"The trial Court is the grassroots of justice delivery; if it fails the whole edifice of justice collapses"

-Justice V.R Krishna Iyer

Topic 1

Constitutional status of Trial Judiciary

Introduction

Around 4.6 crore cases (as of 31st July, 2025) are pending in trial Courts, which are the first point of contact for citizens. The Indian judicial system rests on the trial Courts and only a strong foundation can support a stronger and more efficient system of justice.

- In both civil and criminal cases, the trial judiciary is crucial for application of the rule of law.

Constitutional Status

The subordinate judiciary has been discussed from article 233 to 237 in the Constitution.

In order to achieve a separation of powers, articles 233 to 235 seek to guarantee the judiciary's independence from the executive in accordance with article 50. **Chandramohan vs. State Of U.P. AIR 1966 SC 1987** declared the law on this aspect.

Paragraph 7 and 14 of the judgment.

"(7) The first question turns upon the provisions of Art. 233 of the Constitution. Article 233 (1) reads:

"Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

We are assuming for the purpose of these appeals that the "Governor" under Art. 233 shall act on the advice of the Ministers. So, the expression "Governor" used in the judgment means Governor acting on the advice of the Ministers. The constitutional mandate is clear. The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of district judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the "judicial service or to the Bar, to be appointed as a district judge. Therefore, a duty is enjoined on the Governor to make the appointment in consultation with a body which is the appropriate authority to give advice to him. This mandate can be disobeyed by the Governor in two ways, namely, (i) by not consulting the High Court at all, and (ii) by consulting the High Court and also other persons. In one case he directly infringes the mandate of the Constitution and in the other he indirectly does so, for his mind may be influenced by other persons not entitled to advice him. That this constitutional mandate has both a negative and positive significance is made clear by the other provisions of the Constitution. Wherever the Constitution intended to provide more than one consultant, it has said so: see Arts. 124 (2) and 217 (1). Wherever the Constitution provided for consultation of a single body or individual it said so: see Art. 222. Art. 124 (2) goes further and makes a distinction between persons who shall be consulted and persons who may be consulted. These provisions indicate that the duty to consult is so integrated with the exercise of the power that the power can be exercised only in consultation with the person or persons designated therein. To state it differently, if A is empowered to appoint B in consultation with C, he will not be

exercising the power in the manner prescribed if he appoints B in consultation with C and D.

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(14) Before construing the said provisions, it should be remembered that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, "if, however two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory." The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States: it constitutes a High Court for each State, prescribes the institutional conditions of service of the judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all Courts and tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that "it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question in the case of the superior Judges." Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Ch. VI of Part VI under the

heading "Sub-ordinate Courts". But at the time the Constitution was made in most of the States the magistracy was under the direct control of the executive. Indeed it is common knowledge that in pre-independence India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control."

Article 233: Deals with appointment of District Judges and was also considered by the Supreme Court in **State of Bihar Vs. Bal Mukund Sah**, **(2000) 4 SCC 640** relying upon, inter alia, **Chandramohan** (supra). It was held that article 233 enacts a complete code for the purpose of appointment of District Judges and consultation with the High Courts is an inevitable feature of article 233. On independence of the judiciary paragraph 75 of **Bal Mukund Sah** (supra) says-

"75. The hallmark of the constitutional scheme in the country is the role of judicial review assigned to the courts. Unlike the United States our Constitution explicitly empowers the Supreme Court and the High Courts to check the actions of the Executive and the Legislature in case of such actions being incompatible with the Constitution. To ensure the existence of an independent, effective and vibrant Judiciary provision is made in the Constitution in Part V Chapter IV dealing with the Union Judiciary, Part VI Chapter V dealing with the High Courts in the States and Chapter VI dealing with subordinate courts. This Court, in various decisions, has highlighted the importance of insulating the Judiciary from executive interference to make it effectively independent."

Article 233A deals with validation of appointments of, and judgments, etc., delivered by certain District Judges. It was inserted by the Constitution (20th Amendment) Act, 1966 in order to validate, with retrospective effect, certain appointments and transfers which had been held to be invalid by the Supreme Court.

Article 234: Recruitment of persons other than District Judges to the judicial service. In **State of Bihar vs. Bal Mukund Sah** (supra), it was held that article 234 is not made subject to laws made by the legislature, which means that the legislature cannot make any law regulating the appointment to the subordinate judiciary. The relevant paragraph 66.

