65]

---

62. For decided cases, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 601-04.
63. Law Commission of India: First Report, 1956 (*Liability of the State in Tort*), pp. 35-36. *See also* observations of Mathew, J. in *Shyam Sunder* v. *State*, (1974) 1 SCC 690 (695): AIR 1974 SC 890 (893-94).
64. Cited in *Nagendra Rao* v. *State of A.P.* (*supra*), at p. 240 (SCC).
65. Law Commission of India: First Report, 1956, (*Liability of the State in Tort*),

4. WHETHER STATE IS BOUND BY STATUTE

(a) General

As discussed in preceding lectures, the governmental functions have increased. Today, the State performs not only the 'law and order' functions, but as a 'Welfare State', it performs many non-sovereign and commercial activities also. The important question therefore arises, whether the State is subject to the same rights and liabilities which the statute has imposed on other individuals. In other words, whether the State is bound by a statute, and if it is, to what extent the provisions of a statute can be enforced against the State. Let us discuss this point with reference to English law and then Indian law.

(b) English law

According to the general principles of common law, 'no statute binds the Crown unless the Crown was expressly named therein'.[65] But the aforesaid rule is subject to one exception. As it has often been said, the Crown may be bound by a statute 'by necessary implication'.[67] Thus, as Wade[68] states, 'an Act of Parliament is presumed not to bind the Crown in the absence of express provision or necessary implication'. In England, the Crown enjoys the common law privilege and it is not bound by a statute, unless 'a clear intention to that effect appears from the statute itself or from the express terms of the Crown Proceedings Act, 1947'. This principle is based on the well-known maxim 'the King can do no wrong'. In theory, it is inconceivable that the statute made by the Crown for its subjects could bind the Crown itself. This general principle of the common law is preserved even under the provisions of the 1947 Act.[69]

(c) Indian law

The above principle of common law was accepted in India and applied in some cases.

Province of Bombay v. *Municipal Corpn. of the City of Bombay*[70] is the leading case on the point before independence. The Corporation of Bombay wanted to lay water mains through land which belonged to the Government. The Government agreed to the said proposal upon certain

---

p. 36. *See also* observations of Mathew, J. in *Shyam Sunder* v. *State*, (1974) 1 SCC 690 (695): AIR 1974 SC 890 (893-94).

66. "*Roy n'est lie per ascum statute si il ne soit expressment nosme.*"
67. *Province of Bombay* v. *Municipal Corpn. of the City of Bombay*, AIR 1947 PC 34: (1947) AC 58: 73 IA 271 (PC).
68. *Administrative Law*, (1994), p. 839.
69. S. 40(2)(*f*) Crown Proceedings Act, 1947.
70. AIR 1947 PC 34: (1947) AC 58: 73 IA 271 (PC).

conditions. The said land was acquired by the Crown under the provisions of the Municipal Act. Under the provisions of the Municipal Act, the municipality had power 'to carry water mains within or without the city'. The question was whether the Crown was bound by the statute, viz. the Municipal Act. Following the English law, the Privy Council held that the Government was not bound by the statute.

In *Director of Rationing* v. *Corpn. of Calcutta*[71] — (*Corpn. of Calcutta I*), the Director of Rationing of the Food Department, West Bengal used certain premises for storing rice, flour, etc. Though under the relevant Act a licence was required to be taken from the Corporation of Calcutta for such premises, it was not taken by the Director. He was, therefore, prosecuted by the Corporation. The question before the Supreme Court was whether the State was bound by the statute. The Court by a majority of 4: 1 held that the Director was not liable as 'the State is not bound by a statute, unless it is so provided in express terms or by necessary implication'.

Wanchoo, J. (as he then was), however, did not agree with the majority view. In a dissenting judgment, His Lordship observed:

> "In our country the Rule of Law prevails and our Constitution has guaranteed it by the provisions contained in Part III thereof as well as by other provisions in other parts. It is to my mind inherent in the conception of the Rule of Law that the State, no less than its citizens and others, is bound by the laws of the land. When the King as the embodiment of all power — executive, legislative and judicial — has disappeared, and in our Constitution, sovereign power has been distributed among various organs created thereby, it seems to me that there is neither justification nor necessity for continuing rule of construction based on the royal prerogative."[72]

In *Superintendent and Remembrancer of Legal Affairs, W.B.* v. *Corpn. of Calcutta* (*Corporation of Calcutta II*)[73], the State was carrying on the trade of a daily market without obtaining a licence as required by the relevant statute. The Corporation filed a complaint against the State. When the matter came up for hearing before the Supreme Court, the point was already covered by the judgment of the court in *Corporation of Calcutta I*. The Supreme Court was called upon to decide the correctness or otherwise of the aforesaid decision in *Corporation of Calcutta I*. By a majority of 8: 1, the decision in *Corporation of Calcutta I* was overruled and it was held that the State was bound by the statute.

71. AIR 1960 SC 1355: (1961) 1 SCR 158.
72. *Id.* at pp. 1365-66 (AIR).
73. AIR 1967 SC 997.

It is submitted that the majority view is correct and is in consonance with the doctrine of Rule of Law and Equality enshrined in the Constitution of India. We have no Crown. The archaic rule based on Royal prerogative and perfection of the Crown has no relevance to a democratic republic like India. The Law Commission has also suggested that the common law rule should not be followed in India.[74] Even in England, its survival is 'due to little but the *vis intertiae*'[75].

5. DOCTRINE OF PUBLIC ACCOUNTABILITY

(a) General

The concept of public accountability is a matter of vital public concern. All the three organs of the government, viz. legislature, executive and judiciary are subject to public accountability.

(b) Doctrine explained

It is settled law that all discretionary powers must be exercised reasonably and in larger public interest. Before more than hundred years, in *Henly* v. *Lyme Corpn.*,[76] Best, C.J. stated;

> "Now I take it to be perfectly clear, that if a public officer, abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer. *The instances of this are so numerous that it would be a waste of time to refer to them.*"
>
> (emphasis supplied)

(c) Illustrative cases

In various cases, the Supreme Court has applied this principle by granting appropriate relief to aggrieved parties or by directing the defaulter to pay damages, compensation or costs to the person who has suffered. Thus, in case of defective construction of houses by statutory authorities, a complaint made by 'consumer' regarding use of substandard material and delay in delivering possession was held maintainable and the instrumentality of State was held liable to pay compensation.[77] Again, when illegal and unauthorised electric supply resulted in breaking of fire causing death and destruction of property, it was held that the administration was liable to pay compensation.[78] Very recently, in *Arvind Dat-*

74. Law Commission of India: (First Report), 1956, pp. 31-35.
75. *Corpn. of Calcutta I.* (*supra*): at p. 1365 (AIR).
76. (1858) 5 Bing 91: 130 ER 995.
77. *Lucknow Development Authority* v. *M.K. Gupta*, (1994) 1 SCC 243: AIR 1994 SC 787.
78. *Harvinder Chaudhary* v. *Union of India*, (1996) 8 SCC 80.

tatraya v. *State of Maharashtra*,[79] the Supreme Court set aside an order of transfer of a police officer observing that the action was not taken in public interest but was a case of victimisation of an honest officer at the behest of persons interested to target such officials. "It is most unfortunate that the Government demoralises the officers who discharge their duties honestly and diligently and brings to book the persons indulging in black marketing and contrabanding liquor."

(d) Personal liability

A breach of duty gives rise in public law to liability which is known as "misfeasance in public office". Exercise of power by ministers and public officers must be for public good and to achieve welfare of public at large. Wherever there is abuse of power by an individual, he can be held liable. An action cannot be divorced from the actor. A public officer who abuses his official position can be directed to pay compensation, damages or costs.[80]

In *Common Cause, A Registered Society* v. *Union of India*,[81] the Petroleum Minister made allotment of petrol pumps arbitrarily in favour of his relatives and friends. Quashing the action, the Supreme Court directed the Minister to pay fifty lakh rupees as exemplary damages to public exchequer and fifty thousand rupees towards costs.

In *Shiv Sagar Tiwari* v. *Union of India*,[82] allotment of shops/stalls was made by the Housing Minister 'out of quota' to her kith and kin. The Supreme Court not only set aside the allotment but also ordered the Minister to pay sixty lakh rupees to Government Exchequer.

It is submitted that in *Lucknow Development Authority* v. *M.K. Gupta*,[83] after referring to various decisions, the Supreme Court rightly stated:

> "When the court directs the payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment

79. (1997) 6 SCC 169.
80. *Henly* v. *Lyme Corpn.*; *Lucknow Development Authority* v. *M.K. Gupta*, supra; *Shiv Sagar Tiwari* v. *Union of India*, infra; *Jaipur Development Authority* v. *Daulat Mal Jain*, (1997) 1 SCC 35.
81. (1996) 6 SCC 528, 593: AIR 1996 SC 3081, 3538.
82. (1996) 6 SCC 599.
83. (1994) 1 SCC 243(264): AIR 1994 SC 787.

or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

But at the same time, personal liability should be imposed on erring officers only after giving notice and affording reasonable opportunity of hearing. Such an action should not be taken lightly and it should not be counter-productive deterring public officers from discharging their duties in accordance with law and in desisting to persue genuine cases of public welfare having far reaching effect on public administration.[84]

(e) Limitations

The power of judicial review, however, must be exercised cautiously and with circumspection. A court of law should not act as an appellate authority over the actions taken by the government or instrumentalities of State. It cannot interfere with policy decisions. In *G.B. Mahajan* v. *Jalgaon Municipal Council*,[85] it was contended that the project undertaken by the local authority was 'unconventional'. Repelling the contention, the Supreme Court stated that the test should not be whether the project was 'unconventional' but whether it was 'impermissible'. There must be a degree of public accountability in all government actions, but the extent and scope of judicial review differ in exercise of such power. The administration cannot be deprived of its power of "right to trial and error" so long as it exercises that power bonafide and within the limits of its authority.[86]

(f) Judicial accountability

The doctrine of public accountability applies to judiciary as well. Every organ of the government is subject to criticism for its flaws and drawbacks and judicial institution is not an exception to it. An essential requirement of justice is that it should be dispensed as quickly as possible. It has been rightly said: "Justice delayed is justice denied." Delay in disposal of cases can, therefore, be commented. Whereas comments and criticisms of judicial functioning, on matters of principle, are

84. *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91(94): AIR 1991 SC 1153.

85. (1991) 3 SCC 91(94): AIR 1991 SC 1153.

86. *Sheela Barse* v. *Union of India*, (1988) 4 SCC 226: AIR 1988 SC 2211.

healthy aids for introspection and improvement, the functioning of the Court in relation to a particular proceeding is not permissible.[87]

(g) Conclusions

All actions of the State and its instrumentalities must be towards the objectives set out in the Constitution. Every step of the government should be in the direction of democratic traditions, social and economic development and public welfare.

The concern of public law is to discipline the public power by forging "legal techniques as part of the way in which public power is made operational and part of the process through which it is attempted to render such public power legitimate and to think of issues of legal regulation of public power in a way that goes deeper than particular instances and elaborate issues of general principle".

The constitutional courts exercise power of judicial review with constraint to ensure that the authorities on whom such power is entrusted under the rule of law exercises it honestly, objectively and for the purpose for which it is intended to be exercised.

It is submitted that while exercising the power of judicial review, the following observations in the nature of warning by an eminent jurist[88] must always be kept in view:

> "This court has the power to prevent an experiment. . . . But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles."

6. DOCTRINE OF ESTOPPEL

(a) Meaning

The doctrine of promissory or equitable estoppel is well settled in administrative law. It represents a principle evolved by equity and avoids injustice. Wade[89] states: "The basic principle of estoppel is that a person who by some statement or representation of fact causes another to act to his detriment in reliance on the truth of it is not allowed to deny it later, even though it is wrong. *Justice here prevails over truth*" (emphasis supplied). Garner[90] also states: "A person may be precluded ('estopped') in legal proceedings from denying the existence of some state of fact the existence of which he has previously asserted (by words or conduct),

87. *G.B. Mahajan* v. *Jalgaon Municipal Council*, (*supra*).
88. Brandies, J. in *New State Ice Comp.* v. *Ernest*, 285 US 262(311). See also *G.B. Mahajan* v. *Jalgaon Municipal Council*, (*supra*).
89. *Administrative Law*, 1994, p. 268.
90. *Administrative Law*, 1985, p. 119.

intending the other party to the proceedings to rely on the assertion, and in reasonable reliance on which that other person has, in fact, acted to his detriment. Though the facts asserted may be untrue, the principle of estoppel may make them unchallengeable."

(b) Nature and scope

Estoppel is often described as a rule of evidence, but more correctly it is a principle of law. Though commonly named as promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. *The basis of this doctrine is equity. It is invoked and applied to aid the law in administration of justice. But for it great many injustices may have been perpetrated.*[91] (emphasis supplied)

(c) Illustration

This principle is embodied in Section 115 of the Indian Evidence Act, 1872. It provides: "When one person by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing". The illustration to the section reads as under:

> "*A*, intentionally and falsely leads *B* to believe that certain lands belong to *A*, and thereby induces *B* to buy and pay for it.
>
> The lands afterwards become the property of *A*, and *A* seeks to set aside the sale on the ground that at the time of sale he had no title. He must not be allowed to prove his want of title."[92]

(d) Traditional view

According to the traditional theory, the doctrine of promissory estoppel cannot itself be the basis of an action. It cannot find a cause of action: it can only be a shield and not a sword.

