

Structure & Functioning of Courts, Commissions & Tribunals

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(1)

Main Proceedings & their Stages in a Civil Suit

(A)

- (i) Institution of suit by presenting plaint to the court
- (ii) Issuing summons to the defendant
- (iii) Filing of written statement by defendant
- (iv) Framing of issues
- (v) Production of evidence by plaintiff
- (vi) Production of evidence by defendant
- (vii) Arguments
- (viii) Judgement
- (ix) Preparation of decree
- (x) Execution of decree

(B)

Ancillary or Misc. Proceedings in a Civil Suit

- (i) Disposal of interim injunction application
- (ii) Issuing commission for inspection of disputed property
- (iii) Amendment of pleadings
- (iv) Addition or deletion of parties to the suit
- (v) Substitution of legal representatives to the deceased party
- (vi) Appointment of receiver
- (vii) Restoration of suit if dismissed in default
- (viii) Setting aside ex parte decree

(C)

Main Proceedings & their Stages in a Criminal Case

- (i) Taking of cognizance of offences
- (ii) Supplying copies of prosecution papers to the accused
- (iii) Framing of charges
- (iv) Evidence for prosecution
- (v) Recording of statements of accused u/s 351 of BNSS (u/s 313 CrPC)
- (vi) Production of defence evidence by accused
- (vii) Arguments
- (viii) Judgement
- (ix) Sentencing on conviction
- (x) Sending convict to jail if not released on interim bail to file appeal

(D)

Ancillary or Misc. Proceedings in a Criminal Case

- (i) Remanding accused to judicial or police custody
- (ii) Disposal of bail application of accused
- (iii) Accepting or rejecting bail bonds of sureties
- (iv) Cancellation of BW or NBW if already issued by court
- (v) Order declaring accused as absconder
- (vi) Disposal of application for release of case property like vehicles, guns, etc.
- (vii) Disposal of discharge application if moved by accused
- (viii) Alteration of charges if required
- (ix) Summoning of witnesses for either party
- (x) Summoning of records
- (xi) Cancellation of bail granted to accused if required
- (xii) Forfeiting bond money of sureties if required
- (xiii) Releasing accused from judicial custody if charge sheet is not filed within 60 or 90 days
- (xiv) Summoning additional accused during trial if evidence produced against him by prosecution prima facie shows his involvement in the offence

(2) Tribunals

- (1) Uttar Pradesh Public Services (Tribunal) Act, 1976
- (2) Uttar Pradesh Public Services (Tribunal) Rules, 1975
- (3) Disciplinary Proceedings (Administrative Tribunal) Rules, 1947
- (4) Administrative Tribunals (Procedure for Investigation of Misbehaviour or Incapacity of Chairman, Vice-Chairman and other Members) Rules, 2000
- (5) Uttar Pradesh State Public Services Tribunal Rules Of Practice, 1997
- (6) Administrative Tribunals Act, 1985
- (7) Contempt Of Courts Act, 1971
- (8) Central Administrative Tribunal (Contempt Of Courts) Rules, 1986
- (9) Central Administrative Tribunal (Procedure) Rules, 1987
- (10) Central Administrative Tribunal (Grant Of Certified Copies) Regulations, 1988
- (11) Uttar Pradesh Public Services Tribunal (Procedure) Rules, 1992
- (12) Uttar Pradesh State Public Services Tribunal (Destruction Of Records) Rules, 1998

1. **Tribunals Reforms Act, 2021:** The Supreme Court struck down certain parts of the Tribunals Reforms Act, 2021.
2. **Tribunals have power to punish for contempt:** Tribunals have power to punish for contempt of Court. See: Madras Bar Association Vs. Union of India, (2015) 8 SCC 583 (Five-Judge Bench).
3. **Attributes of quasi-judicial order:** Opportunity to a party interested in the dispute to present his case on question of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. Recording of reasons in support of a decision by a quasi-judicial authority is obligatory as it ensures that the decision is reached according to law and is not a result of caprice, whim or fancy or reached on ground of policy or expediency. The necessity to record reasons is greater if the order is subject to appeal. An administrative order affecting rights of citizen is essentially a quasi-judicial order and must be speaking one. See: M/s. Mahabir Prasad Santosh Kumar Vs. State of U.P., AIR 1970 SC 1302.
4. **Compulsory retirement of a government officer having notoriously bad reputation for corruption held proper:** An Executive Engineer in the P. W. D. of Madras State was charged with corruption and an enquiry was instituted against those charges. The Tribunal for Disciplinary Proceedings, Madras, framed five charges against the civil servant and after an enquiry held three of them to have been proved and the remaining