> *"66. It would be appropriate to notice at this stage that while in Articles 145(1), 148(5), 187(3), 229(2), 283(1) and (2), the Constitution itself makes the provision subject to the provisions of law made by Parliament but Article 234 is not subject to any legislation to be made by the appropriate Legislature, which indicates that so far as recruitment to the Judicial Service is concerned which is engrafted in Article 234, the same is paramount and the power of the Legislature to make law under Article 309 will not extend to make a law in relation to recruitment, though in relation to other conditions of service of such Judicial Officers, the appropriate Legislature can make a law."*

Article 235 deals with control over subordinates Courts, which shall be vested in the High Courts. In **High Court of Judicature for Rajasthan vs. Ramesh Chand Paliwal, (1998) 3 SCC 72** it was held that the word "control" is used in a comprehensive sense, to include general superintendence of the working of the subordinate Courts, disciplinary control over the Presiding Officers of the subordinate Courts, recommendation of imposition of punishment including suspension for the purposes of a disciplinary inquiry, transfer, confirmation and promotion. Paragraphs 34 and 36 be seen.

> *"34. This article (235) shows that the High Court has to exercise its administrative, judicial and disciplinary control over the members of the Judicial Service of the State. The word "control", referred to in this*

article, is used in a comprehensive sense to include general superintendence of the working of the subordinate Courts, disciplinary control over the Presiding Officers of the subordinate Courts and to recommend the imposition of punishment of dismissal, removal and reduction in rank or compulsory retirement. "Control" would also include suspension of a member of the Judicial Service for purposes of holding a discretionary enquiry, transfer, confirmation and promotion. In State of Gujarat v. Ramesh Chandra Mashruwala it was held that "control" in Article 235 means exclusive and not dual control.

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36. What is, therefore, of significance is that although in Article 235, the word "High Court" has been used, in Article 229 the word "Chief Justice" has been used. The Constitution, therefore, treats them as two separate entities inasmuch as "control over subordinate Courts" vests in the High Court, but High Court administration vests in the Chief Justice."

Article 236: Interpretation

Article 237: Application of the provisions of this Chapter to certain class or classes of magistrates.

In this context a passage from **All India Judges' Assn. (3) vs. Union of India, (2002) 4 SCC 247** be looked at.

"27. ...The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary…"

Topic 2

Principles of Natural Justice for procedural fairness

Introduction

The notion and doctrine of principles of natural justice and its application within the justice delivery system have existed for as long as the legal system itself. At its core, natural justice implies fairness, reasonableness, equity and equality. The objective of this doctrine is not only to secure justice but to prevent miscarriage of justice.

The principles of natural justice are not rigid or codified rules, nor are they unvarying in all circumstances. Rather, they are flexible in their application as must adapt to the facts of each case. Their essence can be be summarized in one word: fairness. Whenever a question arises as to whether the principles of natural justice have been violated, the inquiry essentially reduces to, has the Court acted in a just, fair and reasonable manner?

Constitutional Foundation of Natural Justice

The principles of natural justice are firmly reflected in the Constitution, in its various provisions that safeguard fairness, equality and reasonableness in decision making.

i. **Preamble:** Guarantees justice, equality and liberty, forming the moral foundation of natural justice.

ii. **Article 14**: Provides for equality before the law and prohibits arbitrariness in state action. In **H.L. Trehan vs. Union of India, (1989) 1 SCC 764**, it was held that even when the authority has statutory power to take action without hearing, it would be arbitrary to take action without hearing and thus violative of article 14. Relevant is paragraph 11.

> *"11...It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without*

complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice."

iii. **Article 21**: In **Maneka Gandhi vs. Union of India, 1978 AIR 597**, it was held that the procedure must satisfy certain requisites in the sense of being fair and reasonable. The procedure cannot be arbitrary, unjust or unreasonable. Paragraph 40 be seen.