Similarly, as per the traditional view, the doctrine of equitable estoppel or promissory estoppel applies to private individuals only and the Crown is not bound by it. Thus, in *R. Amphitrite* v. *R.*[93], an undertaking was obtained by a ship-owner from the Government to the effect that on certain conditions being fulfilled, the ship would not be detained.

---

91. *Indira Bai* v. *Nand Kishore*, (1990) 4 SCC 668 (670): AIR 1991 SC 1055 (1057); *Canada & Dominion Sugar Co.* v. *Canadian National Steamships Ltd.*, (1947) AC 46 (56); *Hughes* v. *Metropolitan Rly. Co.*, (1877) 2 AC 439 (448). *Pawan Alloys* v. *U.P. State Electricity Board*, (1997) 7 SCC 251 (263-64).

92. *See also* S. 43 of the Transfer of Property Act, 1882; S. 28 of the Indian Partnership Act, 1932.

93. (1921) 3 KB 500: 126 LT 23: 91 LJKB 75.

Relying on this assurance the ship was sent and contrary to the promise, it was detained by the Government. The owner sued on a petition of right for damages. The court dismissed the action and held that the undertaking was not binding on the Government.

(e) Modern view

It is, however, necessary to make it clear that the doctrine of promissory or equitable estoppel is not really based on the principle of estoppel, but it is a doctrine evolved by equity in order to prevent injustice. The doctrine of promissory estoppel need not, therefore, be inhibited by the same limitation as estoppel in the strict sense of the term. It is equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defence.[94]

Likewise, it has now been accepted and the rule of estoppel applies to the Crown as well. There is no justification for not applying this against the Government and exempt it from liability to carry out its promises given to an individual. The Crown cannot escape from its liability saying that the said doctrine does not bind it. Lord Denning[95] has rightly observed:

> "I know that there are authorities which say that a public authority cannot be estopped by any representations made by its officers. But those statements must now be taken with considerable reserve. There are many matters which public authorities can now delegate to their officers. If an officer acting within the scope of his ostensible authority makes a representation on which another acts, then a public authority may be bound by it, just as much as a private concern would be."

(f) Leading cases

Let us consider some leading decisions.

In *Robertson* v. *Minister of Pensions*[96], one *R*, an army officer claimed a disablement pension on account of war injury. The War Office accepted his disability as attributable to Military service. Relying on this assurance *R* did not take any steps which otherwise he would have taken to support his claim. The Ministry thereafter refused to grant the pension.

94. *Central London Property Trust Ltd.* v. *High Trees House Ltd.*, (1947) 1 KB 130: (1946) 1 All ER 256; *Motilal Padampat Sugar Mills* v. *State of U.P.*, (1979) 2 SCC 409 (426): AIR 1979 SC 621.

95. *Lever (Finance) Ltd.* v. *Westminister Corpn.*, (1970) 3 All ER 496 (500): (1971) 1 QB 222 (230).

96. (1948) 2 All ER 767 (770): (1949) 1 KB 227 (231).

The court held the Ministry liable. According to Denning, J., the Crown cannot escape by saying that estoppels do not bind the Crown, for *that doctrine has long been exploded.* (emphasis supplied)

So far as Indian law is concerned, it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognised as affording a cause of action to the person to whom the promise is made. The doctrine has also been applied against the Government and the defence based on executive necessity has been categorically negatived. Before more than a hundred years, that is, long before the doctrine was formulated by Lord Denning, in *High Trees*[94] in England, the High Court of Calcutta applied the said doctrine and recognised a cause of action founded upon it in *Ganges Mfg. Co.* v. *Sourujmull*[97]. The doctrine was also applied against the Government by the High Court of Bombay in the beginning of this century in *Municipal Corpn. of Bombay* v. *Secy. of State*[98].

Union of India v. *Anglo Afghan Agencies*[99] is the classic judicial pronouncement in India on the doctrine of promissory estoppel. In this historic case, 'Export Promotion Scheme' was published by the Textile Commissioner. It was provided in the said scheme that the exporters will be entitled to import raw materials up to 100 per cent of the value of the exports. Relying on this representation, the petitioner exported goods worth rupees 5 lakh. The Textile Commissioner did not grant the import certificate for the full amount of the goods exported. No opportunity of being heard was given to the petitioner before taking the impugned action. The order was challenged by the petitioner. It was contended by the Government that the scheme was merely administrative in character and did not create any enforceable right in favour of the petitioner. It was also argued that there was no formal contract as required by Article 299(1) of the Constitution and, therefore, it was not binding on the Government. Negativing the contentions, the Supreme Court held that the Government was bound to carry out the obligations undertaken in the scheme. Even though the scheme was merely executive in nature and even though the promise was not recorded in the form of a formal contract as required by Article 299(1) of the Constitution, still it was open to a party who had acted on a representation made by the Government

97. ILR (1880) 5 Cal 669: 5 CLR 533.
98. ILR (1905) 29 Bom 580: 7 Bom LR 27.
99. AIR 1968 SC 718: (1968) 2 SCR 366.

to claim that the Government was bound to carry out the promise made by it. Speaking for the Court, Shah, J. (as he then was) stated: "We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment."[1]

The Court further observed:

> "We cannot therefore accept the plea that the Textile Commissioner is the sole judge of the quantum of import licence to be granted to an exporter, and that the courts are powerless to grant relief, if the promised import licence is not given to an exporter who has acted to his prejudice relying upon the representation. *To concede to the Departmental authorities that power would be to strike at the very root of the rule of law.*[2] (emphasis supplied)

Century Spg. and Mfg. Co. v. *Ulhasnagar Municipality*[3] is another leading case decided by the Supreme Court following its earlier pronouncement in *Anglo-Afghan Agencies*. In this case, the petitioner company set up its factory in the 'Industrial Area'. No octroi duty was payable for the goods imported in that area. The State of Maharashtra published a notification constituting with effect from April 1, 1960, a municipality for certain villages including the 'Industrial Area'. On representation being made by the petitioner company and other manufacturers, the State excluded the Industrial Area from the municipal jurisdiction. But in pursuance of the agreement by the municipality that it will not charge octroi for 7 years, the Industrial Area was retained within the municipal limits. Thereafter, before the expiry of 7 years, the municipality sought to levy octroi duty on the petitioner-company. The company's petition challenging the said levy was dismissed by the High Court of Bombay *in limine*. The company approached the Supreme Court. Allowing the appeal, the Court observed: "Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced *ex-contractu* by a person who acts upon the promise: when the law requires that a contract enforceable at law against public body shall be in certain form or be executed in the manner prescribed

1. AIR 1968 SC 718(723).
2. *Id.* at p. 726 (AIR).
3. (1970) 1 SCC 582: AIR 1971 SC 1021.

by statute, the obligations may be enforced against it in appropriate cases in equity."[4]

The Court pronounced:

> "If our nascent democracy is to thrive different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice."[5]

Motilal Padampat Sugar Mills v. *State of U.P.*[6] is one more leading decision on the subject. In that case, the Government of Uttar Pradesh announced that new industrial units in the State would be granted exemption from payment of sales tax for a period of three years. Acting on the above assurance the petitioner established the factory. Later on, however, the Government withdrew the said benefit. The petitioner approached the High Court but failed. Applying the doctrine of estoppel, the Supreme Court allowed the appeal.

Speaking for the Court, Bhagwati, J. (as he then was) stated:

> "It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. *It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel.*"[7]
>
> (emphasis supplied)

Unfortunately, however, a step in the backward direction was taken by the Supreme Court in *Jit Ram* v. *State of Haryana*[8]. In that case, the Municipal Committee of Bahadurgarh had established a *mandi* at Fateh. It was resolved by the municipality in 1916 that the purchasers of the plot in the *mandi* would not be liable to pay octroi duty on the goods imported within the *mandi*. For about fifty years, the exemption continued. However, in 1965, the municipality decided to levy octroi duty

4. *Id.* at p. 586 (SCC): 1024 (AIR).
5. *Id.* at p. 587 (SCC): 1025 (AIR).
6. (1979) 2 SCC 409: AIR 1979 SC 621.
7. *Id.* at p. 442 (SCC): 643 (AIR).
8. (1981) 1 SCC 11: AIR 1980 SC 1285.

and the said action was challenged *inter alia* on the ground of estoppel Virtually dissenting with *Motilal Sugar Mills*, the court rejected the con tention holding that the doctrine of estoppel could not be invoked.

About *Motilal Sugar Mills*, the court observed: "We feel we are i duty bound to express our reservations regarding the 'activist' juris prudence and the wide implications thereof which the learned Judge ha propounded in his judgment."[9]

It is submitted that apart from the fact that *Jit Ram* does not la down correct law on the point, even according to the theory of preceder and judicial propriety also, the Court ought not to have taken a differer view. *Motilal Sugar Mills* was decided by a Division Bench of tw Judges. *Jit Ram* was also placed for hearing before a Bench of tw Judges. In these circumstances, even if the Bench in *Jit Ram* was of th opinion that *Motilal Sugar Mills* was not correctly decided, in fairnes to the earlier Bench and following the general principle of precedent an judicial propriety, it ought to have referred the matter to the larger Bench

It is further submitted that even on merits also, *Jit Ram* had reall put the clock back and was a step in the reverse direction. In Englan as well as in America, the traditional view has now been liberalised. S far as India is concerned, one cannot overlook and ignore the writte Constitution, Fundamental Rights and the Rule of Law. In this view c the matter, if *Motilal Sugar Mills* was decided on the basis of justic equity and morality, one cannot say that it was illegal or improper. Agai if the Government has been treated on par with private individuals s far as legal obligations are concerned, it is really a welcome approac and should be encouraged rather than discouraged or condemned.

It is, therefore, submitted that *Jit Ram* does not lay down corre law.

In *Union of India* v. *Godfrey Phillips India Ltd.*[10], the Central Boa of Excise and Customs granted exemption to certain goods from payme of duty. However, subsequently the said benefit was cancelled. The que tion before the Supreme Court was whether the rule of promissory esto pel was applicable. The Court answered the question in the affirmativ

Regarding *Jit Ram*, Bhagwati, C.J. rightly observed: "We find difficult to understand how a Bench of two Judges in *Jit Ram case* cou possibly overturn or disagree with what was said by another Bench two Judges in *Motilal Sugar Mills case*. If the Bench of two Judges *Jit Ram case* found themselves unable to agree with the law laid down

9. (1981) 1 SCC 11(39): AIR 1980 SC 1285(1303).
10. (1985) 4 SCC 369: AIR 1986 SC 806.

Motilal Sugar Mill case, they could have referred *Jit Ram case* to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a coordinate Bench of the same court in *Motilal Sugar Mills*."[11]

The Court further observed that the law laid down in *Motilal Sugar Mills* was correct and did not approve the observations of *Jit Ram* to the extent that they were contrary to the earlier decision.

Again in *Pawan Alloys* v. *U.P. State Electricity Board*,[12] certain incentives were granted to new industries by a notification. Subsequently, however, those incentives were prematurely withdrawan. The action was challenged by new industries on the basis of doctrine of promissory estoppel. The High Court dismissed the petitions. The petitioners approached the Supreme Court.

Allowing appeals and setting aside the decision of the High Court, the Supreme Court observed, "These new industries which got attracted to this region relying upon the promise had altered their position irretrievably. On these well-established facts the Board can certainly be pinned down to its promise on the doctrine of promissory estoppel."[13]

(g) Estoppel against statute

It should not, however, be forgotten that there cannot be any estoppel against a statute. The doctrine cannot be allowed to operate so as to validate an *ultra vires* act or to override the clear words of a statute nor does it apply to criminal proceedings.[14] The doctrine cannot be used against or in favour of the administration so as to give *de facto* validity to *ultra vires* administrative acts.[15]

Thus, in *Howell* v. *Falmouth Boat Construction Co.*[16], the relevant statute required a licence to do ship repair work. An assurance was given by the designated official that no such licence was necessary. The plaintiff sued for payment of work done by him. It was argued that the work was illegal as no written licence was obtained by him. The Court of

11. *Id.* at p. 387 (SCC): 815 (AIR); see also *Gujarat State Financial Corpn.* v. *Lotus Hotels*, (1983) 3 SCC 379: AIR 1983 SC 848.
12. (1997) 7 SCC 251.
13. *Id.* at pp. 271-72.
14. Wade: *Administrative Law*, 1994, pp. 269-71; Garner: *Administrative Law*, 1985, p. 119; Schwartz: *Administrative Law*, 1985, p. 135; *Minister of Agriculture* v. *Mathews*, (1950) 1 KB 148: (1949) 2 All ER 724.
15. *Ibid.*, see also *Wells* v. *Minister of Housing*, (1967) 1 WLR 1000(1007); *Western Fish Products* v. *Penwith*, (1978) 38 P & CR 7; *Shrijee Sales Corpn.* v. *Union of India*, (1997) 3 SCC 398; *Pawan Alloys* v. *U.P.S.E.B.*, (1997) 7 SCC 251(263-64).
16. (1951) 2 All ER 278: (1951) AC 837.

