

Administrative Law

BIHAR JUDICIARY PRELIMS ANALYSIS 2023 –

ADMIN LAW QUESTIONS

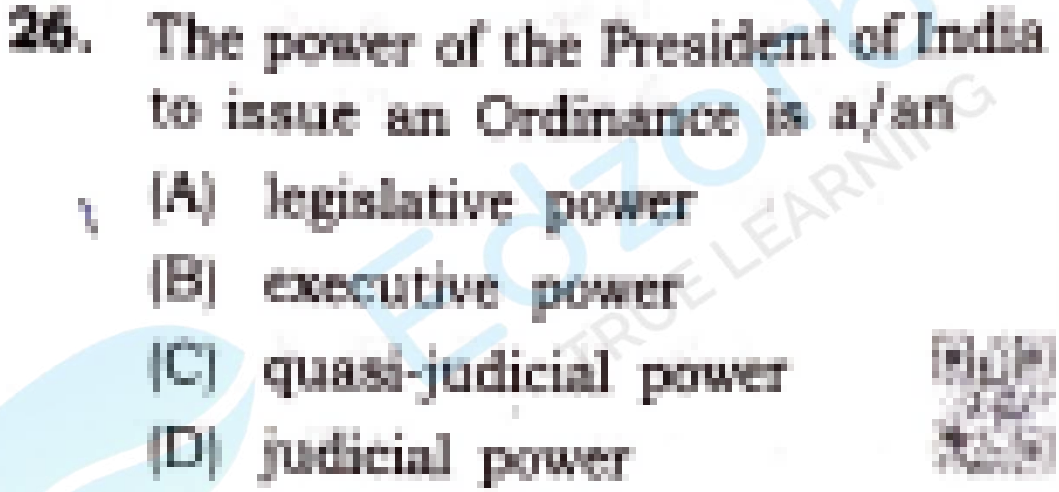
Q.26) The power of the President of India to issue an Ordinance is a/an:

(A) Legislative Power

(B) Executive Power

(C) Quasi-Judicial Power

(D) Judicial Power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(B) executive power

(C) quasi-judicial power

(D) judicial power

Source: Edzorb Law - Admin Law Simplified Notes - Page 27

Doctrine of Separation of Power in India

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



Some traces of Separation of Power in Indian Constitution

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

Q.33) The first attempt towards creation of Ombudsman system in India was made in the form of

(A) the Lokpal Bill, 1966

(B) the Lokpal Bill, 1977

(C) the Lokpal and Lokayuktas Bill, 1968

(D) the Lokpal and Lokayuktas Act, 2013

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Source: Edzorb Law - Admin Law Simplified Notes - Page 101-102

Concept of Sweden brought to India:

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



The Lokpal and Lokayukta Act, 2013:



Did you Know?



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



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

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Q.34) Where a person legally does some work for or delivers something to the government, not intending to act gratuitously, and the same is accepted, then in absence of a valid contract, such person may

(A) claim compensation from the government

(B) not claim any compensation from the government

(C) claim restoration of any benefit derived by the government

(D) compel the government to perform under the constructive contract

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Source: Edzorb Law - Admin Law Simplified Notes - Page 71-73

Suits against Government

Contractual Liability of the Government-

Article 298:

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



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

"All Contracts made in the exercise of the executive power of the Union or of a state shall be expressed to be made by the President or by the Governor of the State,

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

Thawardas pherumal and another Vs Union of Indi 1955, SC

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

Did you Know?

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



Liability of Government under Torts:

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



For reference –

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

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017
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Q.35) The classic case in which, for the first time, conditional legislation was upheld as valid was

(A) Queen vs. Burah

(B) In re Delhi Laws Act, 1912

(C) King-Emperor vs. Benoari Lal

(D) Hamdard Dawakhana vs. Union of India

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(D) *Hamdard Dawakhana vs. Union of India*

Source: Edzorb Law - Admin Law Simplified Notes - Page 44

The following non-essential powers can be delegated:



Conditional Legislation:

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



Q.36) Which of the following is not an instance of procedural ultra vires of delegated legislation?

(A) Laying before the Legislature

(B) Previous publication

(C) Prescribing limitation period for taking recourse to a tribunal

(D) Consultation with affected interests

36. Which of the following is **not** an instance of procedural ultra vires of delegated legislation?

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(B) Previous publication

(C) Prescribing limitation period for taking recourse to a tribunal

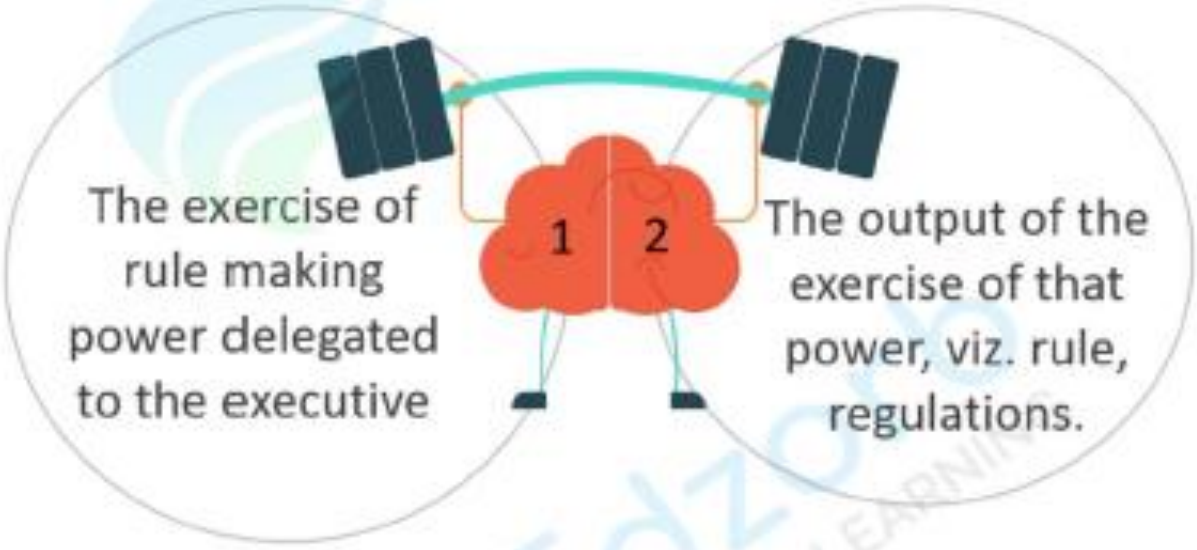
(D) Consultation with affected interests

Source: Edzorb Law - Admin Law Simplified Notes - Page 39-45

Delegated Legislation

There can be no law without a legislative act.
-Austin

'Delegate legislation' is used in two senses.



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

33



Nature and Scope of Delegated Legislation



Food for thought

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



History of Delegated Legislation

Charter Act, 1833

Admin. Powers in the hand of the Governor General.

01

GoI, 1935

Had serious plan for delegation.

