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**LEGAL IMPLICATIONS OF
DEVELOPMENT CONTROL RULES AND
REGULATIONS FOR
BUILDINGS IN URBAN AREAS OF INDIA**
(Thesis Submitted for the Award of Ph.D. Degree in Faculty
of Law)

By

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D e d i c a t i o n

I feel YOU are Here & You Are
There, and YOU Are
E v e r y w h e r e

In my breath and in my
f a m e
On this earth since I
c a m e

In my thoughts and in my deed
YOUR Desire like a *Devine Seed*

With your endless
b l e s s i n g s

Dearest Papa,

The Seed has become a
T r e e
With love dedicated to THEE

**LEGAL IMPLICATIONS OF
DEVELOPMENT CONTROL RULES AND REGULATIONS FOR
BUILDINGS
IN URBAN AREAS OF INDIA**

Faculty : Law

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It is hereby stated that the contents of this thesis are based upon the research work carried out by me under the supervision of Dr. D.D.DHAMELIA, former Professor, Department of Law, Saurashtra University, Rajkot, and leads to contribution in Applied Law and is supported by necessary references.

Rajkot

Date: 13/11/2006

**Miss ILA LODHAVIA
Architect.**

CERTIFICATE

This is to certify that the present Research Scholar Miss ILA LODHAVIA has conducted this research study entitled '**Legal Implication of Development Control Rules & Regulations for Building in Urban areas of India**' under my supervision. The thesis is genuine work of research done in conformity with the rules and regulations relating to Ph.D. of Faculty of Law, Saurashtra University. The thesis of the standards expected of doctoral research and I hereby recommend to forward this research work for evaluation for the award of Ph.D. Degree in law.

RAJKOT

Prof. D. D. Dhamelia

Date: 13.11.2006

PREFACE AND ACKNOWLEDGEMENT

One of the most important areas in technical legal field of applied legislation is the formation and implementation of development control rules and regulations for building as they play most vital and significant role in the protection of environment. This being an applied legislation is having regulatory and preventive aims, objects and measures. It is most essential to get it implemented in its real sense. These development rules and regulations are having justifications for providing better living conditions and create safe environment by eradicating pollution.

Considering the necessity of such rules and regulations, the basic need to have such restrictive measures is to regulate the activities of human being in its individual and collective form. Law of nature as well as in Law of land does, not permit the negative attitude of some human being having nature of doing an act. One always tries to find the excuses and loop holes to escape or to act contrary to law for individual's benefit or mal intentions. The subject "LEGAL IMPLICATIONS OF DEVELOPMENT CONTROL RULES AND REGULATION FOR BUILDINGS IN URBAN AREAS OF INDIA is having multiple areas to be dealt with as one unit as urban development may consist all three, a village, a town and a city. The development from village to town, from town to city and from city to metropolitan city is the basic cause of problems related to the buildings and the need for solutions is to be opting for. It is to be thought over now only to find out the modular type of formation of rules and regulations which have got their own effect to get implemented automatically in course of time keeping certain important aspects of the place where it is to be implemented and for whom it is going to be implemented. Here the place is referred in context of its category viz. Village, Town, City or Metropolitan City under the limitations of the definition of term URBAN and people residing therein. In this Research and Investigation with case study of different situations the researcher's humble effort would be to suggest some sort of rules and regulations for role or negative aspect of the situation and almost all the time to be tempted to do something which is

either not permitted progressive development of Villages Towns and Cities which are covered under the definition of "URBAN and also for the rest of the area which are urban by itself.

The entire research work is proposed to be spread out in eight Chapters with view to cover various facades of the problems in their proper perspective in the ever changing society and situation, only buildings are static, fixed and self explanatory entity to speak about the rules and regulation of the time and date when the same was executed and the deviation, if any. The case study by itself helps in interpretation of the rules and regulation of the time. In this research the difference between Development Control Rules and Regulations and regulations in general are also discussed. The interpretation thereof in legal terminology is different but the implementation thereof is to construct a static entity called a building having multifaceted effect on the ecology and the surroundings depending upon the type of live use thereof. The human tendency is to get attracted by the negative by law or which is contradictory to the law to gain more than most permitted benefits out of the deal. An efficient architect is one who manipulates and interprets the law to get the more out of most benefits .One who can get more Floor Space Index (F.S.I.) and who can get anything adverse to the law. It would not have been a prominent problem if a building had been perishable commodity like ice cream or vegetables or any other consumer item. But now-a-days the demand of building has become an important entity and the industry has become more profitable. Such a situation has made one to think about the forthcoming days and the situation of the place itself.

The Urban Land (Ceiling and Regulation) Act 1976, has limited role in, researcher's work as to define the urban areas. Now the Act is repealed but the effect is left for the study as the mass housing, and other developments under the said Act is present and some schemes are still under construction. The abolition of the Act has no effect on this research as the legal problems are connected to the urban area whether under ceiling limit or not.

A Friend Dr. Roshan Namavati who has done his research in the subject of valuation, inspired to do some more research on valuation and that to on the subject SENTIMENTAL VALUATION OF THE PROPERTY. In deed the subject is interesting but the discipline in which it was covered was not clear. After a discussion with my guruji Shree N.S. Pingle used to teach the principles of aesthetics and basic design during degree course in architecture at Department of Architecture, Faculty of Technology and Engineering .in the year 1969-70. The subject was likely to be covered under his discipline but had only academic importance and for the persons interested in it. As he knew the consequences of the process very well and the basic needs of society had inspired to do some positive work in the field of Development Control Rules and Regulation for building for the disciplined practice in the field of architecture. As an architect finally the interesting aspect of practical knowledge needed some analysis to get the out come of the irregularities in the implementation of rules and regulations. The time was such that the practical experience is to be utilised for the work and the subject got its shape as the aspect of the research is more legal than technical, even though basic technical aspects are present all the time. Anything adverse to law, rules or regulation when physically present and evident and the basic cause of all the irregularities are the vested interest of concern groups.

The law is misinterpreted and rules and regulations are diverted to or twisted to the required shape. The adverse is equally possible when the user is not having the vested interest; the politicians instigate to violet the rules by its tight formation. The other aspects such as social, technical and economical are related to all the other different situation and circumstantial aspects. The aims and objectives of the research in the subject is to find out solution and frame strategy to streamline the process and prevent and regulate illegal and irresponsible process of implementation.

My First and foremost thanks to my friend Dr. Roshan Namavati who had inspired me to do some research work in technical-legal field. My humble

thanks to my respected Guruji Shree N.S. Pingle for inspiring me and helping me to choose the subject as of my earnest interest. I am very thankful to Prof. H.C. Dholakiya (M.S.U. Baroda) and Prof. N.V.Paranjape (Bhopal) for encouraging me for research work. Dr. D.D.Dhamelia for guiding and supervising the research work. I can never forget the favour done by my architect friend Shree B.D. Shukla, Town Planner Rajkot Municipal Corporation & later with Urban Development Authority. The other architect friends naming them would be a long list who had helped me in making survey. My sincere thanks to Dr. N.K. Indrayan, for live discussion as and when needed for research work.

I thank advocate Jayendra Mandani, advocate A.K. Lalani, advocate Chandrakant Mehta, advocate Niranjana Daftary. Last but not the least thanks to Dr. Mahendra Padaliya an evergreen friend for inspiring me to continue to work on the subject. I thank my Architect friend Naren Kotak, from London, for sending me all the required literature from United Kingdom. I also thank a Client and friend of mine, Saleembhai Daud from Karachi Pakistan, for sending rules and regulations. I also acknowledge my sincere thanks to my college friend Mrs. Sunanda Kuvadia from USA for helping me by sending the required details. I am very much thankful to the Librarian and the staff of university library at Rajkot and Smt. Hansa Mehta Library at M.S. University, Vadodara. I cannot forget Shree Gaurang Doshi for helping me in solving problems at the time of processing the data in computer. I cannot ignore a loyal office assistant Suresh and my nephew Sanket Lodhavia to find out details from Newspapers and keeping all records ready for reference. Without divine blessings of my Papa Late Shree Devchand.S Lodhavia and a ever ready live inspiration my great loving Mummy who has put the foundation stone in building my career, the dream of carrying this research work would have never become true. MY heartily thanks to my pets Sonu and Softy and finally Topsy and charming Riya who has given me immense love and pleasure when I was getting tired of work and making me afresh to work again.

AR. (MISS) ILA LODHAVIA.

ABBREVIATIONS

| | |
|----------|--|
| BPL | Below Poverty Line |
| C | Corporation |
| Cantt. | Cantonment |
| C.B. | Cantonment Board |
| C.T. | Census Town |
| E.O. | Estate Office |
| F.S.I. | Floor Space Index |
| F.A.R. | Floor Area Ratio |
| G.P. | Gram Panchayat |
| GDCR | General Development Control Regulation |
| I.S.I. | Indian Standard Institution |
| M. | Municipality |
| M.B. | Municipal Board |
| M.C. | Municipal Committee |
| M. Corp. | Municipal Corporation |
| N.B.C. | National Building Code |
| N.C. | Notified Committee |
| N.A.C. | Notified Area Committee |
| N.A. | Non agriculture |
| N.M. | Non- Municipal |
| N.O.C. | No Objection Certificate. |
| N.P. | Nagar Panchayat |
| O.G. | Out Growth |
| P | Panchayat |
| R.C.C. | Reinforce Cement Concrete |
| RUDA | Rajkot Urban development Authority |
| S.B. | Sanitary Board |
| S.A. | Special Area |
| T.A. | Town Area |
| T.B. | Town Board |
| T.C. | Town Committee |
| T.P. | Town Panchayat |

| | |
|------|---------------------|
| T.S. | Township |
| U.C. | Union Committee |
| U.A. | Urban Agglomeration |
| ULC | Urban Land Ceiling |
| V.P. | Village Panchayat |

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CHAPTER 1 - INTRODUCTION

- 1.1 Statement of Problem
- 1.2 Reference to the Previous Study Made
- 1.3 Objective of the Study
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- 1.6 Methodologies and Technique Used
- 1.7 Limitations
- 1.8 Chapter Scheme

CHAPTER 1 - INTRODUCTION

1.1 STATEMENT OF PROBLEM

"Stones make a wall, walls make a House, Houses make a Street and Streets make a city. A city is stones, the city is people; but it is not a heap of stones and it is not just a jostle of people. In the step from village to the city a new community organisation is built based on the division of labour and on chains of command."¹

The stated view given by J. Bronowski is very much relevant in the present context that the City is not heap of stones or jostle of people. It only means without Stone there is no possibility of existence of CITY and likewise without presence of people there is no life in city. If basic essence is there but in its raw form it does not fulfil the condition as far as the terminology is concerned. One single stone cannot form a wall and one single wall does not form a building and one single building cannot form a city as well. Then the question arises as to what forms a city. To find out the components of the formation of the City, one has to consider different factors, such as static development such as buildings and transitory settlement as well as other basic needs of the city dwellers.

Before defining city it is very much essential to know as to what makes people to come and settle and what inspire them to be comfortable socially, technically, legally and psychologically, in the place where they reside.

¹ J. Bronowski -The Ascent of Man , p 6.

In the Constitution of India there are Fundamental Rights and Directive Principles for the citizens of India². One of the fundamental rights is to live or reside freely anywhere they like and earn their livelihood as per their choice³. There is another right to hold property wherever one likes. If it is a question or problem related to one person then no difficulty arises but when it comes between two persons, or two families or two institutions, two villages, two towns or two cities and two Countries then difficulty arises and the solution to that difficulty becomes an essential part of the study.

It is universal truth that whenever any problem needs solution there lays the formula to solve and certain assumptions, presumptions, rules and regulations are made to solve the same.

One more universal truth is to be considered all the time that, when one part gains something in terms of cash or kinds, rights or privileges, the other looses. Again it is a fact that a gainer never wants to loose and looser always wants to gain or hold whatever is in possession.

This being an applied legislature has got the implied and express provisions of different Statutes. The building had got its existence in the history and no where it is found where and when the first building was built and it becomes a very early history to find out that which has got no relevance now, but when the cluster of the buildings had come into existence and when society had taken its shape, when a group of people in form of family started staying together and a group of many families started living together.

In any form of society has the smallest unit as a house to street, to locality, to ward, and to city, where different types of people stay, work or do all different activities. But none of them is free to do whatever they like

² Art 12 to35 and36 to51 of Constitution of India

³ Art. 19(1)(g) and 19 (6) of Constitution of India

beyond certain self-imposed rules of the society. The rules are not formed expressly for any of the action by any of the persons but there are many factors, which are the reasons or basis of the code of conduct or ethics. Many a times the ritual becomes a rule, in most of the occasion the habit of the people gets form of rule and customs changes its form into rules and regulation but these are not the rules which have got their legal validity or implication. One set of rules has got its own jurisdiction such as house. A family is abiding by the rules of the house and the members residing therein enjoy the rights and have to perform their duties. These rules are not in legal form but are accepted as natural justice. It is based on the principle that “Do as you expect from others” applies to the society such as flat owners association makes their own rules. These rules are formed and framed by the persons residing there in. The do and do not are there where no conditions or provisions are made as all are treated equally. The provisions are also made for the adverse actions. In such small administrative set up also rule breakers are there to disobey the rules made for the benefit of the society at large. These rule breakers always try to take more out of the limited. Many times, some penalty is imposed, but are not legally penalised. Thus the payment in terms of penalty the person acting adversent to rules, do not change behaviour as the penalty is imposed by society.

When the problem is getting its form from micro to macro and from macro to mega form the prevention, restrictions and regulations become inevitable and must as to give justified treatment to the society, as whole in form of the village, town or city. The rules and regulations are framed which have their legal implications.

1.2 REFERENCE TO PREVIOUS STUDY MADE

Previous studies have been on some aspects but as such no study has been made with its legal aspect. The studies are made on slums keeping, slum dwellers in view to review their rights. The development of any area is based on some of the criteria. The development is due to job

opportunities because of industrial development. The other aspect is education oriented due to educational institutions. Most of the urban development is due to people usually migrated from surrounding villages, Even industrial development near some of the towns have made them thickly populated and have come under category of city.

That village or town on the basis of population and not the area covers the classification of the city. The density factor as specified by the Government Institutions is not relevant many a times⁴. The basis is academic and non-practical in case of such type of development. The area required by a human being at time of doing different activities is the base of consideration for the formation of rules and regulations, which must be minimum. Any thing more than specified is accepted. e.g. The minimum open margin is specified as 3 meters in front, on Road side, 2.5 mts. is not acceptable as it is illegal but if it is 3.5 mts. the minimum criteria is taken care of, is accepted as it is legal.⁵ The development when is in process is without any planning. Studies have been by different groups in different cities like Bombay, Calcutta, Delhi, Chennai, Ahmedabad, Vadodara and many more. But these groups have not brought Technical and legal aspects together. The aim and objective of the study is for economic survey, social survey, educational qualifications, and job classifications. The settlements created by the migrated people were either encroachment to the land of private landowners or any of the common plots. Many a times it is on roadside or near railway tracks or Government wasteland. The authorities to provide them basic amenities or basic services like water supply, drainage, streets and streetlights make most of the studies. The developed cities also face such problems even in posh areas.

1.3 OBJECTIVE OF THE STUDY

The aim and objective of this research is to find out the short comings of the present system of the development, rules and regulations as they are

⁴ Sec. 2(n), and 2(o) sec11 and sec 29 Schedule 1 Urban Land Ceiling Law p. 70 to81

⁵ GDCR of Rajkot Urban Development Authority P. 65

revised, added or altered every year or within a short period of time. The rules are implemented as the administrator interprets it. The interpreter of the terminology is many a time not competent enough to follow the meaning and purpose of the set of rules. There is always scope of rectification of the Act by charging penalty or regularised by charging fees but does not serve the purpose of it legality as is formed once is not full proof as the relative matter and forms are not examined properly. The rules are made contradictory rather making it functional. The present system is not having relative alternative as the part of building is constructed at one time and addition and alteration to it is during the revision of the rules. The zone changes, purpose of the building are interrupted by the rules once being the residential locality or zones become commercial and the peaceful area becomes noisy and inhabited by certain group of people.

The roads are widened at any point of time because of change of zone and that is because of vested interest of some concern people who are unaware of the actual situation of the area.

Many times the change of use without permission of the authority creates hurdles. In a residential building a branch of a bank is placed, parking and vehicular traffic become problem. In certain cases restaurant or dining hall is started in a residential colony. The waste disposal and other factors like privacy of the people, noise, pollution etc. create problem for the people residing in purely residential peaceful area.

A. The objective is to study the legal implications of development control rules and regulations and ancillary rules and regulations for building design and construction with following aspects:

THE OBJECTIVES TO STUDY

01. Technical aspects.
02. Legal aspects
03. Administrative and ad judicatory aspects

04. Judicial aspects

05. Comparison with Rules and regulations of other countries.

06. To find out a concept to stream line the procedure so that the legal Implications become easy to follow

1.4 CONCEPTS DEFINED

The title of the research is THE LEGAL IMPLICATIONS OF DEVELOPMENT CONTROL RULES AND REGULATIONS FOR BUILDINGS IN URBAN AREAS OF INDIA.

The Introduction to subject starts not by what does the researcher mean by the title but it starts by the definitions of the objectives. The question is usually asked by people for the need of the formation of rules and regulations. The need is to restrict people doing something wrong and to prevent people doing something beyond rules. It is said that a thing which is wrong, as wrong being a relative term, means that the thing, which is not right, is wrong, then one should know what is right, and not wrong. i.e. the rule when followed should be in total The concept, anything, which is not accepted by law of natural justice is wrong. The meaning of natural justice is related to morality, which is absolute and accepted and expected by any or every human being.

Administrative concept of restriction, prevention and regulation are some facts or instances those are unpleasant matter to people, and most of the time it is opposed by the group of people who are rule bounded. The necessity to have legal system is must as to protect the legal, moral, social rights of people, and punish those who do not obey them.