Appeal decided in favour of the plaintiff on the basis of the doctrine of estoppel. Reversing the judgment of Lord Denning and dismissing the claim of the plaintiff, the House of Lords pronounced:

> "It is certain that neither a Minister nor any subordinate officer of the Crown can by any conduct or representation bar the Crown from enforcing a statutory prohibition or from prosecuting for its breach."[17]

In *Amar Singhji* v. *State of Rajasthan*[18], the Secretary to the Government wrote a letter to the Collector of Tonk that the Jagir of Raj Mata would not be acquired during her life time. Subsequently, resumption proceedings were initiated against the petitioner. It was contended by the petitioner that the Government was estopped from initiating resumption proceedings. Negativing the contention, the Supreme Court held that the powers of resumption were regulated by the statute and must be exercised in accordance with law. "The Act confers no authority on the Government to grant exemption from resumption, and an undertaking not to resume will be invalid, and *there can be no estoppel against a statute.*" (emphasis supplied)

Similarly in *Mulamchand* v. *State of M.P.*[19], it was held that if the provisions of Section 175(3) of the Government of India Act, 1935 are not complied with, the contract is void. No question of estoppel therefore arises. If the plea of estoppel is upheld, it would mean in effect the repeal of an important constitutional provision.

Again, in *Excise Commr.* v. *Ram Kumar*[20], the Supreme Court held that the sale of country liquor which had been exempted from sales tax at the time of auction of licences could not operate as an estoppel against the Government. The Supreme Court observed:

> "It is now well settled by a catena of decisions that there can be no question of estoppel against the Government in the exercise of its legislative, sovereign or executive powers."[21]

(h) Estoppel and public policy

The doctrine of estoppel is equitable and, therefore, it must yield to equity and can be invoked in the larger public interest. If a promise or agreement is opposed to public policy, it cannot be enforced. Likewise,

17. (1951) 2 All ER 278(285): (1951) AC 837(849).
18. AIR 1955 SC 504 (534).
19. AIR 1968 SC 1218.
20. (1976) 3 SCC 540: AIR 1976 SC 2237.
21. *Id.* at p. 545 (SCC): 2241 (AIR). For other cases, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 1354.

it cannot be extended or applied where the promise has been obtained by playing fraud on the Constitution. For instance, a right to reservation under Article 15 or 16 of the Constitution has been made with a view to promote interests of certain backward classes. If a person who does not belong to that class obtains false certificate and gets an employment, and on coming to know about the true facts, has been removed from service, he cannot invoke this doctrine. It would be permitting to play fraud on the Constitution.[22]

(i) Estoppel and public interest

The doctrine of promissory estoppel is equitable and it cannot be invoked against public interest. It does not apply if the result sought to be achieved are against public good. The doctrine must yield to equity.

In *Kasinka Trading Co.* v. *Union of India*,[23] a notification was issued under the Customs Act, 1962 granting exemption from payment of custom duty on certain raw materials imported from foreign country. The notification was issued in public interest and it was to remain in force for two years. Subsequently, however, the exemption was withdrawn before the expiry of the period again in public interest. The Supreme Court upheld the action.

Reiterating the principle laid down in *Kasinka Trading Co.*, in *Shrijee Sales Corpn.* v. *Union of India*,[24] the Supreme Court stated: "Once public interest is accepted as the superior equity which can override individual equity, the principle should be applicable even in cases where a period has been indicated."

(j) Conclusions

It is submitted that the following observations of Bhagwati, J. (as he then was) in *Motilal Padampat Sugar Mills* v. *State of U.P.*[25] lay down correct law on the point. His Lordship propounded:

> "Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, com-

22. *Amrit Banaspati Co.* v. *State of Punjab*, (1992) 2 SCC 411: AIR 1992 SC 1075; *Vasant Kumar* v. *Board of Trustees*, (1991) 1 SCC 761: AIR 1991 SC 14; *Shrijee Sales Corpn.* v. *Union of India*, (1997) 3 SCC 398; *Pawan Alloys* v. *U.P. State Electricity Board*, (1997) 7 SCC 251.
23. (1995) 1 SCC 274: AIR 1995 SC 874.
24. (1997) 3 SCC 398(405).
25. (1979) 2 SCC 409: AIR 1979 SC 621.

mitted to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of 'honesty and good faith'? *The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the courts and the legislature must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction.*"[26]

(emphasis supplied)

7. CROWN PRIVILEGE

(a) General

In every democratic society, it is of utmost importance that the citizens get sufficient information and knowledge about the functioning of the Government. Democracy cannot survive without accountability to public. The basic postulate of accountability is openness of the Government. The very integrity of judicial system and public confidence depend on full disclosure of facts.[27]

(b) England

In England, the Crown has the special privilege of withholding disclosure of documents, referred to as 'Crown Privilege'. It can refuse to disclose a document or to answer any question if in its opinion such disclosure or answer would be injurious to the public interest. This doctrine is based on the well-known maxim *solus populi est suprema lex* (public welfare is the highest law). The public interest requires that justice should be done, but it may also require that the necessary evidence should be suppressed. This right can be exercised by the Crown even in those proceedings in which it is not a party.[28]

Duncan v. *Cammell, Laird & Co. Ltd.*[29], is the leading case on the point. At the time of the Second World War, the submarine *Thetis* sank during her trials and 99 lives were lost. In an action for negligence, the widow of one of the dead persons sought discovery of certain documents in order to establish liability against the government contractors. The Admiralty claimed 'Crown Privilege' which was upheld by the House

26. (1979) 2 SCC 409(442-43): AIR 1979 SC 621(643-44).
27. *S.P.Gupta* v. *Union of India*, 1981 Supp SCC 87 (273): AIR 1982 SC 149.
28. Wade: *Administrative Law*, 1994, pp. 845-46; Garner: *Administrative Law*, 1985, pp. 213-14; de Smith: *Judicial Review of Administrative Action*, 1995, pp. 70-92.
29. (1942) AC 624: (1942) 1 All ER 587.

of Lords. It observed that the affidavit filed by the Minister that disclosure would be against the 'public interest' could not be called into question. Lord Simon observed:

"The principle to be applied in every case is that documents otherwise relevant and liable to production must not be produced if the public interest requires that they should be withheld."[30]

But this decision was very much criticised. It was regarded as a 'very formidable impediment to justice and fair play' by Sir C.K. Allen and by Goodhart as 'opposed to the whole course of British Constitutional history'.[31] In fact, that was not the law previously. As Wade[32] states:

> "The power thus given to the Crown was dangerous since, unlike other governmental powers, it was exempt from judicial control. The law must of course protect genuine secrets of State. But 'Crown Privilege' was also used for suppressing whole classes of relatively innocuous documents, thereby sometimes depriving litigants of the ability to enforce their legal rights. This was, in effect, expropriation without compensation. It revealed the truth of the United States Supreme Court's statement on the same problem that 'a complete abandonment of judicial control would lead to intolerable abuses'.[33] 'Privilege was claimed for all kinds of official documents on purely general grounds, despite the injustice to litigants. It is not surprising that the Crown, having been given a blank cheque, yielded to the temptation to overdraw".[34]

de Smith[35] rightly states: "No one seriously suggested that the decision in relation to the particular facts of the case was unsatisfactory; the documents which the Admiralty had sought to withhold from production included blueprints of a new type of submarine, and the proceedings had been instituted in wartime. Critics fastened on to the broader proposition enunciated by the House of Lords, that a Minister, by virtue of his *ipse dixit*, could make an unreviewable pronouncement excluding relevant evidence merely because, in his opinion, it fell within a class of document which it would be contrary to the public interest to disclose in court. Provided that a Minister performed a suitably elaborate ritual

30. *Id.* at p. 636 (AC): 592 (All ER).
31. Even with regard to cabinet documents, Lord Fraser observed:
> "I do not think that even Cabinet minutes are completely immune from disclosure in a case where, for example, the issue in a litigation involves serious misconduct by a Cabinet minister." Wade: *Administrative Law*, 1994, p. 853.
32. *Administrative Law*, 1994, pp. 845-46.
33. *U.S.* v. *Reynolds*, (1953) 345 US 1: 97 Law Ed 727.
34. Wade: *Administrative Law*, 1994, pp. 847-48.
35. de Smith: *Judicial Review of Administrative Action*, 1995, pp. 72-73.

beforehand, he would be allowed in substance to do as he thought fit. *The interests of litigants, and the public interest in securing the due and manifestly impartial administration of justice, had thus been subordinated to executive discretion*, subject only to extra-legal checks; and all this in a case where a general abdication by the courts had been unnecessary for the decision''. (emphasis supplied)

In *Ellis* v. *Home Office*[36], Ellis, an undertrial prisoner was violently assaulted by another prisoner, who was under observation with a suspected mental defect. Ellis alleged negligence on the part of the Prison Authorities, but the Crown claimed privilege in respect of the medical reports and consequently, Ellis lost his action.

It is submitted that the evidence could have been made available without any injury to the public interest. Delvin, J. rightly observed:

> ''[B]efore I leave this case I must express, as I have expressed during the hearing of the case, my uneasy feeling that justice may not have been done because the material evidence before me was not complete, and something more than an uneasy feeling that, *whether justice has been done or not, it certainly will not appear to have been done*.''[37] (emphasis supplied)

In *Conway* v. *Rimmer*[38], the House of Lords reviewed the earlier legal position and laid down 'more acceptable law'. A police constable was prosecuted for theft of an electric torch and was acquitted. He sued the prosecutor for malicious prosecution and applied for discovery of certain documents relevant for that purpose. 'Crown Privilege' was claimed. The House of Lords took advantage of their newly discovered power to depart from the doctrine of *stare decisis*[39], overruled *Duncan*[29] and disallowed the claim for privilege. It held that a statement by a Minister cannot be accepted as conclusive preventing a court from ordering production of any document. It is proper for the court 'to hold the balance between the public interest, as expressed by a Minister to withhold certain documents or other evidence and the public interest in ensuring the proper administration of justice'. Certain types of documents ought not to be disclosed, e.g. cabinet minutes, documents relating to national defence, foreign affairs, etc. On the other hand, privilege should not be claimed or allowed for routine or trivial documents. To decide

36. (1953) 2 QB 135: (1953) 2 All ER 149.
37. *Id.* at p. 137 (QB): 155 (All ER).
38. (1968) 1 All ER 874: (1968) AC 910: (1968) 2 WLR 998.
39. *See* announcement of Lord Chancellor Gardiner on July 26, 1966: 110 *Solicitor's Journal* 584.

whether the document in question ought to be produced or not, the judge must inspect the document without it being shown to the parties. Accordingly, in this case, the document was ordered to be produced as the disclosure was not prejudicial to the public interest. As Wade[40] graphically puts it, "the House of Lords has contributed to Human Rights Year, by bringing back into legal custody, a dangerous executive power".

He also states: "This was the culmination of a classic story of undue indulgence by the courts to executive discretion, followed by executive abuse, leading ultimately to a radical reform achieved by the courts themselves."[41]

(c) India

(*i*) *Statutory provisions*

In India the basic principle is incorporated in Section 123 of the Evidence Act, 1872, which reads as under:

> "No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."[42]

Section 162 of the Act confers on a court the power to decide finally the validity of the objection raised against production of document.

As a general rule, the principle is that both the parties to the dispute must produce all the relevant and material evidence in their possession. The Evidence Act has prescribed elaborate rules to determine relevance and has accepted the doctrine of onus of proof. And if any party fails to produce such evidence, an adverse inference can be drawn under Section 114 of the said Act. Section 123 confers a great advantage on the Government inasmuch as inspite of non-production of relevant evidence before the court, no adverse inference can be drawn against it if the claim of privilege is upheld by the court. Thus, it undoubtedly constitutes 'a very serious departure' from the ordinary rules of evidence. The principle on which this departure can be justified is the principle of the 'overriding and paramount character of public interest'. The claim proceeds on the basis of the theory that the production of the document in question would cause injury to public interest, and that, where a conflict arises between public interest and private interest, the latter must yield

40. Wade: *Administrative Law*, (1994), p. 851.

41. *Id.* at p. 833, see also *Air Canada* v. *Secy. of State*, (1983) 1 All ER 910: (1983) 2 WLR 494.

42. *See also* Ss. 124, 162; Articles 22(6), 74(2) and 163(3), Constitution of India.

to the former. No doubt the litigant whose claim may not succeed as a result of the non-production of the relevant and material document may feel aggrieved by the result, and, the court, in reaching the said decision, may feel dissatisfied, but that will not affect the validity of the basic principle that public good and public interest must override considerations of private good and private interest.

(ii) Leading cases

Let us consider some important decisions on the point:

State of Punjab v. *Sodhi Sukhdev Singh*[43] is the leading case on the subject. One *S*, a District and Sessions Judge was removed from service by the President of India. In pursuance of the representation made by him, he was re-employed. Thereafter, he filed a suit for declaration that the order of removal was illegal, void and inoperative. He also claimed arrears of salary. He filed an application for production of certain documents. The State claimed privilege. The Supreme Court by majority held that the documents in question were protected under Section 123 of the Evidence Act and could be withheld from production on the ground of public interest.

The Court conceded that it could not hold an inquiry into the possible injury to public interest which may result from the disclosure of the document in question. "That is a matter for the authority concerned to decide; but the court is competent, *and indeed is bound*, to hold a preliminary enquiry and determine the validity of the objections of its production." (emphasis supplied)

> "It is true that the scope of enquiry in such a case is bound to be narrow and restricted; but the existence of the power in the Court to hold such an enquiry will itself act as a salutary check on the capricious exercise of power conferred under Section 123...."[44]

In *Amar Chand* v. *Union of India*[45], the Supreme Court reiterated the principle laid down in *Sodhi Sukhdev Singh*. There, *A* had filed a suit against the Government for recovery of certain amounts. During the course of the trial, *A* called upon the defendants to produce certain documents. The defendants claimed privilege. Following *Sodhi Sukhdev Singh*, the Supreme Court rejected the claim of the defendants.