"40. In Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, Government of India, New Delhi, (1967) 3 SCR 525: (AIR 1967 SC 1836) this Court ruled by majority that the ex-pression 'personal liberty' which occurs in Art, 21 of the Constitution includes the right to travel abroad and that person can be deprived of that right ex-cept according to procedure established by law. The Passports Act which was en-acted by Parliament in 1967 in order to comply with that decision prescribes the procedure whereby an application for a passport may be granted fully or par-tially, with or without any endorsement, and a passport once granted may later be revoked or impounded. But the mere prescription of some kind of procedure cannot ever meet the mandate of Art. 21. The procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary."

iv. **Articles 32 & 226**: These articles guarantee remedies for violation of respectively, fundamental and statutory rights. The writ of prohibition or certiorari is usually issued to the body, which was bound to act according to the principles of natural justice and has failed to do so. If

the decision is influenced by prejudice, the situation can be considered a breach of principles of natural justice.

v. **<u>Article 311</u>**: It lays down that no civil servant shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the proposed action. The reasonable opportunity ordained here demands a hearing according to the norms of natural justice. In **Khem Chand vs. Union of India, AIR 1958 SC 300,** in paragraph 19 the Supreme Court said-

"(19) To summarise: the reasonable opportunity envisaged by the provision under consideration includes;

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him. which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the government servant.

In short the substance of the protection provided by rules, like R. 55 referred to above, was bodily lifted out of the rules and together with an additional opportunity embodied in S.240 (3) of the Government of India Act, 1935 so as to give a statutory protection to the government servants and has now been incorporated in Art. 311 (2) so as to convert the protection into a constitutional safeguard."

Core Principles of Natural Justice

If there is power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such power and that the rule of natural justice operates in areas not covered by any law validly made.

Following are the fundamental principles of Natural Justice-

(a) **Nemo Judex in Causa Sua: Rule against bias i.e. no one should be a judge in their own cause.**

(b) **Audi Alteram Partem: No man shall be condemned unheard.**

(c) **Reasoned Decisions/ Speaking Orders**

- **Definition of judgment is given in section 2(9), Civil Procedure Code, 1908.** After the hearing has been completed, Court pronounces the judgment. Judgment means the statement given by the judge on the grounds of a decree or order. As per **rule 5 order XX**, in suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

CPC provisions on summons and ex-parte hearing

The provisions regarding summons and ex parte hearing under the CPC are essential tools to ensure that civil proceedings are conducted fairly and efficiently.

1) **Summons**: **Section 27** deals with issuance of summons to the defendant after the suit has been duly instituted, to appear and answer the claim. **Order V** deals with issue and service of summons.

Order V Rules 1-3 deal with issuance of summons along with a copy of plaint, after the plaint is admitted.

Further the Order discusses about the modes of service, persons on whom summons may be served etc.

Order V Rule 9(5) says that when the Court receives an acknowledgment or receipt purporting to be signed by the defendant or

his agent or a postal article containing summons is received with an endorsement purporting to have been made by a postal employee or by any person authorised by the courier service to the effect that the defendant or his agent had **refused to take delivery of the postal article containing the summons** or had refused to accept the summons by any other means, when tendered or transmitted to him, **the Court issuing the summons shall declare that the summons had been duly served** on the defendant, subject to the proviso.

The objective of issuance of summons is to ensure that the defendant is aware of the proceedings and can respond in order to prevent arbitrariness.

2) **Ex Parte**: **Order IX rule 6** provides that when the defendant fails to appear on the date of the hearing and summons have been duly served, the Court may make an order that the suit shall be heard ex parte. However **rule 13** provides for setting aside of an ex parte decree passed against the defendant provided he satisfies the Court that the summon was not duly served or he was prevented by any sufficient cause from appearing, when the suit was called on for hearing.

3) **Order XXII Rule 4A:** Order XXII deals with death, marriage and insolvency of parties. Rule 4A lays down procedure, when there is no legal representative. It says that if in any suit it appears to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may do one of the two things on the application of any party to the suit:

1) Proceed in the absence of a person representing the estate of the deceased person

2) Appoint someone to represent the estate of the deceased. This could be:

a) Administrator- General or

b) officer of the Court or

c) such other person as it thinks fit for the purpose of the suit.

This rule ensures that the interests of a deceased person are not ignored and that the case can proceed fairly, upholding the principles of natural justice by allowing proper representation, even when no legal representative is available.