two to be only at the stage of suspicion. The Tribunal recommended compulsory retirement as punishment and the Government of Madras referred the matter to the Public Service Commission for their recommendations. The Public Service Commission in its recommendations agreed with the findings of the Tribunal and added that the prosecution evidence as a whole left a strong suspicion of corrupt practice on the part of the officer, although some of the individual instances could not stand the test of strict legal proof as in a criminal case. The Commission further recommended that according to the principles laid down in G. O. No. 902 Public (Services), dated 28.05.1938, dismissal or removal would have been justified in the case but that the proposed penalty of compulsory retirement would meet the requirements of the case. The Government of Madras on receipt of the recommendations issued a show cause notice on the officer and retired him compulsorily with effect from 23.03.1957, the date from which he was suspended. This order was passed on 14.11.1957. The appeal of the Executive Engineer to the Governor also failed, the Governor holding that the charges framed by the Tribunal for Disciplinary Proceedings were held to have been proved and that there were no fresh materials which required reconsideration. A writ petition to the High Court was allowed, the High Court holding that the impugned order was passed on mere suspicion and as such was invalid. The appeal against the petition having failed, the State appealed to the Supreme Court. It was contended that the High Court erred in holding that the retirement order was passed merely on suspicion. On construction of relevant orders, the Supreme Court held that although the Public Service Commission had given its recommendation in somewhat ambiguous words, in the first part of their communication, they had expressed a general agreement with the findings of the Tribunal. Read in this context it only meant that the Commission had agreed with the charges to have been proved. The second portion of their communication could be justified on their reference to G. O. No. 902 Public (Services) which indicated that even though guilt was not established against public servant by proof as in a criminal case, the fact that the officer's reputation was notoriously bad afforded a just ground for the Government to refuse to continue to be served by such an officer in any Department. As such, the order of compulsory retirement could not be held to be illegal or passed merely on suspicion, though the view expressed in Government Order No. G.O. 902 Public (Services) was open to serious objection in as much as even in disciplinary proceedings, notwithstanding the fact that technicalities of criminal law could not be invoked, the charges framed against a public servant ought to be held to be proved before any punishment could be imposed on him. See: State of Madras Vs. A. R. Srinivasan, AIR 1966 SC 1827 (Five-Judge Bench)

5. **Suspension not punishment even where its duration is long:** Suspension without pay pending enquiry as also pending permission of the Industrial Disputes (Appellate Tribunal) constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 cannot be considered a punishment as such suspension without payment would only be an interim measure and would last till the application for permission to punish the workman was made and the Tribunal had passed orders thereupon. Such suspension would of necessity be of an indefinite duration because to get a written permission of the Tribunal would mean delay and no Tribunal would like to issue any order without notice and without hearing all the parties concerned. Such orders for suspension are meant only as security measures or precautionary ones taken in the interest of the industry itself or its employees in general. These measures are sometimes called for immediately after an incident and any delay, however small, might defeat the purpose for which such measures are intended. Such suspension, however, would not be a punishment by itself. The ordinary dictionary meaning of the word 'punish' is "to cause the offender to suffer for the offense" or "to inflict penalty on the offender" or "to inflict penalty for the offense". Punishment can be otherwise defined as penalty for the transgression of law, and the word "punish" denotes or signifies some offense committed by the person who is punished. Any action of the employer to the detriment of the workman's interest would not be punishment so long as no offense was found to have been committed by the workman. The suspension under such circumstance therefore could not be a punishment even though it may be of an indefinite duration and would not attract the operation of Section 22 of the said Act so as to require permission thereunder before it is meted out to the workmen. See: Lakshmi Devi, Sugar Mills Ltd. Vs. Pt. Ram Sarup & Others, AIR 1957 SC 82 (Four-Judge Bench).
6. **Delay in disposal of petition filed by retired delinquent employee not a ground for terminating disciplinary proceedings:** The appellant was a Deputy Tehsildar, Director of Civil Supplies, Punganoor in the District of Chittoor, Andhra Pradesh. He worked in the said capacity from 11.05.1992 to 21.01.1993. During the aforementioned period, essential commodities meant for public distribution were supplied to the private parties; the price whereof was stated to be Rs.12,46,523.60. He was placed under suspension on 29.1.1993. A departmental proceeding was initiated against him. An enquiry officer was appointed for the said purpose. He was found guilty in the said departmental proceedings and relying on the enquiry report, an order of dismissal was passed against him on 21.10.1994. An appeal preferred by the appellant thereagainst was also dismissed. He then filed an original application before the Andhra Pradesh Administrative Tribunal and on the premise that the enquiry officer was not competent to frame the