In *State of U.P.* v. *Raj Narain*[46], Raj Narain had filed an election petition against the then Prime Minister, Smt. Indira Nehru Gandhi. Dur-

43. AIR 1961 SC 493: (1961) 2 SCR 371.
44. *Id.* at p. 505 (AIR).
45. AIR 1964 SC 1658.
46. (1975) 4 SCC 428: AIR 1975 SC 865.

ing the trial, he applied for production of certain documents. The Government claimed privilege in respect of those documents. The High Court of Allahabad rejected the claim. The Supreme Court allowed the appeal and set aside the order passed by the High Court.

Speaking for the majority, Ray, C.J. observed: "Public interest which demands that evidence be withheld is to be weighed against the private interest in the administration of justice that courts should have the fullest possible access to all relevant materials. When public interest outweighs the latter, the evidence cannot be admitted. *The court will proprio motu exclude evidence the production of which is contrary to public interest.*"[47] (emphasis supplied)

In concurring judgment, upholding the "right to know", Mathew, J. observed: "The Court, therefore, has to consider two things; whether the document relates to the secret affairs of State; and whether the refusal to permit evidence derived from it being given was in the public interest. No doubt, the words used in Section 123 'as he thinks fit' confer an absolute discretion on the head of the department to give or withhold such permission.... An overriding power in express terms is conferred on the court under Section 162 to decide finally on the validity of the objection. The Court will disallow the objection if it comes to the conclusion that the document does not relate to affairs of State or that the public interest does not compel its non-disclosure or that the public interest served by the administration of justice in a particular case overrides all other aspects of public interest. It is, therefore, clear that even though the head of the department has refused to grant permission, it is open to the court to go into the question after examining the document and find out whether the disclosure of the document would be injurious to public interest and the expression 'as he thinks fit' in the latter part of Section 123 need not deter the Court from deciding the question afresh as Section 162 authorises the Court to determine the validity of the objection finally."[48]

In *State of U.P.* v. *Chandra Mohan Nigam*[49], the Supreme Court held that when an order of compulsory retirement was challenged as arbitrary or *mala fide* by making clear and specific allegations, it was certainly necessary for the Government to produce all the necessary materials to rebut such pleas to satisfy the Court by voluntarily producing such documents as will be a complete answer to the plea. "*Ordinarily, the ser-*

47. *Id.* at pp. 442-43, para 41 (SCC): p. 875 (AIR).
48. *Id.* at pp. 451-52 (SCC): 882-83 (AIR).
49. (1977) 4 SCC 345 (358): AIR 1977 SC 2411 (2421).

vice record of a Government servant in a proceeding of this nature cannot be said to be a privileged document which should be shut out from inspection.'' (emphasis supplied)

Again, a similar question arose in the well-known case of *S.P. Gupta* v. *Union of India*[50], popularly known as *'the Judges' transfer case.* A privilege was claimed by the Government against disclosure and production of certain documents. After considering a number of English as well as American cases, the Court held that the provisions of the Evidence Act, 1872 should be construed keeping in view our new democracy wedded to the basic values enshrined in the Constitution. In a democracy, citizens ought to know what their Government is doing. No democratic Government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the Government. Therefore, *disclosure of information in regard to functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.*[51] (emphasis supplied)

The final decision in regard to the validity of an objection against disclosure raised under Section 123 would always be with the court by reason of Section 162. (emphasis supplied) The court is not bound by the assertions made by a Minister or a Head of the department in an affidavit in support of plea against non-disclosure. The court retains the power to balance the injury to the State or the public service against the risk of injustice, before reaching the decision. Bhagwati, J. (as he then was) further observed: ''Every claim for immunity in respect of a document, whatever be the ground on which the immunity is claimed, and whatever be the nature of the document, must stand scrutiny of the court with reference to one and only one test, namely, what does public interest require — disclosure or non-disclosure.... And this exercise has to be performed in the context of the democratic ideal of an open Government.''[52]

In *R.K. Jain* v. *Union of India*[53], an appointment of the President of CEGAT (Customs, Excise and Gold Control Appellate Tribunal) was challenged in the Supreme Court. Necessary record was ordered to be produced by the court. The Attorney General claimed privilege. Negativing the plea and considering various Indian and foreign decisions, the

50. 1981 Supp SCC 87: AIR 1982 SC 149.
51. *Id.* at para 67 (SCC).
52. *Id.* at paras 69, 80 (SCC).
53. (1993) 4 SCC 119.

Court observed that except the actual advice tendered to the President by the Cabinet, the rest of the file and records were open to *in camera* inspection by the Court.

(iii) Right to know

The modern trend is towards more open government. The right to know is part and parcel of freedom of speech and expression and is thus a fundamental right guaranteed under Article 19 of the Constitution. It is also equally paramount consideration that justice should not only be done but also be publicly recognised as having been done.[54]

In *Reliance Petrochemicals Ltd.* v. *Indian Express Newspapers*,[55] Mukharji, J. (as he then was) stated: "We must remember that the people at large have a right to know in order to be able to take part in participatory development in the industrial life and democracy. *Right to know is a basic right which citizens of a free country aspire in the broader horizon of the right to live in this age of our land under Article 21 of the Constitution.* That right has reached new dimensions and urgency. That right puts greater responsibility upon those who take upon themselves responsibility to inform." (emphasis supplied)

In the leading case of *State of U.P.* v. *Raj Narain*,[56] the Supreme Court rightly observed, "In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions, which can at any rate, have no repercussion on public security. *To cover with veil of secrecy, the common routine business, is not in the interest of the public.*" (emphasis supplied).

---

54. *R.K. Jain* v. *Union of India*, (1993) 4 SCC 119 (163-64).

55. (1988) 4 SCC 592 (613): AIR 1989 SC 190 (202-03), *see* also observations of Krishna Iyer, J. in *Maneka Gandhi* v. *Union of India*: "A government which revels in secrecy in the field of people's liberty not only acts against democratic decency but busies itself with its own burial... *Public power must rarely hide its heart in an open society and system*". (1978) 1 SCC 248 (342): AIR 1978 SC 597 (661).

56. (1975) 4 SCC 428(453): AIR 1975 SC 865: (1975) 3 SCR 333, see also *Star Enterprises* v. *City & Industrial Development Corpn.*, (1990) 3 SCC 280.

(iv) Power and duty of courts

It is well-settled that a court is not bound by the statement made by the Minister or the head of the department in the affidavit claiming privilege. The court has to balance injury to the State or public against risk of injustice to the cause. In balancing competing interests it is the duty of the court to see that no harm should be done to the nation by the disclosure of the document and that justice should not suffer by permitting withholding of the document. The court must decide which aspect of the public interest predominates; whether the public interest which requires that the document should not be produced outweighs the public interest which requires the document to be produced. In striking the balance, the court may itself inspect the document. It is constitutional, legitimate and lawful *power* and *duty* of the court to ensure that powers, constitutional, statutory or executive are exercised by the Government in accordance with the Constitution and the law.[57]

At the same time, courts should not allow production of documents if they are of a "fishing" nature. The court should not take a peep just on the off chance of finding something useful. It should inspect documents only where it has definite grounds for expecting to find material of real importance to the party seeking disclosure.

(v) Considerations

Whenever an objection is raised against disclosure of a document on the ground that it belongs to a class which in the larger public interest ought not to be disclosed, it would be difficult to decide the question in vacuum. The court must consider various factors such as, interest likely to be affected by disclosure; extent to which such interests would be affected; seriousness of the issues raised in relation to which production is sought; effect of disclosure of document on the outcome of the case likelihood of injustice if disclosure is not allowed, etc. *Each case must be considered and decided on its own facts and circumstances.*[58]

(emphasis supplied

(vi) Test

There is natural temptation on the part of the executive to regard the interest of the department as paramount forgetting the larger and greater interest, i.e. interest of justice. Many a time, it may not be convenient for the executive to produce a particular document and it may adopt an easy course of claiming privilege. As has been rightly said; "Inconveni

57. *R.K. Jain* v. *Union of India (supra)*; at p. 139 (SCC).
58. *Id.* at pp. 162-64 (SCC).

ence and justice are often not on speaking terms." The court must be alive of such possibility and decide the question keeping in mind the well-known maxim *populi est supreme lex* (public welfare is the highest law)[59].

(d) Conclusions

It is submitted that the following observations of Gajendragadkar, J. (as he then was) in the leading case of *State of Punjab* v. *Sodhi Sukhdev Singh*[60] lay down correct law on the point. After considering the relevant provisions and leading decisions on the point, His Lordship propounded:

> "It must be clearly realised that the effect of the document on the ultimate course of litigation or its impact on the head of the department, or even the Government in power, has no relevance in making a claim for privilege under Section 123. The apprehension that the disclosure may adversely affect the head of the department or the Minister or even the Government, or that it may provoke public criticism or censure in the legislature has also no relevance in the matter and should not weigh in the mind of the head of the department who makes the claim. *The sole and the only test which should determine the decision of the head of the department is injury to public interest and nothing else.*"[61] (emphasis supplied)

8. MISCELLANEOUS PRIVILEGES OF GOVERNMENT

Over and above the aforesaid privileges, the Government enjoys many other privileges also. Some of them are as under[62]:

(1) Under Section 80 of the Code of Civil Procedure, 1908, no suit can be instituted against the Government until the expiration of two months after a notice in writing has been given.

(2) Rule 5-B of Order 27 of the said Code casts duty on the court in suits against Government to assist in arriving at a settlement.

(3) Rule 8-A of Order 27 of the said Code provides that no security shall be required from the Government.

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

---

59. *Id.*; at pp. 139, 162 (SCC).
60. AIR 1961 SC 493: (1961) 2 SCR 371.
61. *Id.*; at p. 504 (AIR).
62. For detailed discussion; *see* C.K. Takwani: *Civil Procedure*, 1997, pp. 243-48.

(5) Under Article 112 of the Limitation Act, 1963, any suit by or on behalf of the Central Government or any State Government can be instituted within the period of 30 years.

Lecture XI

Public Corporations

Uncle Sam has not yet awakened from his dream of Government of bureaucracy, but ever wanders further afield in crazy experiments in State socialism. Possibly some day he may awaken from his irrational dreams, and return again to the old conceptions of Government, as wisely defined in the Constitution of the United States.

—JAMES M. BECK

Today, probably the giant corporations, the labour unions, trade associations and other powerful organisations have taken the substance of sovereignty from the State. We are witnessing another dialectic process in history, namely, that the sovereign State having taken over all effective legal and political power from groups surrenders its powers to the new massive social groups. —FRIEDMANN

SYNOPSIS

1. Introduction
2. Definition
3. Characteristics
4. Classification
   (*i*) Commercial corporations
   (*ii*) Development corporations
   (*iii*) Social services corporations
   (*iv*) Financial corporations
5. Working of Public Corporations
   (*i*) Reserve Bank of India
   (*ii*) Oil and Natural Gas Commission
   (*iii*) Damodar Valley Corporation
   (*iv*) Life Insurance Corporation of India
   (*v*) Road Transport Corporations
   (*vi*) State Trading Corporation
6. Rights and duties of Public Corporations
   (*a*) Status
   (*b*) Rights
   (*c*) Powers
   (*d*) Duties
   (*e*) Lifting of veil
7. Liabilities of Public Corporations
   (*a*) Liability in contracts
   (*b*) Liability in torts
   (*c*) Liability for crimes

(*d*) Crown privilege

8. Servants of Public Corporations
   (*a*) General
   (*b*) Whether civil servants?
   (*c*) Whether public servants?
   (*d*) Whether entitled to reinstatement?
   (*e*) Principles
9. Controls over Public Corporations
   (*a*) Judicial control
      (*i*) General
      (*ii*) Traditional view
      (*iii*) Modern view
      (*iv*) Illustrative cases
      (*v*) Power and duties of courts
      (*vi*) Conclusions
   (*b*) Governmental control
      (*i*) General
      (*ii*) Appointment and removal of members
      (*iii*) Finance
      (*iv*) Directives
      (*v*) Rules and Regulations
      (*vi*) Suggestions
   (*c*) Parliamentary control
      (*i*) General
      (*ii*) Statutory provisions
      (*iii*) Questions
      (*iv*) Debates
      (*v*) Parliamentary Committees
      (*vi*) Conclusions
   (*d*) Control by public
      (*i*) General
      (*ii*) Consumer councils
      (*iii*) Membership
      (*iv*) Consumers and courts
      (*v*) Consumer Protection Act
10. Conclusions

1. INTRODUCTION

As stated in the previous lectures, the passive policy of '*laissez faire*' has been given up by the State. Today it has not confined its scope to the traditional, minimum functions of defence and administration of justice. The old 'police State' has now become a 'welfare State'. It seeks to ensure social security and social welfare for the common mass. It also participates in trade, commerce and business. With a view to achieving

the object of 'socialist',[1] democratic republic, constitutional protection is afforded to State monopoly[2] and necessary provisions are incorporated in the Constitution itself by laying down the 'Directive Principles of State Policy'. It is also provided that "notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy"[3]. The political philosophy of the 20th century has, therefore, impelled the Government to enter into trade and commerce with a view to making such enterprises pursue public interest and making them answerable to the society at large.