Topic 3

Speedy Justice and Fairness in Trial

Introduction

It is often said that "Justice delayed is justice denied." At the same time, we also hear the phrase "Justice hurried is justice buried." These two sayings together highlight the delicate balance between speedy justice and fairness in trial. If a trial is delayed endlessly, the very purpose of justice is lost. But if a trial is rushed without giving proper opportunity to both sides, then fairness is compromised.

The Constitution of India, under **article 21**, guarantees the right to life and personal liberty. The Supreme Court has repeatedly held that this right includes both the right to a speedy trial and the right to a fair trial. These are not privileges, but fundamental rights available to every accused and every victim.

Importance of speedy justice

Justice and fair play require that no one be punished without a fair trial. In the administration of justice it is of prime importance that justice should not only be done but must also appear to have been done.

The importance of speedy justice can be explained in three dimensions:

1. **For the Accused** – A person accused of a crime but kept waiting for years suffers mentally, socially and financially. The uncertainty of not knowing his fate becomes a punishment in itself. In **Durga Datta Sharma v. State, 2003 SCC OnLine Gau 153**, the accused had to suffer for nearly 25 years due to delay, after which the Court finally quashed the proceedings recognizing the violation of the constitutional right.

Default bail: it refers to right to bail that accrues when the police fails to complete investigation within a specified period. It is enshrined under section 187(3) BNSS laying down that the no Magistrate shall authorise the detention of the accused person in custody for a total period exceeding-

i. ninety days (offences punishable with death, life imrisonment, imrisonment for a term of ten years or more)

ii. sixty days (any other offence)

On expiry of the said ninety or sixty days, the accused person shall be released on bail if he is prepared to and does furnish bail.

This ensures that the accused is not kept in indefinite custody due to delay in investigation.

2. **For the Victim** – The victim of a crime seeks closure and justice. A delayed trial only increases suffering. The delay denies dignity to the victim, particularly in sensitive cases like rape, where prolonged litigation adds to trauma.

3. **For Society** – If trials drag on for decades, society begins to lose faith in the legal system. Law becomes irrelevant if it cannot respond within reasonable time.

Principles of Fair Trial

Speed should never come at the cost of fairness. A fair trial is to be ensured. In criminal and civil jurisprudence, some key components of a fair trial include:

1. **Presumption of innocence:** The burden of proving guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the Courts cannot record a finding of guilt of the accused.

2. **Impartial Judge:** In order to have a fair trial it is necessary that the judge or Magistrate must not be in any manner be connected with the prosecution or interested in prosecution. Justice must be delivered without bias.

3. **Open and Transparent Proceedings -** Fair trial also requires public hearing in open Court. **Section 327 CrPC (section 366 BNSS)** and **section 153B CPC** provides for open Court, generally accessible to members of the public in order to ensure transparency, unless sensitive cases require in camera proceedings.

4 . **Right of accused to know of the accusation-** Fair trial requires that the accused person is given adequate opportunity to defend himself. Such opportunity will have little meaning if the accused is not informed of the accusations against him.

5. **Accused person to be tried in his presence-** This would enable the defence to understand properly the prosecution case as it unfolds in the Court. It also facilitates preparation for defence.

6. **Right to cross-examine and produce evidence in defence-** Evidence given by witnesses becomes reliable, when given on oath and tested by cross-examination. A criminal trial, which denies the accused person/defendant the right to cross-examine prosecution witnesses cannot be considered as a fair trial.

- **Order XVI (CPC)** deals with summoning and attendance of witnesses while **order XVIII** deals with hearing of the suit and examination of witnesses.
- As per **rule 4 order XVIII**, the examination in chief of a witness shall be on affidavit and copies shall be supplied to the opposite party by the party who calls him for evidence.
- Similarly cross examination and re-examination is conducted in Court or before the Commissioner appointed by it.
- **Rule 5** deals with recording of evidence in appealable cases.
- **Rule 16** empowers the Court to record the testimony of a witness at once if there is a liklihood that he may not be available later.
- Corresponding **sections 140 to 143 of Bhartiya Sakshya Adhiniyam** deals with examination of witnesses.

7. **Protection Against Excessive Delay** – This is all the more true in a criminal trial, where the accused is not released on bail during the pendency of the trial and the trial is inordinately delayed. As held by the Supreme Court in **Hussainara Khatoon vs. State of Bihar (1980) 1 SCC 98** speedy trial is an essential ingredient of "reasonable, fair, and just" procedure guaranteed by article 21 and that it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused.