Legal system is a relative system, which does not work independently. The reason being situations and circumstances are ever changing factors and the system depending upon them also gets affected. For the interpretation of definitions of the term used, the dictionary meaning thereof should be

checked. The terminology from the Dictionaries is accepted as the base for interpretation and understanding the subject.

The word legal gives an idea that it might be a word connected to Law. Better to clarify as the word connected to manmade law that is taken as law of land. All the legality and illegality are related to man made law and interpreted as per the definitions used in the law for references. So in this research, the aspect and concept are absolute legal in terms of Natural Law and Man-made law because of this as less as possible contradiction will arise. In this research the Law and Morality is kept in the view and all the checks and crosschecks are based on the personal moral bindings and ethics. When the question of administration is concern, the justification of terminology is not necessarily having literal meaning of the word used in dictionary but the gist of the collective meaning of the term.

⁶LAW:

1. A rule established among a community and enjoining or prohibiting certain actions
2. The system made up of these rules, its controlling power, the order produced by it, its administration,
3. The science concerned with it, the persons learned in it
4. The courts administering it, branch of it relevant to any subject,(lay down the l., be dogmatic; necessity knows no l, justifies anything: bad l. view resting on misapprehension of the ll. On a subject; read l., study the ll., go to l., start suit in l., courts; take or have the law into one's own hands, redress one's wrong by force; the law of evidence contract and c.); any rule of the procedure. (the laws of Cricket; be a law unto oneself, takes one's own line disregard convention and c.); the precept of the Pentateuch, The Mosaic dispensation; (also Law of Nature) invariable sequence between certain conditions and phenomena, prevalence of such sequences in nature.

⁶ Oxford Dictionary P. 443

⁷LAW:

A rule of action to which men are obliged to make their conduct comfortable.

'Law' in its legislative sense is of much wider important than the juristic notion of law as the command of a sovereign or as rule laying down a general course of conduct.

Law in Art. 245 of the constitution of India must be construed as including in its scope all legislative Acts in the prescribed manner and form.

Law is a scheme of social control, as distinct from self-control. The sovereign portion of the State considers and determines how much personal liberty is best, and how much social control is best, in the interest of the State, for the protection of its social interests. In other words, law is an expression of the will of the sovereign portion of the State, affirming an order which will be enforced by the government machinery of the State, directed to the realisation of some real or imagined good.

Rules and Regulations are the form of operative law as imposed and enforced by the State within its territory. It includes all rules and legal principles which are- (a) enforced by the State and (b) applied by the Courts, for the administration of justice.

It embodies distinct provisions enjoining persons-. (a) to do or (b) forbear from doing certain acts. Accompanied by the sections of the State that they will have to be obeyed.

In a democracy, law is a scheme of social control established by the people as a whole, for the purpose of creating a better social order, either

⁷ Judicial Dictionary p.559

of social happiness or social perfection, through the delimitation of personal liberty for the protection of social interests.⁸

There is no hard and fast line between a Legislative and a Judicial Act⁹. A law which is retrospective or which declares or modifies existing rights may often have the effect of a judicial decree. The Legislature may legislate to interfere with pending proceedings in Law Courts. Again, the Courts may interpret laws in one way but the Legislature may by a declaratory enactment lay down a different interpretation. The Legislature may also enact laws providing that a suit that had been dismissed on a particular view of the laws must be restored and retried. There is under the Indian Constitution no doctrine or dogma of separation of various powers¹⁰. The Constitution has not vested the judicial or legislative power in separate departments of the State. The Articles of the Constitution do not divide and establish areas in black and white. A declaratory Act of a Legislature that enacts that property in an estate vested in a particular person as from a definite date in the past is valid even against claims to that estate based on adverse possession.¹¹

A law also follows the customary forms of law making and must be expressed as a binding rule of conduct. There is generally an established method for the enactment of laws and the laws when enacted have also a distinct form. It is not every indication of the will of the Ruler, however, expressed which amounts to a law. An indication of the will meant to bind as a rule of conduct and enacted with some formality either traditional or specially devised To read the word 'law' as meaning rules of natural justice will land one in difficulties because the rules of natural justice, as regards procedure, are nowhere defined and the or the occasion, results in a law,

⁸ Singhal's Jurisprudence p. 19

⁹ Judicial Dictionary p.560.

¹⁰ *ibid* p.560

¹¹ Ramprasad Narayan v. State of Bihar, AIR 1952 Pat 194.

but not an agreement to which there are two parties one of which is the Ruler¹².

To read the word 'law' as meaning rules of natural justice will land one in difficulties because the rules of natural justice, as regards procedure, are nowhere defined and the Constitution can not be read as laying down a vague standard. The word 'law' is equivalent to state made law.¹³

"Law"¹⁴ means state made law and not general law connoting the principles of natural justice outside the realm of positive law.

".....That the consensus of opinion is to the effect that executive orders made by Government in respect of the administration of its own properties cannot be considered as statutory rules and are not justiciable under Art.226 of the Constitution. Government can own property and deal with it in any manner that is permissible under the law."¹⁵ The word 'Law' used therein is of general import and there must be deemed to embrace any Law, whether it be Common Law or Statute Law."¹⁶

'As at present advised, we are unable to see why the word "Law" in this phrase "in accordance with law" as used in Schedule 2 should be given a restricted connotation so as to leave out industrial law as evolved by courts.'¹⁷

¹² Nagpur Cotton Mills Ltd. v. Board of Revenue, M. P., AIR 1964 SC 888, referred to in State of Rajasthan v. Bundi Electric supply Co., Ltd.. AIR 1970 Raj 36(46) ; I. S. Mehta and C. M. Lodha, JJ .

¹³ A.K.Gopalan v. State of Madras, AIR 1950 SC 27 :51 Cr. LJ 1303 : 1950 SCJ 174

¹⁴ In Article 21 of the constitution

¹⁵ Constitution of India, Art. 226; Bidyadhori Spill Matsyajibi Samabaya Samiti v. State, AIR1961 Cal 214

¹⁶ Cf. C.P. and Berar Industrial Dispute Settlement Act (23 of 1947). Sec. 30 and Sch. II, Entry No. 3; Maroti Lutabaji v. State Industrial Court, Nagpur, AIR 1959 Bom 61

¹⁷ Cf. C.P. and Berar Industrial Dispute Settlement Act (23 of 1947) Sch. 2, Cl. (3); Provincial Transport Services v. State Industrial Court, Nagpur, AIR 1963 SC 114.

Law is meant to serve the living and does not beat its abstract wings in the jural world. Its functional fulfilment as social engineering depends on its sensitised response to situation; subject matter and the complex of realities, which require ordered control. A holistic understanding is simple justice to the meaning of all legislations. Fragmentary grasp of rules can misfire or even backfire.¹⁸

A legal order, tacitly or formally accepted by a community and consisting of a body of rules binding in that community and backed by some mechanism accepted by the community.¹⁹

Definition of legal order: Though theorist may not find it easy to define a law as distinguished from executive orders, the main features and characteristics of law are well recognised. Stated broadly, a law generally is a body of rules, which have been laid down for determining legal rights, and legal obligations, which are recognised by courts.²⁰

The test therefore, is whether the act in question embodies the command of the sovereign prescribing a binding rule of conduct determining legal rights and obligations. Law is the emanation of the will of the sovereign, which prescribes a binding rule of conduct for observance in future and affecting legal rights and obligations of persons subject to his power.²¹

¹⁸ V.R. Krishna Iyer, J.; Chairman Board of Mining v. Ramjee 1977 UJ (SC) 184: 1977 2 SCC 256: 1977 SCC (lab) 226 1977 34 Fac LR 381: (1977) 2 SCR 904: AIR SC 965 (967).

¹⁹ State of M.P. v. Ramchandran Bhagose Kanchi, (1972) 22 MPLJ 176: AIR 1977 MP. 68

²⁰ Per Gajendragadkar, C.J.; Rajkumar Nursing Pratap Singh Deo v. State of Orissa, (1964) 7 SCR 112: (1965) 1 ScR 421: 1965 SCD 720; 31 Cut LT 721: AIR 1964 SC 1973

²¹ Cf. Baroda State (Application of Laws) Order, 1949, Paras 5(1) ©, 3 and 6; Kadi Municipality v. New Chhotalal Mills Co. Ltd. AIR 1965 Guj 993.

The word in its literal sense may include constitutional law, but it was pointed out “ ---- there is a clear demarcation between ordinary law, which is made in exercise of legislative power, and constitutional law which is made in exercise of constituent power. The scheme of the relevant provisions of the Constitution is that though both Arts. 13 and 368 are widely phrased, the harmonious rule of construction requires that the word “Law “, in Art 13 should be taken to exclude law made in exercise of the constituent power.”²²

Law includes all rules and legal principles those are enforced by the State and applied for the administration of justice. It embodies distinct provisions enjoining persons to do or forbear from doing, certain acts, accompanied by the sanction of the State that they will have to be obeyed.

The law deals with States will, only in so far as it is manifested in action; it deals only with external acts those produce an effect upon the world of senses. It prescribes that acts of men should conform to certain rules of conduct. It is organic totality of the rules relating to external human action, together with the associated system of rights and duties. Those rules imply and all legal principles imposed and affirmed by the State and apply by the Courts in discharge of their judicial functions.²³

Law-abiding²⁴; Obedient to the laws, law and order, normal state in civilised country.

Law court²⁵: The court of Law.

²² Cf. Constitution of India, Arts. 13(2) and 368; Sajjan Singh v. State of Rajasthan, AIR 1965 SC 845.

²³ Singhal's Jurisprudence, p.19.

²⁴ Oxford Dictionary p. No 448.

²⁵ Ibid p.448

Lawgiver²⁶: Author of code of law, Lord, member of the House of Lords, qualified to assist in the legal work.

(Here M.L.A or M.P. as the case may be)

Law officer²⁷: Attorney or Solicitor General

(A person looking after the legal affairs of the institution or gives legal opinion)

Law of nation²⁸: Regulating relations between states, law of land, indisputable, unalterable

(An Act regulating affairs of the people and authority for certain subject in principle)

Lawsuit²⁹: Prosecution of claim in law court.

Lawful³⁰: permitted or appointed or qualified or recognized by law, not illegal or Illegitimate.

Lawless³¹: having no laws, disobedient to laws, unbridled.

Law agent. A person who is given an authority by another to do all acts in Court on his behalf. Differ from power of attorney.³²

Law and equity - The distinction between law and equity is one which has existed in many systems of jurisprudence, notably in the Roman and the English system and the distinction invariably comes to abolished (more or less) in course of time; the principles of equity coming to prevail over

²⁶ Oxford Dictionary p.448

²⁷ ibid p.449

²⁸ ibid p.449

²⁹ ibid p.449

³⁰ ibid p.449

³¹ ibid p.449

³² Judicial Dictionary by K.J. Aiyer p.562

without destroying the principles of law, until by positive legislation there is effected a complete fusion between the two sets of principles. Justinian affected this fusion for Roman law and Queen Victoria by her two Lord Chancellors (Selbourne and Cairns) for English law. [Brown].³³

Law and facts. In litigation, it is customary to find the conjunction of law and fact; but occasionally there is no dispute about the facts, the question being entirely one of law, and again there is frequently no dispute about the law, but dispute purely about the facts. Matters of law are for the Judge, and matters of fact are for the Jury; mixed matters of law and fact are for the jury, but properly dealt with they would be distinguished. [Brown].³⁴

“Law, due course of”³⁵ Law for the time being in force is Expression refers to any law bearing upon the subject of arbitration which is in force at the time when question of applicability of that law to arbitration under S. 19 The Defence of India Act, 1939 arises and covers any such law which come into force even after the passing of that Act,³⁶

“Law imposing tax” “ the expression ‘Law is imposing taxation’ occurring in our Constitution should receive a limited construction.”³⁷

Law in force:³⁸ The phrase “Law in force” as used in Art. 20(1) of Constitution of India should be understood in its natural sense as being the law in fact in existence and in operation at the time of commission of the

³³ Judicial Dictionary by K.J. Aiyer p. 562

³⁴ *ibid* p.562

³⁵ S.9 of the Specific Relief Act 1 of 1877 (Corresponding to S. 6 of the Specific Relief Act, 1963; *Rudrappa v. Narsing Rao*, 29 Bom 213.

³⁶ *Sir Dinshaw v. G. B. Badhas*, 70 Bom LR 632: AIR 1969 Bom 151.

³⁷ Cf. *Constitution of India Art. 286(3)*; *P. Chettiar & Co. v. Dy. C.T. Officer*, AIR 1959 Mad 317.

³⁸ See *Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

offence as distinct from the law “deemed” to have become operative by virtue of the power of Legislature to pass retrospective laws,³⁹

“The words should not, receive, any technical meaning but should be understood in sense which gives them a fair measure of amplitude. The crucial words so read must lead to the conclusion that decisions of the High Court of Bombay given before the appointed day are binding on this Court.”⁴⁰

The expression “Law in force” in Art. 20 of the Constitution of India means “law actually in force and not law deemed to be in force by retrospective operation of an amendment.”⁴¹

The definition of the expression “Law in force” in Art. 13 of the Constitution is not exhaustive but is only illustrative as the word used is “includes” and not “means”. Secondly, under Clause (3)(a) “Law” has been defined so as to include custom and usage having the force of law”. Under S. 13 of the General Clauses Act, a word used in plural has the same meaning as when it is used in the singular form and the content in Clause (1) of Art. 13 makes it necessary to interpret “laws in force” so as to include customs and usages.⁴²

³⁹ Shiw Bahadur Singh v. State of U. P., 1952 SCJ 563: 1953 Cr. LJ 1480: AIR 1953 SC 394.

⁴⁰ Bombay Reorganisation Act, 1960 S. 87; Anand Municipality v. Union of India, AIR 1960 Guj 4 (FB)

⁴¹ Rama Shanker Tewari v. State, 1954 AWR (HC) 334: 1954 Cr LJ 1212: AIR 1954 All 562 (DB)

⁴² Panch Gujar v. Amer Singh, 1954 Raj LW 204: AIR 1954 Raj 100 (DB): (AIR 1952 Bom 84, relied on).

“Law is relating to” The expression “law relating to” contemplates that the relation must be real, reasonable and prominent and not far- fetched or problematical.⁴³

Law list. A list of barristers and other legal practitioners giving the addresses and the dates on which they enrolled themselves.“ In India list means a common roll of advocates prepared and maintained⁴⁴

Law making power of the State.

Unless the Constitution of a State places a limitation upon the law making power, the Legislature has an absolute power to make any law that it likes. It is not open to the Judiciary of the State to question the wisdom of the law, or the expediency of a provision, or the reasonableness of an enactment. Nor is a Court concerned with the motives of the Legislature.⁴⁵ But, different considerations prevail, when the Constitution of State places restraint upon the power of Legislature.

The Constitution being the fundamental law of the land, all its laws must conform to it. An enactment that is repugnant to, or contravenes, some provision of the Constitution is void. The validity of a Law has, therefore, to be considered with reference to the provisions of the Constitution. It has to pronounce an enactment as valid, if it is in conformity with the Constitution, otherwise contravenes, the Constitution, or in other words, is ultra virus of the Legislature. The validity of a law may be challenged on the ground that in enacting the law the Legislature has either exercised a jurisdiction which the Constitution forbade it, or usurped the jurisdiction of another Legislature.⁴⁶

⁴³ Ram Shankar Tewari v. State, 1954 AWR (HC) 334: 1954 Cr. LJ 1212: AIR 1954 All 562.

⁴⁴ Under S. 20 of the Advocates Act, 1961 (Act 25 of 1961)”.

⁴⁵ In re, C. P. Motor Spirit Act, AIR 1939 FC 1.

⁴⁶ Kameshwar Singh v. State of Bihar, ILR 31 Pat 565: 1962 SCR 889

The presumption is always in favour of the validity of an enactment. The Court leans in favour of the constitutionality. It pronounces a legislation to be ultra virus, if there are clear and unequivocal indications, which establish that the Legislature has overstepped its competence, or travelled outside the limitations laid down in the Constitution.

Law of Nature:

Certain rules of conduct supposed to be so just that they are agreed to be binding upon all mankind.⁴⁷

Law of Reports:

Report of the judgements of the Courts of the highest authority in law published periodically for the purpose of being used as a precedent.

Substantial questions of Law

In terms of a substantial question of law in Art 152 of the Constitution does not mean a question of general importance but a substantial question of law between parties to the case and the question must be one in respect of which there may be a difference of opinion.⁴⁸

“Lawful” means that which is in conformity with the principle of spirit of the law whether moral or judicial. The term does not connote enjoined by law but the opposite of unlawful⁴⁹ “lawful” for accord with ethical principles.

Lawful excuse: Such justification as would in law exculpate an individual in his act. Lawful excuse means that there is a justification for the

⁴⁷ Kameshwar Singh v. State of Bihar, ILR 31 Pat 565: 1962 SCR 889

⁴⁸ State of Tripura v. J Mohini Mohan AIR 1957 Tripura 22; AIR 1947 PC 19; (1949) 4 DLR 20 (Bom); (1951) 5 DLR 107 (Simla); 54 IA 126; Chail Beharilal V. Municipal Board Agra, AIR 1948 All 189; Kaikhusroo Pirozsha Ghiair v. C.P. Syndicate Ltd. AIR 1949 Bom 134; Public Prosecutor v. A.K. Gopalan, AIR 1953 Mad 66; Rimmalapudi Subba Rao v. Noory Veeraraju, AIR 1951 Mad 969

⁴⁹ 1968 Cr. LJ 405 (Cal).

contravention, which is recognised by law. Intentionally or deliberately contravening the law can never be said to be a justification or excuse.⁵⁰

“Lawful excuse” and “Lawful authority.”