02

Constitution of India

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

03

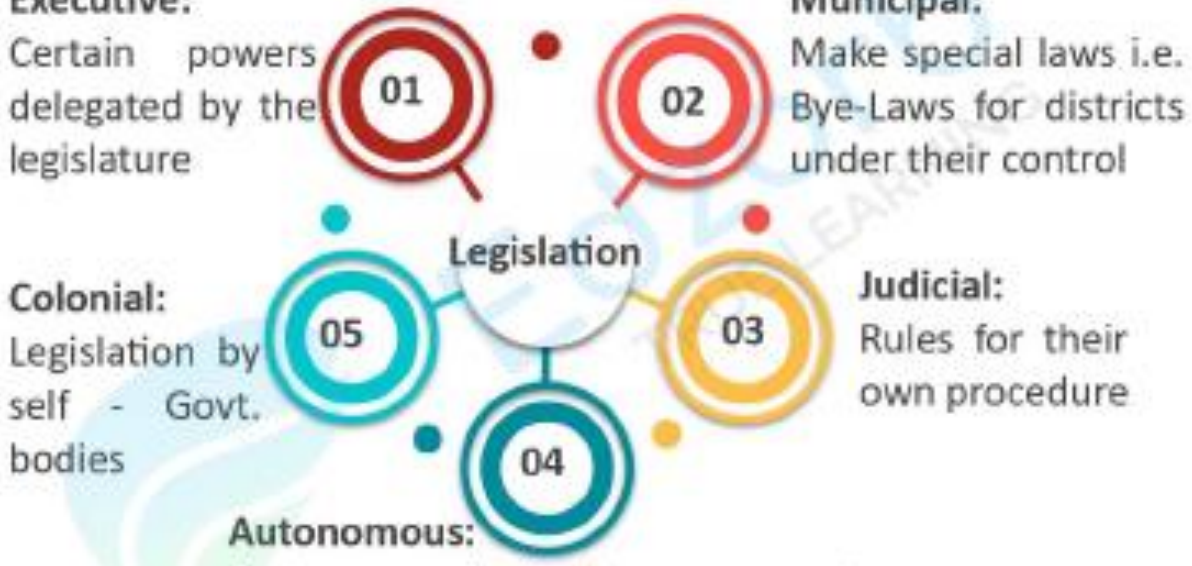
Types of Delegated Legislation

Normal Delegation

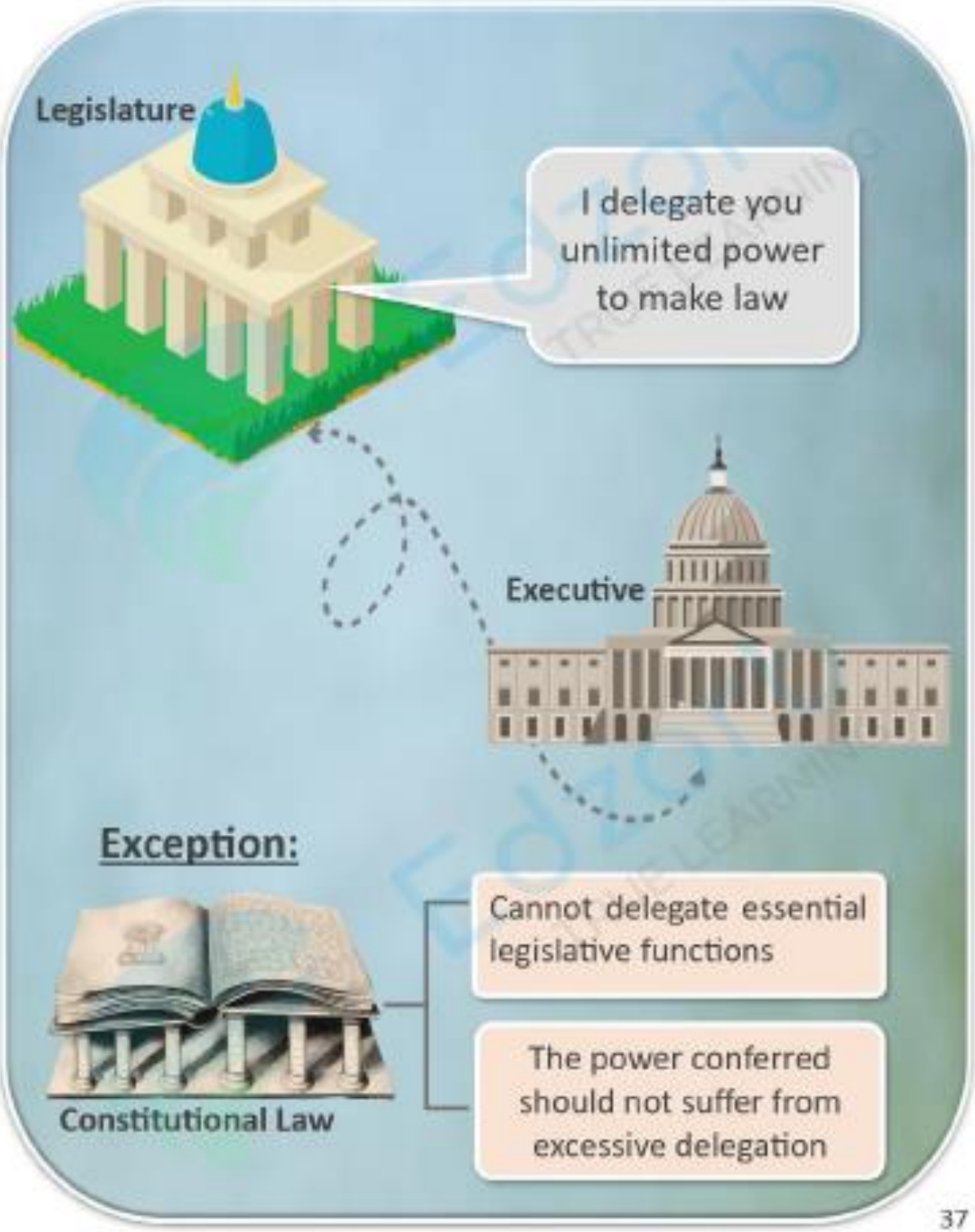
Exceptional Delegation

Subordinate Legislation:

- In subordinate legislation, the process consists of discretionary elaboration of rules and regulations.
- Subordinate legislation has its origin in the delegation of the power of Parliament to inferior authorities and are subject to control of the sovereign legislation.



Constitutional Limits of Legislative Delegation



The following non-essential powers can be delegated:



Power to extent the duration of the statutes



Adopt the existing statute with the incidental changes



Power to promulgate rules



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

Conditional Legislation:

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





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

Disadvantages of Delegated Legislation:

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



Modes of controlling Delegated Legislation:

Parliamentary control	Procedural control	Judicial control
• By laying the rules before Parliament; • By Parliament scrutinizing the rules.	• Prior consultation of interests • Prior publicity of rules • Post-natal publicity of rules	• Doctrine of Ultra vires • Use of prerogative writs

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

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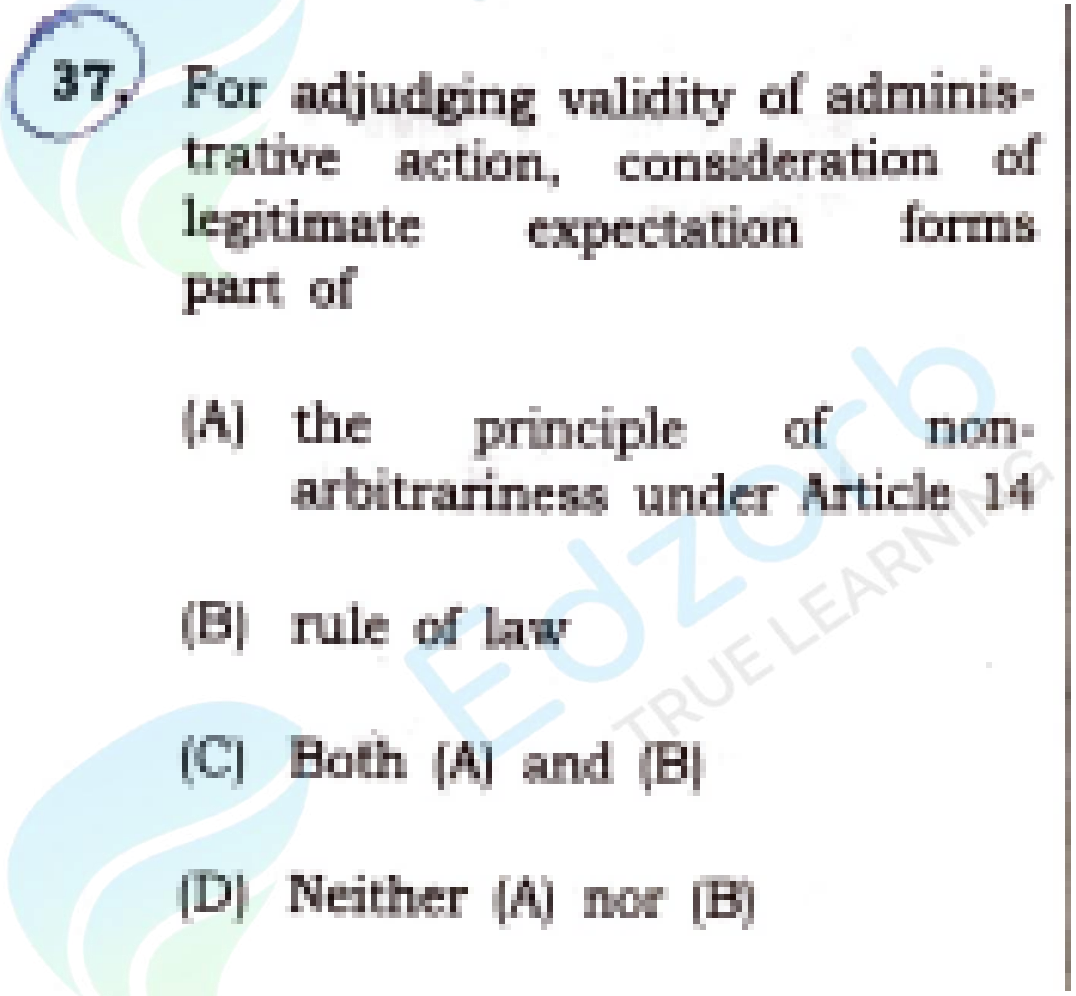
Q.37) For adjudging validity of administrative action, consideration of legitimate expectation forms part of