charges, the order of dismissal was set aside by the Tribunal. The State filed a writ petition thereagainst before the High Court. The High Court set aside the order of the Tribunal. The appellant filed SLP before the Supreme Court challenging the order of the High Court. The disciplinary proceedings had continued against the appellant after his retirement. The appellant had caused loss to the State Government. The disciplinary proceedings against him were initiated immediately while he was in service and were concluded within reasonable time. The appellant retired only when the SLP was pending before the Supreme Court. The Supreme Court held that continuation of the disciplinary proceedings against the appellant after retirement was not illegal in view of Rule 9 of the Andhra Pradesh Pension Code. The Supreme Court further held that the delay in disposing of the appeal and the writ petition by the Tribunal and the High Court could not be a ground for quashing the disciplinary proceedings against the appellant. See: (i) V. Padmanabham Vs. Government of A. P. & Others, AIR 2009 SC 2416 & (ii) Madras Aluminium Company Limited Vs. Tamil Nadu Electricity Board, (2023) 8 SCC 240 (Three- Judge Bench)

7. **Evidence in departmental enquiries can be procured from all sources and all channels:** Domestic Tribunals exercising quasi-judicial functions are not Courts and therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict rules of evidence. They can, unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedure, which govern proceedings in Courts. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case but where such an opportunity had been given, the proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts. In respect of taking the evidence in an inquiry before such Tribunal, the person against whom a charge is made should know the evidence which is given against him so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety take place before the party charged who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities

and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them. See: *State of Mysore Vs. Shivabasappa Shivappa Makapur*, AIR 1963 375 (Five-Judge Bench).

8. **Allegations of victimization should be properly and adequately pleaded and proved in disciplinary enquiry by charged employee:** Where there is no failure of the principles of natural justice in the course of domestic enquiry, if the tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, it will have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In that event, the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficacy. Ordinarily, a person is victimised, if he is made a victim or a scapegoat and is subjected to persecution, prosecution or punishment for no real fault or guilt of his own, in the manner, as it were, of a sacrificial victim. Victimisation is a serious charge by an employee against an employer, and, therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is based to enable the employer to fully meet them. The fact that there is a union espousing the cause of the employees in legitimate trade union activity and an employee is a member or active office-bearer thereof, is, per se, no crucial instance. The onus of establishing a plea of victimisation will be upon the person pleading it. Mere allegations, vague suggestions and insinuations are not enough. All particulars of the charge brought out, if believed, must be weighed by the Tribunal and a conclusion should be reached on a totality of the evidence produced. A proved misconduct is anti-thesis of victimisation as understood in industrial relations. This is not to say that the Tribunal has no jurisdiction to interfere with an order of dismissal on proof of victimisation. See: *M/s. Bharat Iron Works Vs. Bhagubhai Balubhai Patel & Others*, AIR 1976 SC 98 (Three-Judge Bench).
9. **Jurisdiction of tribunals of Courts :** The Supreme Court has laid down following principles for determining the question of ouster of jurisdiction of civil courts---
 - (1) Where the statute given a finality to the orders of the special tribunals, the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the

statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) Challenge to the provisions of the particular Act as ultra vires cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply. See---

(i) Church of North India vs. Lavajibhai Ratanjibhai, (2005) 10 SCC 760

(ii) Dhulabhai vs. State of M.P., AIR 1969 SC 78

- 10. Wakf Tribunal & Jurisdiction Civil Courts:** Suit for injunction in respect of wakf property lies before the Wakf Tribunal constituted under the Wakf Act, 1995 as amended in 2013 and not before the civil court. Civil court has no jurisdiction in respect of the wakf property. See: Rashid Wali Beg Versus Farid Pindari and others, (2022) 4 SCC 414.

11. **Suit for eviction from wakf property lies in civil court u/s 9 CPC :** Suit for eviction from wakf property is tribal by civil court. Wakf Act does not provide determination of dispute of eviction by Wakf Tribunal. Civil Court u/s 9 CPC has jurisdiction to try such suit. See : **Faseela M. Vs. Munnerul Islam Madrasa Committee, 2014 (4) ALJ 22 (SC).**