The words ‘lawful authority’ mean an authority which is given or recognised by law and which permits the act in question to be done. They do not mean an authority, which has not been shown to be unlawful. The words ‘lawful excuse’ are *ejusdem generis* with the words ‘lawful authority’. The expression ‘lawful authority or excuse’ means as authority or excuse allowed or recognised by law.⁵¹

“It shall be lawful” Where the words “ It shall be lawful” are to be found used in provision of a statute, they should be taken to convey the meaning that if the law had not been enacted there would have been no authority to do the act, in other words, that the law as it stood without the provision that was being considered did not in fact permit the doing of the act. It does not mean that it is to be inferred from the provision itself that there was in the law, as it existed before the provision no authority to do the act.⁵²

LEGAL: a. of, based on, concerned with, appointed or required or permitted by law. Adj. Abbr. leg.

- (1) Of pertaining to, or concerned with law, legal papers
- (2) a. Authorised by or based on law; a legal act.
b. Established by law; Statutory
- (3) Conformity with or permitted by law.
- (4) Recognised or enforced by law rather than by equity,

⁵⁰ Cf. Defence on India Rules, 1962 5, and U. P. Foodgrains (Control, Requisition and Distribution) Order, 1963, Cls. 3-B, 18 and 19; State of U. P. v. Firm Deo Dutt Lakhan Lal, AIR 1966 All 73 (FB).

⁵¹ Per Sen and Gajendragadakar JJ in 49 Bom LR 336

⁵² C.R.M. Reddy Money Ltd. v State, AIR 1956 Bom. 304

- (5) In terms of or created by the law; a legal offence.
- (6) Applicable to or Characteristic of lawyers or their profession;
Legal advice.
Theology
 - (a) Of or pertaining to Mosaic Law,
 - (b) Of or pertaining to salvation through works, rather than through faith. [Old French form *legallis* from *Lex* (Stem *leg.*) Law, legality - adv.]

Legal means "That which is in conformity with rule of law, "Legal, just and proper, the person of incidence."⁵³ With reference to Sec. 41 of Indian Evidence Act, the word 'legal character' means something equivalent to status.⁵⁴

Distinguished from "lawful"..... Legal is more appropriate for conformity to positive rules of law, lawful for accord with ethical principles'.⁵⁵

"Legally authorised" denotes that the tribunal or person has been authorised by statute or statutory rules.

IMPLICATION:

- n. (esp.) thing implied

- n.
 1. The act of implicating or the condition of being implicated.
 2. The act of implying or the condition of being implied.
 3. That which is implied especially (a) an indirect suggestion,
(b) An inference

⁵³ Cf. Specific Relief Act 1877, Sec. 42 and Sec. 21(b): Guntur Tobacco Market Committee V.Yarabodhu Narsaiyah, AIR 1965 AP 266.

⁵⁴ 88 MLW 445

⁵⁵ Cf. Advocates Act 1961 S. 30 (ii); Zonal Manager, Life Insurance Corporation of India v. City Munsif, Meerut, AIR 1968 All 270

Necessary inference of something not directly or publicly declared from the circumstances of the case.

DEVELOPMENT

A public purpose is implicit, for it means the realisation of the potentiality of land or territory by Building or mining.⁵⁶

CONTROL

(1) Power of directing and restraining, (2) Right of supervision,

The word, Control in article 235 of the Constitution of India must include disciplinary jurisdiction. Indeed the word may be used as a term of art because the Civil Services (Classification, Control and Appeals) rules used the word Control and the only rules that can legitimately come under the word control are the Disciplinary Rules. The history that lies behind the enactment of these Articles indicates that control was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it includes diplomacy control as well the very object would be frustrated. The word control was used for the first time in the constitution and the word vest that is a strong word accompanies it. It shows that the High Court is made the sole custodian of the control over the judiciary. Control therefore, is not merely the power to arrange the day-to-day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.⁵⁷

RULE

n. Principle to which action conforms or should conform dominant custom, canon, test, standard normal state of things, in regulation manner, mechanically as a rule, usually, more often than not. Precise criterion

⁵⁶ Cf.. Constitution of India Art. 31; Sadruddin Suleman Jhaveri v. J.H. Patwardhan, AIR 1965 Bom 224.

⁵⁷ State of W.B. V. Nripendranath Bagchi (1965) 2 SCA 884: AIR 1966 SC 447

or rigid formula; sway, government, dominion; religious order's code of discipline; order made by judge with reference to particular case only.

RULES: The Simple definition is

01. A regulation for the management of Government of a society and binding on the members
02. Point of law settled by Authority
03. Orders regulating the practice of Courts
04. Orders made between parties to a suit.

RULE OF LAW:

The term Rule of law in brief connotes the undisputed supremacy of law, and envisages a state of things in which every one respects the law and where law has to be followed by every one collectively and individually by the citizens as well as by the State.⁵⁸

Rule has three meanings or may be regarded from three different points of view:

01. It means in the first place the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative, or even of wide discretionary authority on the part of the Government.⁵⁹

The absence of arbitrary power is the first essential of the rule of law upon which the whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law, from this point of view, means that decisions should be made by the application of known principles and rules and in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any

⁵⁸ Laxminarayan Gupta V. Collector, District Shivpuri, ILR 1956 MB 330 (S): AIR 1956 MB 163 (DB)

⁵⁹ State of M.P. v. Thakur Bharat Singh 1967 Mah L.J.151: 1967 M.P. L.J. 433 AIR 1967 SC 1170 1967 Jab LJ 493.

principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law." Law has reached its finest moments",⁶⁰ stated Douglas, J, when it has freed man from the unlimited discretion of some ruler... Where discretion is absolute, man has always suffered ". It is in this sense that the rule of law may be said to be sworn enemy caprice. Discretion as Lord Mansfield stated in classic terms in the case⁶¹ where the meaning of 'sound discretion guided by law' is explained, It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful".⁶²

REGULATIONS:

To regulate the activities in the family the individual house or living space was designed according to the individual or families choice and to regulate the activities of several families the village planning came into existence. Taking into consideration a village is where the need of an individual, a family and a society is incorporated. The nature of requirement of the buildings in form of the individual house or community housing or public spaces in present circumstances are identical in any of the urban area as the living pattern of the people residing therein have got the similar type of routine or habits.

India as such has got varied culture traditions religion and customs but the existence of the said originality have started losing its existence and the western culture and customs have started finding its place in form of Indo - western culture and the development of such culture has started in every aspect of human habitat. The Urban area is accounted by the population and not by the area in terms of its magnitude. If question arises for the existence of first municipality, the governing body has ever thought for the

⁶⁰ In United States v. Wanderlick (1951) 342 US 98

⁶¹ John Wilkes (1770) 4 Burr.2528 (2539)

⁶² S.G.Jaisingitani v. Union of India, (1967) 1 ITJ 903: (1967) 65 ITR 33: AIR 1967 SC 1427: 1967 Cur LJ (D) 49.

future development. There are quite many reasons for the explosion in population.

It is necessary that the problems to be defined solutions should be streamline, which are likely to be faced in near future. The need of visualising the future development, which will be totally failure in case if, the preventive measures are not taken.

An old name for Acts or laws promulgated by the legislative authority. The only difference that is noted between the old Regulations and the present Acts is that the former were less concisely drafted and preceded by detailed exposition of the objects and purposes of the enactment while the Acts have short preambles. Regulation ordinarily mean, prescription of rules for control of conduct.⁶³

The word “regulation” in the legislative entry was construed liberally so as to include all those ingredients of regulation of house accommodation”. The principle of interpretation is well settled that widest possible construction must be given to the words in the legislative entries and that they are to be construed most liberally and not in a narrow and restricted sense. It may be stated that the Act is a piece of social legislation in terms of.⁶⁴

“Regulation and regulate: The dictionary meaning of the word regulation in the Shorter Oxford Dictionary is “ the act of regulating and the word regulate is given the meaning of to control, govern or direct by rule or regulation.”⁶⁵

⁶³ Municipal Commissioner v. Haji Ismail, AIR 1967 Punj 32.

⁶⁴ Purxotoma Ramanta Quenim v. Union of India, AIR 1970 Goa, Daman & Diu 35 (V.S.Jetley, J.C.)

⁶⁵ Indu Bhushan Bose v. Ram Sundari Debi (1969) 1 SCA 671 : (1969) 2 SCC 289.

Regulation made by Governor, The Government of India Act does not define the word 'Regulation'. But there can be doubt that a 'Regulation duly passed by a Governor under S. 92 of that Act is to have the force of law and is to be regarded in every way as a Provincial Act except that it is enacted by the Governor acting in his discretion. It cannot therefore be held that such a regulation is something less than an act of the Provincial Legislature for the purpose of the general Clauses Act.⁶⁶

BUILDING:

Building or dwelling unit is meant for human settlement and any citizen can imagine the house or bungalow or dwelling unit or a hut of his/her own choice, a Chapter from its technical stability and feasibility the very existence of it has got much to do with its legal aspect As the researcher have already stated that this being an applied legislature for the specific purpose has got its own sole importance in the society to regulate & prevent the irregularity in the development of the surrounding in form of Village, Town or city.

Building means house or other stationary structure with walls and Roof⁶⁷; and something that is built, structure; an edifice.⁶⁸

'It is used on the ordinary sense of a house... Assuming that what was leased out was a vacant site, it should be regarded as a building in view of the fact that it had a superstructure and it was taken on lease for the purpose of running the theatre.⁶⁹

The word "building" has not been defined in the Act...whether a particular structure amounts to a building and, therefore, accommodation within the

⁶⁶ Per Agrawal, C.J. and Ayyar, J in Peshan Shaikh v. Emperor 49 Cr. LJ 318.

⁶⁷ Oxford Dictionary p.97

⁶⁸ Universal Dictionary p.215

⁶⁹ 'Cf. Madras Building (Lease and Control) Act (25 of 1949) (as applied to Andhra Pradesh), Ss. 2(1) & 2(4);Shahnawaz Begum v. Potina Srinivasa Rao, AIR 1964 AP 233.

meaning of S. 2(a) depends upon the circumstances of each case. The existence of a roof may not be necessary roofless structure is a building.⁷⁰ The term in respect of Municipal Act includes a house, outhouse, stable, latrine, shed, hut, wall (other than boundary wall not exceeding eight feet in height) and any other such structure, whether of masonry, bricks, wood, mud, metal or any other material whatsoever.⁷¹ It means any house, hut, shed or other roofed structure, for whatever purpose and of whatever material constructed. And “every part thereof”, but does not include a tent or other portable and merely temporary shelter.⁷² Means a building, a house shop hut (jhupra) etc. with a roof thereon constructed for human habitation; open lands obviously are not included in the term “building”.⁷³

The word ‘building’ has not been defined in the Penal Code, and a precise definition of it for general application is difficult. Indeed, it seems that whether a particular property comes within the definition of a ‘building’ is a matter, which must be decided on the facts of each case. The ordinary meaning of the word building is “ an enclosure of brick or stone work covered in by a roof”.⁷⁴

The word for the purposes of S. 436, I.P.C., covers any edifice. It includes ‘grass or mat huts’ as well as substantial buildings.⁷⁵

⁷⁰ Cf. U.P. (Temporary) Control of Rent and Eviction Act (3 of 1947), S.2 (a); Abdul Sami v. Md. Noor, AIR 1966 All 39

⁷¹ S.3. Madras Act of 1919

⁷² Cf. Bihar and Orissa Municipal Act (7 of 1922), S.3 (1); Shivji Khetai Thacker V. Commissioner of Dhanbad Municipality, AIR 1964 Pat 186.

⁷³ Cf. Bombay District Municipal Act (ACT 2 of 1901), S.8 (7) and House Tax Rules, R. 3(7) and 1(ii); Century Spinning & Mfg. Co. Ltd. v. Municipality of Ulhasnagar, AIR 1968 SC 859.

⁷⁴ Cf. Penal Code, 1860, S.442; Ranjeet Kahar v. AIR State, 1961 Pat 409

⁷⁵ Per Jackson, J. in 1934 M Cr.C 228.

A wall would fall within the definition of “building”⁷⁶ whether it forms part of a house or is detached from it.

Residential buildings ordinarily have roofs but there can be a non-residential building for which a roof is not necessary. A large stadium or open-air swimming pool constructed at a considerable expense would be a building as it is a permanent structure and designed for a useful purpose. The question as to what is a “building” under s. 9 of the U.P, Z.A. and L.R. Act, 1951 must always be a question of degree, a question depending on the facts and circumstances of each case. The word “building” has not been defined in the Act and must, therefore, be construed in its ordinary grammatical sense, unless there is something in the context or object of the statute to show that it is used in a special sense different from its ordinary grammatical sense. Accordingly, the Supreme Court held that a brick-kiln which has no site, or structure or roof or walls, but is a mere pit dug in the ground with bricks by its side, is not a “building” within the meaning of S. 9 of the Act. According to the dictionary meaning the existence of a roof is not always necessary for a structure to be regarded as a building.⁷⁷

The word “building” as used in S. 11(3)⁷⁸ includes buildings for non-residential purposes.⁷⁹ Super structure, which is intended for the use and occupation as a habitation or for purposes of trade, manufacture or commerce or some other structure constituting of fabric or ice will be deemed to be a building. A mere wall or a fence or a gate enclosing land certainly cannot come under that that definition.⁸⁰

⁷⁶ S. 3 of the Punjab Municipal Act, 1911,

⁷⁷ Ghansham Dass v. Debi Prasad, (1966) 1 SCWR 907: 1966 LLJ 536: 1966 AWR (HC) 412: AIR 1966 SC 1998.

⁷⁸ Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947,

⁷⁹ Balmakund v. Harinarain, 3 DLR (Pat) 33

⁸⁰ Chandramani Patta Maha Devi Varu v. Collector of Visakhapatnam, AIR 1957 AP 867.

The word “building” should be given its literal meaning as something, which is built. Even uncovered ottas and chabutras fall within the term “building” as used⁸¹ and therefore, along with the land appurtenant to them they must be settled with⁸² Whether drains, culverts, roads etc., are buildings or not must necessarily depend on facts and circumstances of each case. The nature of their construction, the expenditure incurred or lay out for the purpose of their construction and the object and purpose for which they were constructed are some of the factors, which should be taken into account in determining the question as to whether they are buildings.⁸³

Leased building: A lease of land, for the purpose of erecting a building for a period usually of 99 years.

Building line: A line which is in the rear of the street alignment and to which the main wall of a building abutting on a street may lawfully extend and beyond which no portion of the building may extend except as prescribed⁸⁴ in the building rules.

“Primarily used for collection of rent: Where the proprietor required the building for the purpose of deriving agricultural income and therefore even though he received a rental income of a few thousand rupees and might have realised that amount in that building, it could not be said that the “building was primarily used for collection of rent.”⁸⁵

⁸¹ S. 5(a) of the M. P. Abolition of Proprietary Rights (Estates and Mahals alienated Lands) Act 1951,

⁸² The respondent. State of Bombay v. Sardar Venkat Rao Krishna Rao, (1963) 1 SCR 428: 1962 NLJ 369: 1962 MPLJ 753.

⁸³ Income-tax Act, 1961, S. 32; Oil India Ltd. v. C.I.T., (1978), 114 ITR 323.

⁸⁴ Mahals Alienated Lands) Act, 1951

⁸⁵ Ram Kumari Devi v. State of Bihar, AIR 1957 Pat 94 (DB).

Site.

Ground on which town or building stands stood or is to stand.⁸⁶

The general locale upon which, the house is built. In so far as a flat or society is concern, site is that on which a flat or storey immediately is super imposed or stands.⁸⁷

Society.

A society formed for the purpose of rising, by the subscription of its members, a stock or fund to be used for making advances to members upon security of plots, which may be freehold, copyhold, leasehold by way of mortgage. The members must utilise the loan only for the construction of building and the loan amount shall have to be paid back in easy installments. The work of such societies usually is done co-operative basis.

Building used for purpose of factory

Buildings belonging to the proprietors of the factory will get benefit of exemption from taxation under S. 4 of the Act, provided three conditions are satisfied:

- (1) The building must be used for the purpose of a factory;
- (2) The factory must be one where manufacturing process involving the use of power is being and has been carried on for a continuous period of six months; and
- (3)
 - (a) No rent is being charged for the building; it is not a Godown outside the factory compound, or
 - (b) It is not a bungalow or house intended for or occupied by the managerial or superior staff.⁸⁸

⁸⁶ See S. 3(8), Bombay Act 15 of 1879.

⁸⁷ *Attendrooloo Chetty's Charities V. Sadhana Aushadhalaya*, 81 MLW 196: (1968) 2MLJ 406: ILR (1969) 184.

⁸⁸ Cf. *Punjab Urban Immovable Property Tax Act (17 of 1940), S. 4(1)(g); State of Punjab v. British India Corporation, Ltd.*, AIR 1963 SC 1459.

- (c) Just as the use of a building for a purpose which maintains the efficiency of the machines is a user for the purpose of a factory, so also, is the user of a building for the purpose of providing something which is necessary for maintaining the efficiency of the workers.⁸⁹

As per Bombay Provincial Municipal Corporation ACT, 1949 'Building'- Meaning of: The definition of the word 'building' given in Section 2(5) of the Act is inclusive definition, covering any constructed portion of the land. In this case, the parking places are constructed at considerably high cost. In the case of all these office buildings that relate to these appeals, it is the basement or cellar portion that is being shown and recognised as the parking places connected with the building. It is obvious that without undertaking extensive construction work, such a basement cannot be prepared. Therefore these basements which are common parking places are buildings and not land, and therefore covered within the meaning of building as laid down in Section 2(5) of the Act.⁹⁰

Building includes a house, outhouse stable shed, but hut and other enclosure of structure whether of masonry, bricks, wood, mud metal or any other material whatever, whether, used as a human dwelling or otherwise, and also includes verandas, fixed platforms, plinths doorsteps, wall including compound walls and fencing and the like. It should be remembered that at the date when the earlier petition came up for hearing, the decision was rendered solely on the basis of the expression "building".⁹¹ Certain Rules Regulations and byelaws control the building activities. The formation of rules and regulations are made less than one statute while the byelaws are made under the other statute. To understand

⁸⁹ Cf. Punjab Urban Immovable Property Tax Rules, 1941, Rule 18; Ibid

⁹⁰ G.S. Duggal & Co. Ltd. V. Municipal Corporation, Ahmedabad, 1981 Guj LH 436.