(A) The principle of non-arbitrariness under Article 14

(B) Rule of law

(C) Both (A) and (B)

(D) Neither (A) nor (B)



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(D) Neither (A) nor (B)

Source: Edzorb Law - Admin Law Simplified Notes - Page 115-119

Doctrine of Legitimate Expectations:

Introduction:

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

Doctrine of Legitimate Expectation:

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



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

Origin of Doctrine of Legitimate Expectations:

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

Civil Service Unions & Others Vs Minister for the Civil Service

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

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



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

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

State of Kerala Vs K.G. Madhavan Pillai

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

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

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

Held: -

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

Circumstances for the formation of legitimate expectation:

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

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

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

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

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

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

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

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

National Buildings Construction Corporation Vs S.Raghunathan

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

Bannari Amman Sugars Ltd. Vs CTO

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

Article 14 and Legitimate Expectation:

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

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017
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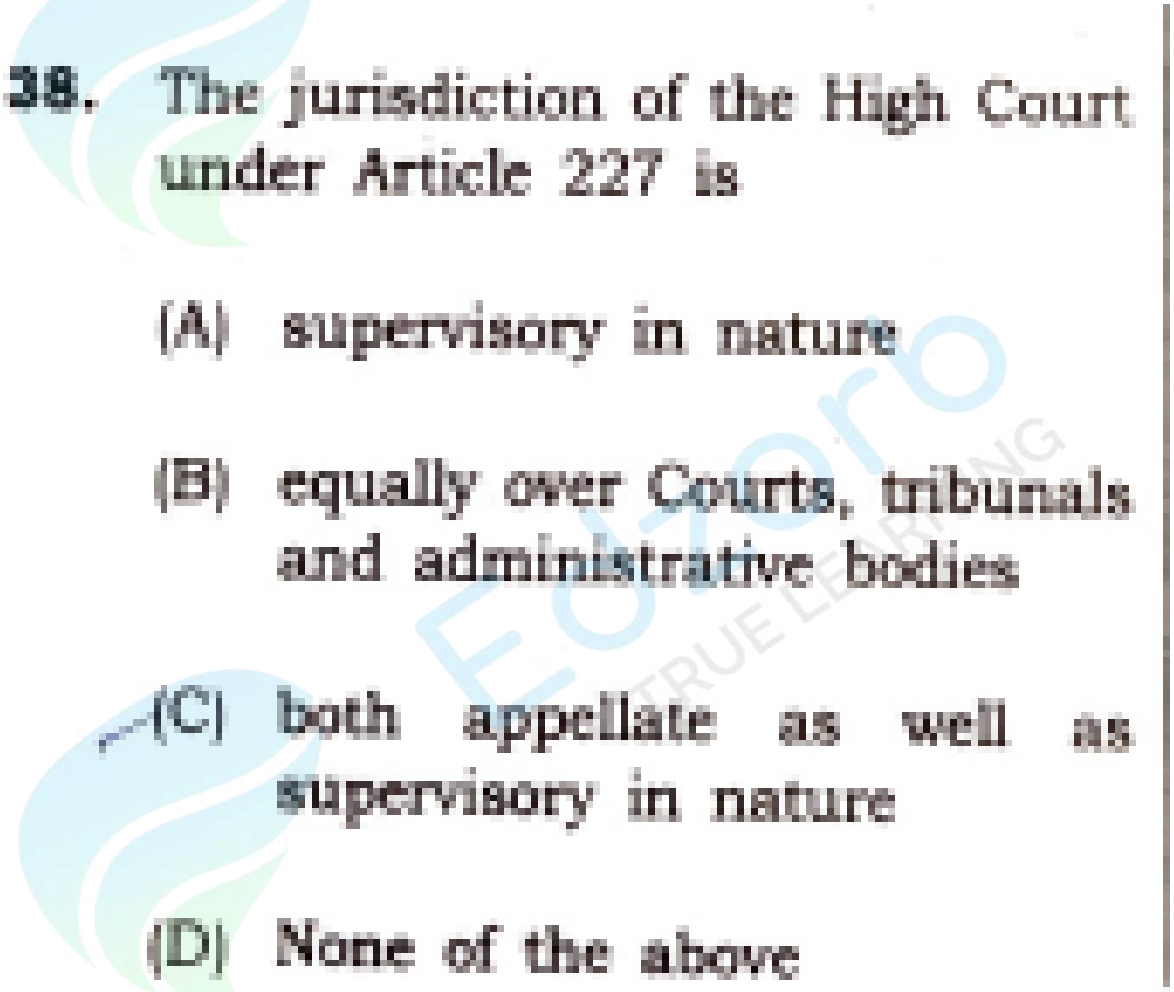
Q.38) The jurisdiction of the High Court under Article 227 is

(A) Supervisory in nature

(B) Equally over Courts, tribunals and administrative bodies

(C) Both appellate as well as supervisory in nature

(D) None of the above



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Source: Edzorb Law - Admin Law Simplified Notes - Page 83

Constitutional Remedies



Article 32:
Writ Jurisdiction of SC

Article 227:
Superintendence Power of HC

Article 226:
Writ Jurisdiction of HC

Article 136:
Special Leave Petition of SC

Article 32 Vs Article 226

Basis	Article 32	Article 226
Fundamental Right	• It is FR	• It is constitutional right.
Suspension	• President suspends it during emergency	• It cannot be suspended.
Discretion	• No discretion of SC	• Discretion of HC, may refuse the remedy.

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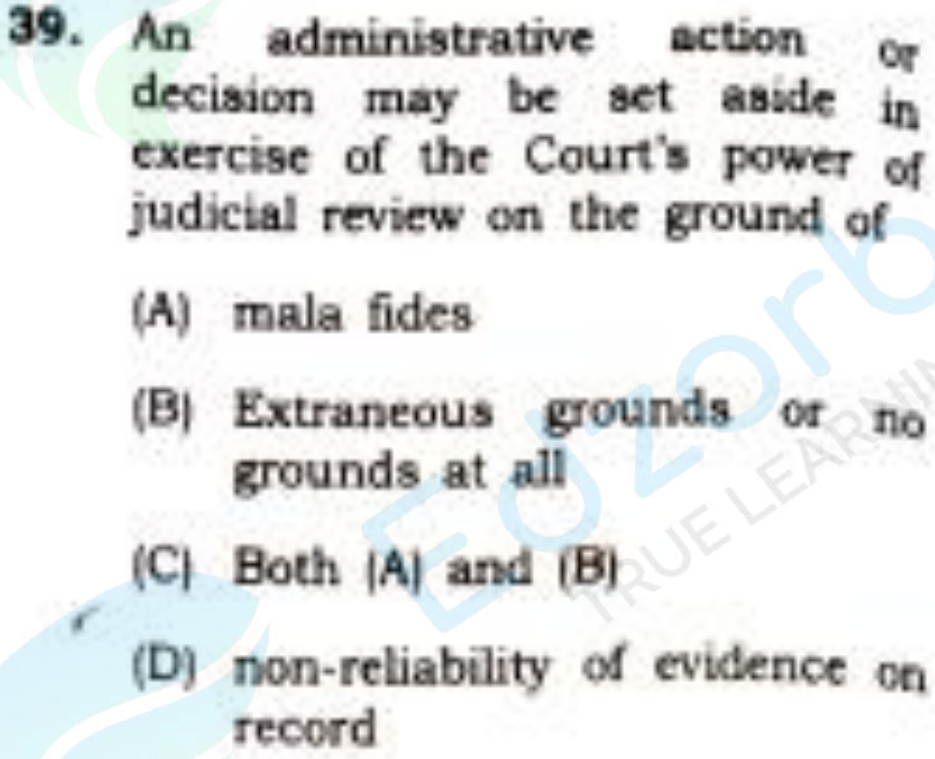
Q.39) An administrative action or decision may be set aside in exercise of the Court's power of judicial review on the ground of