(3) Commissions

1. Commissions of Inquiry Act, 1952
2. Central Vigilance Commission
3. Uttar Pradesh Sub-ordinate Services Selection Commission Act, 2006
4. Uttar Pradesh State Law Commission Act, 2010
5. Commissions Of Inquiry (Uttar Pradesh) Rules, 1985
6. Uttar Pradesh Regularisation Of Ad-Hoc Appointments (On Posts Within The Purview Of The Public Service Commission) Rules, 1979
7. Uttar Pradesh Regularisation Of Ad-Hoc Appointments (On Posts Outside The Purview Of The Public Service Commission) Rules, 1979
8. Uttar Pradesh Regularisation Of Ad-Hoc Promotions (On Posts Within The Purview Of The Public Service Commission) Rules, 1988
9. Uttar Pradesh Regularisation Of Ad-Hoc Promotions (On Posts Outside The Purview Of The Public Service Commission) Rules, 1988
10. Uttar Pradesh Sub-Ordinate Services Selection (Commission) Act, 1988
11. Uttar Pradesh Direct Recruitment Through Public Service Commission (Preliminary Examination) Rules, 1986
12. Uttar Pradesh Procedure For Direct Recruitment For Group 'C' Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 2001
13. Uttar Pradesh Procedure For Direct Recruitment For Group 'C' Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 2002
14. Uttar Pradesh Procedure For Direct Recruitment For Group 'C' Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 1998
15. Union Public Service Commission (Exemption From Consultation) Regulations, 1958
16. Uttar Pradesh Promotion By Selection In Consultation With Public Service Commission (Procedure) Rules, 1970
17. Uttar Pradesh Constitution Of Departmental Promotion Committee For Post Outside The Purview Of The Service Commission Rules, 1992
18. Uttar Pradesh Promotion By Selection (On Posts Outside Purview Of The Public Service Commission) Eligibility List Rules, 1986

19. Uttar Pradesh Public Service Commission (Limitation of Functions) Regulations, 1954
20. Uttar Pradesh Regularisation Of Daily Wages Appointment On Group 'C' Posts (Outside The Purview Of The Uttar Pradesh Public Service Commission) Rules, 1998
21. Uttar Pradesh State Consumer Disputes Redressal Agencies (State Commission And District Fora) Employees Service Rules, 2006
22. Uttar Pradesh State Law Commission (Repeal) Act, 2007
23. Uttar Pradesh Public Service Commission (Computer Section) Service Regulations, 2009
24. Uttar Pradesh Subordinate Services Selection Commission (Repeal) Act, 2007
25. Uttaranchal Commission For Scheduled Castes, Scheduled Tribes And Other Backward Classes Act, 2001
26. Uttaranchal State Commission For Other Backward Classes Act, 2003
27. Uttaranchal Commission For The Scheduled Castes And Scheduled Tribes Act, 2003

(4)

Commissions of Inquiry Act, 1952

SYNOPSIS

1 Object behind setting up of Commissions of inquiry 2 Commission not a Court 3 Report of enquiry commission as fact finding report 4 Effect of non-observance of principles of natural justice by commission 5 Government not bound by recommendations of commission 6 Commission when to make critical observations? 7 Judicial and quasi-judicial tribunals 8 What constitutes a "Court"?	9 Nature of inquiry under Commissions of Inquiry Act, 1952 10 Contempt of Commission 11 Proceedings before Commission of inquiry and Court distinguished 12 Courts not bound by conclusions arrived at by Commission 13 Commission of inquiry setup for authorised and unauthorised purposes 14 Political rivalry between parties not to vitiate setting up of Commission of inquiry 15 Delay in acting upon report of Commissions 16 Guidelines of Supreme Court for appointing High Court Judges as inquiry Commissions
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COMMENTS

1. **Setting up of a Commission of inquiry to maintain purity and integrity of political administration held valid:** In the present case, the purpose of the enquiry as stated in the preamble to the notification appointing a Commission of Inquiry under the Commissions of Inquiry Act, 1952 stated

that "the matters aforesaid regarding the aforesaid persons should be enquired into through a Commission of Inquiry so that facts may be found which alone will facilitate rectification and prevention of recurrence of such lapses and securing the ends of justice and establishing a moral public order in future". In other words, the object of the enquiry to be made by the Commission appointed under Section 3 of the Act was to take appropriate legislative or administrative measures to maintain the purity and integrity of the political administration in the State. The appointment of the Commission of Inquiry was valid exercise of the statutory power by the State Government under Section 3 of the Act. See: P. V. Jagannath Rao Vs. State of Orissa, AIR 1969 SC 215 (Five-Judge Bench).

2. **Commission appointed under Commissions of Inquiry Act, 1952 is not a 'Court':** Functions of the Commission appointed under the Commissions of Inquiry Act, 1952 are not like a body discharging judicial functions of judicial power. The commission appointed under the 1952 Act is not a Court and making the inquiry or determination of facts by the Commission is not of judicial character. The commission has the powers of Civil Court for the limited purpose as set out in Section 10A of the Act. It is also treated as a Civil Court for purposes of Section 5(4) of the Act. The proceedings before the Commission are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Code. But the real issues are: whether the above provisions particularly and the 1952 Act generally would bring the Commission comprising of a sitting Supreme Court Judge within the meaning of "Court" under Section 2(c)(i)? Whether the proceedings before the Commission are judicial proceedings for the purposes of Section 2(c)(ii)? Whether the functioning of such Commission is part of the administration of justice within the meaning of Section 2(c)(iii)? The Supreme Court held that the functions of the Commission appointed under the 1952 Act are not like a body discharging judicial functions or judicial power. The Commission appointed under the 1952 Act is not a Court and making the enquiry or determination of facts by the Commission is not of judicial character. See: Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench).
3. **Report of Enquiry Commission is a fact finding report:** There is absolutely no question of any notice being issued to the person against