8. Both prosecution and defence must be treated equally, ensuring a **level playing field.**

9. **Reasoned Decisions**- On the plainest requirement of justice and fair trial the least that is expected of the trial Court is to notice, consider and discuss, however briefly, the evidence of various witnesses as well as the arguments addressed at the Bar.

Factors affecting free trial and speedy justice

i. Partial and incompetent judges, political, executive or personal bias, or affect ensure fairness. Justice suffers.

ii. Shortage of judges.

iii. Inadequate infrastructure.

iv. Long pendency and adjournments deny speedy justice.

v. Improper investigation.

vi. Media trial.

vii. Witness protection.

viii. Frivolous litigation.

Again said, challenge lies in balancing speed with fairness. If cases are disposed of in haste, it may lead to wrongful convictions. If fairness is given priority without speed, justice is denied due to long delays.

Measures to ensure speedy justice and fair trial

i. Use of technology

ii. Increased strength of judges

iii. ADR

iv. Limit on adjournments

v. Fast track Courts

vi. Accountability of investigating agencies

Topic 4

Doctrine of Precedent

Introduction

Judicial precedent is an important source of law. Precedents have a binding force on judicial tribunals for deciding similar cases in future. According to Salmond, the doctrine of precedent has two meanings:

i. In a loose sense precedent includes merely, reported case-laws which may be cited and followed by the Courts

ii. In its strict sense, precedent means that case law not only has a great binding authority but must also be followed.

Two primary considerations determine whether a certain decision, or precedent, becomes binding:

i. It must have been rendered by a Court with adequate seniority and,

ii. Only the ratio decidendi, or the reasoning behind the decision, is binding.

Types of Precedent

Precedents may either be Authoritative or Persuasive.

i. **Authoritative Precedent:** is one that has a binding force and the judge must abide by whether or not he agrees with it. These are the rulings of the highest Courts of justice that subordinate Courts must follow. The decisions of the Supreme Court of India are binding precedents (article 141).

ii. **Persuasive Precedent:** is one which the Judges are under no obligation to follow but which they may take into consideration.

Key Components

i. **Ratio Decidendi:** It literally means reason for decision. It is the general principle which is deduced in a case. Stated differently, the rule of law that serves as the foundation for the decision is known as ratio decidendi. As per Salmond, ratio decidendi roughly denotes the law applied by and acted upon by the Court or the rule which the Court regards as governing the case.

ii. **Obiter Dicta:** Obiter dicta are legal declarations that are not included in the ratio decidendi; they are neither binding nor authoritative on lower Courts. These are just the Court's informal remarks, not relevant for deciding the lis.

iii. **Stare Decisis:** It literally means "let the decision stand in its rightful place". When a decision contains a new principle, it is binding on subordinate Courts and has persuasive authority for equivalent Courts. The general principles on which the doctrine of stare decisis is based may be stated as follows-

a) Each Court is absolutely bound by the decisions of the Court above it.

b) To a certain extent, higher Courts are bound by their own decisions. In India, the Supreme Court is, however, not bound by its own earlier decision.

c) The decision of one High Court is not binding on any other High Court and it has only persuasive value.

d) A single judge is bound by the decision of a Division Bench of the same High Court but not vice versa. However, a subsequent Division Bench, if differs with view taken by an earlier Division Bench, there is likely to be a reference to a larger Bench. If the two judges in the Division Bench differ, the matter is referred to a third judge.

However, the Supreme Court in **Bachan Singh vs. State of Punjab AIR 1980 SC 898** held that, "if the rule of stare decisis were followed blindly

and mechanically, it would dwarf and stultify the growth of the law and affect its capacity to changing needs of the society".

Hierarchy and operation in India

Article 141 in the Constitution of India gives a constitutional status to the doctrine of precedent in respect of law declared by the Supreme Court of India. Article 141 mandates every Court subordinate to the Supreme Court to accept law laid down by the Apex Court. Precedents which enunciate the rules of law form the basis of administration of justice in India. The decisions of the various High Courts are binding on the Courts below them within their respective State limits. In **Bengal Immunity Ltd. V. State of Bihar (AIR 1955 SC 661)**, the Supreme Court held that it is not bound by its own decision.