⁹¹ Kantilal V.A. Assessor & Collector, Ahmedabad Municipal Corporation, 1977 Guj LR 1037 at 1039.

the meaning thereof the universal definition should be examined hypothetically.

URBAN AREA (LAND)

The very concept and definition of urban land has made mess and the land within 5 k.m. of cities where the Urban Land (Ceiling and Regulation) 1976 Act applied had become problematic in terms of development in socio economically as the very aim and objective of the Act was to build houses for economical weaker section of the Society, and lower income group and reservations for B.C. S.C. & S.T.

The law being a new concept the pros and cons were not thoroughly considered. The Act has got its objectives and the definition of word urban along with other suffix is given as follows:

An Urban Agglomeration is made up of main town together with adjoining areas of urban growth and is treated as one urban spread. The population covered by such spreads is categorised as urban. Each such agglomeration may be made up of more than one statutory town adjoining one another such as municipality and the adjoining cantonment, etc. and also other urban growths such as a railway colony, university campus, etc. Such outgrowth (O.G.) which did not qualify to be treated as individual towns in their own right and have pronounced urban characteristics are shown as constituents of the agglomeration.

The Urban area is defined in the different capacity under the formation of the local authority as the body with power to handle the activity of the building industry from designing to construction from technical detailing and justifications to legal aspect of the case.

(A) In relation to any State or Union territory specified in Column (1)^{92*} of Schedule 1 means, - (I) the urban agglomeration specified in the

⁹² Sec 2 (n) Urban Land (Ceiling & Regulations) Act 1976 p.43

- corresponding entry in column (2) thereof includes the peripheral area specified in the corresponding entry in column (3) thereof; and
- (B) Any other area which the State Government may, with the previous approval of the Central Government, having regard to its location population (Population being more than One Lac) and such other relevant factors as the circumstances of the case may require by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall be deemed to belong category D in that Schedule and the peripheral area therefore shall be one kilometer;
- (C) In relation to any other State or Union territory means any area which the State Government may, with the previous approval of the Central Government having regard to its location population (population being more than one lac) and such other relevant factors as the circumstance of the case may require, by notification in the Official Gazette, declare to be an urban agglomeration and any agglomeration so declared shall deemed to belong to category D in Schedule I and the peripheral area there for shall be one kilometer.

Urban Land means:⁹³

- (i) Any land situated within the limits of an urban agglomeration and referred to such as in the master plan; or
- (ii) In a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limit of an urban agglomeration and situated in any area included within the local limits of Municipality (by whatever name called) a notified area committee, a town area committee, a city and town committee a small town committee, a cantonment board or a panchayat, but does not include any such land which is mainly used for the purpose of agriculture

⁹³ Sec. 2 (0) Urban Land (Ceiling & Regulations) Act 1976 p. 44

(A) The definition of agriculture includes the horticulture but does not include:

- (1) Raising of grass
- (2) Dairy farming
- (3) Poultry farming
- (4) Breeding of livestock,

Such cultivation or growing of such plant, as may be prescribed

(B) Land shall not be or deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:⁹⁴

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm house, then so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farmhouse, such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

(C) Notwithstanding anything contained in clause (B) of this Explanation, land shall not be or deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for the purpose other than agriculture;

Urbanisable land means: Land situated within an urban agglomeration, but not being urban land;

Vacant land means: Land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include:

⁹⁴ Sec. 2 (q) Urban Land (Ceiling & Regulations) Act 1976 p. 44

(1) Land on which construction of a building is not permissible under the building regulation in force in the area in which such land is situated;

(2) In area where there are building regulations, the land is occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

(3) In an area where there are no building regulations, the land occupied by any building, which has been constructed before, or is being constructed on the appointed day and the land is appurtenant to such building:

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding live stock, on any land situated in a village with an urban agglomeration (described as a village in the revenue records), then, so much extent of the land has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purpose of this clause.

1.5 HYPOTHESIS

This research is carried out by suppositions and assumption made as basis of reasoning to find out legal implications.

(01) To find out the whether basic rules and regulations are even and identical in all the urban areas of INDIA has improved the standard of living in general and urban poor in particular.

(02) To find out the module for the regulation based on the requirement of the place and people of different type and magnitude i.e. shape and size.

- (03) To find out the misinterpretation of the terminology for building components used is common for every place. I.e. room, kitchen, living space, toilet, store, puja room study etc.
- (04) To study and find out the application of the technical terms like, built up area, floor space index, open area though defined evenly.
- (05) To find out the justification of the ecological basic need of each human is taken as standard so far as the size and shape is concern. The size includes height width and length in terms of space is required.
- (06) To find out whether the legal terminology as far as the ownership is concern, is based on Revenue code of India can serve the purpose in its fullest extent or not.
- (07) To find out implications arising because of the Property when developed as and when is taken under consideration is as per the immovable property as defined in the Transfer of property Act is interpreted accordingly or not.
- (08) To study the implications arising out of the Rights such as easement right is referred is as defined in the Easement Act
- (09) To find out whether the administrative set up of Local Authority is capable enough to implement the rules and regulations as and when is referred for the Urban area is taken as Nagar Panchayat, (NagarPalika) Borough Municipality (Mahanagarpalika) Municipal Corporation and other development authorities like Urban development authority and area development authority, Other authorities, which undertakes the development of urban area by formulating development control rules and regulations.
- (10) Whether Public Purpose, as and when specified mean as pointed out by Mahajan J.⁹⁵ is justified or not.
- (11) To find out the reasons for the encroachment on the Road, street or lane as and when specified is as per the BPMC Act 1949

⁹⁵ In state of Bihar v. Sir Kameshwar Singh (AIR 1952 SC 252(311)).

(12) To find out the capability and inner concern of Technical staff as and when referred is taken to be the Civil engineer and having qualification and experience both with moral concern of responsibility and liability and not only qualification

1.6 METHODOLOGY AND TECHNIQUE USED

The methodology used is the analytical method of collecting the data. The data collected by analysing the documents by technical and legal viewpoint.

Methodology

VARIOUS SYSTEMS

Historical: As said building is being an entity, which is showing all the aspect of its creation. Planning of the building speaks about purpose and material used therein is evidence of technology of the time and the very purpose of its use. The Old buildings, which are still in use and are not heritage buildings, are studied properly by keeping all viewpoints those are applicable in the present practice. The need of minimum and maximum factors to specify the space in terms of three dimensions is derived from such buildings. The old city planning norms are derived and followed by the study of such urban area.

Comparative: Since the practice of framing the development control rules and regulation has started, the rules and regulations were and the addition alteration and omission are made all the situations are compared so as to come to conclusion as to frame the rules and regulation with The Comparative method is used by study of the regulations of other Western countries like U.K. and USA and Asian countries like Malaysia and Pakistan.

Analytical: The analysis of the rules and regulation is made so as to find out the shortcoming of the implication of the rules and regulation. The

analysis of technical terminology as well as legal terminology is taken into consideration

01. Analytical study of Rules and regulations and byelaws of different towns, Cities and Metro cities.
02. Analytical study by keeping technical aspects in to consideration and keeping National Building Code as the base for the comparison.
03. Analytically study the documents scrutinised by applying all the rules and regulation.
04. Relevancy of Rules
05. Interpretation of terminology
06. Application of technical terminology
07. Justification of legal aspect
08. Study of Legal document
09. Study of circulars general circulars and the orders.
10. Study, analysis and comparison the modifications with the NBC.
11. Questionnaire from architects from all different States⁹⁶

Critical: The critical method is utilised for the cases of hardships and application of discretionary power is to be used. The partiality in terms of politicians, or the force, evil force as well as corrupt practice where the implication of rule is not taken care of or the irregularity are overlooked is illustrated.

1.7 LIMITATIONS

In this research work the **area** is taken in to consideration is urban areas of India where the term urban is defined in the Urban Land (Ceiling and Regulation) Act 1976.

The **legal aspect** is taken as the **natural law**, as prime legal system and Law and Moral as well as Justice and morality as in the case of implication

⁹⁶ Appendix K

of the rules and regulation from both the sides of the coin i.e. the beneficiaries and the administration.

The **time period** is taken from the implication of simple primary rules to the present complex rules where different legislation is also incorporated. To be accurate the time period is taken from 1975A.D.-2006.A.D. The Building of Heritage category is taken in to consideration for the comparison of rules of the time it was built.

The **local authorities**, like Municipal Corporation, Urban Development Authority, Area Development Authority, Municipality and Nagar Panchayat, which are concern with the affairs of the building industry such as scrutinising, approving and sanctioning the building plan checking structure design as well as the condition of the soils monitoring the construction and the followed by the occupation or completion certification for the occupation of the building for the purpose, it is constructed for.

The urban areas are defined under different capacities as follows in Note II of the **SCHEDULE I** of the Urban Land (Ceiling & Regulation) Act. 1976 with sections 2(n) 4,11 and 29: under Sec.9 (b) of the Gujarat Panchayat Act 1961 is specified as to be a ram, if the population of such local area does not exceed 10,000;

A franchised city, a citizen who could perform public offices but not hold magistracies.

In different states the specifications of the authority is defined differently but for the purpose of this research the limitations are taken up to

- (1) Village or Gram with Village Panchayat or Gram Panchayat. Where the upper limit of population of that area is 10,000;
- (2) Town or Nagar with Town Panchayat or Nagar Panchayat where the upper limit of population of that area is 25,000;
- (3) NagarPalika or Borough Municipality where the upper limit of population of that area is 50,000;

- (4) Mahanagarpalika or Municipal Corporation where the upper limit of population is 3,00,000;
- (5) Brihad Mahanagarpalika or Greater Municipal Corporation Where the upper limit of the population is more than 40,00,000;

In this research work the Development Control regulations are illustrated and they are stated where the legal implication is neither followed nor interpreted properly. In the metro cities and other cities as well as in towns, the interpretation of same done by the administrative machinery is considered is many times contradictory to legal implication of rules and regulations.

In this research it is assumed that the basic theory of formation of General Development Rules and Regulations is common in India, as it has to follow the National Building Code for Construction and Development. The Basic rules for Vehicular Traffic are also considered as parking private vehicles and public transport is also same. The minor difference arises as per the local conditions but does not change the form from grass root level.

1.8 CHAPTER SCHEME

Scheme of writing: The entire research work is divided into eight Chapters as follows:

Chapter – 1: introduction, Chapter – 2 Historical Perspective, Chapter – 3 Legislative Measures, Chapter – 4 Administrative And Adjudicatory Machinery For Implementation Of Development Rules And Regulations, Chapter – 5 Judicial Trends Chapter – 6 Legal Implications Of Social, Technical And Psychological Problems, Chapter – 7 Building Rules And Regulations In Other Countries – Comparative Analysis, CHAPTER – 8 Conclusion And Findings. The total research supported by the list of Cases And Bibliography along with Appendices.

CHAPTER – 2 HISTORICAL PERSPECTIVES

- 2.1 Introduction
- 2.2 Term Defined
- 2.3 Need to View Back
- 2.4 Reason to Study History
- 2.5 Objective
- 2.6 Base for Presumptions

CHAPTER – 2 HISTORICAL PERSPECTIVES

2.1 INTRODUCTION

In this chapter the historical perspective of the subject is highlighted as to why the rules and regulations became necessary for the existence of the buildings, mainly used by human beings. The specific uses like schools and colleges for education. Hotels, guest houses and rest houses for tourists to stay. The inns, dharmashalas, ashrams etc. are for pilgrims to stay in transit means for temporary period. Stadium and pavilion for games and sports. Cinema, theatre, auditoriums, town halls etc. are for cultural programmes and activities. Swimming pools and gymnasiums are for health and physical fitness. Specific activities take place in specific building. Certain standards, rules and regulations became inevitable for the uniformity of the concept of limitation of their use. Social, economical, psychological and technical justifications are related to the use in these regards.

Historical perspective is a picture in form of words. One can see and examine the past with respect to the building activities. As such, history is an evidence of events, happened in the past. The person has made evidence available by writing the description of the event, or thing, which is long lasting like existing buildings narrate it. In this case, an existing building or a monument is in a form of evidence, which cannot speak but impliedly says the whole story of its time either by its existence or by its ruins.

To examine the situation, and importance of legal implications of Development Control Rules and Regulations for building, the buildings being an existing entity at present, is a product of past. The durability of the building and its existence as is a part of present, one has to examine the historical aspect of the building technically and legally.⁹⁷

⁹⁷ Ancient Monuments, Archeological Site and Remains Act 1958

It is necessary to find out the basic elements of the building within and without reference so as to the formation of a village and from village to town and from town to city and from city to metropolitan. For instance, any village when is formed it was a natural phenomenon. It was not that only one family settled and a village was formed but there were different people those use to stay together in different dwellings and use to perform their duties and activities. Much time was taken for granted when a locality was taking its shape. The basic reason used to be was to earn lively hood or for any other specific purpose.

2.2 TERM DEFINED

The term history is defined as per its meaning in the dictionary any time before this day is counted and any past is counted as history and any event taken place in the past is taken as historical event. In this research the period is taken to a particular period. The research is based on the events and matters from 1975 A.D. to 2006 A.D. The term history is defined in dictionary keeping various aspects and contexts in to consideration.

Historical:⁹⁸ means of based on history (historical evidence, method); vouched for by history; dealing with historical events.

History⁹⁹ Methodical record of public events; past events, course of human affairs, study of these, train of events public or private; eventful Carter; natural history. Systematic account of natural phenomena;

History sheet¹⁰⁰: as ordinarily understood having regard to the dictionary meaning of History is a continuous method of record of public events or the whole train of events connected with a person or things.¹⁰¹

⁹⁸ Oxford Dictionary p. 376

⁹⁹ Ibid p. 376

¹⁰⁰ Judicial Dictionary p. 461

The word Perspective defined:¹⁰²

One of various techniques for representing three-dimensional object with depth relationships on a two dimensional surface. Linear perspective renders depth by using actual or suggested lines that intersect in the background to delimit relative size from background to foreground. Aerial or atmospheric perspective renders depth by changes of form, size, tone and colour with recession of objects from the picture plane.

1. Any picture representing objects in this way.
2. A view or vista
3. The appearance of objects in depth as perceived by normal binocular vision.
4. The relationship of aspects of a subject to one another and to whole, a perspective history.
5. Any of such aspects.
6. Subjective evaluation of the relative significance. Facts or things; ones personal point of view.
7. An objective and well balanced evaluation or point of view: get things in perspective (Middle English) from Medieval Latin *perspectus* (era) optics from Late Latin *perspectiva* of a view from Latin *perspicere* (past participle *perspectus*. To see through or into, inspect : per - (Intensive + *specere* to look] perspective – perspective).

Perspectivism some times capital P. Philosophy: The Doctrine that reality can be accurately understood only from several different points of view¹⁰³
To view the art or science of drawing or otherwise representing objects or scenes on a plane so that they appear to have their natural dimensions and spatial relations; the appearance of an object with regard to dimensions and spatial position, as affected by distance from the eye;

¹⁰¹ Nagabhushanam v. Ankam Ankaish, AIR 1968 AP 74

¹⁰² Oxford dictionary p. 592

¹⁰³ Universal Dictionary p. 1154

representation of an object or objects that give the illusion of space or depth; view or vista; the interrelationships or proportionate significance of facts or information as considered from a particular point of view; the ability to evaluate information, situations, and the like with respect to their meaningfulness or comparative importance - a. pertaining to the art of perspective; marked by or rendered in perspective- aerial perspective a planer representation of distance or depth achieved by modification of light, shade and colour; distinguished from *liner perspective* –
Perspectively.¹⁰⁴

Usually the term perspective is taken for a limited meaning as to understand as three-dimensional representation of a building or object or objects. But the broader meaning is the viewpoint of a person individually. It is not a mere view in pictorial form but a view in form of thoughts, suggestions and justification. A person keeping the pros and cons in view evaluates the situation in terms of existing condition. The history represents, the different situations in past with different reasoning for the matter.

Conceptual perspective of a **village** means the formation or evolution of a village. Formation of any entity is always objective. The objectives are:

1. Planning for the people of different type: All houses and surroundings are not identical. Individual as per his choice and requirements did planning. The planning was also depending upon their customs rituals and social status. The planning depended upon the caste and creed, economic condition and availability of resources.
2. Planning for the different cattle and animals: The people in village were depending upon different type of animals such as Cows and buffaloes for dairy farming. The domestic animals are kept in near vicinity of the

¹⁰⁴ New Webster's Dictionary p. 708

house in covered place. The planning was done as per the requirement. The maldharis i.e. shepherds with goats and sheep need more space and open area. Certain community kept donkeys for transportation of their raw materials. Horses were also accounted much in daily routine.

3. Planning for the different activities: The activities like education, healthcare, worship, gathering, palace requires the need base planning as the activity is objective and the standards are maintained.
4. Planning for overall development: Mere planning for buildings or structure was not the aim or object for development of village but roads, water tanks for supply, Wells step wells as water sources potable water was also taken care of.

2.3 NEED TO VIEW BACK

To arrive at certain conclusion, or to find out certain aspect, or matters one has to view back and examine the historical background.