Once, the Government entered the field of trade and commerce, it became increasingly evident that the governmental machinery hitherto employed merely for the maintenance of law and order was wholly inadequate and unsuitable for business exigencies, which demanded a flexible approach. It was, therefore, felt necessary to evolve a device which combined the advantages of flexibility with public accountability. It was in response to this need that the institution of public corporation grew.[4]

2. DEFINITION

No statute or court has ever attempted or been asked to define the expression 'public corporation'. It has no regular form and no specialised function. It is employed wherever it is convenient to confer corporate personality.

In *Dhanoa* v. *Municipal Corpn., Delhi*[5], a corporation is defined thus:

> "A corporation is an artificial being created by law having legal entity entirely separate and distinct from the individuals who compose it with the capacity of continuous existence and succession, notwithstanding changes in its membership. In addition, it possesses

1. Preamble to the Constitution of India, as amended by the Constitution (42nd Amendment) Act, 1976.
2. Article 19(6)(*ii*), Constitution of India.
3. Article 31-C, Constitution of India.
4. For the reasons of growth and development of public corporations, see *R.D. Shetty* v. *International Airport Authority*, (1979) 3 SCC 489 (506-07): AIR 1979 SC 1628.
5. (1981) 3 SCC 430 (437): AIR 1981 SC 1395 (1398); see also *Sukhdev Singh* v. *Bhagatram*, (1975) 1 SCC 421: AIR 1975 SC 1331.

the capacity as such legal entity of taking, holding and conveying property, entering into contracts, suing and being sued, and exercising such other powers and privileges as may be conferred on it by the law of its creation just as a natural person may."

3. CHARACTERISTICS

Since a public corporation is a 'hybrid organism, showing some of the features of a Government department while some of the features of a business company, it is not possible to precisely enumerate the characteristics of such corporation. However, it can be said that a corporation created *by* or *under* a statute possesses the following main characteristics[6]:

(1) A corporation is established by or under a statute. It possesses an independent corporate personality and it is an entity different from the Union or the State Government. It is a body corporate with perpetual succession and a common seal. It can sue and be sued in its own name.

(2) There may be several members or shareholders of a corporation. The law, however, knows only one body corporate. Juristic personality of corporation is distinct from its individual members.

(3) A corporation having neither soul nor body, it acts through natural persons.

(4) A corporation exercises its rights, performs its functions and discharges its duties and obligations entrusted to it by its constituent statute or charter by which it is created. Its powers do not extend beyond what the statute provides expressly or by necessary implication.

(5) Every action of a corporation not expressly or impliedly authorised by the statute or charter is *ultra vires* and having no legal effect whatsoever.

(6) The doctrine of *ultra vires*, however, must be interpreted and applied reasonably. All incidental and consequential actions should be held legal and lawful.

(7) A corporation can possess, hold and dispose of property.

(8) Subject to the provisions of the statute by or under which a corporation is created, such corporation is by and large an autonomous body. Even though the ownership, control and management of a corporation might be vested in the Union or the State, in

6. For detailed discussion and case-law, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 542-43.

the eye of law, the corporation is its own master in day-to-day management and administration.

(9) An appropriate Government may issue directives relating to policy matters. The corporations are bound by them and have to act in accordance with such directions.

(10) The constituent statute or charter may delegate the rule-making power to a corporation. Such rules, regulations and bye-laws are enforceable and binding unless they are *ultra vires* the parent Act, Constitution of India or are otherwise bad in law.

(11) A corporation created by or under a statute can be said to be an agency or instrumentality of the Government and 'State' within the meaning of Article 12 of the Constitution, and therefore, is subject to the jurisdiction of the Supreme Court under Article 32 and of the High Courts under Article 226 of the Constitution.

(12) Employees of a corporation do not hold 'civil post' under the Union or the State within the meaning of Part XIV of the Constitution of India.

(13) A corporation cannot be said to be a 'citizen' within the meaning of Part II of the Constitution and therefore, it cannot claim benefits of those Fundamental Rights which have been conferred only on the citizens.

(14) A corporation is liable for breach of contract and also in tort.

(15) Since a corporation is neither a department nor an organ of the Government, the doctrine of 'Crown Privilege' cannot be claimed by it.

4. CLASSIFICATION

A logical classification of public corporations is not possible, and neither Parliament nor the courts have made any serious attempt in that direction. But jurists have tried to categorise public corporations. Prof. Griffith and Street[7] divide public corporations into two groups: (*i*) Managerial economic bodies; and (*ii*) Managerial social bodies. Prof. Hood Phillips[8] divides them into four classes: (*i*) Managerial-industrial or commercial corporations; (*ii*) Managerial-social services corporations; (*iii*) Regulatory corporations; and (*iv*) Advisory corporations. According to Prof. Garner[9], they can be divided into three groups: (*i*) Commercial corporations; (*ii*) Managerial corporations; and (*iii*) Regulatory corporations.

7. *Principles of Administrative Law*, 1967, pp. 281-84.
8. *Constitutional and Administrative Law*, 1967, pp. 556-57.
9. *Administrative Law*, 1989, pp. 347-54.

In India, public corporations may be classified into four 'ill-assorted' main groups:

(*i*) Commercial corporations;

(*ii*) Development corporations;

(*iii*) Social services corporations; and

(*iv*) Financial corporations.

(i) Commercial corporations

This group includes those corporations which perform commercial and industrial functions. The managing body of a commercial corporation resembles the Board of Directors of a public company. As their functions are commercial in nature, they are supposed to be financially self-supporting and they are also expected to earn profit. At the same time they are required to conduct their affairs in the interests of the public and do not operate merely with a profit-earning motive unlike a private industry. State Trading Corporation, Hindustan Machine Tools, Indian Airlines Corporation and Air India International are some of the commercial corporations.

(ii) Development corporations

The modern State is a 'Welfare State'. As a progressive State, it exercises many non-sovereign functions also. Development corporations have been established with a view to encourage national progress by promoting developmental activities. As they are not commercial undertakings, they may not be financially sound at the initial stage and may require financial assistance from the Government. Oil and Natural Gas Commission, Food Corporation of India, National Small Industries Corporation, Damodar Valley Corporation, River Boards, Warehousing Corporations, are development corporations.

(iii) Social services corporations

Corporations which have been established for the purpose of providing social services to the citizens on behalf of the Government are not commercial in nature and therefore, are not expected to be financially self-supporting. In fact, as their object is to render social service, they are not required to conduct their affairs for the purpose of earning profits. Generally, they depend on the Government for financial assistance. Hospital Boards, Employees' State Insurance Corporation, Housing Board, Rehabilitation Housing Corporation are examples of social services corporations.

(iv) Financial corporations

This group includes financial institutions, like Reserve Bank of India, State Bank of India, Industrial Finance Corporation of India, Life Insurance Corporation of India and Film Financing Corporation. They advance loans to institutions carrying on trade, business or industry on such terms and conditions as may be agreed upon. They may provide credit to those institutions which find it difficult to avail of the same or which do not find it possible to have recourse to capital issue methods (e.g. Industrial Finance Corporation). They may give financial assistance on reasonable terms to displaced persons in order to enable them to settle in trade, business or industry (e.g. Rehabilitation Finance Corporation).

5. WORKING OF PUBLIC CORPORATIONS

The constitution of the corporations and their functions, powers and duties[10] may be understood by a study of the actual working of a few public corporations.

(i) Reserve Bank of India (RBI)

The Reserve Bank of India was constituted under the Reserve Bank of India Act, 1934. It was nationalised in 1948 by the Reserve Bank (Transfer to Public Ownership) Act, 1948. It is a body corporate having perpetual succession and a common seal. It can sue and be sued. It was primarily established to regulate the credit structure, to carry on banking business and to secure monetary stability in the country. It is managed by a Board of Directors, consisting of a Governor, two Deputy Governors and a number of directors. The Governor and the Deputy Governors are whole-time employees and receive such salaries and allowances, as may be fixed by the Board with the approval of the Central Government. They are appointed by the Central Government for a term of five years and are eligible for re-employment.

Under the Banking Companies Act, 1949, the Reserve Bank has extensive powers over the banking business in India. It grants licences without which no company can carry on banking business. Before granting such licence, it can inquire into the affairs of the company to satisfy itself as regards the company's capacity to pay back to its depositors. It can cancel a licence on the ground that the conditions specified therein have not been complied with. Even after granting such a licence it may inquire into the affairs of any bank, inspect its books of accounts and hold an investigation either under the direction of the Central Govern-

10. *See also* R.S. Arora: *State Liability and Public Corporations in India*, (1966) Public Law 245.

ment or *suo motu*. The report of the inquiry will have to be sent to the Central Government. A copy of such report will also be given to the banking company concerned. It can make a representation to the Central Government on any point arising out of the report. Upon this report, the Central Government may order the suspension of the banking business by the company concerned or direct it to apply for its liquidation.

Very wide discretionary powers have been conferred on the Reserve Bank. It determines the policy relating to bank advances, frames proposals for amalgamation of two or more banks. It may make a representation for the operation of the Banking Companies Act to be suspended. The Governor of the Bank is empowered to suspend the operation of the Act for 30 days in an emergency. The validity of these wide discretionary powers has been upheld by the courts.[11]

(ii) Oil and Natural Gas Commission (ONGC)

The Commission was first established in the year 1956 as a Government department. By the Oil and Natural Gas Commission Act, 1959, the Commission was given a status of a public corporation. It is a body corporate enjoying perpetual succession and a common seal. It can sue and be sued. It can hold and dispose of property and can enter into contracts for any of the objects of the Commission. The Commission consists of a Chairman and two or more (not exceeding eight) members, to be duly appointed by the Central Government. Except a Finance Member, others may be part-time or full-time members. The Central Government prescribes the rules fixing their terms of office and conditions of service. It can remove any member even before the expiry of the period, after issuing a show-cause notice and a reasonable opportunity of being heard. The Commission has its own funds and all receipts and expenditures are to be made to and from such funds. It also maintains an account with the Reserve Bank of India. It can borrow money with the prior approval of the Central Government. Its functions range from planning, promotion, organisation or implementation of programmes for the development of petroleum resources to production and sale of petroleum products it produces. It conducts geological surveys for the exploration of petroleum and undertakes drilling and prospecting operations. The Commission determines its own procedure by framing rules and its decisions are by majority vote. The Government can acquire lands for the purposes of the Commission under the provisions of the Land Acquisition Act,

11. *Vellukunnel* v. *Reserve Bank of India*, AIR 1962 SC 1371; *Peerless Gen. Finance & Inv. Co. Ltd.* v. *Reserve Bank of India*, (1992) 2 SCC 343: AIR 1992 SC 1033.

1894. The purposes connected with the Commission's work are deemed to be public purposes within the meaning of the aforesaid Act.

(iii) Damodar Valley Corporation (DVC)

The Damodar Valley Corporation was established under the Damodar Valley Corporation Act, 1948. Like other corporations, it is a body corporate having perpetual succession and a common seal. It can sue and be sued. The Board of Management consists of a Chairman and two members appointed by the Government of India in consultation with the Governments of the States of Bihar and West Bengal. The members are whole-time, salaried employees of the Corporation. The Government of India is empowered to remove any member for incapacity or abuse of position. It also appoints the Secretary and the Financial Advisor of the Corporation. Their pay and conditions of service are fixed by the regulations of the corporation, made by the Corporation with the approval of the Central Government.

The objects of this Corporation are to promote and operate irrigation schemes, water supply, drainage, generation of electricity and electrical energy, navigation, etc. in the river Damodar. The river is well known for its notorious propensities. Due to heavy flooding which causes widespread damage and destruction in the States of Bihar and West Bengal, one of the important objects of the Corporation is flood control. It is empowered to establish, maintain and operate laboratories, experimental institutions and research stations to achieve the above-mentioned objects. It helps in construction of dams, barrages, reservoirs, power houses, etc. It supplies water and electricity and can levy rates for it.

The Corporation is empowered to acquire, hold and dispose of property. It has its own funds deposited in the Reserve Bank of India. It can borrow money with the previous approval of the Government of India. It is liable to pay taxes on its income. It has a separate and independent existence and it is an autonomous body independent of the Central or the State Governments. There is no interference by the Government in the matter of execution of its programmes and day-to-day administration. Nevertheless, the Corporation is subject to overall control of the Central Government, Parliament and the State legislatures of Bihar and West Bengal. It has to send its annual reports to the Governments. They are placed on the tables of Parliament and the two State legislatures. Parliament and the State legislatures exercise their legislative control through debates, questions and resolutions. The Central Government may also give directions to the Corporation with regard to its policy. The accounts of the Corporation are to be audited in the manner prescribed

by the Auditor General of India. Any dispute between the Corporation and the three Governments associated with it has to be settled by an arbitrator appointed by the Chief Justice of India.

(iv) Life Insurance Corporation of India (LIC)

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

The Corporation is an autonomous body as regards its day-to-day administration. It is free from ministerial control except as to the broad guidelines of policy.