(A) Mala fides

(B) Extraneous grounds or no grounds at all

(C) Both (A) and (B)

(D) Non-reliability of evidence on record



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Source: Edzorb Law - Admin Law Simplified Notes - Page 74-76

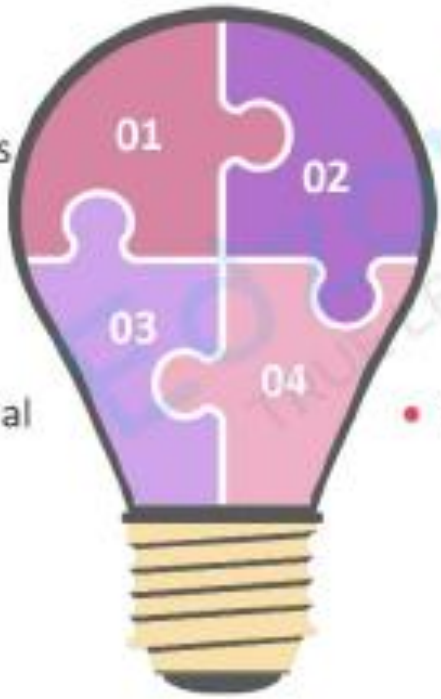
Judicial Review



Scope of Judicial Review

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

Grounds of Judicial Review



- Violation of Principles of Natural Justice
- Unconstitutional
- Jurisdictional error
- Error of Law

Exclusion of Judicial Review



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

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Indira Nehru Gandhi Vs Shri Raj Narain
AIR 1975 SC 2299

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

Did you Know?

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



Q.56) Which of the following is an incorrect statement?

(A) Delegated legislation is open to attack on the ground of excessive delegation.

(B) Conditional legislation is open to attack on the ground of excessive delegation.

(C) Delegated legislation involves delegation of rule-making power to executive.

(D) In conditional legislation, the law does not come into force immediately.

56. Which of the following is an ***Incorrect*** statement?

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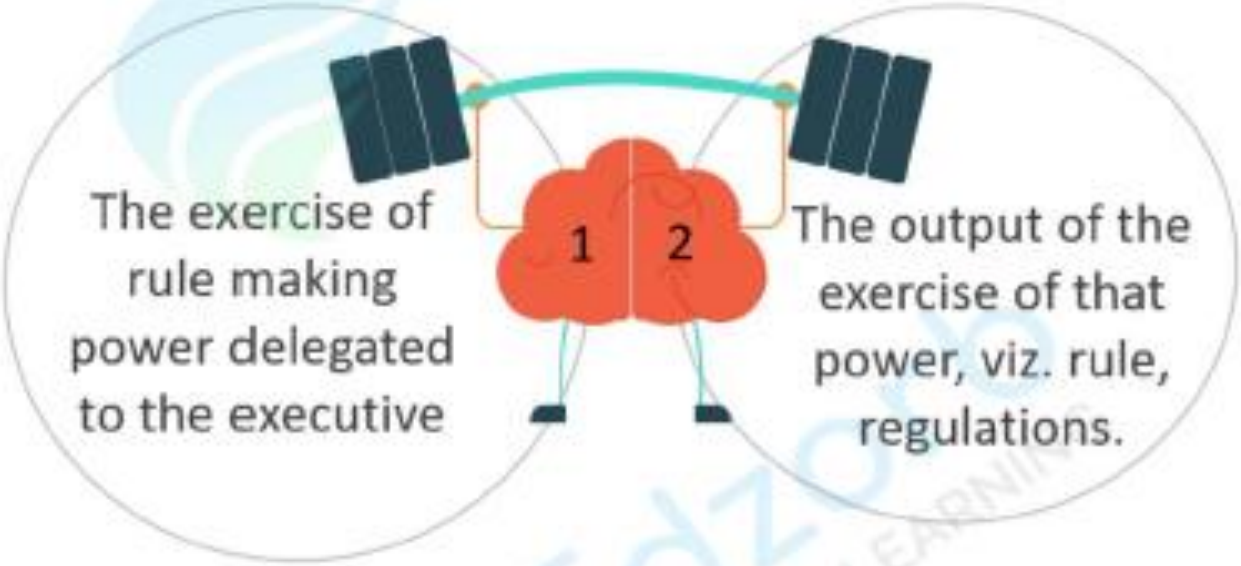

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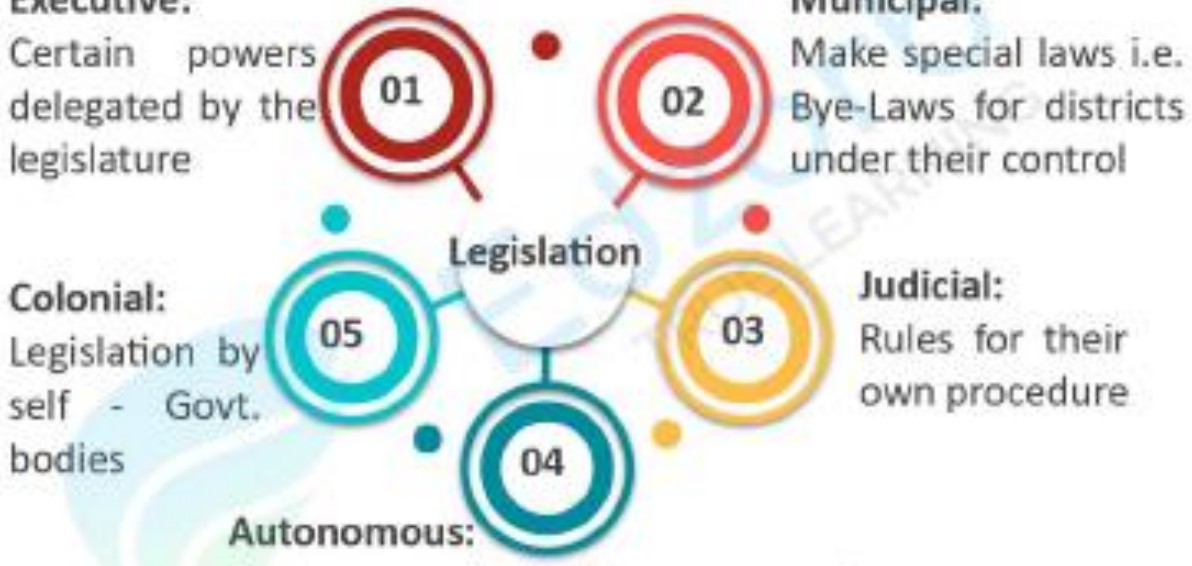
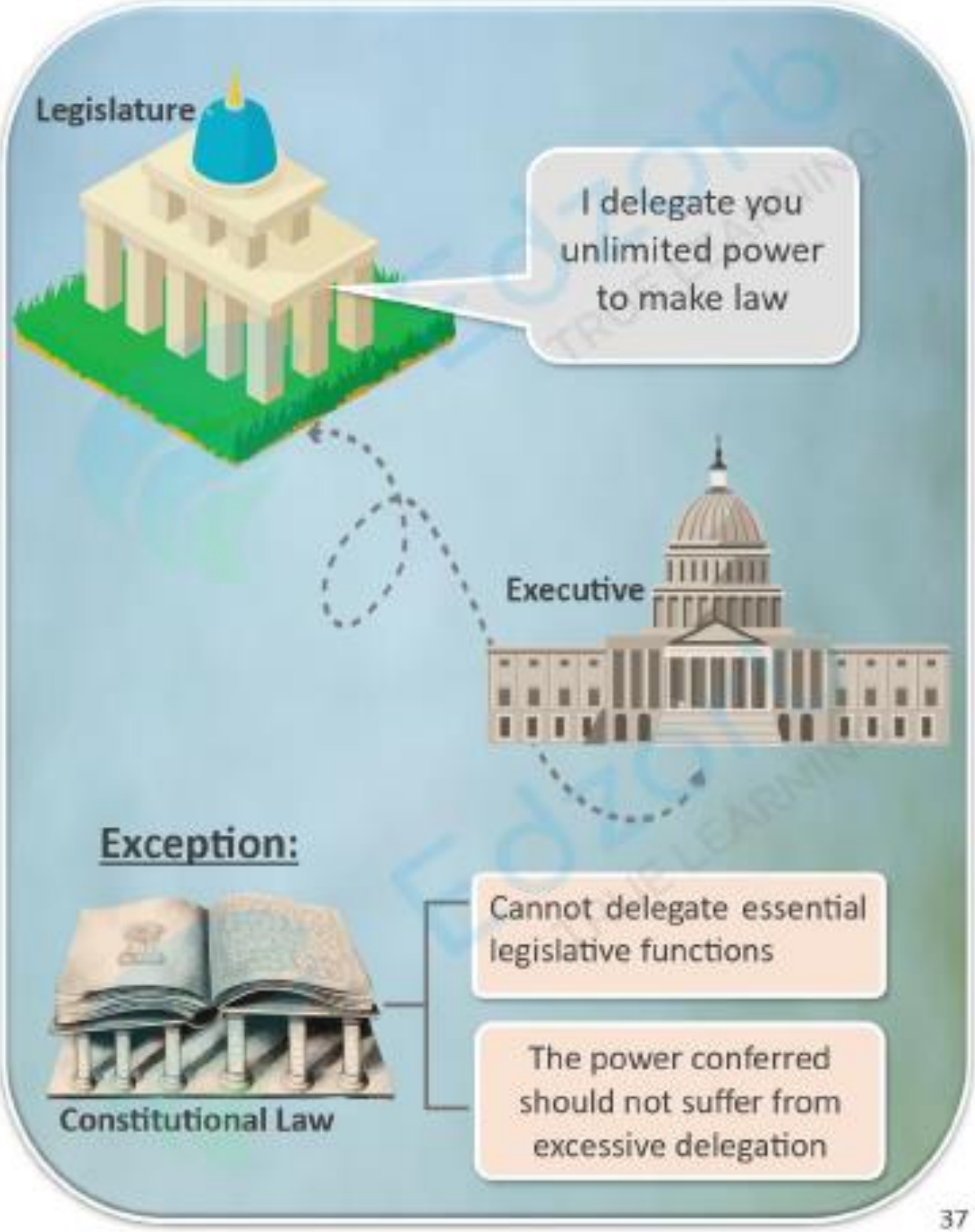