Topic 5

Application of the principles of Administrative law in Court management

Introduction and key principles

The term "Court management" describes the methodical operation of Courts to guarantee prompt, equitable and effective administration of justice. It covers things like case filing, creating cause lists, rosters, allocating cases, adjournments, managing judicial time and using technology.

According to the principles of administrative law, managing a Court involves more than just efficiency, it also entails making sure that justice is administered impartially, openly and without bias.

Firstly to be seen are the most basic principles of administrative law and then we'll see its application in Court management. Principles of administrative law are are as follows:

- **Rule of Law**: All actions of the state and its authority must be carried out within the framework of the law, ensuring absence of arbitrariness, equality before the law and accountability of public officials. It serves

as a check against abuse of authority and is upheld through judicial review.

- **Separation of powers**: The powers of the legislative, executive, and judiciary are distinct and operate with checks and balances to prevent concentration of authority.
- **Delegated legislation**: It refers to law enacted by a body other than the legislature but, with its permission and within the parameters established by the parent statute. This ensures flexibility and technical expertise but, it is still subject to judicial review and legislative oversight to prevent misuse.
- **Natural Justice**: Natural justice refers to the fundamental principles of fairness in legal and administrative proceedings. Its primary principles are the right to a fair hearing (audi alteram partem) and the rule against bias (nemo judex in causa sua). These principles ensure that decisions are impartial and fair.
- **Judicial review**: Superior Courts exercise their authority to assess the legitimacy of administrative decisions and overturn them if they are arbitrary, illegal, illogical, or procedurally incorrect. It ensures that authorities follow the law and the Constitution, maintaining justice and accountability.
- **Reasonableness and proportionality**: Administrative acts must be fair and balanced, not arbitrary. According to this principle, directions made should have a rational connection to the objective and should not be excessive; punishment or restrictions should be proportionate to the goal intended to be attained.
- **Accountability and transparency**: Administration must be open, responsive and subject to scrutiny.

Application

1) **Rule of Law**

   Courts must follow the High Court rules and regulations for filing, listing, and disposal of cases.

2) **Separation of Powers**

Judges carry out judicial functions while registries/staff handle case listings, maintaining records/documents, and administrative tasks.

3) **Delegated Legislation**

The High Courts of each State frames Rules to be followed for case management, filing procedures, etc.

4) **Natural Justice**

Case scheduling, adjournments, and dismissal for default, restoration must follow fairness and impartiality.

5) **Judicial Review**

Even Court administrative decisions are subject to judicial scrutiny.

Administrative decisions or directions can be subject of judicial review. The High Court having power of superintendence can make decisions on the administrative side, as can be made subject to judicial review. A collective decision on the administrative side can be interfered with by a Bench on the judicial side.

6) **Reasonableness and Proportionality**

Case scheduling should balance urgency with equal treatment, avoiding favoritism. Costs for adjournments or the cause should be reasonable and proportionate.

7) **Accountability and transparency**

Concept of open Courts and presently, use of technology makes judicial administration transparent and accountable. Like for example e-Courts, digital cause lists, online filing, video-conferencing, help in tracking cases etc.

Topic 6

Special provisions relating to the State of Sikkim- Article 371-F of the Constitution of India

Introduction

Article 371F of the Constitution provides specific provisions for the state of Sikkim, acknowledging its distinct requirements and historical context. Its importance is in granting autonomy, while guaranteeing a seamless transition into the Indian Union following Sikkim's merger in year 1975.

Sikkim's distinct political and cultural trajectory has shaped its history, which is unlike that of any other Indian state. The Chogyal dynasty had ruled Sikkim, an independent state for centuries, until year 1975. A historic referendum was held in year 1975 and Sikkim's citizens chose to integrate with India. As a result, Sikkim's history underwent a significant change, moving from monarchy to become a part of democratic India.

Through the 36th Constitutional Amendment Act, 1975, the Indian Government included article 371-F to ensure Sikkim's seamless integration into India and to address the concerns of its citizens. This unique clause was thoughtfully written to safeguard the Sikkimese people's socio-political and cultural interests, while enabling them to establish a position for themselves within India's larger constitutional framework. An essential safeguard is provided by article 371-F, which guarantees that Sikkim's distinct character, customs and administrative procedures are upheld and maintained even under the framework of the Indian state.