(v) Road Transport Corporations (RTCs)

Various State Governments have established Road Transport Corporations for their respective States under the Road Transport Corporations Act, 1950, e.g. Gujarat State Road Transport Corporation. A Road Transport Corporation is managed by a Chief Executive Officer, a General Manager and a Chief Accountant appointed by the State Government concerned. The Central Government contributes the capital in part, while the remaining capital is to be borne by the State Government concerned in agreed proportions. The Corporations can raise capital by issuing non-transferable shares. The capital, the shares and the dividends are guaranteed by the Government. The Corporation is a legal entity independent of the State Government. It is a body corporate having perpetual succession and a common seal. It can sue and be sued in its own name. Its employees are not 'civil servants' within the meaning of Article 311 of the Constitution of India, though they are deemed to be 'public servants' within the meaning of Section 21 of the Indian Penal Code, 1872.

The primary function of the Corporation is to provide efficient, adequate, economical and a properly coordinated system of road transport services in the country. The State Government is empowered to issue

general instructions for the efficient performance of the functions of the Corporation. It manufactures, purchases, maintains and repairs rolling stock, appliance, plant and equipment. It can acquire, hold and dispose of property. It can borrow money subject to the approval of the State Government. The budget has to be approved by the State Government. Its accounts are to be audited by the government auditors. The Government is empowered to ask for the statements, accounts, returns and any other information. It can order inquiries into the affairs of the Corporation. It may take over any part of the undertaking in public interest or supersede the Corporation, if it appears that the Corporation is wholly unfit and unable to perform its functions. It can also be wound up by a specific order of the State Government made after the previous approval of the Central Government.

(vi) State Trading Corporation (STC)

State Trading Corporation of India is a Government company.[12] It is wholly owned by the Government and all the shares are held by the Central Government and two Secretaries of the Government of India.

The object of the corporation as laid down in the Memorandum of Association is to organise and undertake generally with the State trading countries as also other countries in commodities entrusted to it for such purposes by the Central Government from time to time the purchase, sale and transport of such commodities in India or anywhere else in the world. Since it is constituted under the Companies Act, 1956 all the provisions of the Act apply to it. It can be wound up by a competent court. Its functions are commercial in nature. It is neither a department nor an organ of the Government of India.

Like a statutory corporation, a government company can also be said to be "State" within the meaning of Article 12 of the Constitution. Similarly, like employees of a statutory corporation, employees of a government company also cannot be said to be civil servants under Part XIV of the Constitution.

6. RIGHTS AND DUTIES OF PUBLIC CORPORATIONS

(a) Status

As stated above, a public corporation possesses a separate and distinct corporate personality. It is a body corporate with perpetual succession and a common seal. It can sue and be sued in its own name. Public corporations have been recognised in the Constitution. It expressly provides that the State may carry on any trade, industry, business or

12. S. 617, Companies Act, 1956.

service either itself or through a corporation owned or controlled by it to the exclusion of citizens. The laws providing for State monopolies are also saved by the Constitution.[13]

(b) Rights

A public corporation is a legal entity and accordingly, like any other legal person, it can sue for the enforcement of its legal rights. It should not, however, be forgotten that it is not a natural person, but merely an artificial person, and, therefore, cannot be said to be a citizen within the meaning of the Citizenship Act, 1955. Therefore, a corporation cannot claim any fundamental right conferred by the Constitution only on citizens.[14] All the same its shareholders, being citizens, can claim protection of those fundamental rights.[15]

An interesting question which arises is whether fundamental rights conferred by the Constitution on a person or a citizen can be enforced against a public corporation. The rights conferred by Part III of the Constitution can be enforced not only against the 'State' but also against all 'local or other authorities'.[16] In *University of Madras* v. *Shantha Bai*[17], a narrow view had been taken by the High Court of Madras and it was held that the fundamental rights cannot be enforced against a University. But in *Rajasthan State Electricity Board* v. *Mohan Lal*[18], the Supreme Court took a liberal view and held that the Electricity Board fell within the category of 'other authorities' within the meaning of Article 12 of the Constitution and fundamental rights can be enforced against it. After the momentous pronouncement of the Supreme Court in *Sukhdev Singh* v. *Bhagatram*[19], now it is well-settled that fundamental rights can be enforced against public corporations.

---

13. Arts. 19(6)(*ii*) and 305, Constitution of India.
14. Art. 19, Constitution of India; see also *S.T. Corpn. of India* v. *C.T.O.*, AIR 1963 SC 1811; *Indo-China Steam Navigation Co.* v. *Jagjit Singh*, AIR 1964 SC 1140; *Tata Engineering Co.* v. *State of Bihar*, AIR 1965 SC 40; *Barium Chemicals Ltd.* v. *Company Law Board*, AIR 1967 SC 295; *Amritsar Municipality* v. *State of Punjab*, (1969) 1 SCC 475: AIR 1969 SC 1100; *State of Gujarat* v. *Ambica Mills*, (1974) 4 SCC 656: AIR 1974 SC 1300.
15. *Barium Chemicals* (*supra*); *R.C. Cooper* v. *Union of India*, (1970) 1 SCC 248: AIR 1970 SC 564; *Bennett Coleman & Co.* v. *Union of India*, (1972) 2 SCC 788: AIR 1973 SC 106; *Neptune Assurance Co.* v. *Union of India*, (1973) 1 SCC 310: AIR 1973 SC 602; *State of Gujarat* v. *Ambica Mills* (supra); *Godhra Electricity Co. Ltd.* v. *State of Gujarat*, (1975) 1 SCC 199: AIR 1975 SC 32.
16. Art. 12, Constitution of India.
17. AIR 1954 Mad 67.
18. AIR 1967 SC 1857.
19. (1975) 1 SCC 421 (446-47): AIR 1975 SC 1331(1347-48) 1365. See also *Sirsi Municipality* v. *C.K. Francis*, (1973) 1 SCC 409: AIR 1973 SC 855; *R.D. Shetty*

(c) Powers

There is no doubt that a statutory corporation can do only those acts as are authorised by the statute creating it, and that powers of such corporation do not extend beyond it. A statutory corporation must act within the framework of its constitution. Its express provisions and necessary implications must at all events be observed scrupulously. If it fails to act in conformity with law, the action is ultra vires and invalid.

But it is equally well-settled that the doctrine of *ultra vires* in relation to the powers of a statutory corporation must be understood reasonably. "*Whatever may fairly be regarded as incidental to, or consequent upon, those things which the legislature has authorised ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires.*"[20] (emphasis supplied)

(d) Duties

A statutory corporation being an instrumentality of the State must exercise its powers in just, fair and reasonable manner. Its approach must be beneficial to general public. It must act bona fide. Wide powers conferred on corporations are subject to inherent limitations that they should be exercised honestly and in good faith.[21]

(e) Lifting of veil

In the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. The court can look behind the veil to see the real face of the corporation. This can be done by the following methods:

(*i*) Peeping behind the veil;

(*ii*) Penetrating the veil;

(*iii*) Extending the veil; and

(*iv*) Ignoring the veil.[22]

7. LIABILITIES OF PUBLIC CORPORATIONS

(a) Liability in contracts

A public corporation can enter into contract and can sue and be sued for breach thereof. Since a public corporation is not a government de-

---

v. *International Airport Authority*, (1979) 3 SCC 489: AIR 1979 SC 1628. For detailed discussion *see* C.K. Thakker: *Administrative Law*, 1996.

20. *Khandoze* v. *Reserve Bank of India*, (1982) 2 SCC 7(19-20): AIR 1982 SC 917.
21. *Mahesh Chandra* v. *U.P. Financial Corpn.*, (1993) 2 SCC 279: AIR 1993 SC 935.
22. *State of U.P.* v. *Renusagar Power Co.*, (1988) 4 SCC 59; *New Horizons* v. *Union of India*, (1995) 1 SCC 478 (497); *Sterling Computers* v. *M & N Publications*, (1993) 1 SCC 445; *LIC* v. *CERC*, (1995) 5 SCC 482.

partment, the provisions of Article 299 of the Constitution of India do not apply to it and a contract entered into between a public corporation and a private individual need not satisfy the requirements laid down in Article 299.[23] Similarly, the requirement of a statutory notice under Section 80 of the Code of Civil Procedure, 1908 before filing a suit against the Government does not apply in case of a suit against a public corporation.

(b) Liability in torts

A public corporation is liable in tort like any other person. It will be liable for the tortious acts committed by its servants and employees 'to the same extent as a private employer of full age and capacity would have been'.[24] This principle was established in England in 1866[25], and has been adopted in India also. A public corporation cannot claim the immunity conferred on the Government under Article 300 of the Constitution. A corporation may be held liable for libel, deceit or malicious prosecution though it cannot be sued for tortious acts of a personal nature, such as assault, personal defamation, etc. Similarly, it can sue for tortious acts of any person, such as libel, slander, etc. Likewise, all defences available to a private individual in an action against him for tortious acts will also be available to a public corporation. But a statute creating a public corporation may confer some immunity on the corporation or on its servants or employees with regard to the acts committed by them in good faith in discharge of their duties. For example, Section 28 of the Oil and Natural Gas Commission Act, 1959 reads as under:

> "No suit, prosecution or other legal proceedings shall lie against the Commission or any member or employee of the Commission for anything which is in good faith done or intended to be done in pursuance of this Act or of any rule or regulation made thereunder."

It is submitted that the immunity conferred on statutory corporations for tortious acts committed by its servants is unjustifiable and against the principle of equality before the law and equal protection of law guaranteed under the provisions of the Constitution of India. Jain and Jain[26] rightly state: "In the modern welfare State, when the State is entering into business activities of all kinds, the protection clause in the statutes establishing corporations seems to be incongruous and unjustified."

---

23. For detailed discussion, *see* Lecture X (supra); *see also* C.K. Takwani: *Civil Procedure*, 1997.
24. For detailed discussion about 'Tortious Liability', *see* Lecture X (*supra*).
25. *Mersey Dock Trustees* v. *Gibbs*, (1866) LR 1 HL 93.
26. *Principles of Administrative Law*, 1986, p. 1033.

However, for *ultra vires* act of a servant, the corporation cannot be held liable.[27]

(c) Liability for crimes

A public corporation may also be held vicariously liable for offences committed by its servants in the course of employment[28] e.g. libel, fraud, nuisance, contempt of court, etc. Since, however, it is an artificial person, it cannot be held liable for any offence which can be committed only by a natural person; e.g. murder, hurt, bigamy, etc.

(d) Crown privilege

A public corporation is only 'a public authority with large powers but in no way comparable to a Government department' and therefore, the doctrine of 'Crown privilege' cannot be claimed by public corporations. In *Tamlin* v. *Hannaford*[29], Denning, L.J. (as he then was) observed:

> "In the eye of the law, the corporation is its own master and is answerable as fully as any other person or corporation. It is not the Crown and has none of the immunities or privileges of the Crown. Its servants are not civil servants, and its property is not Crown property. It is as much bound by Acts of Parliament as any other subject of the King. It is, of course, a public authority and its purposes, no doubt, are public purposes, but it is not a Government department nor do its powers fall within the province of Government."

8. SERVANTS OF PUBLIC CORPORATIONS

(a) General

A corporation established by or under a statute possesses an independent legal personality and it is an entity different from the Union or the State Government. Employees of a corporation are appointed by a corporation and the terms and conditions of their services are regulated by the Rules and Regulations framed by the corporation.

(b) Whether civil servants ?

Since a public corporation is a separate and distinct legal entity from the Government, its employees and servants are not 'civil servants' and they cannot claim protection of Article 311 of the Constitution.[30]

27. *Lakshmanaswami* v. *LIC*, AIR 1963 SC 1185.
28. For 'Vicarious Liability', *see* Lecture X (*supra*).
29. (1950) 1 KB 18 (24): (1949) 2 All ER 327.
30. *Ajay Hasia* v. *Khalid Mujib*, (1981) 1 SCC 722: AIR 1981 SC 487; *Som Prakash Rekhi* v. *Union of India*, (1981) 1 SCC 449: AIR 1981 SC 212; *U.P. Warehousing Corpn.* v. *Vijay Narayan*, (1980) 3 SCC 459: AIR 1980 SC 840; *Kalra* v. *Project*

Thus, an employee of the Oil and Natural Gas Commission, the Life Insurance Corporation of India, the Industrial Finance Corporation, the Hindustan Steel Ltd., the Hindustan Antibiotics Ltd., the State Transport Corporation, the State Bank of India, the Damodar Valley Corporation, the Hindustan Cables Ltd., the State Electricity Board, the Sindri Fertilisers and Chemicals Ltd., etc. cannot be said to be a 'civil servant'.

(c) Whether public servants ?

Sometimes, a statute creating a corporation may confer on its employees the status of public servants for certain purposes. For instance, Section 56 of the Damodar Valley Corporation Act, 1948 reads as under:

> "All members, officers and servants of the Corporation, whether appointed by the Central Government or the Corporation shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of Section 21 of the Indian Penal Code."

But by such provisions, the employees of a corporation will not become civil servants so as to be entitled to the protection of Article 311 of the Constitution of India.

Thus, a Chief Minister or a Minister, an employee of Road Transport Corporation, a chairman of the managing committee of the municipality, etc. may be said to be 'public servants' under Section 21 of the Indian Penal Code, but nevertheless, they are not civil servants within the meaning of Article 311 of the Constitution of India.

(d) Whether entitled to reinstatement ?

A question may arise as to the effect of breach or violation of the Rules and Regulations framed by a corporation. Suppose, the Rules have been framed by the Government under the parent Act or the Regulations have been made by the corporation and in violation of the Rules or Regulations, the services of an employee have been terminated by a corporation. Whether he would be entitled to a declaration that the order passed by the corporation is null and void and that he is continued in service or he would be entitled to claim damages only and has no right to claim reinstatement.