Constitutional Limits of Legislative Delegation



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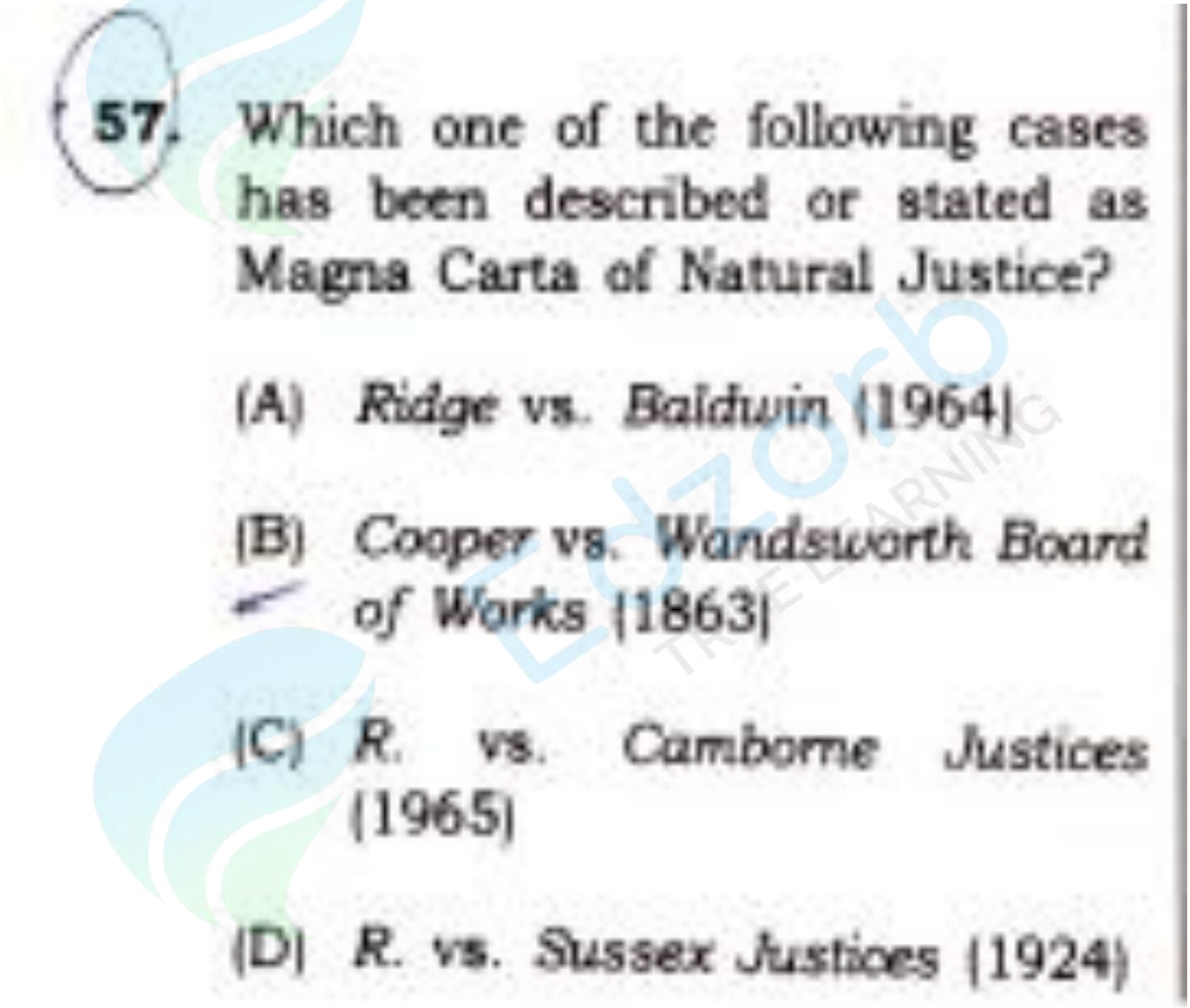
Q.57) Which one of the following cases has been described or stated as Magna Carta of Natural Justice?

(A) Ridge vs. Baldwin (1964)

(B) Cooper vs. Wandsworth Board of Works (1863)

(C) R vs Camborne Justices (1965)

(D) R. vs. Sussex Justices (1924)



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(C) *R.* vs. *Camborne Justices* (1965)

(D) *R.* vs. *Sussex Justices* (1924)