Article 371-F provides elaborately in respect of the state of Sikkim.

Role of Governor

- Special responsibility for peace and an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and
- Governor in discharge of his special responsibility under this clause, subject to such directions as the President may from time to time deem fit to issue, act in his discretion.

Legislature

- The legislative assembly of Sikkim shall consist of not less than 30 members. [Article 371-F(a)]
- Special provisions were made for reservation of seats in the Assembly for different sections of Sikkim's population, to maintain their political representation. [Article 371-F(f)]
- The State of Sikkim is given one seat in the Lok Sabha and one seat in the Rajya Sabha.

Applicability of laws

- All the laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority.
- To ensure that Sikkim's pre-merger laws are compatible with the Constitution, the President may within two years of the merger, adapt, amend or repeal, such laws as necessary. Any changes made under this power cannot be challenged in Court.

Property and Assets

All property and assets (whether within or outside the territories comprised in the State of Sikkim), which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any other person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim.

Applicability of Central Laws

Sikim is the only State in India where residents (94%) are exempted from paying income tax, due to its unique historical and legal status.

Section 10(26AAA)-

"In case of an individual, being a Sikkimese, any income which accrues or arises to him—

(a) from any source in the State of Sikkim; or

(b) by way of dividend or interest on securities:

Provided that nothing contained in this clause shall apply to a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

Explanation.—For the purposes of this clause, "Sikkimese" shall mean—

(i) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(ii) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order no. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(iii) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grand-father or brother from the same father has been recorded in that register;"

Significance

- Following Sikkim's union with India, it's political, cultural and social distinctiveness is preserved.
- By granting Sikkim authority over land, resources and local administration, excessive central intervention is avoided.
- Assures that rights, tradition and customs of native people are upheld.
- Enabled Sikkim to join the Indian Union in a way that respected its historical background and the people had peace and were secure.

Topic 7

Discussion on the judgements of Hon'ble Supreme Court of India and High Court of Sikkim and its importance and implications to Sikkim

1. R.C. Poudyal vs. Union of India [1994 Supp (1) SCC 324]

This ruling addressed the constitutional legitimacy of special provisions pertaining to reserving seats in Sikkim Legislative Assembly. The facts include that Sikkim was a monarchy under Chogyal rule before it was merged. Native Bhutia-Lepcha communities were concerned about their political representation as a result of the demographic shift brought about by influx of Nepali migrants. Twelve seats were reserved for Bhutia-Lepchas and one for Budhist Sanghas in Sikkim Legislative Assembly. The remaining seats were available to all communities. Petitioner contested the reservation arguing that the religious basis of the reservations violated article 15 of the Constitution, which forbids discrimination on the basis of caste, religion or race.

Establishing an autonomous electoral poll for members of the Sangha tribe was a clear violation of the Union's democratic norms, of which Sikkim was now a member.

There were three issues before the Court-

a. Whether Parliament can provide reservations while admitting a new state under article 2?
b. Whether such reservations violate the secular and democratic principles of the constitution?
c. Whether judiciary can review the conditions imposed for state admission ?

The Supreme Court held that while Parliament has wide powers under article 2 to admit new states, the powers are subject to the 'Basic Structure Doctrine' and judicial review. Parliament may impose special conditions on newly admitted states like Sikkim but such conditions must not undermine core constitutional institutions. In light of the constitutional principle of equality allowing for reasonable classification based on intelligible differentia the

Court concluded by majority opinion, that article 371F of the Constitution did not violate the basic structure.

2. State of Sikkim vs. Surendra Nath Sharma [(1994) 5 SCC 282]

In this case the facts were, after Sikkim became the 22nd State of Union of India, the Directorate of Survey and Settlement in Government of Sikkim created and advertised certain posts. Applications were invited for filling up the posts on temporary basis. Respondents before the Supreme Court had applied and got job on temporary basis. They were not 'locals'. As and when the survey work was completed, surplus employees were relieved of their jobs in years 1980, 1981 and 1982. Some of the surplus employees, who were 'non-locals' filed writ petitions in the High Court of Sikkim challenging the Government's decision to terminate their services. A learned single Judge of the High Court by judgment and order dated 29th February, 1984 allowed the writ petitions and quashed the termination orders. State of Sikkim appealed to the Supreme Court.