Some form of building control regulations existed since very long time. When man first started congregating in cities those grew up without any form of control other than one imposed by land ownership, the environment, which developed, must have been quite dreadful. In England, the occurrence of events such as the Great Plague and the Great Fire of London led to effort being made to prevent a recurrence, in other words to take positive steps to ensure the health and safety of the inhabitants. It is this two aspects which have dominated the provisions of building regulations ever since. More recently the conservation of fuel and power and the prevention of waste or misuse of water have been added.

“The History of Modern Building Legislation goes back to 1845 A.D. When the first Public Health Act was passed. Housing was the primary concern and the defect to be cured were mainly damp, structural instability, poor sanitation, fire risk and lack of light and ventilation. In 1877 A.D. The first model by-laws were produced as a guide for local authorities, with who lay

the responsibility for setting and enforcing minimum standards. They applied to “New Streets and Buildings”, but in 1936 new legislation was enacted covering all buildings and requiring all local authorities to make and enforce ‘building by-laws.’ At this time, although guidance from central government was given, Local authorities still held direct responsibility for building standards and issued their own by-laws which, although similar, had individual differences which made it necessary for architects, designing buildings for the first time in a particular local authority area, to make sure of obtaining and studying a copy of the by- laws; undoubtedly a time wasting routine. The break through came with the issue of the 1952 Model By -Laws series IV (amended in 1953), which saw two major advances. Firstly perhaps as a result of the development of a whole range of new materials, different techniques of control was used whereby standards of performance were stated, and these formed the mandatory part of by laws. Descriptions of actual structural minima which previously had been mandatory part of the by laws, were now contained in the so-called ‘deemed to satisfy provisions’, leaving the way open for other newer methods and materials to be used, providing their performance could be established. This system has of course, been effectively used ever since, and has enabled increasing reference to be made to advisory publications such as British Standard Specifications and code of practice, Secondly although the enforcement of the model by laws was still a matter for local authorities, they were universally adopted throughout England and Wales and hence building control Regulation became standard. They also contained major new controls introducing, for the first time the concept of structural fire resistance periods in relation to building type and size. This legislation really did cause all building design offices to pause, think, and realise that, for the first time, they had a significant control system to satisfy, and one, which was going to affect all fundamental design traditions. For example prior to 1952 Model By Laws a decision between structural steel or reinforce concrete for a frame would be made purely on such criteria as convenience, time for erection and cost. Subsequently the cost and time taken to fireproof the steel section could and often did, sway the decision in favour of RC. With hindsight it can be seen that this was

really the first, and probably still the most important step from ad-hoc by laws, (suitable only for use when building were a simple matter of bricks and mortar) towards a rationalised system under which the controls would gradually develop to embrace most parts of building's skeleton, cladding and services".¹⁰⁵

Till 1952 the formation of building by laws in India was having the effect of British legal system in administration as well as preventive and regulative legislation but there after it has got its own way as far as the local conditions situations and other legislature was concern. The out come or the conclusive data, decisions were based on the procedure followed by the British way of rules and regulations. The terminology in the existing system is based on the western traditional way of living.

2.4 REASON TO STUDY HISTORY

In ancient, medieval or modern history the description of building is a part of art and Architecture. Concept of building form was based on the requirement of its user. In Western Countries there were cottages, villas, houses, palaces, forts for residential purposes, arcade and plaza for shopping, arena stadia for sports and club houses and gymkhana for recreation and theatre for entertainment. Church, chapel were for religious ceremony. School and college as well as university were for education and public Library for general mass.

The existing historical building form was so much purpose oriented and the area so covered was according to the choice and not the requirement. The standards were not fixed expressly but by studying the total building form the standards were derived and the rules were derived impliedly.

According to human ecology and activities, more or less, the land use and building pattern was formed. The form was according to availability of land

¹⁰⁵ Guide to building regulations 1985 second edition. U.K.

was in ample and the town planning pattern was the natural form of building clusters, defined as community space or common space.

The problem of urbanisation in those days was as same as it is these days. People started migrating from village to town and from town to city. The political situation had also played a vital role in creating the drastic change into the existing situation. Considering ancient historical situation, as buildings of that time concerned were only purpose oriented and not the scarce land.

In India, specifically, history of urban areas is to be studied keeping the developmental aspects into account and consideration.

For example what was Delhi in 476 A.D. then from 476 A.D. to 15th century and what it is till this date. Urbanisation has direct relation with population and use of land.

Economical growth of urban areas were due to industrial and commercial development, political importance, environmental stability and availability of natural resources such as oil, gas and water. Same principle applied for Bombay, Calcutta and Chennai. Then the B grade cities should be studied with same perspective keeping the factors which plays important role in the development in terms of urbanisation. The excess or scarce resources affected directly to the development of the city.

Historical perspective is helpful in understanding the necessity of the rules and regulations to construct a building as one does not affect ones own self but matters much to the people in near vicinity or surrounding. Each and every Law, Act or Rule or Regulation has got its history as to why it was formed or enacted. Any happening in past has become historical event and it can be stretched back up to 1000 years or more, but as the researcher has to restricted from the date of first enactment of bye-laws or any set of rules and regulations for the study and research. The time course has changed the meaning of the word used in our daily

terminology. Now it is necessary to interpret precisely the word or terminology in the special context as for its legal use. Quite many words as were used as town and country planning. What does it mean by the term. The term should be land use planning or space planning in terms of three-dimensional land cum space use. To plan from zero to one means planning for a totally new town or city. From one to ten, means planning from village for town. From ten to hundred means, from town planning for city where certain development is present and certain is yet to be done. Any civilisation started in village form and developed as per the necessity arsed. Civilisation has reference to the development of human powers towards highest possible unfolding.

The ultimate object of Law is to get maximum satisfaction of Human needs. It aims at individual perfection by perfect relationship between Individual and other individuals. The functional aspect of law is the necessity:¹⁰⁶

When effort is made to derive certain conclusions from the History or Historical events or the historical buildings one must understand the theoretical aspects of the subject concern.

For understanding process of Urbanisation the concept should be well understood. It was V. Gorden Childe who first formulated concept of Urban Revolution in 1936¹⁰⁷, He put forward a clear delineation of the archaeological traits accompanying the earliest city:

(01) The first cities must have been more extensive and more densely populated than any other previous settlements.

¹⁰⁶ 1 para. Urbanisation in Ancient India p.21

¹⁰⁷ V.G.Childe. Man Makes Himself (1936) and in 1950 (Idem, 'the Urban Revolution' Town Planning Review, Vol.21 (1950), p.3-17.

(02) While there might have been peasants cultivating lands outside the cities, all cities must have accommodated non-food producing classes supported by the surplus produced by the peasants.

(03) Each primary producer paid over his surplus to a deity or divine king who thus concentrated the surplus.

(04) Truly monumental buildings were constructed which not only distinguished each known city from the village but also symbolised the concentration of social surplus.

(05) Temples or royal granaries and were dependent on the temple or court. Among the specialists priests, civil and military leaders and officials absorbed major share of the surplus and thus came to form the **ruling class**, which conferred substantial benefits upon the subjects in the way of planning & organisation.

(06) The political expediency compelled the **ruling class** to invent systems of recording exact, but practically useful, sciences. Revenue administration obliged the administrators to invent writing and numeral notation.

(07) The invention of writing enabled the leisured clerks to elaborate more exact and predictive sciences-arithmetic, geometry and astronomy.

(08) Other specialists gave new directions to artistic expressions by carving modelling or drawing according to conceptualised and sophisticated styles.

(09) The concentration of surplus also facilitated foreign trade.

(10) In the city the craftsmen were provided with raw materials needed for the employment of their skill and also guaranteed security in a state organisation based on residence rather than kinship. Itinerary was no longer obligatory. The city was a community to which a craftsman could belong politically as well as economically.

The crucial problem is working out of a conceptual framework for the study of early historical urbanisation of India. Both A. Ghosh and D.K

Chakrabarti¹⁰⁸ taking their clue from the sociological theory of Gideon Sjoberg and Mumford.

Thinking of political-power was of prime importance in early historical urbanisation in India. Ghosh thinks that the political power compelled the people to contribute their surplus to the towns, which also received it through regular channels of trade.¹⁰⁹ “The prerequisite, therefore, is not a hypothetical surplus but an administrative and mercantile organisation- the ruler and the merchant, both of the city and other ally of the other in history.” While discussing the role of iron in the second urbanisation in India Ghosh asserts that no technology can flourish unless there is congenial social climate for its growth, technology cannot be used to produce surplus which is not needed, thereby emphasising the role of the political authority, which according to him, got surplus to produced.

The process of evolution and revolution is a game of hide and seek as the reason is either direct or indirect as the matter of fact that the process of urbanisation though being evident it has reasons to sustain or to be changed.

2.5 OBJECTIVES

The objectives to study history with a view to establish the facts and figures which are the basic guideline to form a system which is technically as well as legally sound. The Objectives are directly or indirectly outcome of the conceptual theory as to interpret the system when the building had taken shape and space during a period of time.

At the time of studying history of a building the objectives are as to find out the following:

¹⁰⁸ Concept of Urban Revolution and the Indian Context', Puratatva, No. 6 (1972-73) p. 31

¹⁰⁹ A. Ghosh P. 20.

1. The time of its conception as well as formation. (By whom and when)
2. The purpose for which it was made. (Why)
3. The use of materials and techniques. (With what)
4. Application of Minimum standards. (Whether)
5. Impact of Culture and traditions. (Social Influence)
6. The effect of local climate and situation (Local Situation)
7. The class of people to utilise the services there of. (For whom)

Taking an example of a building that is built in early age in 13th or 14th century AD that exists till date, the classification or analysis of the existence is taken as the sample and hypothesis is made by assuming certain factors and aspects as per evidences or the interpretation done by local people residing nearby.

In the historical building the legal objective is to be analysed by keeping certain factors aside like the ownership, because the legal and technical aspects such as the rules and regulations are of prime importance at this stage. The technical aspects do not have any effect as far as the ownership is concern.

2.6 BASE FOR PRESUMPTIONS

The historical perspective has got its station point and the vanishing points too. The picture is very clear by earlier statement that the political authority is the base for urbanisation. No urban centre or city was an urban centre from its conception but was developed by one or the other reason.¹¹⁰

The formation of rules and regulations or by passing orders and notifications the development of certain places had taken place but prior to that the fortifications had made the picture clear as to what was the situation in ancient India.

¹¹⁰ A. Ghosh p. 22.

Some of the forts are still in good condition and some are in dilapidated condition and at many places forts and palaces, are destroyed or converted in to heritage hotels. However the basic concept of the building is same. Some of the old monuments are converted into holiday resorts, Tourist places or government offices. The uses are different which are implied uses. The base of presumption is on the technical terminology in terms of size, shape and space and not in terms of legal aspects like margins or land use etc.

The Rules and Regulations followed are the defined and refined forms of the rules and regulations, which are processed in ongoing system of review, depending upon the use of the building and for the purpose it is constructed for:¹¹¹

- (a) "Assembly building" means a building or part thereof where groups of people congregate or gather for amusement, recreation, social, religious, patriotic, civil, travel and similar purposes. It include buildings of drama and cinema theatres city halls, town halls, auditoria, exhibition halls museums, "marriage hall", "skating rings", gymnasia, stadia, restaurants, eating or boarding houses, place of worship, dance halls, clubs, gymkhanas, road, air and sea or other public transportation stations and recreation piers.
- (b) "Business building" means a building or part thereof for transaction of record therefore, offices, banks, all professional establishments, court houses classified as business buildings if their principal function is transaction of business and /or keeping of books and records.
- (c) "Commercial building" means any development carried out or such activity of trade, commerce, profession and which consumes more than 20% of the F.S.I of the building.
- (d) "Detached building," means a building with walls and roofs independent of any other building and with open spaces on all sides.

¹¹¹ GDCR –2004 p. 04 and 05

- (e) "Semi-Detached building" means a building having one or more side attached with wall and roof with other building.
- (f) "Educational building" means a building exclusively used for a school or college, recognised by the appropriate University or Board, or any other Competent Authority involving assembly for instruction, education or recreation incidental to educational use, and including a building for such other users incidental there to such as a library or a research institution it shall also include quarters for essential staff required to reside in the premises, and a building used as hostel captive to an educational institution whether situated in its campus or not.
- (g) "Hazardous building" is a building or part thereof used for
- (1) Storage, handling, manufacture or processing of radioactive substances or of highly combustible or explosive materials or products which are liable to burn with extreme rapidity and/or producing poisonous fumes or explosive enabatuibs.
 - (2) Storage handling, manufacture or processing of which involves highly corrosive, toxic obnoxious alkalis, acids, or other liquids, gases or chemicals producing flame, fumes, and explosive mixtures or which result in division of matter into fine particles capable of spontaneous ignition.
- (h) "Industrial building " means a building or part thereof wherein products or material are fabricated, assembled or processed, such as assembly plants, laboratories, power plants refineries, gas plants, mills, dairies and factories.
- (i) "Institutional building" means a building constructed by Government Semi-Government organisations, public sector undertakings, registered Charitable Trusts for their public activities, such as education, medical, recreational and cultural, hostel for working women or men or for an auditorium or complex for cultural and allied activities or for an hospice, care of orphans, abandoned women, children and infants convalescents, destitute or aged persons and for penal or correctional detention with restricted liberty of the inmates ordinarily providing sleeping accommodation, and includes dharmashalas,

hospitals, sanatoria, custodian and penal institutions such as jails, prisons, mental hospitals, houses of correction, detention and reformatories building constructed for the promotion of Tourism such as started hotels, clubs, golf course, sport stadium and all activities of Tourist Unit.

- (j) "Mercantile building " means a building or part thereof used as shops, stores or markets, for display and sale of wholesale or retail goods or merchandise including office, storage and service facilities incidental thereto located in the same building.
- (k) "Low rise building" shall mean a building having height up to 15.00 mts. and having ground floor plus three floors, four floors if built on stilt¹¹². However hollow plinth up to 2.80 Mts. and parapet on terrace up to 1.50 Mts. shall not be counted.
- (l) "High – rise building" shall mean building other than mentioned in the per view of " law rise building" provided the maximum height shall not exceed 40 Mts. The magnitude differs according to the magnitude of the city.
- (m) "Office building" (premises) means a building or premises or part there of whose sole or principal use is for an office or for office purposes or clerical work, " Office purposes" includes the purpose of administration, clerical work, handling money, telephone, telegraph and computer operation and clerical work" includes writing, book keeping, sorting papers typing, filing, duplicating, punching cards or tapes, machines calculations, drawing of matter for publication and editorial preparation of matter of publication.
- (n) "Public building" means a building constructed by Government, Semi Government organizations, public sector under-takings registered Charitable Trust or such other organisations for their non-profitable public activities
- (o) "Residential building" means a building in which sleeping accommodation is provided for normal residential purposes, with or

¹¹² As per corrigendum No. GH/V/27 of 2004/DVP-132001-2262-L, Dt. 25.02.2004 of U.D.& U.H. Dept Gandhinagar

without cooking or dining facilities and includes one or more family dwellings, lodging boarding houses, hostels, dormitories, apartment houses, flats and private garages of such building. It shall also include the mix used building where commercial development is less than 20%

- (p) "Special building" means
- (i) A building solely used for the purpose of a drama or cinema theatre, motion picture a drive in theatre, an assembly hall or auditorium, town hall, lecture hall, an exhibition hall, theatre museum, stadium, community hall, marriage hall.
 - (ii) A hazardous building;
 - (iii) A building of a wholesale establishment;
 - (iv) Centrally air –conditioned building which exceeds 15 mts. in height, in case where in buildings constructed on stilt*
- (q) "Storage building" means a building or part there of used primarily for storage or shelter of goods, merchandise and includes a building used as a warehouse, cold storage freight depot, transit shed, store house, public garage, hanger, truck terminal grain elevator, barn and stable.
- (r) "Unsafe Building" means a building that is
- (i) Structurally unsafe
 - (ii) Unsanitary
 - (iii) Not provided with adequate means of egress,
 - (iv) Constitutes a fire hazard
 - (v) Dangerous to human life,
 - (vi) In relation to its existing use constitutes a hazard to safety or health or public welfare by reasons of inadequate maintenance, dilapidation or abandonment.
 - (vii) The presumptions are depending up on the human ecology based on the minimum space needed.
- (s) Wholesale establishment means an establishment wholly or partly engaged in wholesale trade and manufactures wholesale outlets, including related storage facilities, warehouses and establishments engaged in truck transport, including truck transport booking warehousing.

- (t) Stall means a shop, the floor area of which does not exceed 9.00 sqmts. and minimum side of shop or stall shall be 1.80 sqmts.

The purpose-oriented buildings were specified by its category and the buildings were governed by the corresponding rules and regulations in the area of its establishment. Such concepts were and are the basis of the formation of rules and regulations for the proper orientation of urban areas as far as the General development related to build environment is concern. The historical perspective is the base of future planning.

CHAPTER - 3 LEGISLATIVE MEASURES

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CHAPTER – 3 LEGISLATIVE MEASURES

3.1 TERM DEFINED

In this part various **Legislative Measures** are discussed at length which have been enacted to tackle the problem and find out solution by formation of certain rules and regulations directly connected with the public utility in general. The subject is having direct and indirect application of various enactments. The interpretation of each measure has its own limitations and interpretations, which may be contradictory to each other or one other. To find out the solution, which has equal legal competency in this field is to introduce the standard measures of technical -legal nature.

MEANING THERE OF

The dictionary meaning of word legislative is to be examined so as to get the concept clear as far as the implication of term is concern.

The word Legislation¹¹³ is a noun from which the adjective Legislative is derived. Legislation means making or framing law. It is divided into two.

Primary legislation: The making of Statutes, or Acts or Laws; Secondary legislation, the making of by-laws or statutory rules. Legislation is (a) Supreme, which proceeds from the sovereign power in the State, and is incapable of being repealed, annulled or controlled by any other legislative authority; (b) subordinate, which proceeds from any authority other than the sovereign power.