Source: Edzorb Law - Admin Law Simplified Notes - Page 65-70

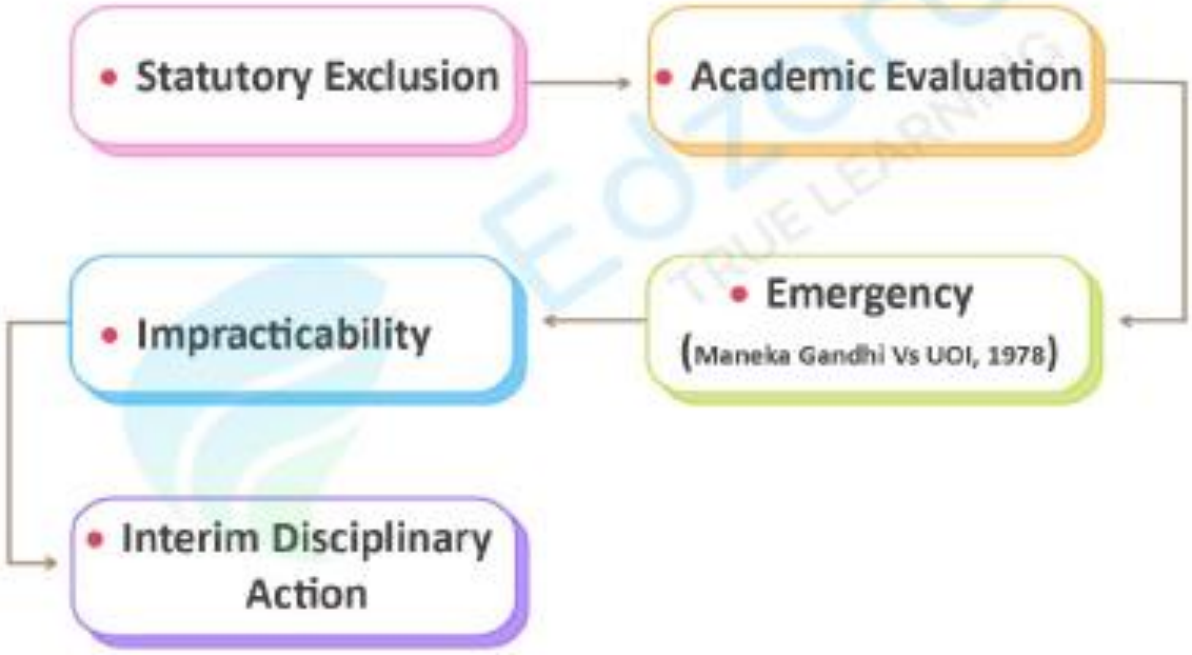
Principles of Natural Justice

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

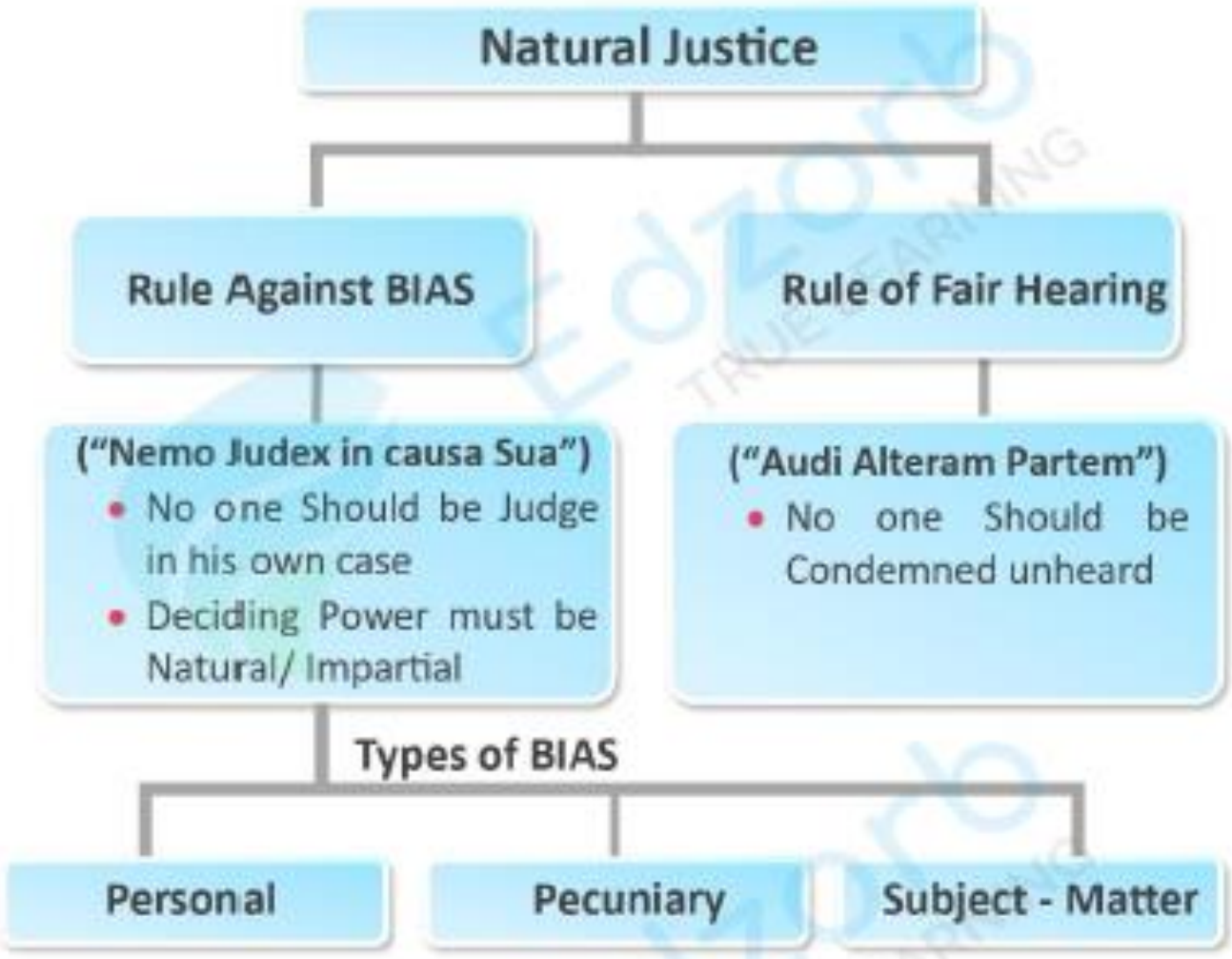
PRINCIPLES OF NATURAL JUSTICE



Exception to Principle of Natural Justice



Natural Justice



Rule against Biasness

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



Types of Biasness:



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

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

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

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

Rule of Being Heard

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



R. Radha Krishna Vs Osmania University

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

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017
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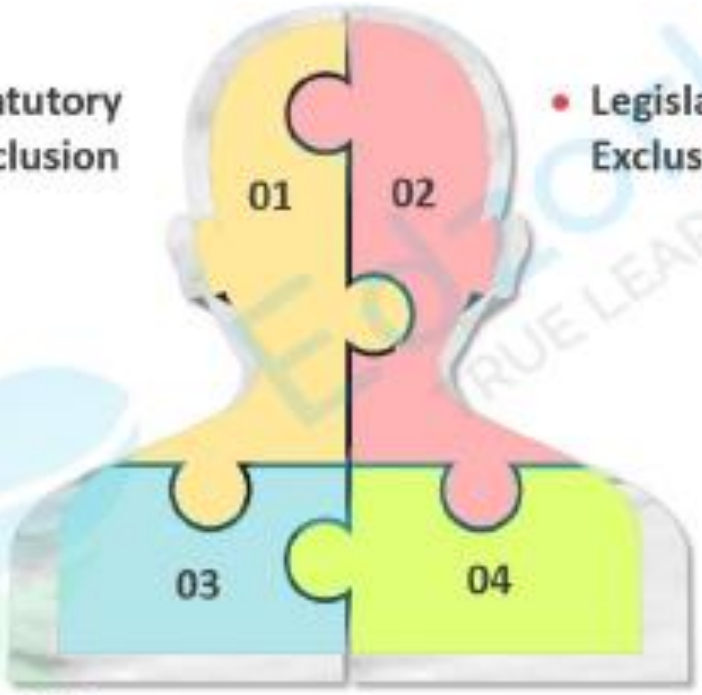
Exclusion of Principle of Audi Alteram Partem:



- Statutory Exclusion
- Legislative Exclusion
- Impracticability
- Inter disciplinary Action

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

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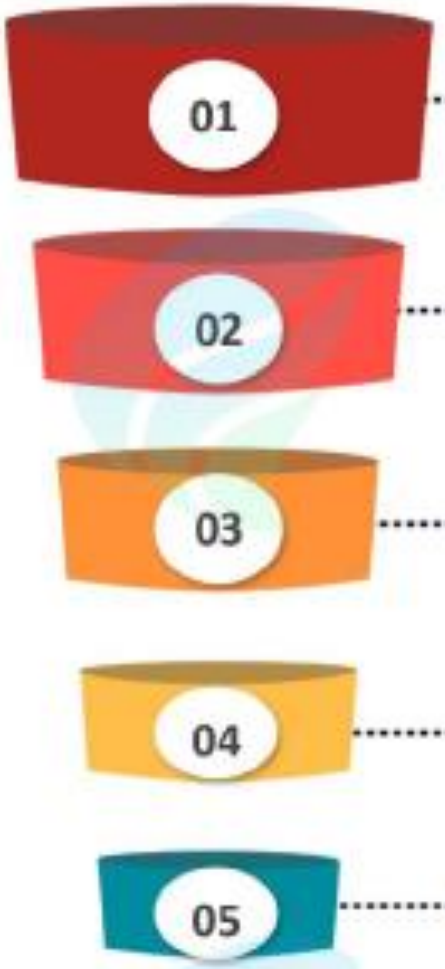
Exception to the Rule of Audi Alteram Partem:

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



- Where the functions of an authority concerned have been held not to be Judicial.
- Where the function of an authority has been held to be policy oriented
- Where prompt action, preventive or remedial is needed due to emergency situation.
- Where the power exercised is the disciplinary one.
- Where the process of fair hearing would be prejudicial to public interest.