The Supreme Court set aside the order of the High Court by relying on article 371-F(k). In doing so the Supreme Court considered that there was in existence the Establishment Rules. Though such rules, in giving preference to 'locals' may appear to offend article 16(2), since such a provision is permissible by virtue of article 16(3) and Parliament permits its (the Establishment Rules) continuance by the special provision of article 371-F(k), inserted by amendment in the Constitution, the requirement giving preference to 'locals' cannot be struck down as unconstitutional and any action based on the provision would not be inconsistent with Part-III of the Constitution.

3. Association of Old Settlers of Sikkim vs. Union of India (2023 SCC OnLine SC 38)

Section 10(26AAA) of the Income Tax Act, 1961, which exempts "Sikkimese" people from paying income taxes, was contested in this case. It was claimed that Indians who were settled in Sikkim prior to its 1975 unification with India were unjustly left out of the definition of "Sikkimese." Additionally, Sikkimese women who married non-Sikkimese men after 1st April, 2008 were also excluded, whereas no such restriction existed for

Sikkimese men marrying non-Sikkimese women. They argued that these exclusions went against articles 14, 15 and 21 of the Indian Constitution.

The Supreme Court thoroughly reviewed the constitutional, legal, and historical circumstances pertaining to Sikkim inhabitants' status both prior to and following the merger in year 1975. It stated that while 95% of Sikkim's population was granted tax exemption under section 10(26AAA), a tiny minority (roughly 1% of the population, known as the Old Indian Settlers) was unjustly left out because their names weren't on a register. According to the Court, the goal of section 10(26AAA) was to exempt legitimate Sikkim residents from paying taxes, not just those with paperwork in a particular register. It said that the term "Sikkimese" was too limited, lacked any intelligible differentia and did not pass the twin test of classification required by article 14:

- Since both groups were residents, it was unfair to discriminate against them, and
- it had no rational connection to the law's purpose (benefiting Sikkim residents)

Furthermore, it was determined that the clause that excluded Sikkimese women who married non-Sikkimese men after 1st April, 2008, was discriminatory. Given that a Sikkimese man, who married a non-Sikkimese lady was not subject to the same disqualification the Court vehemently denounced this gender-based exclusion. This violated the principles of gender equality, autonomy and dignity, which are safeguarded by articles 14, 15, and 21, by establishing an unfair double standard based only on marital status and gender.

The Court further emphasized that arbitrary and irrational classifications, even if created by the legislature must be overturned. In the end, the Court decided that all Indian residents, who made Sikkim their permanent home before 26th April, 1975 must be considered "Sikkimese," regardless of whether their names are listed in the 1961 register. Because it was unconstitutional, the clause that excluded Sikkimese women, who married outside the group had to be removed.

4. SICPA India Private Limited and Another vs. Union of India and others, WP© no. 54 of 2023

SICPA India Pvt. Ltd., a manufacturer of security inks in Sikkim, decided to close its operation in January 2019 and subsequent thereto sold all machineries and assets between April 2019 and March 2020, reversing input tax credit (ITC) as per GST law. Despite this, petitioner had an unutilized ITC balance of approximately Rs. 4,37,61,402/- in its electronic ledger. Petitioner applied for refund under section 49(6) of CGST Act, 2017 which entails that the balance in Electronic Credit Ledger after payment of tax, penalty, fee or in every amount payable may be refunded in accordance with the provisions of section 54 of the CGST Act. Refund was refused by stating that section 54(3) only allows refunds in two specific circumstances- zero rated supplies or inverted duty structure. It does not cover business closures.

Issue before the Court was whether the right to claim a refund of unutilized ITC under section 49(6) is confined to the two instances under section 54(3), or whether a registered entity can claim such a refund upon business closure due to absence of an explicit prohibition.

The Sikkim High Court allowed the petition by saying that though section 54(3) specifies only two situations for refund but it does not expressly prohibit refunds in other scenarios, such as business closure. The Court relied on pre-GST precedent of **Union of India Vs. Slovak India Trading Company Pvt. Ltd**. reported in **MANU/KA/0709/2006** which granted the refund in absence of any specific statutory provision.