The Chief forms of subordinate legislation are – (1) preventive; (2) executive, whose essential function is to conduct the administrative departments of the State; (3) the superior Courts have power to make

¹¹³ Judicial Dictionary p.572

rules for the regulation of their own procedure; (4) municipal; municipal authorities are entrusted with limited and subordinate powers of establishing special law for the districts under their control; (5) autonomous, where the power of promulgating certain law is entrusted into private hands touching matters which concerns themselves; thus Railways can make by laws for the regulation of the undertaking, and registered company can alter its Articles of Association, an University can make Rules and Regulations binding upon its members.

Autonomic Law is product of a true form of Legislation imposed by a superior authority while conventional law is the product of agreement.

Legislation is to be contrasted with precedent. The virtue of legislation lies in its abrogative power. It is not merely a source of new law but also abolishes the existing law. But precedent possesses merely constitutive efficacy. Legislation is the indispensable instrument, not indeed of legal growth but of legal reform. Precedent however need not be absolutely strict. It can unmake as well as make the law.

Legislative act and Judicial act¹¹⁴. The distinction between a legislative act and judicial act is well known though in some specific instance the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the Court interprets and gives effect to the intent and mandate of the Legislature to lay down the law, prescribing norms of conduct, which will govern parties and transactions and to require the Court to give effect to the law. While, in view of the distinction between legislative and judicial functions, the legislature can not be a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may at any time, in exercise of the plenary power conferred on it by Arts.245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law

¹¹⁴ Judicial Dictionary p. 572

on topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based as pointed out by Ray, C.J¹¹⁵ rendering ineffective of judgements or orders of courts and tribunals by validating Acts, such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power.¹¹⁶

Legislate: makes laws, Legislation n. Law making; laws made, legislative.¹¹⁷

MEASURE

The rule by which anything is proportioned¹¹⁸

Measures of damages: the test by which the quantum of damages to be awarded is determined.¹¹⁹

3.2 BASIC NECESSITY

Basic necessity of Legislative measures as far as the research work is concern is to prevent, regulate administer and give remedy to the process of development of village, town or city in terms of area, space and to the people of those village town and city for their welfare.

¹¹⁵ Indira Nehru Gandhi v. Raj Narain, (1973) 1 SCR 516,

¹¹⁶ I.N. Saksena v. State of M.P., 1976 ASR 195 (SC)(201).

¹¹⁷ Oxford Dictionary p.448

¹¹⁸ Judicial Dictionary p.623

¹¹⁹ ibid

3.3 TAKING LEGSLATIVE MEASURE

The concept of taking legislative measure is to regulate the activities of certain field in proper way without infringing the rights of the common man and as a citizen of the country. The measure such taken is for the benefit of society as a whole and a person in particular. The building industry is a multifaceted industry and quite many aspects are to be taken care of. The laws are in form of rules or regulations are to govern the principal of equality and uniformity in the use of land no matter it is owned by a person individual, an institution or competent authority like Municipal Corporation, Municipality, Nagar Panchayat, Gram Panchayat and many other organisation such as CIDCO¹²⁰, Development authorities and so on. The measures are to be taken as far as the rights and duties are concern.

The concept of taking legislative measures is to be derived from different statutes and standards, or taken care of independently. The absolute base is necessary to reach to conclusion and form a base for formation of the measures.

The necessity has arisen as to control the activities, which are harmful to society and the interest of general public. The basic necessity has arisen to uplift the moral of the public. One cannot restrict the other for common cause. The common cause is to be marked and recorded by the people who are representative of the mass.

To prevent from doing some thing which is wrong, to regulate, which is going to be wrong and to penalise which is already wrong. The act, which is done, is a relative phenomenon. The traffic rule of keeping left is a basic rule. When the rule infringed by someone by driving vehicle on right side

¹²⁰ City and Industrial Development Corporation of Maharashtra Ltd. For New Bombay 1975

instead of driving on left, will compel the other person coming from left side to drive on right side as to avoid an accident. Accident is more serious offence than driving in wrong side. The offence is relative and is not independent by itself. For such an offence and similar offences which are transitory has different legislative measure where as the building laws have another concept of legislative measure.

Building being a static entity has all the evens and effects for a longer period of time. The effect has got economic psychological. social, technical and legal effects.

3.3.1 COMMANDS

Commands defined: Order (person to do, a thing to be done, action that) issue orders, be the source of orders or in command, having authority or control of being in command of (ship, troops, expedition); restrain or hold in check.

(Oneself, passions) have at disposal or within reach (sum, skill person; your stock, at your service), have a right to claim (sympathy and C.); (of height or its occupants) look down over, dominate 2. Noun order given (at or by one's c., in pursuance of it.);¹²¹

3.3.2 ORDERS

Orders defined: Mandate, Command. The word " Order" used in Sec. 77 of the M.P. Co-operative Societies Act, 1960 is comprehensive enough to include every decision, award or order, made under the Act. The "order is

¹²¹ Oxford Dictionary p. 152

not a term of art. It has no fixed legal meaning. In 67 CJS 520, the following statement occurs:

"Order" as a noun has been held equivalent to or synonymous with "decision":¹²² "Regulation", "Rule" "Resolution", "Shipment" and "warrant", as has been compared with distinguished form, "Regulation" and "Warrant".

The word "ORDER" has not been defined in the Act like the Code of Civil procedure, which gives it a special meaning in order to distinguish it from a decree.¹²³

The word "Order" in Sec. 26 (2) Evacuee Property Act is used in its widest connotation and includes an act of confirmation of sale. It is not correct to say that it is not an order because there is no opposite party contending against such a confirmation, because the Custodian in whom the law normally vests all properties of evacuees is in effect an opposite party who notionally contends against the confirmation of sale. Being a judicial or a quasi-judicial authority, the Custodian's decision is either an order or a judgement and the Custodian has the power to review his own decision under Sec. 40 of the Administration of Evacuee Property Act.¹²⁴

The word 'order' cannot be given the meaning, which is attributed to the word 'maral'... It does not, however follow that the word "order" in this

¹²² 26 CJS 767, Note 72

¹²³ Gangadhar Lalliram v. Nirvachan Adhikari, Marketing Society, Vijaypur, AIR 1971 MP 16(18); Shiv Dayal S.M.N. Raina JJ.

¹²⁴ Dulari v. Addl. Custodian of Evacuee Property, 1953 AL 359(2): 1953 AWR (HC) 506: AIR 1953 All 718 (DB)

case in its application to.... is used in the sense in which it has under Negotiable Instruments Act.¹²⁵

ORDER. : " _____ " An endorsement on the instrument is an order with in the meaning of Sec. 61, Stamp Act 1899¹²⁶

"From the Date of Order: The words within one year from the date of order" in Sec. 33-A (2) of the Income Tax Act mean with in one year from the date of the order when the assessee is notified of that order".¹²⁷

3.4 DOCTRINAL APPROACH

The legislative measures taken are based on different principles or doctrines e.g. as measures taken are preventive in nature having the concept of prevention of crime or irregularities or misshapeness. The Rules and regulation for traffic to be observed as one way during peak hours or daytime is to avoid or prevent accidents. Regulatory is the concept to prevent irregularity in the final product. In this work of research the final product is building and the regulatory measure is to implement uniform regulation in the area specified in the development regulation. e.g. plot area for some specific category of building such as high-rise buildings, Industrial buildings, educational institutes etc. in terms of plot size, and type of construction in terms of facilities to be given. Mandatory is the concept of buildings, which needs certain compulsory aids for the safety

¹²⁵ S.13 (1) Explanation (iii) taken with S. 8,9. 78 of Negotiable Instruments Act, Rangnatv.Periakaruppan. AIR 1957 SC 815

¹²⁶ Jageshar Naib v. Collector, Jaunpur, AIR 1966 All 392 (FB).

¹²⁷ Mahabir Pershad v. C.I.T. Punjab, (1952) 22 ITR 296: 55 Punj. LR 53 ILR 1953 Punj. 193: IR 1953 Punj. 16 (DB).

and to avoid hazards e.g. the fire retardants in the cinema hall etc. Recommendatory measure is for the better results and to make as product more functional in terms of its usefulness. Last one is penal which is remedial measure so as to warn the person of the consequences of committing any wrong or crime.

3.4.1 PREVENTIVE

Preventive Word defined: The word does not mean only an obstruction by physical force,¹²⁸

There is a proverb that” prevention is better than cure”. The doctrine of prevention is all the time-accepted principle as it obstructs the process of illegal act or harmful act of people. The consequence of the adverse act is taken care of under this principle. The term prevention is impliedly used as restriction but the meaning there of has different interpretation. In Sec. 307(2) of the Succession Act 1925, the word “restriction’ includes and covers a total prohibition”.¹²⁹

Prevention is the right that a superior has to demand that a certain act should not be done. In this case the prevention or preventive measures are taken in the interest of public. E.g. the speed breakers are provided near school buildings, near Road crossings, near hospitals etc. for preventing the traffic driving with high speed than specified under zone regulations.

¹²⁸ Teja Mohan v. Maugubhai Mehta AIR 1970 Guj 209 (215); M.U. Shah, J

¹²⁹ Gotiram Nathu Mendra v. Sonabai wife of Savleram Kahane, AIR 1970 Bom 73 (77); Naik J

3.4.2 REGULATORY

The other doctrine or principle is regulatory is derived from the word to regulate. The dictionary meaning there of is to adjust, to govern or manage according to certain standards of law, rules, restrictions or governing principles. The regulation would not ordinarily imply power to impose taxation but under particular circumstances where funds are required for the implementation of the objects of an Act, it might include the power of raising such funds. The matter is not, however free from doubt.¹³⁰

The word regulate according to Shorter Oxford Dictionary, means to control, govern, or direct by rule or regulations to subject; to guidance or restrictions.”

Regulatory is the principle which mean for regulation is a prescription of rules for control of conduct.¹³¹

The word regulating¹³² would include the power to prescribe that permission in writing should be taken a few days before the holding of a meeting on a public street.

Rule 7,13,14 and 15 framed under the said Act do not prohibit the holding of meeting but only prescribe that the permission should be taken.¹³³

¹³⁰ Aluminium Corp. of India v. Coal Board, (1953) 61 CWN 55.

¹³¹ Municipal Commissioner v. Haji Ismail AIR 1967 Punj 32

¹³² Sec. 33(a) of the Bombay Police Act 1951

¹³³ Himat lal v. Police Commissioner AIR 1973 SC 87 (92) affirming (1971) 12 Guj. L.R.

3.4.3 MANDATORY

One of the doctrines to form the legislative measure is mandatory. The word mandatory is derived from word mandate, is authoritative command, commission to act for another.¹³⁴

Mandate is an authoritative command or instruction. An instruction authorisation to a Government to follow, particular policy supposedly express in election results.

Mandatory means pertaining to or having the nature of, or a containing mandate. Required as if by mandate; obligatory.¹³⁵

3.4.4 RECOMMENDATORY

This doctrine of recommendation is applied for legislative measure for better administration of the institution. The term is defined with relative meaning there of. The term recommendatory is derived from the verb to recommend. The simplest meaning there of is to speak in favour of ...¹³⁶. Give oneself one's spirit, make acceptable, piece of advice¹³⁷ to commend, to the attention of another as reputable, worthy or desirable or refer to the committee again for further consideration.¹³⁸

¹³⁴ Oxford Dictionary p. 479 Fourth edition

¹³⁵ Universal Dictionary p. 935.

¹³⁶ Gala's Model Dictionary p.340

¹³⁷ Oxford Dictionary p. 674 Fourth edition

¹³⁸ Universal Dictionary p. 1282

3.4.5 PENAL

The doctrine of penalty is accepted principle of legislation to fulfil or recover the liquidated damages. As is defined¹³⁹ “In its ordinary acceptation, the word ‘penal’ may embrace penalties for infractions of general law which do not constitute offences against the State; it may, for many legal purpose, be applied with perfect propriety to express or implied, they are calculated to mislead, because they are capable of being construed so as to extend the rule to all proceedings for recovery of penalties, whether eligible by the State in the interest of the community or by private persons in their own interest.”¹⁴⁰

Of, or involving punishment, punitive, servitude imprisonment with hard labour.¹⁴¹

Of or pertaining to punishment especially for braking the law. Subject to punishment, legally punishable a penal offence. Prescribing or enumerating punishment or penalties for offences, penal laws, serving as or constituting a means or place of punishment; penal servitude.¹⁴²

3.5 COMPETENT AUTHORITIES

Means any person or persons or Authority or Authorities authorised by the Urban Development Authority Or Municipal Corporation as the case may be to perform such functions as may be authorised to perform different functions.¹⁴³

¹³⁹ Judicial Dictionary p 710.

¹⁴⁰ Per Lord Watson, 1893 App Cas 156

¹⁴¹ Oxford Dictionary p. 586

¹⁴² Ibid

¹⁴³ Regulation no. 2.14 of GDCR , RAJKOT URBAN DEVELOPMENT AUTHORITY.

The Act contemplates a competent authority to many functions under the Act. The statement under S. 6 is to be filed before the competent authority. He has to determine the ceiling limit and acquire the excess for the state (S.10). He is to determine the amount payable for the acquired land (S.11). He has power to exclude land in excess of ceiling limit from acquisition (S.21 (1)). He is competent to order demolition and stoppage of construction of building, which are being constructed in contravention of S. 29(S. 30). He has the power to exercise option and purchase vacant land proposed to be sold by the owner, for the state government (S.26 (2)). A person desiring to make a transfer of land on which the building stands or a building or a portion thereof cannot do so without previous permission of the competent authority. (S. 27(1)). It will thus be seen that the competent authority is most important functionary under the Act. The expression ‘ person or authority implies that the appointment of a competent authority may be by name or designation. The appointment is made by notification in the official gazette.

The Act does not lay down the qualifications to be satisfied for appointment of a competent authority. However, having regard to the functions required to be performed by a competent authority under the Act the state before appointment of a particular person is expected to perform those functions.¹⁴⁴

3.5.1 TECHNICAL

Of or in or peculiar to a particular art or science or craft (terms, skill); of or in or for the mechanical arts.¹⁴⁵

¹⁴⁴ S.2 (d) of Urban Land (Ceiling and Regulation) Act.

¹⁴⁵ Oxford Dictionary p.860

1. a. of or pertaining to that aspect of an art or science requiring practical, applied, mechanical, or scientific skills or knowledge. b. Qualified or skilled in the practical mechanical, or applied aspect of an art or science; a technical expert. 2.a. Have, pertaining to, or characteristic of any specialised field of activity; technical vocabulary¹⁴⁶

In this case the technical aspect as personnel is taken for the architect, civil engineer, structural designer, clerk of works, site supervisor, surveyor, and plan maker¹⁴⁷ and the measures taken for materials for construction are based on the National Building Code and in certain cases as per Indian Standard Institute as per ISI code in case of raw materials like coarse aggregate, bricks semi finished materials like concrete mix of certain proportion as M 150, M 200 Etc. and finished goods such as pipes sanitary fittings, cement, steel, rolled steel and mild steel or TOR steel etc. Now in many cases ISO is being followed.

3.5.2 LEGAL

The simple meaning is based on or in agreement with law.¹⁴⁸ In this case, Legal officer in any institution or authority, means having knowledge and qualifications of law. The qualification is taken as Bachelor of Law from a recognised university or Master in Law in concern branch.

Every act during procedure of development, from pre development phase to post development phase should follow the legal aspect of the procedural law. The legal aspect of the procedure is starting from the approved title to the immovable property to the legitimate follow up of the total act during sanction to completion on paper as well as on site.

¹⁴⁶ Universal dictionary p.1552.

¹⁴⁷ Regulation no. 2.77 of GDCR , RAJKOT URBAN DEVELOPMENT AUTHORITY

¹⁴⁸ Gala's Model Dictionary p.340

3.5.3 ADMINISTRATIVE

Meaning there of. The adjective is derived from the verb administer, to have charge of, direct; manage (the affairs of a person, business or government or the like) To give or perform a formal or ritualistic way;¹⁴⁹

The administrative authority is supposed to know the basic technical and legal terminology to administer the rules and regulations. This branch of authority should be competent enough to manage all the affairs of the institution externally as well as internally. In government or semi government the institution head for administrative work is always a person qualified by Indian Administrative Service.

3.6 FORMATION OF PRIMARY AND SECONDARY RULES

Formation of Primary Rules: The Primary rules are to define the terminology and formed/framed to fulfil the objective. The objectives are to frame the Development Control Rules and Regulations. The basic elements of the process are the components those are involved in the development of the area. The elements are buildings and the parts there of, Roads and parts there of, Drainage line and the network there of. The town planning aspects are also involved as far as the roads are concern and the public purpose or utility is concern. The primary or preliminary rules are said to be the introduction of the objective in form of definition.

The secondary rules are to define the essentials requirements to fulfil the end results of the objectives.

¹⁴⁹ Universal dictionary p.30

3.6.1 PRELIMINARY STAGE

The Development Control Rules and regulations for building in urban areas are the element of legal system, which is an implied set of legislative instrument. The system is a complex system in which the technical specifications are playing major role as far as existence of the final product is concern but for the preliminary stage the concept of the system was taken as fresh start keeping the ownership in to consideration. The word title has taken major importance in the formation of the rules on legal side. To understand the concept of title is to understand and examine the concept of ownership or owner. The preliminary stage is concern with owner and local authority.

Owner:

When used with reference to any premises the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let and includes- an agent or trustee who receive such rent on behalf of the owner.

An agent or trustee who receives the rent of, or is entrusted with or concerned for, any premises devoted to religious or charitable purpose.

A receiver, sequestrator or manager appointed by any Court of competent jurisdiction to have the charge of, or to exercise the rights of an owner of, the said premises; and Mortgagee-in possession.