whom the Commission of Enquiry constituted under the provisions of the Commissions of Enquiry Act, 1952 was constituted. Opportunity of cross-examination of witnesses by the person or persons against whom the Enquiry Commission was set up is also not required as per Section 8-C of the Act. The report of the Enquiry Commission is a fact finding enquiry report on the basis of information or material collected by the Commission. See: (i) Common Cause Vs. Union of India, (2017) 9SCC 499, (ii) Goa Foundation Vs. Union of India, (2014) 6SCC 590 and (iii) M.V. Rajwade, IAS, District Magistrate Vs. Dr. S.M. Hassan & Others, AIR 1954 Nagpur 71.

4. **Non-observance of principles of natural justice renders Commission's report *non est*:** While interpreting Section 8-B of the Commission of Enquiry Act, 1952 which was introduced in the said Act in 1971 by the Amending Act 79 of 1971, the Supreme Court has held that it may be noticed that the said amendment was brought about 20 years after passing of the main Act itself. The experience during the past two decades must have made the legislature realize that it would but be necessary to notice a person whose conduct the Commission considers necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. It is further provided that such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus the principles of natural justice were got inducted in the shape of a statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with the principles of natural justice renders the action *non est* as well as the consequences thereof. See: (i) State of Bihar Vs. Lal Krishna Advani & Others, AIR 2003 SC 3357 (Para 8) and (ii) Sanjay Gupta Vs. State of Uttar Pradesh & Others, AIR 2014 SC 2982 (Para 9).
5. **Government not bound to accept recommendations of Commission:** A Commission of inquiry setup under the Commissions of Inquiry Act, 1952 is not a court properly so called. A Commission is obviously appointed by the appropriate Government for the information of its mind in order for it to decide as to the course of action to be followed. It is, therefore, a fact-finding body and is not required to adjudicate upon the rights of the parties

and has no adjudicatory functions. The Government is not bound to accept its recommendations or act upon its findings. The mere fact that the procedure adopted by it is of a legal character and it has the power to administer an oath will not impart to it the status of a court. See: (i) Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench) (Para 33) and (ii) Dr. Baliram Waman Hiray Vs. Justice B. Lentin & Others, AIR 1988 SC 2267.

6. **Commission cannot make any critical observations against any person without giving him opportunity of hearing:** In the year 1989, some communal riots took place in Bhagalpur District, State of Bihar, resulting in many deaths and left some others injured. Undoubtedly, it was a matter of concern and the State Government decided to constitute a Commission of Inquiry under Section 3 of the Commission of Inquiry Act, 1952. The Commission made its observation against Shri Lal Krishna Advani, BJP Leader in these words “Thus Jansangh disappeared and became a part of the Janta Party. Along with people like Mr. Advani became Information and Broadcasting Minister and Vajpae the Minister of External Affairs while invidiously Mr. Advani spreading the message of his cult through the official media. Mr. Advani really spilled the beans and revealed the real intention of the BJP in his statement Reported in the Panchajanya and copied by the 'Times of India' dated January 30th, 1993. Speaking for ourself, were distressed to read that the statement not out of fear because our life and our religion are both safe in this country but because of an eminent national leader should resort to threat of rioting unless the norms set by him are followed. The demand by him that Muslim and Christian should style themselves as Mohammadi Hindu and Christian Hindu etc. is a proof of this depraved an achronistion ideology. One became the protector of Islam by peddling the slogan of "Islam in Danger" the other is exactly doing the same thing by peddling the concept of protecting the Hindu. The Islam which Mr. Jinna and the Muslim League tried to save led to the chaotic condition in Pakistan. Hinduism or Sanatan Dharma which Mr. Advani is trying to save is creating the same chaotic condition in India”. Observations by Commission of Inquiry constituted under the Commission of Inquiry Act, 1952 was made without giving any chance to Shri Lal Krishna Advani, BJP Leader, to explain his conduct. It militates against the reputation of the leader. Said person need not wait till certain action is initiated by the Government considering report of Inquiry