It is submitted that the law on the point was somewhat uncertain up to 1975 and there were conflicting decisions of the Supreme Court. How-

---

and Equipment Corpn., (1984) 3 SCC 316: AIR 1984 SC 1361; *Pyare Lal Sharma* v. *J&K Ind.*, (1989) 3 SCC 448: AIR 1989 SC 1854; *State Bank of India* v. *Vijay Kumar*, (1990) 4 SCC 481. *See also* C.K. Thakker: *Administrative Law*, 1996, pp. 554-67.

ever, now the law appears to have been well settled that employees of statutory corporations are entitled to reinstatement.

In the leading case of *Tewari* v. *District Board, Agra*[31], the Supreme Court held that ordinarily, a contract of personal service cannot be specifically enforced by granting an order of reinstatement. However, in the following circumstances, a contract of personal service can be enforced and an order of reinstatement can be granted by a competent court—

(1) cases of civil servants falling under Article 311 of the Constitution of India;

(2) cases falling under the Industrial Law; and

(3) cases where acts of statutory bodies are in breach of mandatory obligation imposed by a statute.

Thus, in *L.I.C.* v. *Sunil Kumar*[32], services of Field Officers were terminated without complying with the provisions of Life Insurance Corporation Field Officers (Alteration of Remuneration and other Terms and Conditions of Service) Order, 1957, since the orders terminating the services had not been passed in accordance with the Order, they were held invalid.

Unfortunately, however, a distinction was sought to be made between the Rules and Regulations by the Supreme Court in the case of *U.P. State Warehousing Corpn.* v. *C.K. Tyagi*[33]. In that case, a confirmed employee was dismissed from service after holding an inquiry. He filed a suit challenging the order of dismissal, *inter alia*, on the ground that the inquiry was held in disregard of the Regulations framed by the corporation. The High Court granted reinstatement but the Supreme Court reversed the order of the High Court.

However, in *Sirsi Municipality* v. *Cecelia Francis*[34], an employee working in a municipal hospital run by the municipality was dismissed from service. She challenged the order of dismissal contending that it was in violation of Rule 143 framed under the Bombay District Municipalities Act, 1901. It was contended by the municipality that even if the dismissal was wrongful, the remedy was not declaration but damages. Negativing the contention of the municipality, the Court held that 'where a State or public authority dismisses an employee in violation of man-

31. AIR 1964 SC 1680 (1682).
32. AIR 1964 SC 847; see also *Calcutta Dock Labour Board* v. *Jaffar Imam*, AIR 1966 SC 282; *Mafatlal Barot* v. *State Transport*, AIR 1966 SC 1364.
33. (1969) 2 SCC 838: AIR 1970 SC 1244; see also *Indian Airlines Corpn.* v. *Sukhdeo Rai*, (1971) 2 SCC 192: AIR 1971 SC 1828.
34. (1973) 1 SCC 409 (413): AIR 1973 SC 855 (857).

datory procedural requirements or on the grounds which are not sanctioned or supported by statute, the courts may exercise jurisdiction to declare the act of dismissal to be a nullity.

Then came the celebrated judgment in *Sukhdev Singh* v. *Bhagatram*[35]. In that case, the dismissed employees of three statutory corporations, namely: (1) Oil and Natural Gas Commission, (2) Life Insurance Corporation, and (3) Industrial Finance Corporation claimed reinstatement. The Corporations were incorporated under the Oil and Natural Gas Commission Act, 1959, the Life Insurance Corporation Act, 1956, and the Industrial Finance Corporation Act, 1948.

One of the questions raised before the Supreme Court was whether the Regulations made by such corporations prescribing the terms and conditions of their employees have statutory force and if those Regulations have not been complied with, whether the employees were entitled to the relief of reinstatement.

Speaking for the majority, Ray, C.J. rightly observed: "There is no substantial difference between a rule and a regulation inasmuch as both are subordinate legislation under powers conferred by the statute.... An ordinary individual in a case of master and servant contractual relationship enforces breach of contractual terms. The remedy in such contractual relationship of master and servant is damages because personal service is not capable of enforcement. In cases of statutory bodies, there is no personal element whatsoever because of the impersonal character of statutory bodies. In the case of statutory bodies it has been said that the element of public employment or service and the support of statute require observance of rules and regulations.

> *Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void.*[36]" (emphasis supplied)

(e) Principles

The following principles have been deduced by an eminent author on Constitutional Law[37] with regard to the status of employees of a statutory corporation—

---

35. (1975) 1 SCC 421: AIR 1975 SC 1331.
36. *Id.* at pp. 438-39 (SCC): p. 1341 (AIR); see also *Workmen* v. *Hindustan Steel Ltd.*, 1984 Supp SCC 554: AIR 1985 SC 251; *K.C. Joshi* v. *Union of India*, (1985) 3 SCC 153: AIR 1985 SC 1046; *Central Inland Water Transport Corpn.* v. *Brojo Nath Ganguly*, (1986) 3 SCC 156: AIR 1986 SC 1571.
37. Seervai: *Constitutional Law of India*, 1984, Vol. II, pp. 2578-79.

(*i*) a statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State;

(*ii*) it makes little difference in this respect, whether the Union or the State holds the majority share of the Corporation and controls its administration by policy directives or otherwise;

(*iii*) it also makes little difference if such a statutory Corporation imitates or adopts the Fundamental Rules to govern the service conditions of its employees;

(*iv*) although the ownership, control and management of the statutory corporation may be, in fact, vested in the Union or the State, yet in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any 'civil post under the Union or the State';

(*v*) if, however, the State or the Union controls a post under a statutory corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder of the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union.

To these, two more may be added—

(*vi*) even if the statute creating a public corporation confers on its employees the status of public servants for certain purposes, they cannot thereby become civil servants so as to attract the provisions of Article 311 of the Constitution;

(*vii*) even though employees of a statutory corporation cannot claim protection of Article 311 of the Constitution, they hold statutory status and are entitled to declaration of being in employment if their services are terminated otherwise than in accordance with the statutory provisions.

9. CONTROLS OVER PUBLIC CORPORATIONS

The main purpose of establishing public corporations is to promote economic activity through autonomous bodies. In fact, these corporations have been granted very wide powers and there is no interference by any authority in exercise of these powers by the corporations. Yet, it is necessary that some control over these corporations should be there so that the powers conferred on such corporations may not be arbitrarily

exercised or abused, and it may not become the 'headless fourth organ' of the Government. The various controls may now be discussed:

(a) Judicial control

(i) General

Since a public corporation is a legal entity it can sue and be sued. It is a body corporate having perpetual succession and a common seal. Legal proceedings may be taken by or against a corporation in its corporate name. It is a distinct and separate entity from the Crown or the Government.[38] Jurisdiction of courts over a public corporation is the same as it is over any private or public company except that the powers of the former depend on the provisions of a special statute while the powers of a company are derived from the terms of its Memorandum of Association. In some statutes an express provision is made enabling a corporation to be sued. But even in the absence of such a provision, a corporation can be sued like any other person. In fact, when any statute refers to a 'person', it includes a corporation also.[39] Accordingly, a public corporation is liable for a breach of contract and also in tort for tortious acts of its servants like any other person. It is liable to pay income tax unless expressly exempted and cannot invoke the exemption granted to the State under Article 289 of the Constitution of India. It is bound by a statute. It cannot claim 'Crown privilege'.

(ii) Traditional view

According to the traditional theory, since a public corporation is created by a statute, it is required to exercise its powers within the four corners of the constituent statute. Therefore, if a corporation exceeds its authority, the action may be declared *ultra vires*. Similarly, if a company registered under the Companies Act, 1956 acts *de hors* the terms and conditions mentioned in the Memorandum of Association, the same principle will be applied.[40]

There are, however, certain difficulties. The main difficulty is that most of the statutes which confer powers on public corporations are so widely worded that it is very difficult, if not impossible, to declare a particular act of the corporation to be *ultra vires*. Similarly, where duties

38. *S.L. Agarwal* v. *Hindustan Steel Ltd.*, (1969) 1 SCC 177: AIR 1970 SC 1150; *H.E.M. Union* v. *State of Bihar*, (1969) 1 SCC 765: AIR 1970 SC 82; *State of Bihar* v. *Union of India*, (1970) 1 SCC 67: AIR 1970 SC 1446.

39. S. 3(42), General Clauses Act, 1897.

40. *Lakshmanaswami* v. *LIC*, AIR 1963 SC 1185; *State of Punjab* v. *Raja Ram*, (1981) 2 SCC 66: AIR 1981 SC 1694.

are imposed by statutes, generally they are vague in nature and cannot be endorsed through courts.

Again, who would be able to move the court for the purpose of getting an act of a corporation declared as *ultra vires*. Generally, only an aggrieved person has *locus standi* to move the court for the purpose of getting appropriate relief. In case of a public corporation or a government company, who can move the court restraining the public corporation or a government company from acting *ultra vires* ? Usually, substantial shareholding is by the Government or government officials and it is too much to expect a shareholder coming to the court of law in such cases against the corporation or company. Thus, *the judicial control through the doctrine of ultra vires cannot be said to be direct, adequate or effective.*

(iii) Modern view

Modern State is not merely a 'police State' performing 'law and order' functions, but has become a welfare State, which acts through statutory corporations and companies. Thus, corporations have become 'a third arm' of the Government. They perform functions which are otherwise to be performed by the Government. Being a creation of the State, a public corporation must be subject to the same constitutional limitations as the State itself. Again, statutory corporations as well as government companies are held to be 'other authorities' and, therefore, "State" within the meaning of Article 12 of the Constitution. In these circumstances, there is no reason why these corporations should not be subject to the same judicial control as the Government itself. As discussed in Lecture X (*supra*), statutory corporations are amenable to the writ jurisdiction of the Supreme Court under Article 32 and of High Courts under Article 226 of the Constitution.

(iv) Illustrative cases

So far as Indian courts are concerned, they have always adopted a liberal view and have interfered wherever justice required such interference. Thus, if an action of a public corporation is illegal, arbitrary or unreasonable, the court would quash and set it aside . Even in case of grant of largess, jobs, government contracts, issue of quotas and licences, etc. such corporations and companies have to act in accordance with law.[41] In cases of acceptance of tenders, enhancement of rates of taxes and fees, irrational or discriminatory actions cannot be permitted. In cases of employees of such corporations and government companies, though

41. *R.D. Shetty* v. *International Airport Authority*, (1979) 3 SCC 489: AIR 1979 SC 1628.

they are not 'civil servants' under Part XIV of the Constitution and, therefore, not entitled to protection under Article 311 thereof, the general principles of service jurisprudence are applied to those employees. Nevertheless, in 'unequal fights between giant public sector undertakings and petty employees' the courts have safeguarded the interests of employees.[42] Again, the courts have also criticized the attitude of such corporations whenever they had adopted an attitude of 'typical private employer's unconcealed dislike and detestation'.[42] Apart from enforcing statutory regulations and granting relief of declaration and reinstatement in service to employees of corporations, by invoking the provisions of equality clause enshrined under Articles 14 and 16 of the Constitution of India, the regulations framed by such corporations were also declared illegal, arbitrary and unconstitutional by the courts.[43] In *LIC of India* v. *CERC*[44] the Supreme Court held that in prescribing terms, conditions and rates of premium while issuing policy, the corporation must act reasonably and fairly. The eligibility conditions must be just and reasonable.

(*v*) ***Powers and duties of courts***

It is true that public corporations must have liberty in framing their policies. If the decisions have been taken bona fide although not strictly in accordance with the norms laid down by courts, they have been upheld on the principle laid down by Justice Holmes that they must be allowed some freedom of "play in the joints"[45]. It cannot, however, be overlooked that such power is not absolute or blanket. If it is shown that exercise of power is arbitrary, unjust or unfair, an instrumentality of State cannot contend that its action is in accordance with the "letter of the law". Whatever may be the activity of a corporation, it must be subject to rule of law and should meet the test of Article 14 of the Constitution. It is not only the power but the duty of a court of law to see that every action of an instrumentality of the State is informed by reason, guided by public interest and conforms to the Preamble, Fundamental Rights and Directive Principles of the Constitution.[46]

---

42. *K.C. Joshi* v. *Union of India*, (1985) 3 SCC 153: AIR 1985 SC 1046.
43. *Central Inland Water Transport Corpn.* v. *Brojo Nath Ganguly*, (1986) 3 SCC 156: AIR 1986 SC 1571; *Bharat Petroleum Management Staff Pensioners* v. *Bharat Petroleum Corpn.*, (1988) 3 SCC 33: AIR 1988 SC 1407; *Delhi Transport Corpn.* v. *Mazdoor Congress*, 1991 Supp (1) SCC 600: AIR 1991 SC 101.
44. (1995) 5 SCC 482.
45. *Sterling Computers* v. *M & N Publications (supra).*
46. *Id.*; see also *Central Inland Water Transport Corpn.* v. *Ganguly*, (1986) 3 SCC 156: AIR 1986 SC 1571; *R.D.Shetty* v. *International Airport Authority*, (1979) 3 SCC 489: AIR 1979 SC 1628.