Developer with limited duties and responsibilities

After defining the term owner the duties and responsibilities are defined as far as the term owner and ownership is concern within limitation of development control rules and regulations concern.¹⁵⁰

3.6.2 IDEA OF OBLIGATION

The theory of law as coercive orders, notwithstanding its errors, started from the perfectly correct appreciation of the fact that where there is law, there human conduct is made in some sense non-optional or obligatory. In choosing this starting point the theory was well inspired and in building up new account of law in terms of the interplay of primary and secondary rules. It is however in this case, is the detail study of the existing rules and regulations and search and research for the concrete solution by making rules from the theory's error. So from the beginning it is clear that one needs some thing else for an understanding of the idea of obligation. There is difference, however, equally yet to be explained, between the assertion the one is obliged to do something and the assertion that one had an obligation to do it. The first is often a statement about the belief and motive with which an action is done.

In case of development control rules and regulations the situation prevails for which those are framed. The implications are to be justified by proving obligation. E.g. rule for keeping open margin, for construction of a new building on an open plot. The reasoning for keeping the open area when the land is very expensive and scarce, the priority is welfare of people for provision of sunlight, ventilation and to park vehicle inside the premises instead of parking outside. Vehicular traffic problem by mandatory and recommendatory parking place in any building, as those are essential for any dweller. By not implementing such rules and one has to pay penalty

¹⁵⁰ GDCR 2004 regulation 2.66

for disobedience. So, the obligation is on both the sides i.e. authority who implements and the owner or beneficiary, who has to obey it. The rules are made for both the parties. There cannot be rules for one as far as legality is concern. There are two aspects internal and external. There are two reasons implied and express.

3.6.3 THE ELEMENT OF LAW

“It is of course possible to imagine a society without a legislature, courts or officials of any kind. Indeed there are many studies of primitive communities which not only claim that this possibility is realized but depict in detail the life of society where the only means of social control is that general attitude of the group towards its own standard modes of behaviour in terms of which one has characterized rules of obligation. A social structure of this kind is often referred as one of the custom but this term is not often used as it often implies that the customary rules are very old and supported with less social pressure than other rules. To avoid these implications the reference should be a social structure as one of the primary rules of obligation. If a society is to live by such primary rules alone, there are certain conditions, which granted a few of the most obvious truisms about human nature, and the world must be satisfied.¹⁵¹

The first of these conditions is that the rules must contain in some form of restrictions on the free use of violence, theft, trespass and deception to which human beings are tempted but which they must in general, repress, if they are to coexist in close proximity to each other. In this case the offences which are having similar nature but in the form of physical or illegal possession, i.e. violence in the form of violating the rules, by theft in the case of some bodies legal right by fraud and forgery to obtain illegal

¹⁵¹ The concept of Law p.89

right trespassing is encroachment either on public land or some bodies private property.

The necessary element of law is expressly and impliedly expected in urban development and construction of buildings. Infra structure to support the development is a complex process. There are many statutes and case laws as well as other set of rules are also incorporated. As specified, this being applied legislation is brought from basic legal theories, has to be useful and workable along with changing society the rules and regulation though have an element of law should be up gradable.

3.7 THE FOUNDATION OF LEGAL SYSTEM

Foundation of legal system is also based on identification of other rules of the system. Situation arises in the foundation of legal system. The Rules and Regulations are framed with objective of getting it implemented and with obligation to get it obeyed. The rules are so framed and formed less than one set of statutory obligation. The legal system is to be defined as system formed by law, i.e. the implementation of law, of the law as the rules and regulations cannot be formed and framed without reasons or purpose or objectives. And for the law as to get one statute to be implemented a set of rules is required to be framed.

The malicious intention of a person having willful act of committing wrong is to be examined from all the angles before putting foundation of setting any of the legislative measure. The existing system is such that there are many measures and each measure has many loopholes to escape.

3.7.1 RULE OF RECOGNITION AND LEGAL VALIDITY

Legislative measures are taken on basis of assumptions and presumptions. Once abandoned the view that the foundation of legal

system consist in a habit of obedience to a legally unlimited sovereign and substitute for this the conception of an ultimate rule of recognition which provide a system of rules with its criteria of validity.

A range of fascinating and important question confronts us. They are relatively new questions for they were veiled as long as jurisprudence and political theory were committed to the older ways of though those are also difficult questions requiring for a full answer to the one hand a grasp of some fundamental issues of constitution law and to the other an appreciation of the characteristic manner in which legal forms may silently shift and change. Therefore it shall be investigated these questions only so far as they bear upon the wisdom of insisting as have done that a central place should be assigned to the union of primary and secondary rules in the elucidation of the concept of law.

The first difficulty is that of classification for the rule, which in the last resort is used to identify the law escape. The conventional categories used for describing a legal system though these are often taken to be exhaustive, which are so called orders in council and rules embodied in precedent and partly of conventions, which are mere usage understanding of customs. It is non conventional since the courts are most intimately concern with the same level as the laws strictly so called which is used to identify. Even it is enacted by statute this neither would nor reduce to the level of statute so the legal statue of such as enactment necessarily would depend on the fact that the rule existed antecedent to and independently of the enactment.

Moreover as shown in the last section of existence unlike that of a no statute must consist in actual practice. This aspect of things extracts from some a cry in despair.

How could be shown that the fundamental provisions of constitution which are surely law are really law is a question. Others reply with the insistence that as the base of legal systems there is something which is not law which is 'pre legal' 'mere legal'.

It is just 'political fact' This uneasiness is a sure sign that the categories used for the description of this most important feature in any system of law is for crude, the case for calling the rule of recognition 'laws is that the rule providing criteria for the rectification of the wrong or adverse act of the person.

According to the theory criticised, the foundation of legal system consist of situation in which the majority of social group habitually obey orders backed by threats of the sovereign person or persons who themselves habitually obey no one. This social situation is for this theory both necessary and sufficient condition of the existence of law. In that has already exhibited in some detail the incapacity of this theory to account for some of the salient feature of a modern municipal legal system yet nonetheless as it hold over the minds of many thinkers suggests, it does contain, though in a blurred and misleading form, certain truths about certain important aspects of law. These truths can however present their importance rightly assessed in terms of the more complex social situation where secondary rule of recognition is accepted and used for the identification of primary rules of obligation. It is this situation that deserves if any thing is to be called the foundation of legal system. Various elements of this situation have received only partial or misleading expression in the theory of sovereignty and elsewhere.

The implications of Development Control Rules and Regulations for the building in urban areas of India have different applications so as to take legal measures. To prove legality and validity of the building as a process needs study of its all the aspects of its existence. The process is so

complex that the inter relationship of rules which are implied to get it implemented should not be contradictory to each other.

3.7.2 NEW ACTIONS

Once the foundation and formation of legal system or legislative measures are chocked out or established, the series of new questions will arise. They are related with limitations, timings and its validity. Each legislative measure has to be justified the curiosity of its reorganization. The process is on trial and error basis. The measures are taken are conceptual basis. E.g.. The rule once applied for the maximum. FSI 1.5. The owner use to construct a building on part of a plot utilizing total F.S.I. (Floor space Index) keeping no F.S.I. spared and the same owner will sell the rest of the open plot to other party when there is no scope for any construction there on as the full FSI was utilized by the seller earlier. But being the independent plot with clear title the purchaser carried out on the construction on plot, which was excessive as per laws. There was no full history of the plot and the area constructed there on. The new action had created problem, as there was some shortcomings in the implementation of the rule, as the competency of the administrative staff was needed. The stream lining was made by the new rule of sub plotting the plot for smaller units two or more and amalgamation for the joining two or more plots to achieve the maximum FSI. A solution to a problem is a problem arising out of those solutions.

The new actions are always out come of the revised legislative measures. Each start is always a fresh start when some new modifications are introduced, e.g. the rule for margin on road in model bye- laws earlier was in proportion to the size of the plot irrespective of the width of the road. The technical viewpoint for the roadside development was never visualised for many years.

Illustration: The Development Control Regulations 1984 a set of the regulations was as under with irrespective width of the road and type of development i.e. commercial, residential, industrial:

This rule has multiple effects on the building as to provide off street parking, projected balcony and number of floors. The plot size does not show the hairline difference.

Off street parking is with minimum parking area with vehicle to park. The area for circulation for taking vehicle in and going out was not included.

Open stair was allowed in front margin. By giving many relaxation and provisions the express or implied objectives could not be achieved. The Rules are much complex as in case of calculating one small variation and whole set changes.

Table No.1¹⁵²

| Sr. No. | Plot area In Sqmts. | Minimum side of plot on road side in mts. | Front margin in mts. | Rear margin in mts. | Any other side margin in mts. | Maximum permissible built up area in sqmts. | Remarks. |
|---------|---------------------|---|----------------------|---------------------|-------------------------------|---|----------------|
| 01 | Up to 40 | 3.00 | 1.50 | - | - | 65% | Specified area |
| 02 | 80 to 150 | 5.00 | 2.50 | - | 2.50 | 60% | |
| 03 | 151 to 250 | 8.00 | 3.00 | - | 3.00 | 60% | |

¹⁵² General Development Control Regulations 1984, P.33

| | | | | | | | |
|----|---------------|-------------------|------|------|-----------------------|-----|--|
| 04 | 251 to 400 | 10.00 | 4.50 | 2.50 | 2.50 | 40% | |
| 05 | Above 400 | 12.00 or above | 4.50 | 3.00 | 3.00 both sides | 40% | |

The Concept of keeping open space compulsory was for better development. The objective was to keep uniform development so as to keep road line maintained. The Floor space index was specified as per the table no. 2.

Type of development was specified as under:

Table no. 2

| Sr. No. | Area | F.S.I. | Maximum permissible built up area on any floor incl. Ground floor. |
|---------|-------------|--------|--|
| 1 | Other areas | | |
| a. | Residential | 1.20 | 40% to 60% depending upon size of the plot as per table no. 1 |
| b. | Industrial | 1.20 | 50% |
| c. | Commercial | 1.30 | 40% |
| d. | Other | 1.20 | 40% |

Many areas such as stilt parking, basement cellar, electric cabin, unusable architectural projections, entrance lobby, ramps leading to cellar or upper floor, Watchman Cabin up to 9.00 sqmts. On ground floor and projected balcony up to 1.20 mt. Width and up to 10% of total built up area of the floor. The trial and error method has always tried to find out some solutions to the problems arising at the time of implementation.

The same regulation was modified in 2004

The development shall be regulated according to the width of the road on which it abuts subject to use zone table as follows:

| Road width | Uses not permitted |
|----------------------------------|---|
| a) 24 Mts and above | All educational institutions up to SSCE Level |
| b) 15 Mts. and less than 24 Mts. | Cinema Hall, town hall, college, technical institution. |
| c) 12 Mts. and less than 15 Mts. | All uses mentioned in (b) above and High rise buildings lecture rooms, hotels, auditorium, petrol pump, general hospital & polyclinic, community hall |
| d) 9 Mts. and less than 12 Mts. | All uses mentioned in (b) and (c) above and building with more than 13 mts. Height. |
| e) 6 Mts. and less than 9 Mts. | All uses mentioned in (b), (c) and (d) above and Apartments/Flat type building. |

The said regulation is off course a new action as the earlier were not full proof as those created many serious problems such as school use to be in lane or on a narrow road and also on a main road of 24 mts. wide. The new action was taken that school/educational institutions are NOT permissible on 24 mts. road¹⁵³.

3.7.2.1 PREVENTIVE MEASURES

(a) PREVENTIVE MEASURES DEFINED

¹⁵³ GDCR 2004 regulation no. 12.1

Preventive as a doctrine which states to stop any thing which is illegal, harmful, unjust or adverse to the statement of rules and has got its validity in all the fields of life as in economy, social, health and hygiene and in concrete world like development of urban or rural area as specified by the relative acts. In the said research the preventive measures are taken care of in the existing system. By the proverb as said prevention is better than cure. Once if the diseases has found a place in the body of wicked person or in a city where ignorance, negligence and irresponsibility is present than the diseases like illegal construction and trespass will surely find its way.

(b) NEED OF PREVENTION

The need of prevention is based on different interests such as loosing something in terms of right, materials or both or in the case of the subject matter for the welfare of the general interest of the person in particular and public at large.

Land Use Zoning for Flood Safety:

Some important considerations for regulating the land use in the planning areas are as follows:

Where, no building or other activity should be allowed. This will not only facilitate improvement of these drains in future for taking discharges on account of growing urbanization, but will also help minimizing damage due to drainage congestion wherever rainfall of higher frequency than designed is experienced. These green belts at suitable location can also be developed as parks and gardens.

In the present set of legal system, primary and secondary rules makes the system running but no system is full proof as far as its end results are

concern. In general the preventive measures are with specific purpose e.g. every settlement needs some open areas such as parks, play grounds, garden etc. In one way it will be possible to develop such areas by restricting any building activity in vulnerable areas. Such a development will be in the interest of providing proper environment for the growth of such settlement.

On the same analogy, certain areas on either side of the existing and proposed drains (including rural drains) should be declared as green belts.

As case study the need of prevention is illustrated below. The prevention is considered from different aspects.

Problems Created by Vehicular Traffic and Possibilities of Accidents: Most of the cities, mega cities, metro cities, are congested and frequency of vehicles on road at present do not match the need of circulation area. To prevent the possibilities of accidents the heavy vehicles are not allowed during peak hours in the market. The Vehicles are diverted to the peripheral roads or road is allowing for one-way traffic.

Road curvature :It is commonly accepted that all the road junctions are having curvature so that the vehicle coming from the road right angle to the other can see the incoming and passing by vehicles/traffic and accidents avoided/prevented.

Speed Breakers on the Road at Road crossings, near school buildings, Hospitals, market places are also with the objective of preventing the mishappenings.

To prevent the mishappenings the development of special category is not permitted on certain width of the road but the re are many ways and means to take liberty to overcome the restriction the category of permissible building is sanctioned and changed in to non permissible use such as residential building in a commercial house or shops or hospital or bank. To control and prevent such infringement of regulation the preventive measure is taken as:

USES PERMISSIBLE FOR COMMERCIAL DEVELOPMENT¹⁵⁴

| ROAD WIDTH | FLOOR |
|---------------------------------|------------------------|
| 1) Below 9 mts. | Nil |
| 2) 9 mts. and less than 12 mts. | Ground floor |
| 3) 12 mts. and below 18 mts. | Ground and First floor |
| 4) 18 mts. and above | All floors. |

Parking area for pubic as well as private sectors in the building itself so as to avoid congestion on road.

Fire escape staircase for high-rise buildings is preventive measures so as to prevent the people dwelling there in can be taken off safely. The preventive measures are also well taken as safety measures.

The parapet wall; height of the terrace wall is to prevent children or the normal people from falling down from terrace.

¹⁵⁴ GDCR 2004 p. 68

Soak pit are meant to prevent the health and hygiene hazards and to reduce load on drainage line in certain areas.

Plinth Height of Building: to prevent roadside rainwater entering the building.

(c) BURDEN OF PROOF

In legal system or legislative measures when taken, there will be a question from the opposite side asking the reason to introduce a change in regulation or a modification or altogether a new one with any objective or objectives are supposed to be at par after due tests. The preventive measures are taken to prevent certain situation. E.g. road to be marked as one-way for vehicular traffic is proved to be insufficient for the frequency to meet with.

By providing speed breakers near schools and hospitals for reducing speed so that children or the disabled or sick are not suffered by the running vehicles.

The road curvature while provision is made on the plan and on site it self are provided according to the road width, as the intensity of traffic is directly proportionate to the width of road.

(d) RIGHT TO PREVENT

Any person, or passer by cannot take the legislative measures by passing on the road. While taking legislative measure the right to take steps are inevitable in the system. The right can be taken in terms of power conferred to the officer taking the steps. The system does not have any vested interest in taking such measures. The prevention is done by instructions i.e. sign boards. The signboards are put on the road by

different authorities or by department of traffic police, but the authority takes decision by keeping all ancillary departments in confidence. E.g. while repairing Roads or drainage line or water supply line the authority can provide the hurdles on the road or boards to stop people or to warn them for the danger or hardship without any ones prior permission. But if any citizen wants to repair or maintain certain status of the building has to take prior permission of the authority. Here the primary and secondary rules play its role.

(e) VALIDITY OF PREVENTIVE MEASURES

The validity of preventive measures are considered in terms of time, places, and people affected by that measure. E.g. the above mentioned preventive measures are taken having validity in terms of time in case of disallowing heavy vehicles during peak hours in market place. The clear notification of the measures is precisely made known to public as far as time is concern. The sign boards showing one way traffic route is mentioned with signboards. These are complex measure having concept of prevention but the measures are remedial and transitory.

The preventive measures as far as development control rules and regulations are concern with their static effect is that certain development is prevented in the cases where it is necessary. Main gate of compound wall should not open outside on road. The main gate is not permitted on the curvature or junction of the road.

(f) LIMITATION OF VALIDITY

In present set up all the regulations are with limitations in terms of time: In case of any permission is granted for specific purpose, has the validity period within which one has to work according to permission granted. The

roadside transitory parking in most of the urban area is a drastic problem. In present situation the transitory parking in the fort area of the city is allowed on odd date and even dates where there is no solution and road width is narrow and the area is commercial. In such case the solution

The set back of building is proposed in the case of reconstruction but when, such possibilities are rare the regulation have no validity, as it is not applicable.

3.7.2.2 REGULATIVE MEASURES

Regulative measures are for general purpose, as they are taken for welfare of people in general. Regulative measures are with specific purpose as to control over all development of the urban area in all respect as building in general. They are related to infrastructure, specific category of buildings like schools, hospitals, markets, parks by making provision for common plots. They also denote zones such as residential, educational, commercial, industrial, recreational etc.

(a) REGULATIVE MEASURES DEFINED

Regulative measures are like master plan of a project which is with all out line requirement for general development as to define in detail is a regulation for each and every citizen residing in the respective City or town. The urban development is directly related to the concept of regulative measures. The undeveloped land when is as a farm or land for agriculture does not have any demarcation as to plan out the town planning scheme. Certain thumb rules are incorporated for the preliminary development plan.