Q.58) The judgement of A. K. Kraipak vs. Union of India (AIR 1970 SC 150) is related to

(A) personal bias

(B) official bias

(C) pecuniary bias

(D) bias as to the subject matter

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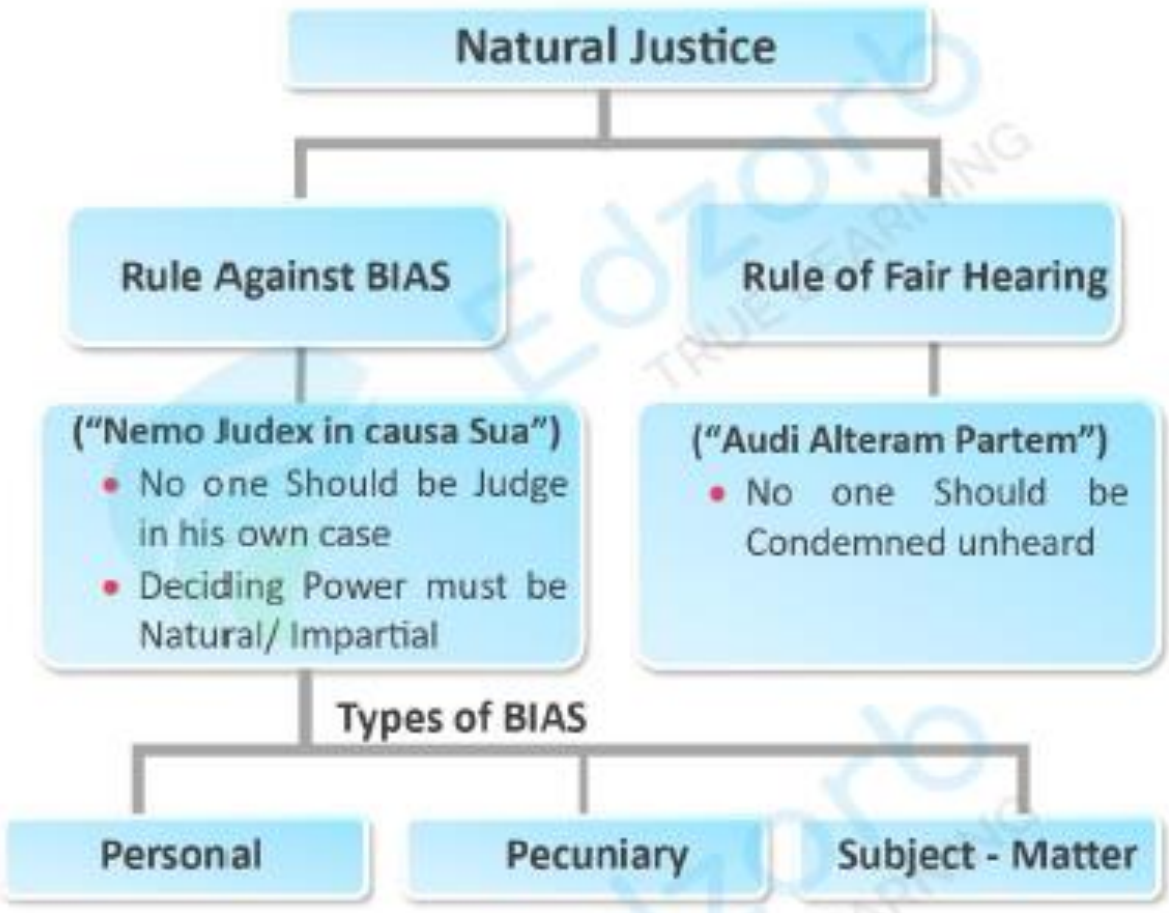
Source: Edzorb Law - Admin Law Simplified Notes - Page 66-68

Natural Justice



Rule against Biasness

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



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Types of Biasness:



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

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

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

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

Rule of Being Heard

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



R. Radha Krishna Vs Osmania University

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

Reference: Administrative Law by I.P. Massey; 9th Ed., 2017
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Q.59) Which one of the following does not relate to "Nemo debet esse judex in propria causa"?

(A) No man shall be a judge in his own case

(B) Judges like Caesar's wife should be above suspicion

(C) Deciding authority must be impartial and without bias

(D) No man should be condemned unheard

59. Which one of the following **does not** relate to "Nemo debet esse judex in propria causa"?

(A) No man shall be a judge in his own case

(B) Judges like Caesar's wife should be above suspicion

(C) Deciding authority must be impartial and without bias

(D) No man should be condemned unheard

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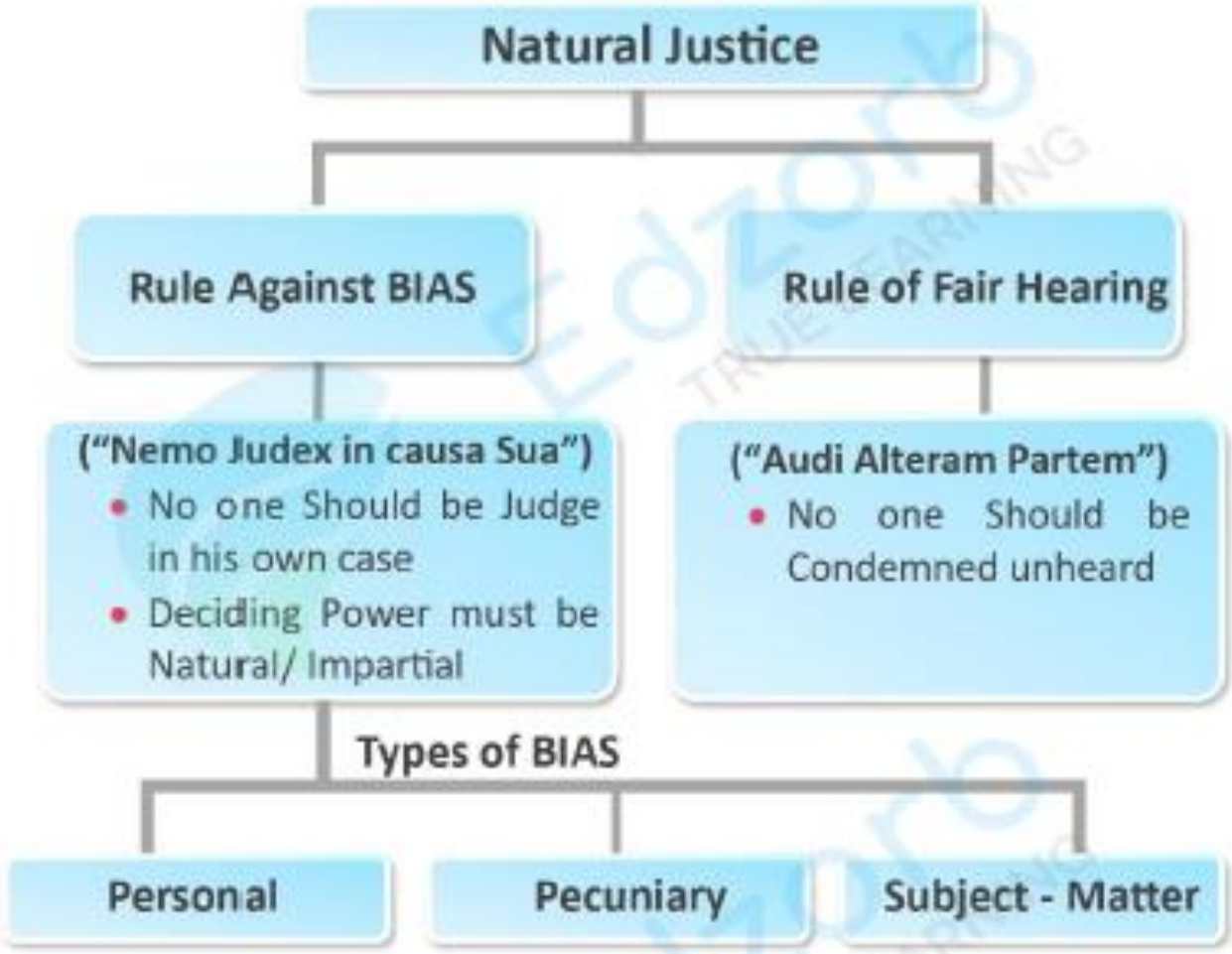
Natural Justice