(vi) Conclusions

It is submitted that the following observations of Krishna Iyer, J. in *Fertilizer Corpn. Kamgar Union* v. *Union of India*[47], lay down correct law on the point and therefore are worth quoting:

> "Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the judges in our constitutional scheme. We do not think that our internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, is incompetent and improper and, therefore, out of bounds, nevertheless, *the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.*"[48]
>
> (emphasis supplied)

(b) Governmental control

(i) General

As the judicial control over public corporations is not effective, it needs to be supplemented by other controls. Government also exercises some control and supervision over such corporations as the custodian of public interest in different ways.

(ii) Appointment and removal of members

Generally, the power of appointment and removal of the Chairman and the members of a public corporation is vested in the Government.[49] This is the key provision and the most effective means of control over a public corporation. In some cases, the term of office of a member is also left to be determined by the Government.[50] In some statutes, a provision is made for removal of a member on the ground that the member is absent from meetings for a specified period, he is adjudged a bankrupt or is '*otherwise unsuitable*' to continue as a member.[51]

(iii) Finance

The Government exercises effective control over a public corporation when such corporation is dependent on the Government for finance. A statute may require previous approval of the Government for undertaking

47. (1981) 1 SCC 568: AIR 1981 SC 344.
48. *Id.* at pp. 588-89 (SCC): 356 (AIR).
49. S. 4, Damodar Valley Corporation Act, 1948.
50. S. 5, Air Corporations Act, 1953.
51. S. 51, Damodar Valley Corporation Act, 1948.

any capital expenditure exceeding a particular amount.[52] It may also provide to submit to the Government its programme and budget for the next year and to submit the same in advance.[53] It may also impose a condition on the corporation to take consent of the Government before borrowing money or may insist for issuance of bonds and debentures to secure payment made by the Government to the corporation.[54] The Comptroller and Auditor General exercises control in the matter of audit of accounts submitted by public corporations.[55]

(iv) Directives

An important technique involved to reconcile governmental control with the autonomy of the undertaking is to authorise the Government to issue directives to public undertakings on matters of 'policy' without interfering with the matters of day-to-day administration. A statute may empower the Government to issue such directives as it may think necessary on questions of policy affecting the manner in which a corporation may perform its functions. The corporation will give effect to such directives issued by the Government. A statute may also provide that in case 'any question arises whether a direction relates to matter of policy involving public interest, the decision of the Central Government thereon shall be final'.[56] It is very difficult to draw a dividing line between matters of 'policy' and 'day-to-day' working of a public corporation and by this method, the Government can exercise effective control over public corporations. But unfortunately, in practice, the Government hardly exercises its power to issue policy directives. Considering the provisions of Section 21 of the Life Insurance Corporation Act, 1956, the Chagla Commission[57] has rightly observed:

> "In my opinion, it is most unfortunate that the wise and sound principle laid down in Section 21 has not been adhered to in the working of the Life Insurance Corporation."

(v) Rules and Regulations

Usually a constituent statute creating a corporation contains provisions to make rules and regulations. The provision empowers the Central Government to make rules 'to give effect to the provisions of the Act'.

52. S. 35, Air Corporations Act, 1953.
53. S. 26, Food Corporations Act, 1964.
54. S. 10, Air Corporations Act, 1953.
55. S. 15, Air Corporations Act, 1953; S. 619, Companies Act, 1956.
56. S. 21, Life Insurance Corporation Act, 1956; see also *Fertilizer Corpn.* v. *Workmen*, AIR 1970 SC 867.
57. Chagla Commission: *Report on the Life Insurance Corporation*, (1958).

The other provisions authorise the corporation 'with the prior approval of the Central Government' to make regulations 'not inconsistent with the Act and the Rules made thereunder' for enabling it to discharge its functions under the Act.[58] Thus, even in case of framing rules and regulations, the Government is having the upper hand. Regulations promulgated without previous approval of the Government cannot be said to be valid.[59] Again, in case of inconsistency between the rules and regulations, the rules would prevail and the regulations will have to give way to the extent of inconsistency with the rules made by the Central Government.[60]

(vi) Suggestions

As Chagla Commission rightly observed, there must be compromise between the authority of a statutory corporation in the matters of day-to-day administration and the control which must be exercised by a welfare State over such corporation. The central problem is the reconciliation of these two basic concepts of autonomy and control. No hard and fast rule can be laid down and no uniform pattern can be suggested. The balance between autonomy and control varies from enterprise to enterprise as well as the organisational form of enterprise.[61]

(c) Parliamentary control

(i) General

Public corporations are created and owned by the State, financed from public funds and many a time they enjoy full or partial monopoly in the industry, trade or business concerned. They are expected to exercise their powers in the public interest. It is, therefore, necessary for Parliament to exercise some degree and mode of control and supervision over these corporations. The methods adopted to exercise such control are numerically four.

(ii) Statutory provisions

All public corporations are established by or under statutes passed by Parliament or State legislatures. The powers to be exercised by such corporations can be defined by them. If any corporation exceeds or abuses its powers, Parliament or the State legislature can supersede or even abolish the said corporation. Even though this type of control is not frequently employed, it is a salutary check on the arbitrary exercise of power by the corporation.

58. Ss. 31, 32, Oil and Natural Gas Commission Act, 1959.
59. *Karnakar* v. *State of Mysore*, AIR 1966 Mys 317.
60. *L.I.C.* v. *Sunil Kumar*, AIR 1964 SC 847; *see also* Lecture V (*supra*).
61. Jain and Jain: *Principles of Administrative Law*, 1986, p. 1005.

(iii) Questions

Through this traditional method, the members of Parliament put questions relating to the functions performed by public corporations to the Minister concerned. But this method has not proved to be very effective because of the authority of public corporations in their fields. As Garner states: "The House of Commons is not a meeting of the shareholders of a public corporation, nor are the Ministers of the Crown in the position of directors of corporation".[62]

Accordingly, broad principles subject to which questions relating to these undertakings can be asked, have been laid down, namely, questions relating to policy, an act or omission on the part of a Minister, or a matter of public interest (even though seemingly pertaining to a matter of day-to-day administration or an individual case), are ordinarily admissible. Questions which clearly relate to day-to-day administration of the undertakings are normally not admissible.

(iv) Debates

A more significant and effective method of parliamentary control is a debate on the affairs of a public corporation. This may take place when the annual accounts and reports regarding the corporation are placed before Parliament for discussion in accordance with the provisions of the statute concerned. There is no general obligation on the part of all corporations to present their budget estimates to Parliament. Estimates Committee[63], therefore, recommended that corporations should prepare a performance and programme statement for the budget year together with the previous year's statement and it should be made available to Parliament at the time of the annual budget.

(v) Parliamentary Committees

This is the most effective form of parliamentary control and supervision over the affairs conducted by public corporations. Parliament is a busy body and it is not possible for it to go into details about the working of these corporations. Parliament has, therefore, constituted the Committee on Public Undertakings in 1964. The functions of the Committee are to examine the reports and accounts of the public undertakings, to examine the reports, if any, of the Comptroller and Auditor-General on the public corporations, to examine in the context of the autonomy and efficiency of the public corporations, whether their affairs are being man-

62. *Administrative Law*, 1989, p. 363.
63. Jain and Jain: *Principles of Administrative Law*, 1986, pp. 1013-15.

aged in accordance with sound business principles and prudent commercial practices.

The recommendations of the Committee are advisory and, therefore, not binding on the Government. Yet, by convention, they are regarded as the recommendations by Parliament itself, and the Government accepts those recommendations; and in case of non-acceptance of the recommendations of the Committee, the ministry concerned has to give reasons therefor.

(vi) Conclusions

No doubt, parliamentary control over the public corporations is "diffuse and haphazard"[64], yet it is the duty of Parliament to see that if a corporation is exercising too great a measure of freedom, it should be brought to heel.[65] The whole purpose of establishing an autonomous undertaking is to make it free, in its daily working from detailed scrutiny by members of Parliament. But since the functions carried on by these undertakings are of public concern and to be performed in public interest, Parliament cannot completely absolve itself of its controlling function. It is, therefore, necessary that leaving the matters relating to day-to-day administration to the corporations, there must be overall supervision in important policy matters by Parliament.[66]

(d) Control by public

(i) General

In the ultimate analysis, public corporations are established for the public and they are required to conduct their affairs in the public interest. In the ultimate analysis, public enterprises are owned by the people and those who run them are accountable to the people. It is, therefore, necessary that in addition to judicial, parliamentary and governmental control, these corporations must take into account the public opinion also. There are two different means of representation of the 'consumer' or public interest.

(ii) Consumer councils

These are bodies established under the authority of the statute constituting the corporations concerned with the object of enabling "consumers" to ventilate their grievances, or make their views known to the

64. Per Chandrachud, C.J. in *Fertilizer Corpn. Kamgar Union* v. *Union of India*, (1981) 1 SCC 568 (580): AIR 1981 SC 344.

65. Garner: *Administrative Law*, 1989, p. 362.

66. *Fertilizer Corpn. Kamgar Union* v. *Union of India*, (1981) 1 SCC 568 (580): AIR 1981 SC 344.

corporations. The outstanding examples of consumer councils are to be found in the electricity and gas industries. The difficulty about these councils is that the members of the general public have neither the technical knowledge nor a keen interest in the affairs of certain consumer councils; e.g. Gas or Electricity Consumer Councils. These councils may make recommendations to their area boards, but there have been very few occasions when alterations of policy decisions have resulted. Garner states: "It is by no means clear that Consumer Councils are really able to justify their continued existence in the administrative machinery of the gas and electricity industries". Again, if a question of 'policy' is raised, the Consumer Councils are powerless. The friendly and close relations that often exist between an Area Board and its Consumer Council may, whilst desirable from many points of view, militate against any real improvements or modifications in policy being achieved. Again, as Garner suggests the Consumer Council must have a power to 'bark' as well as to 'bite'.[67]

(iii) Membership

In other cases, Parliament has arranged for members of certain public corporations to be nominated by local authorities and other bodies interested in the functions of the particular corporation. Thus, members of Hospital Management Committees are appointed by the Regional Hospital Boards after consultation with local health authorities, executive councils and other officials, as required by the statute. Sometimes, such consultation is made mandatory. Some statutes also provide that certain members of a council must possess particular qualifications.

(iv) Consumers and courts

Due to rapid development of administrative law and consciousness of rights by vigilant citizens, there is a clear tendency on the part of the consumers to approach courts for the purpose of ventilating their grievances. More and more cases are coming before the courts by consumers in their individual capacity or through some organisation by way of public interest litigation. So far as public interest litigation is concerned, it is dealt with in Lecture IX. But the courts have granted appropriate relief even to individual consumers whenever justice required.[68]

(v) Consumer Protection Act

With a view 'to provide for better protection of the interests of consumers and for that purpose to make a provision for the establishment

67. Garner: *Administrative Law*, 1989, pp. 364-68.
68. For detailed discussion and case-law, *see* C.K. Thakker: *Administrative Law*, 1996, pp. 581-85.

of Consumer Councils and other authorities for the settlement of consumers' disputes and for matters connected therewith', Parliament enacted the Consumer Protection Act, 1986.[69] The Act provides for establishment of consumer protection councils, and also sets up machinery for settlement of consumer disputes.

10. CONCLUSIONS

From the above discussion, it is clear that public corporations must be autonomous in their day-to-day working and there should be no interference by the Government in it. At the same time, the wide powers conferred on such corporations should not be abused or arbitrarily exercised and they should not become the 'fourth branch' of the Government. The discussion would be well concluded by quoting the following observations of a learned author on Administrative Law:[70]

> "The most disturbing problem in connection with public corporations; especially those responsible for the management of nationalised industries, is undoubtedly that of control and accountability. A powerful corporation, having great financial resources, employing many personnel and possessing monopolistic powers conferred by statute, should be answerable in some measure to the elected representatives of the nation and to the courts of law. In many cases this control seems tenuous and ineffective. On the other hand, any large-scale commercial enterprise must be allowed freedom to carry on research, to experiment, and even on occasion to make mistakes. Indeed, the justification for the constitutional device of the public corporation has been said to be so as to secure freedom from civil service (and particularly Treasury) controls, and from the influence of party politics. *It is one of the modern problems of public administration, how these conflicting objectives can be reconciled.*"[71]
>
> (emphasis supplied)

---

69. Preamble to Consumer Protection Act, 1986. *See also* C.K. Thakker: *Administrative Law*, 1996, p. 585.
70. Garner: *Administrative Law*, 1989, pp. 370-71.
71. See also *R.D. Shetty* v. *International Airport Authority*, (1979) 3 SCC 489: AIR 1979 SC 1628; *Fertilizer Corpn. Kamgar Union* v. *Union of India*, (1981) 1 SCC 568: AIR 1981 SC 344.

About The Book

In this third edition, the author has red all the recent developments in the in India and abroad.

eral topics have been revised and latest has been added. Delegated Legislation, Justice, Judicial Review, Administrative s, Judicial Remedies, etc. have been ed in greater detail. Some important ave been dealt with for the first time. e doctrine of Public Accountability, onality, Legitimate Expectations and nciples find place in the present edition. e Delegation; Delegation in favour of thorities, Doctrine of Estoppel and other ve been discussed in the light of leading .

author has discussed at length and with eye, a recent decision of a larger Bench upreme Court in *L. Chandra Kumar* v. *ndia,* which has opened a new chapter in Constitutional and Administrative Law in India.

ISBN: 81 7012 639 8

EASTERN BOOK COMPANY
34, Lalbagh, Lucknow-226-001