

Merits and Demerits of Public Law

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Abstract: ¹This study provides an overview of the concept of public law in India. Public law is a fundamental pillar of any democratic society.

Public law governs the relationship between individuals and the state. In India, a nation known for its diverse culture, historical heritage, and evolving legal framework,

This analysis of multifaced dimensions of public law in India, governs constitutional law, administrative law, criminal law various other branches that shape the interactions between the government.

It exercises the power of the government and public authorities. It examines the evolution of public law in India from its colonial legacy to its modern avatar as enshrined in the Constitution of India, which serves as the supreme legal document guiding the nation.

This analysis also discusses the role of the judiciary, particularly the Supreme Court of India, in interpreting and safeguarding public law principles.

Additionally, it explores the challenges and complexities associated with public law enforcement, including issues related to administrative transparency, fundamental rights, and the balance between individual liberties and the collective welfare of society.

Keywords: public law in India

I. INTRODUCTION

²Public law is a branch of law that governs the relationship between individuals and the state and the relationships between different state entities. It is concerned with the regulation of government powers and the protection of public interests. Unlike private law, which focuses on the relationships between individuals, public law ensures that the actions of public authorities are legal, fair, and just. Public governs constitutional law, administrative law, and criminal law. By setting the framework for how the state operates and interacts with its citizens, public law plays a critical role in maintaining the rule of law and safeguarding democracy.

In Jurisprudence, positive law is broadly divided into the two categories of Private Law and Public Law. Private Law is subdivided into Commercial Law, Family Law, Law of Torts, etc. Public Law is divided into Constitutional, Administrative, and Criminal Law.

Even in the legal systems where no distinction was observed in the beginning between Private Law and Public Law, the subjects considered to be part of Public Law today are Constitutional Law, Administrative Law, Anti-Trust Law, and the law relating to the Civil and Criminal Procedures (Goldberg-Ambrose, 1996). However, the point of distinction between Private Law and Public Law in contemporary jurisprudence is the distinction between the “interests of the individuals and the interests of the Commonwealth”

Public law exercises the power of the government and public authorities. It somehow relates to them when a crime is committed against one specific individual one person has suffered a loss considered as a defence committed against the entire society. The government is ensuring our safety, so it is committed against society enlarge.

Constitutional law, the supremacy of law functioning in the state, set out the form of government now its different branches work, how they are elected or appointed, it has division of powers and responsibilities between them.

Administrative law, it regulates the bureaucratic managing procedures. These laws are enforced by the executive. The law which regulates in international trade, taxation, pollution.

Historical Perspective of Public Law in India

³The history of public law in India is closely tied to the country’s colonial past and its journey toward becoming a democratic republic. Before India gained independence in 1947, its legal system was primarily based on British colonial

law, which was designed to serve the interests of the British Empire rather than the Indian people. During this period, public law in India was heavily influenced by English common law and the laws that governed the British colonies.

With the arrival of British rule, India saw the development of a legal framework that was mostly centered around maintaining the power of the British government. The British introduced key legal concepts like constitutional law, administrative law, and criminal law, but these were often designed to control the Indian population and limit their rights.

However, the Indian independence movement, led by figures like Mahatma Gandhi, Jawaharlal Nehru, and others, brought about a transformation in India's legal and political landscape. The struggle for freedom and self-rule called for a rethinking of the relationship between the state and the citizens, leading to the creation of the Constitution of India in 1950. The Constitution marked a new beginning in the evolution of public law in India, establishing India as a sovereign, socialist, secular, democratic republic.

With the Constitution, India adopted a legal framework that sought to balance the powers of the government with the rights and freedoms of its citizens. Public law in independent India was designed to ensure justice, equality, and freedom for all. The Constitution also laid the groundwork for the protection of fundamental rights, the establishment of democratic institutions, and the independence of the judiciary.

Over the years, India's public law has continued to evolve, with significant contributions from the judiciary, especially the Supreme Court. Landmark judgments have shaped public law, reinforcing principles such as the protection of human rights, the accountability of public authorities, and the importance of transparency in governance.