Commission. It would be open for him to move the Court for deletion of such remarks made against him violating the provisions of Section 8B of the Commission of Inquiry Act, 1952. One is entitled to have and preserve one's reputation and one also has a right to protect it. In case any authority in discharge of its duties fastened upon it under the law traverses into the realm of personal reputation adversely affecting him must provide a chance to him to have his say in the matter. In such circumstances, right of an individual to have the safeguard of principles of natural justice before being adversely commented upon by a Commission of Inquiry is statutorily recognised and violation of the same will have to bear the scrutiny of judicial review. It would but be necessary to notice a person whose conduct the Commission considers it necessary to inquire into during the course of the inquiry or whose reputation is likely to be prejudicially affected by the inquiry. Such a person would have a reasonable opportunity of being heard and to adduce evidence in his defence. Thus, the principle of natural justice was got inducted in the shape of statutory provision. It is thus incumbent upon the Commission to give an opportunity to a person before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with principles of natural justice renders the action non est as well as the consequences thereof. See: State of Bihar Vs. Lal Krishna Advani, AIR 2003 SC 3357.

7. **Judicial and quasi-judicial tribunal distinguished:** If a body which has power to give a binding and authoritative decision is able to take action so as to enforce that decision, then, but only then, according to the definition quoted, all the attributes of judicial power are plainly present. The other fundamental test which distinguishes a judicial from a quasi-judicial or administrative body is that the former decides controversies according to law while the latter is not bound strictly to follow the law for its decision. The investigation of facts on evidence adduced by the parties may be a common feature in both judicial and quasi-judicial tribunals but the difference between the two lies in the fact that in a judicial proceeding the Judge has got to apply to the facts found, the law of the land which is fixed and uniform. The quasi-judicial tribunal, on the other hand, gives its decision on the differences between the parties not in accordance with fixed rules of law but on principles of administrative policy or convenience or what appears to be just and proper in the circumstances of a particular case.

In other words, the process employed by an Administrative Tribunal in coming to its decision is not what is known as “judicial process”. See: (i) Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench) (Para 27) and (ii) Dr. Baliram Waman Hiray Vs. Justice B. Lentin & Others, AIR 1988 SC 2267.

8. **What constitutes a “Court”?:** In order to constitute a ‘Court’ in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or a definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement. With reference to the provisions of the Public Servants (Inquiries) Act, 1850 vis-a-vis Contempt of Courts Act, 1952 (now 1971), a Three-Judge Bench of the Supreme Court in the case of Brajnandan Sinha Vs. Jyoti Narayan, AIR 1956 SC 66 had held that the Commissioner appointed under the Public Servants (Inquiries) Act, 1850 is not a Court within the meaning of the Contempt of Courts Act, 1952 (now 1971). See: Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench) (Para 28).
9. **Inquiry by Commission under Commissions of Inquiry Act, 1952 neither judicial nor quasi-judicial proceeding:** An inquiry by the Commission appointed under the Commissions of Inquiry Act, 1952 is neither a judicial nor a quasi-judicial proceeding attracting the issue of appropriate writs under Article 226 of the Constitution of India. See: See: (i) Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench) (Para 32) and (ii) Shri Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar & Others, AIR 1958 SC 538.
10. **Commission can make reference to High Court to draw proceedings for its contempt:** A Commission appointed under the Commissions of Inquiry Act, 1952 is not a court for purposes of the Contempt of Courts Act, 1971 even though it is headed by a sitting Supreme Court Judge. Section 10A of the 1952 Act leaves no doubt that the High Court has been conferred with the power to take cognizance of the complaint in respect of the acts calculated to bring the Commission or any member thereof into disrepute. Section 10A provides the power of constructive contempt to the Commission by making a reference to the High Court with a right of appeal

to the Supreme Court. See: Dr. Subramanian Swamy Vs. Arun Shourie, AIR 2014 SC 3020 (Five-Judge Bench) (Para 34).

11. Proceedings before Commission of inquiry and Court distinguished:

One of the items regarding one of the persons into whose conduct the Commission was appointed to inquire in the notification appointing the Commission of Inquiry was the subject matter of a civil litigation pending in appeal before the High Court. In the civil litigation, none of the parties had adduced any evidence. The person had not appeared as a witness and had not presented himself for cross-examination. The suit was decided by the lower Court purely on the basis of burden of proof. There was no factual enquiry into the allegations. It was contended that the appointment of the Commission of Inquiry during the pendency of the appeal in the suit constituted contempt of Court. The Supreme Court held that it did not amount to contempt of Court. It was not also possible to accept the argument that the inquiry was in relation to the very matters which were the subject matters of the civil suit and of the pending appeal. The inquiry cannot be looked upon as a judicial inquiry and the order ultimately passed cannot be enforced *proprio vigore*. The inquiry and the investigation by the Commission do not therefore amount to usurpation of the function of the courts of law. The scope of the trial by the Courts of law and the Commission of Inquiry is altogether different. In any case, it cannot be said that the Commission of Inquiry would be liable for contempt of Court if it proceeded to enquire into the matters referred to it by the Government Notification. In appointing a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952, the State Government exercises a statutory power and in making the inquiry contemplated by the notification, the Commission performs its statutory duty. It is therefore not possible to accept the argument that the setting up of the Commission of Inquiry by the State Government or the continuance of the inquiry by the Commission so constituted would be tantamount to contempt of Court. To constitute contempt of court, there must be involved some "act done or writing published calculated to bring a court or a judge of the Court into contempt or to lower his authority" or something "calculated to obstruct or interfere with the due course of justice or the lawful process of the courts." Therefore, the issue of the notification under Section 3 of the Act or the conduct of the Inquiry by State did not amount to contempt of Court. See:

P. V. Jagannath Rao Vs. State of Orissa, AIR 1969 SC 215 (Five-Judge Bench).

12. **Courts are not bound by the conclusions arrived at by Commission:** A Commission setup under the provisions of the Commissions of Inquiry Act, 1952 has only the power of investigation and record its findings on any issue assigned to it for inquiry and make its recommendations to the Government. It has no power to enforce its recommendations. The inquiry by the Commission and its report cannot be looked upon as a judicial inquiry in the sense of its being an exercise of judicial function properly so called. The Commission and its report cannot decide the guilt or innocence of any person. Courts are not bound by the conclusions arrived at by the Commission during the course of its inquiry. The Courts of law can reach their conclusion on the basis of their own judicial exercise conducted according to law. See: (i) Brajnandan Sinha Vs. Jyoti Narayan, AIR 1956 SC 66 and (ii) Shri Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar & Others, AIR 1958 SC 538.
13. **Dominant purpose behind setting up of Commission of inquiry determinative of its legality if it was setup for both authorised as well as unauthorised purpose:** If a statutory authority exercises its power for a purpose not authorised by the law, the action of the statutory authority is ultra vires and without jurisdiction. In other words, it is a mala fide exercise of power in the eye of law, i. e., an exercise of power by a statutory authority for a purpose other than that which the Legislature intended. But the question arises as to what is the legal position if an administrative authority acts both for an authorised purpose and for an unauthorised purpose. In such a case, where there is a mixture of authorised and unauthorised purpose, the proper test to be applied is as to what is the dominant purpose for which the administrative power is exercised. To put it differently, if the administrative authority pursues two or more purposes of which one is authorised and the other unauthorised, the legality of the administrative act should be determined by reference to the dominant purpose. See: P. V. Jagannath Rao Vs. State of Orissa, AIR 1969 SC 215 (Five-Judge Bench).
14. **Mere political rivalry between ruling and opposition parties not to vitiate setting up of Commission of inquiry:** The existence of political

rivalry between the ruling party and the leaders of the ex-ruling party into whose doings the enquiry commission is constituted to enquire is not in itself sufficient to hold that the appointment of the Commission of Inquiry is illegal. When after the perusal of the affidavits of the parties, it is clear that the appointment of the Commission of Inquiry was not merely due to the existence of political rivalry of the parties but was impelled by the desire to set up and maintain high standards of moral conduct in the political administration of the State and that the latter was main object of the appointment of the Commission and not "the character assassination" of the leaders of the ex-ruling party, the appointment of a Commission is not ultra vires or mala fides. See: P. V. Jagannath Rao Vs. State of Orissa, AIR 1969 SC 215 (Five-Judge Bench).

15. **Delay in acting upon report of Commissions deprecated:** It is appropriate that when in a matter of definite public importance, a Commission of Inquiry is appointed under the Commissions of Inquiry Act, 1952, the State Government should examine the Report of the Commission expeditiously and decide what action, if any, is required to be taken on that Report promptly. To keep a report pending for years together and, as, in this case, for a decade, does no credit to anybody. Reports of Commissions of Inquiry should not be allowed to gather dust for years together as it reflects adversely on the utility of such commissions and would affect the credibility of the entire exercise. The State Government of Uttar Pradesh had setup Justice Parekh Commissions in 1982 to enquire into the riots which took place in September, 1982 in the City of Meerut. The Commission had submitted its final report to the State Government in November, 1988. Several Governments changed but none of them took a decision to place the report of the Commission before the Houses of the State Legislature and failed to take any action thereon. It appears that the State Cabinet with a view to maintain religious and political harmony in Meerut City and to avert any flare-up in any particular class or community had decided not to take any further action on the basis of the Parekh Commission Report which itself did not identify any particular person as responsible for the riots nor fixed responsibility for dereliction of duty on any official. The State Government having considered the report and taken a decision, the Supreme Court held that this writ petition did not require any further consideration and directed that it be consigned to records. See:

Fazalur Rehman Vs. State of U.P., AIR 1999 SC 3460 (Three-Judge Bench).