Rule against Biasness

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



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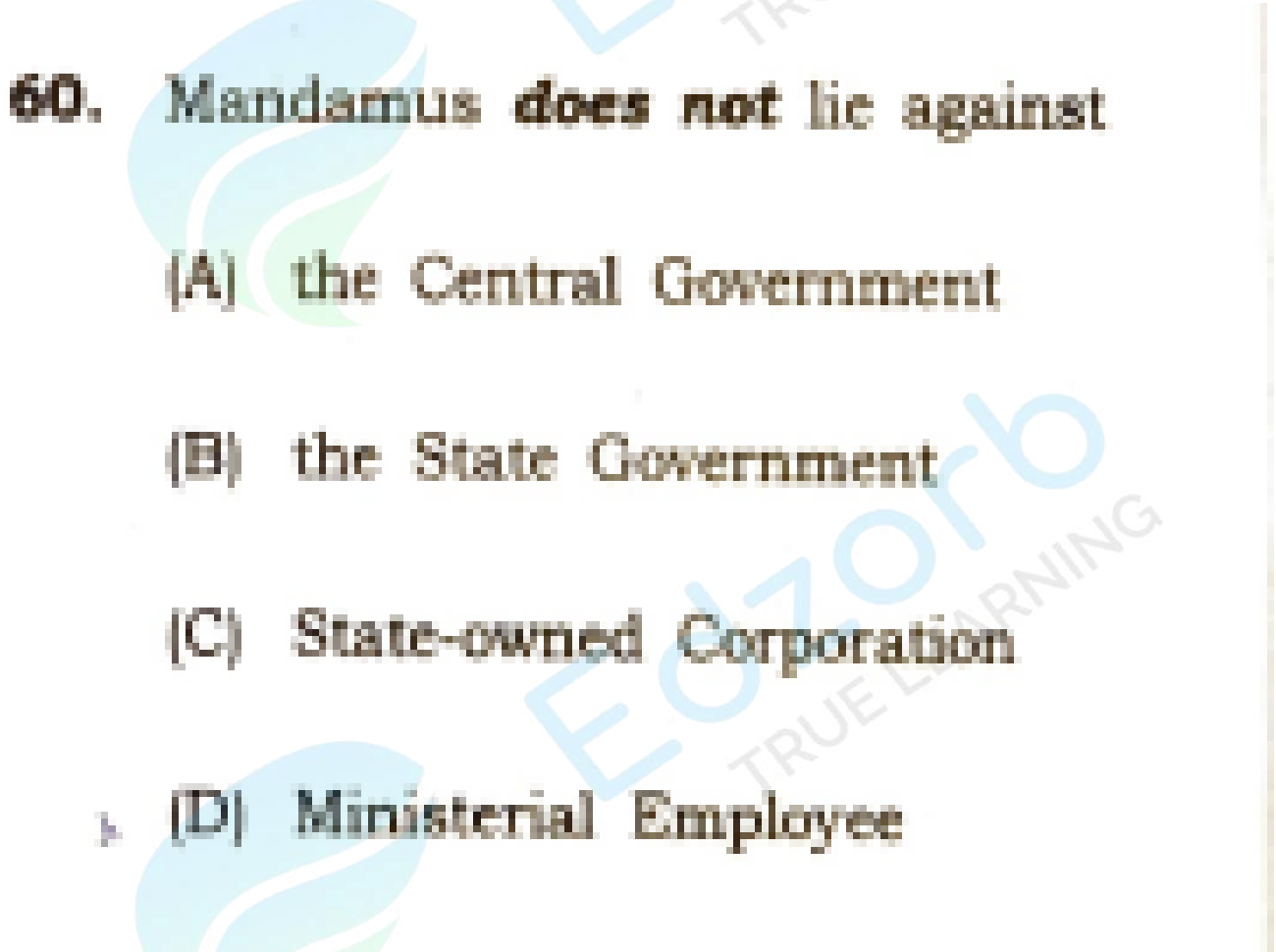
Q.60) Mandamus does not lie against

(A) the Central Government

(B) the State Government

(C) State-owned Corporation

(D) Ministerial Employee


60. Mandamus **does not** lie against

(A) the Central Government

(B) the State Government

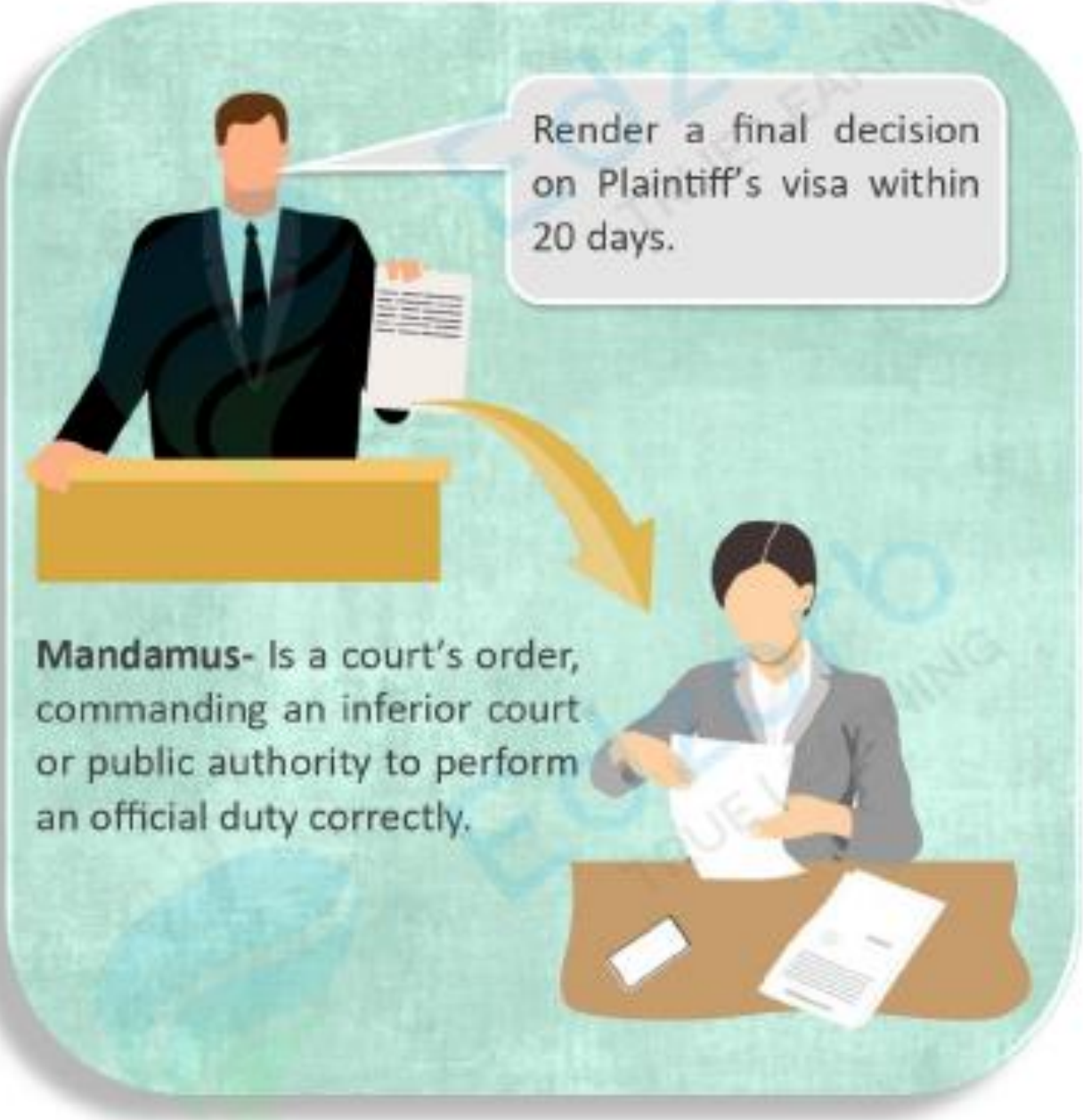
(C) State-owned Corporation

(D) Ministerial Employee

Source: Edzorb Law - Admin Law Simplified Notes - Page 85-86

Writ of Mandamus

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



- **Who can apply for Mandamus:**

Mani Subrat Jain Vs State of Haryana

1977

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

- **Grounds of Mandamus**