II. MERITS OF PUBLIC LAW

⁴Order and Stability: Laws ensure predictability and order in society by defining acceptable behavior and penalizing violations. For instance, traffic laws regulate road use, reducing accidents and chaos. In the absence of laws, disputes could escalate into violence. For example, contract laws allow businesses to operate smoothly by resolving disputes without resorting to physical altercations.

Protection of Rights: Laws protect fundamental rights such as freedom of expression, equality, and protection against exploitation. They also address injustices like discrimination and violence, ensuring that all individuals are treated fairly. The Constitution of India guarantees fundamental rights, including the right to equality and freedom of speech, which help maintain social harmony.

Conflict Resolution: Laws provide an impartial system (courts and tribunals) to resolve disputes between individuals, businesses, or governments. This prevents conflicts from escalating and ensures that justice is served fair Alternative Dispute Resolution (ADR) mechanisms like mediation and arbitration have proven effective in resolving disputes without burdening courts.

Deterrence of Crime: Strict penalties for criminal acts discourage potential offenders. Laws like the death penalty, life imprisonment, or fines act as deterrents, ensuring compliance.

Stringent anti-corruption laws deter public officials from misusing their positions. Cybercrime laws prevent digital theft and hacking.

Social Norms and Ethics: Laws codify societal values, creating a legal framework for moral and ethical behavior. They promote principles like honesty, fairness, and equality, helping societies evolve in a just manner. Anti-discrimination laws ensure equal treatment irrespective of race, gender, or religion, upholding ethical values in diverse societies.

Promoting Social Justice: Laws are instrumental in addressing inequalities and empowering marginalized sections of society. They enable affirmative actions like reservations and welfare schemes for underprivileged groups. The Indian legal system enforces laws such as the SC/ST (Prevention of Atrocities) Act to uplift marginalized communities.

Economic Stability: Laws regulate economic activities to ensure fairness, protect consumers, and safeguard investors' rights. They prevent monopolies, ensure competition, and foster a stable business environment. The Competition Act, of 2002 in India prevents anti-competitive practices and monopolistic behaviors.

Protection of the Environment: Environmental laws regulate industrial activities to prevent pollution and promote sustainable development. They also penalize entities causing environmental harm. The Environment Protection Act, of 1986 in India ensures accountability for industries polluting the environment.

Technological and Cyber Regulation: Laws adapt to technological advancements, ensuring digital safety and regulating online platforms. They combat cyberbullying, data theft, and unauthorized surveillance. The IT Act, 2000 in India governs cybersecurity and protects users from fraud, hacking, and identity theft.

III. DEMERITS OF PUBLIC LAW

⁵Inflexibility: laws can be outdated especially when societal norms and value change. This can delay the progress, making it difficult to address modern issues in a timely manner. Laws can be rigid and slow to change which can prevent the legal system from adapting to modern needs or societal values. In some countries criminalize or public opinion has shifted towards legalization or decriminalization. That will be the conflict between old laws and modern social norms.

Potential for Misuse: Those in power can exploit laws for personal or political gain, leading to corruption and suppression of dissent. Misuse of sedition laws or preventive detention acts to silence critics of the government. It sometimes be used to unfairly target or harm certain groups of people through power or corruption.

Complexity and Accessibility: Legal language is often complex, creating barriers for laypersons to understand and exercise their rights. This widens the gap between the legal system and ordinary citizens. Many individuals lack the resources to hire lawyers or navigate through complex legal procedures, especially in criminal cases, without legal expertise or resources it is inaccessible for many people.

Cost and Delay: Legal processes can be prohibitively expensive and time-consuming. Delayed justice undermines faith in the system. High-profile cases often take decades to conclude, leaving victims without timely redress.

Overregulation: Excessive regulations stifle innovation, creativity, and business growth. They can lead to unnecessary bureaucracy and create hurdles for entrepreneurs. Small business owners often face challenges due to excessive licensing requirements and inspections.