16.

17. **Guidelines of Supreme Court for appointing High Court Judges as Inquiry Commissions:** There are so many Statutes enacted by the Parliament which provide for a sitting Judge of the High Court to be appointed either as the President, Chairman, or Vice-Chairman of any Tribunal or Commission. Therefore, it cannot be said that a sitting Judge of a High Court shall neither be appointed to any other post nor shall be assigned any other judicial or quasi-judicial work. But, invariably, in all cases, the Chief Justice of the concerned High Court would be consulted in case the appointment is sought of a sitting Judge. Normally, a Judge who is to retire from service shortly may be desirous of accepting any other assignment either as a Chairman, Vice-Chairman or Member of any Commission or Tribunal. But if a sitting Judge is appointed to a regular post of Chairman, Vice-Chairman or Member of a Tribunal and the decision of that authority is subjected to judicial review of the High Court, it may not be an ideal situation. Under the Constitution, security of judicial tenure has been provided to the Judges of the superior Courts and they could be removed only as per the proviso prescribed under Article 124(4) of the Constitution on account of proved misbehaviour or incapacity. Sometimes, the sitting Judge who is appointed to the post of Chairman, Vice-Chairman of any Tribunal or Commission would be liable to be removed by the appointing authority. This also is not desirable in view of the Constitutional position being occupied by the Judge. Quite often sitting Judges are appointed as Inquiry Commissions. The appointment of Judges to head or chair a Commission of inquiry or to perform other non-judicial work would create unnecessary burden on the Judge and would affect the administration of justice. Quite often the reports of the Commission are ignored and no follow-up actions are taken by the Government. In some matters, when political issues are also involved, even impartiality and objectivity of the Court may sometimes be questioned due to some extraneous and oblique motives. The public image and prestige of the Court as guardian of the Constitution and rule of law has to be maintained. Keeping in view all these aspects, the appointment of a sitting Judge as a Commission of Inquiry has to be made only on rare occasions if it becomes necessary for the paramount national interest of the country. The Supreme Court laid down following broad guidelines as to the manner in which the

appointment of sitting Judge of a High Court to a Commission should be dealt with:

- (1) Appointment of a sitting Judge to the following offices may not be objectionable:
 - (a) As a commission of inquiry under the Commissions of Inquiry Act, 1952.
 - (b) Judicial Officer which is of such a high character and where it has to be filled up by a sitting Judge to fulfil the requirement of law, e.g. under Article 262 of the Constitution of India which provides for adjudication of any dispute with respect to the use, distribution or control of water or any inter-State river or river-valley, read with Inter-State Water Disputes Act, 1956.
 - (c) Where expertise and experience of a sitting Judge is required to discharge the functions, a sitting Judge may be appointed, for example, as a Member of the Finance Commission or Law Commission.
- (2) Appointment of sitting Judge or a Tribunal is not desirable where the adjudicating members are composed of other members who are not Judges or qualified to be appointed as Judges, such as bureaucrats, revenue officials etc.
- (3) So also, appointment of sitting Judge to a Judicial Tribunal is not desirable where the statute or the rules and regulations framed therein contemplate provisions for removal from such office or other disciplinary action by any authority.
- (4) When a sitting Judge is appointed to a post or Tribunal, he shall be amenable to the disciplinary jurisdiction only in the manner provided for in Article 124(4) of the Constitution of India if he is a Judge of the Supreme Court or in the manner provided for in Proviso (b) to Article 217(1) read with Article 124(4) of the Constitution of India if he is a Judge of a High Court.
- (5) Where the post may not be a whole time post but the nature of duties are such that his order as a Tribunal or Commission would be subjected to the supervisory jurisdiction of the High Court under Articles 226, 227, a sitting Judge of the High Court may not be appointed to such post, but if the sitting Judge concerned has only a short period to retire from service, he may be appointed, but after accepting the full-time post, he shall not sit as a Judge and discharge duties and functions (both judicial and administrative) as a sitting Judge of High Court, even though he may not demit office consequent on his appointment to a full-time post.
- (6) When the Chief Justice of a High Court is consulted for appointment of a sitting Judge as Member, Chairman, Vice-Chairman or President of any Court, Commission or Tribunal and it is a whole time post, the Chief Justice shall bear in mind the relevant circumstances and shall not compromise the

dignity of the office of the sitting Judge and shall strive to preserve the independence of judiciary.

- (7) When a sitting Judge who has only a short period to retire from service is appointed to a post, he shall express his willingness to relinquish the remaining tenure as a Judge and then only his service shall be made available for such post. See: T. Fenn Walter Vs. Union of India, AIR 2002 SC 2679 (Three-Judge Bench).