Disparities in Enforcement: Inconsistent application of laws leads to social or racial bias, undermining public trust in the justice system. Cases of police brutality or uneven application of anti-drug laws disproportionately affect marginalized groups.

Conflict with Modern Norms: Laws based on outdated moral or cultural standards may conflict with contemporary societal norms. Laws criminalizing homosexuality or restricting women's rights in some countries contradict modern values of equality.

Potential for Overreach: Some laws grant excessive power to authorities, risking infringement of individual freedoms and privacy. Surveillance laws allow governments to monitor citizens without adequate safeguards.

Undermining Innovation: Strict regulations and fear of legal consequences may affect businesses and individuals from pursuing innovative ideas. Intellectual property laws, while protecting creators, can discourage collaboration in areas like open-source software.

III. CASE LAW

⁶ Maneka Gandhi v. Union of India (1978) Issue:

The case revolved around the arbitrary enforcement of laws under the passports act 1967

Maneka Gandhi, an Indian citizen, was denied permission to travel abroad after her passport was impounded by the government. The government did not provide any specific reasons for this action, and Maneka Gandhi challenged the decision, arguing that the impounding of her passport violated her fundamental rights under Article 21 (Right to Life and Personal Liberty), Article 14 (Right to Equality), and Article 19 (Freedom of Speech and Expression) of the Constitution of India.

Maneka Gandhi contended that the government's action was arbitrary and lacked a fair procedure, and therefore, it infringed upon her personal liberty and right to freedom of movement. The key issue was whether the impoundment of her passport, without giving adequate reasons, violated her constitutional rights.

Significance:

This landmark case had a profound impact on the interpretation of Article 21 (Right to Life and Liberty) of the Constitution. The Supreme Court of India in this case significantly broadened the scope of the right to life and personal

liberty. The Court ruled that Article 21 does not merely provide protection against physical harm, but also guarantees that no person's personal liberty shall be deprived except according to a fair, just, and reasonable procedure.

Right to Fair Procedure: The Court held that the right to life and liberty under Article 21 includes the right to a fair procedure, which means that **arbitrary actions** by government authorities, such as impounding a passport without providing reasons, were a violation of this right.

Reinforcing the Need for Due Process: The Court emphasized that laws and actions of government authorities must adhere to **due process** and be **reasonable** in nature. The Court ruled that any law that deprives a person of their liberty or freedom must be **just, fair, and reasonable** and not arbitrary.

Broadening of Fundamental Rights: This case also marked the expansion of **fundamental rights**, stating that even rights under Article 19, such as freedom of movement, cannot be taken away arbitrarily without following a procedure prescribed by law. The decision thus reinforced the need for judicial scrutiny of executive actions.

The Supreme Court's judgment in **Maneka Gandhi v. Union of India (1978)** is considered one of the most significant rulings in the interpretation of fundamental rights in India. It emphasized that any action taken by the state that affects an individual's liberty must not only be prescribed by law but also meet the test of fairness and reasonableness. This case laid down the foundation for the protection of personal liberties and restricted the arbitrary power of the state, reinforcing the principle of rule of law in India.

IV. CONCLUSION

public law serves to maintain order, ensure social justice, and regulate government actions, it is not without its challenges. Issues like the misuse of law, bureaucratic inefficiency, complexity of legal processes, and delays in justice pose significant barriers to its effective enforcement. Additionally, the tension between government power and individual freedoms requires constant scrutiny to avoid overreach and protect fundamental rights.

Despite these challenges, public law in India continues to evolve, striving to balance the interests of the state with the rights of the people. Landmark judgments, such as *Maneka Gandhi v. Union of India (1978)*, have expanded the scope of rights under Article 21 (Right to Life and Liberty), ensuring that government actions are just, fair, and reasonable.

In conclusion, public law remains a critical pillar for the functioning of a democratic society, ensuring that power is exercised lawfully and that individuals' rights are respected. The ongoing development of public law, guided by judicial interpretations, will continue to shape the relationship between the state and its citizens, striving for fairness, justice, and equity.

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