(b) NEED OF REGULATION

The general regulations are applied to all undeveloped, under developed and developed land. The regulative measures are a standard for preliminary development. The concept of zone is related to the regulative measures. As the urban land is occupied for various purpose by the various type of people for different activities such as for commerce, industry, education, transportation, recreation and finally for residential. The urban development is never static or pre-planned. It is as ever changing process needs regulative measure to prevent the haphazard development.

In present system zoning is the prime most regulation as it is purpose based and regulated by District Collector /District Panchayat or Taluka Panchayat as the case may be mentioning the purpose of the land use in its sanction letter. The development being necessary, regulation is applied by keeping specific requirements and situation into consideration.

The regulative measures related to zones are at present in two sets. Activity based zones and the Nature based zones.

OBJECTIVES:¹⁵⁵

The basic objective of land use zoning is to regulate land use in hazard prone areas to minimise the damage caused to the habitat, as a result of natural hazards viz. earthquakes, cyclonic storms and floods which recur from time to time. Land use zoning therefore, aims at determining the locations and the extent of areas likely to be adversely affected by the hazards of different intensities and frequencies, and to develop such areas

¹⁵⁵ GDCR 2004 p.176

in a fashion that the loss to the development is reduced to minimum. The identification of such areas is as follows:

(a) Earthquake Prone Areas: The regulative measures for such urban areas are taken special precaution as technical measures giving them the backing of legislative measure.

(b) Cyclone Prone Areas: Areas prone to cyclonic storms are along the sea coast of India where the cyclonic wind velocities of 47 meters per second or more are specified in the Wind velocity map given in IS 875 (part 3) to a small scale and easily identified in the Vulnerability Atlas of India where the maps are drawn State wise to a larger scale.

In these cyclone prone areas which are likely to be subjected to heavy rain induced floods or flooding by sea water under the conditions of storm surge, are specially risky due to damage by flood flow and inundation under water.

(c) Flood Prone Areas: The flood prone areas in river plains (Unprotected or protected by bunds) are indicated in the Flood Atlas of India prepared by the Central Water Commission and reproduced on larger scale in the State-wise maps in the Vulnerability Atlas of India.

Besides the above areas other areas can be flooded under conditions of heavy intensity rains inundation in depressions, backflow in drains, inadequate drainage, failure of protection works etc.

Whereas, the flood prone areas as mentioned, in Para. 1 are identified on the available maps as indicated, the areas under Para 2 have to be identified through local contour survey and study of the flood history of the planning area. Such studies may be carried out through Survey of India or local survey teams, and by reference to the Central Water Commission and the concern department of respective state.

(c) BURDEN OF PROOF

It is necessary in any legal system to introduce new measures to prove the necessity of regulatory aspect which are formed and framed and those, which are out come of some of the Acts, which, are non-regulative. When certain regulations become ineffective the rectifications or amendment is necessary to make them more effective.

When regulative measure is revoked and if is proved the penalty close is introduced to make it regular. Any provision intended to compel the performance of a contract, Where any sum is reserved on an agreement to be paid in case of the non performance of the same It is considered to be penalty, sec. 73 & 74 of the Indian Contract Act deal with the consequences of the breach of contract, and these sections are intended to do away with the distinction between penalties and liquidated damages. It means sum payable as punishment for a default or by way of securing the performance of a collateral object. In building contract the contract is between regulating authorities with the owner of the property.

(d) RIGHT TO REGULATE

The dictionary meaning of the word regulate¹⁵⁶ is to adjust to govern or to manage, according to certain standards of law, rules, restrictions or governing principles.

The regulation would not ordinarily imply power to impose taxation, but under particular circumstances where the funds are required for implementation of the object of an Act, it might include the power of raising such funds the matter is not, however, free from doubt.¹⁵⁷

The Chief Officers of institutions like Municipal Corporations, Municipal Commissioner and Development Authorities, Chief Executive have right to regulate situations like irregular, illegal development or the work adverse

¹⁵⁶ Judicial Dictionary p. 812

¹⁵⁷ Alluminium Corp India.ltd. v. Coal Board (1953)61 CWN 55

to the rules and regulations in terms of buildings of any discipline and development in terms commercial or religious. The right to regulate is in terms of power to regulate. The right is obtained by the office and not by any other virtue. Any officer holding such power has to obey the same rules in his personal capacity. In short no officer can act adverse to rules and regulations when he is holding the powers to regulate and has right to regulate.

(e) VALIDITY OF REGULATIVE MEASURES

Validity of Regulative measures is similar to other measures also in terms of time and the place where that are applied. The validity in time is till the building sanctioned exists. In many cases of road widening the regulation of the time of operation is counted to be valid. Validity is not changed in case where the zone is same but other aspects are added as and when zone is changed. The residential Zone is changed, as mix zone like commercial cum residential or residential and educational. At that time the amendment the validity of its purpose is changed to new term till the new change or amendment is incorporated.

(f) LIMITATIONS OF THE VALIDITY

In case of limitations of such validity is related to its purpose, the regulative measures are to regulate and control development in urban area. The purpose is related to the use of the building and open space left for parking and circulation. The main area is the commercial incorporating market place, community places and educational places where traffic is heavy. The parking provided is for static vehicles. The transitory parking is approximated to certain minimum area but insufficient space leads to congestion on streets and roads attached to the building. The regulative measure is to restrict the incoming vehicular traffic for certain period of time. The limitations are many in terms of lack of additional space for such problems. The economical restrain is to provide some additional space in

near vicinity but that also is difficult to obtain from private property holder. In such cases the validity is forever till the rule is implied.

3.7.2.3 ADMINISTRATIVE MEASURES

In any Machine when created or assembled a manual is always attached to the machine as well as a diagram of assembly also attached along with. In the same manner the legislative measures along with technicality of the facts are framed and formed are also attached with some of the measure as to show how the framework is done along with the implied reasons for formation. The other part is a manual to show the way of running the set up so framed and formed. The said set up is called the administrative measures with legal aspects of the administrative set up.

(a) ADMINISTRATIVE MEASURES DEFINED

The said research is as a complex and compound process of legislation. The administrative measures are also complex in nature. These are the measures, which are having all the type of identity such as preventive, regulative and remedial too. But as they are related to the procedural rule and regulations are taken as administrative measures. These measures are the directional and guiding measures as to run the set up with procedural aspect. E.g. Work as procedural aspect of sanctioning the plans, developmental proposals and town planning schemes etc.

(b) NEED OF ADMINISTRATION

The needs of administrative measures are as important as breathing is for life. To run an institution is an ongoing process. The process is having triplicate role to be played, Pre development, during development and post development. The process needs people of various disciplines as are specifically mentioned in the next chapter. The measures as far as the related to legislation is concern are the process of scrutinising the proposal

for development, is the process under pre development phase where the preventive measures as far as administration is concern are taken. The process during development is in progress, reports of the construction in progress is made available, to those who seeks them and has applied for, not to all as the part of procedure. The third phase as a follow up of the development completed is a certificate of occupancy. In case of illegal or irregular development or construction is undertaken this certificate will not be issued. The follow up is done at the time of execution of town planning schemes means as and when the obstruction on Public Street is found out. No steps are taken without written complain or in case of expressly reported.

(C) BURDEN OF PROOF

The administrative measures are taken for certain reasons. The objective of taking such measures such as pre development phase is an application for the proposal for development. The objectives are checking the title of the person holding the property by the prescribed list of documents. In such a case the documents such as affidavit, indemnity bond and the agreement to pay development charges for the town planning schemes are part of the list of documents. This is standard format which is to be submitted by every applicant whether is required or not. Such an action of getting the details are the layout plans and part plans of the T.P. Sketch as a document which is given by authority and taken back by them. Though the official records are lying in the office of the town planner the additional hard copies are asked for. These measures are taken as precautionary measures as far as records for documents are concern. The administrative officers are getting the undertaking of the situations as the conditions arise.

After getting all the required documents in pre development phase, scrutiny of the plan in relation to the development rules and regulations is

undertaken. The interpretation of the terminology administrative as well as legislative is made in such a way that there is no inter relations between literal meaning of Draft rules and the implied meaning there of are taken as per the required situation.

(d) RIGHT TO ADMINISTER

Administrative measures are such that any action adverse to the measures such as rules regulations or orders can be regulated or rectify by the officers concern. The rights and duties are such that they go side by side as it is the duty of the officer not to allow any person to act adverse to the prescribed rules. In case of any adverse act to the rules the administrative officer holding powers to administer takes action against the wrong act.

The removals of a part of a structure, to the demolition of the entire structure are based on different facts. The base is taken as any of the lacking feature of the scrutiny, which is not done at the time of the development phase. The other fact is that, there is no relevance between the paper work and the actual work. The right is already there along with that the liability of any misconduct also included.

Such a right is the right given by administrative measures. A show cause notice is issued prior to administering such right but in certain cases such a procedure is deleted or avoided in case where the Highest Officer feels the necessity of administration of right to prevent other persons to stop such activities and such right comes from discretionary powers of the highest officer of the local authority concern. Municipal Commissioner in the limits of Municipal Corporation, Chief Executive in Urban Development Authority or Area and the rest part is with District Collector where the issue is not within purview of local authority. In such cases the power of highest officers are discretionary. They do not act personally as it is difficult for

them to follow up the action as they are decision makers. Powers are delegated to the assistant administrative officers.

(e) VALIDITY OF ADMINISTRATIVE MEASURES

The validity of administrative measures are till the validity of such rule or set of rules is in existence based on time in term of the set of rules are amended or changed or abolished. Many times it happens that the total statute is repealed and the documents related to those statutes or orders are still sought for as precautionary measures. The measures are of technical nature and also of legal nature. Encroachment on public streets by constructing a small so called a holy place on roadside or extending the temporary sheds on footpath and keeping the goods are adverse to rules and regulations. No permission is granted to do so but even then the people do so till the administrative steps are taken for the adverse act. The validity for such measure is forever because in no case permanent encroachment is allowed under any set of the rules whether is present or repealed or amended.

(f) LIMATIONS OF VALIDITY

As the procedure is followed under Civil Procedure Code the validity is limited to the time period given by the Court. Otherwise the property owner has to respect condition as directed by the authority in the interest of general public.

Where a court passes an order in the absence of a party without having previously informed that party of the day on which it was going to pass the order, the date of passing the order cannot validly be made the starting point for limitation. On contrary, limitation can only be held to commence to

run from the date on which the party in question came reasonably for the first time to know as to when the order was passed.¹⁵⁸

In many cases the limitations in terms of time do not co inside with the validity of measure as the civil procedure takes longer time due to many reasons and within that period of suit measures are amended or repealed.

3.7.2.4 REMEDIAL MEASURES

The word remedy is defined as the legal recompense for an invasion of a right. The remedial measures are like water and changes its shape as per the shape of vessel it is poured in. The solutions to problem are not written in black and white but the principles to give such solutions are framed and formed.

(a) REMEDIAL MEASURES EXPLAINED

The technical term for the extreme limit of allowance the mint will allow from the fixed coinage standard.

Remedies by acts of parties

- 1) Self-defence: entry: abatement of nuisance: distress etc.:
- 2) Arbitration; Accord and satisfaction.

Remedies by operation of law. Suit; ejection; Injunction, etc.

¹⁵⁸ Sant Ram v. Amrawati, AIR 1953 Bilaspur 9.

Remedies for breach of contract. Where a contract has been broken, the usual remedy is damages. Other remedies are specific performance and injunction, appointment of a receiver, etc.¹⁵⁹

Equitable remedies such as Injunction; specific performance: appointment of receiver etc. After due definition of the term remedy is the remedial measures. The measures are such where the deficiency of the rule is to be fulfilled or extra benefit is given, as the general rule is insufficient to fulfil the objective of the rule so formed and framed accordingly.

(b) NEED OF REMEDY

In any walk of life nothing was perfect, nothing is perfect and nothing will be perfect as the system is ongoing and ever changing process. The aspect of each individual is different for different objective. In case of legislative measures the rules are made for general purpose with standard objectives. In case of old town area or fort area, which is said to be gamtal, area is the one where the rules and regulations applied, are different. Those are termed as and defined as the remedial measures because the buildings and development of such an area is according to the rules and regulations of the date as on the building was so constructed and many a times the buildings were constructed before the rules and regulations formed and framed for such an area. The width of the road and the width of the streets and the ownership there of as in many old cities are owned by a group of people as far as the right to way right to light and ventilation or to drain water or such other specific purpose is concerned. Though the city is same but the developmental changes are the reasons for such different rules.

¹⁵⁹ Singhal's Jurisprudence, p. 187

In case of such areas where the development has already taken place but as the rule of nature the process is ever changing is the reason to provide the remedial measures. For example:

Classification of Residential Area¹⁶⁰

1. Good living areas
2. Average living areas
3. Sub Standard living areas or problem areas

The Development Control Rules and Regulations are for Buildings in urban area. The rules are applied to the urban areas of the Country. Where the tendency of people residing in the area is nearly same but the condition of people residing in different areas such as area already developed, under developed and not developed are different and the requirement is also different. The scope of satisfying the demand or requirement will also be. is different. In such cases the remedial measures are must and express need of people.

The Common cold is an ailment, which gets cured as time passes provided the sick takes rest but if his/her activities are not stopped, the ailment gets form of bronchitis and finally it get chocked in the lungs and pneumonia takes place which is dangerous The same true in the matter of building construction for which remedial measures are the solution.

(c) BURDEN OF PROOF

This, very simple process is present in each field and phase of life. The demand or needs have reason when raised and the fulfillment also has reason as to why it is fulfilled. But then the reason need to be sound and when asked for can be proved. The remedial measures are needs of the same criterion. All the time situations are not favourable or convenient.

¹⁶⁰ Raipur Development Plan, Town and Country Planning Department Madhya Pradesh p.75

E.g. remedial measure for time factor, the remedy is to ask for time extension for clarifications or to submit the necessary documents as supporting documents to prove the need of remedy. In case of most of the time the remedial measure is the extension of time limit so as to avoid reply and the other supporting documents can be found out or documents or reasons can be fabricated. The reasons so shown as to ask for the benefit of remedial measures need to be sound enough to prove its merit.

(d) RIGHT TO REMEDY

The right to take remedial measures is the right in terms of its social and economical conditions. Many times it is also due to change in administrative set up. The level of income, time in terms of situation to receive the remedy and technical and legal standing to the reason as to get the benefit of such remedial measures.

When a set of rules and regulations are amended or some of them are repealed with a particular date in effect, the right to take remedy remains till the date of application made which is prior to the date of amendment. In such cases the administration is taking harsh steps to reject all the application leaving some apart as hardship. The right to take remedy stands no more as the date of application has no validity after rejection of the proposal.

(e) VALIDITY OF REMEDIAL MEASURE

The remedial measures when, taken by the beneficiary and given by the authority or concern institutions has put the clause of validity. The validity of time in terms of duration, the validity in terms of reason to fulfil the purpose to use the property or place can be termed as license. The validity of remedial measure is the period when the application of proposal is pending or is in due course or is under consideration or is asked for

clarifications. In case of hardship the validity in terms of technical or legal validity are reviewed and can be extended if the concern officer fills so.

(f) LIMITATION OF VALIDITY

The limitation of validity is in terms of the people or persons for whom the remedial measures are sought. E.g. the facility clause which is extra but if is inevitable for the place and time the measure is limited to those people e.g. for children, old people or for handicapped persons. The facilities are meant for such special purpose.

(g) EFFECT OF HARDSHIP

The remedial measures are most of the time conditional. The content of the remedial measures are like medicine of the concern ailment. One of the criteria is hardship. The condition of hardship is defined as and when no rule or regulation is applicable to the situation. The situation can be in terms of:

Right to Title,

In case if the title is defective and the major segment is valid but the linking chain if is missing, the person holding such temporary rights such as power of attorney r or authorised agent of such person can be given good title by remedial measures as per concern statutes.

Time Period

The time period is one of the limitations, as a reason for hardship in the case where the documents sought for is not availed in the time specified. The remedy is the extension of time period within the purview of remedial measure.

The effect of Hardship is based on

Technicality of the structure,

Legality of the structure

Purpose for use of the structure,

Other specified and non-specified as per the discretion of the concern officer. The use of word specified or non-specified is for the reason to decide the hardship from the situation is the privilege of the officer concern, with the discretionary right and power either obtained by office or delegation. The effect of hardship on the situation is to be handled by an individual as per his/ her own discretion. The discretionary power has changed the set up of the organisation as the legislation has no meaning or is subsidiary to the applied one.

The zones are specified as per situation of the development and use of the buildings for specific purpose. E.g. the bye pass roads in any urban area or city like Rajkot or Mega City like Bombay or Ahmedabad or other such areas are to divert the traffic from one town to the other without entering the core city. The hardship is such that the traffic of core city is diverted to the bye pass or ring road so as to avail the facilities given on that road each and every type of development is permissible on the road because of the width of the road but the very purpose of the planned development is not served within short period of time.

The persons having vested interest and muscle create very often hardships and money power is utilised freely. The remedial measures for such a fabricated hardship are also fabricated.

3.7.3 PROS AND CONS OF THE LEGAL SYSTEM

Every coin has two sides, such that both are equal and opposite. Like wise a legal system also has pros and cons. In present legal system the set up is that it is not full proof The legislative measures are framed considering certain major aspect and other subsidiary aspects are not taken care of either with intention or by mistake or by negligence. Foresight is one of the

most essential virtues of a legislator or a rule maker if it is lacking at the time of framing the rules, creates negative effect of the law and becomes the cons of the said part.

The system has two sides one to form and other to obey. To obey is mandatory part of duty as citizen. In such cases when rules are framed the people who are self oriented according to the present legal set up will accept the rule in total with its pros and cons. In any set up there are three phases. Positive Negative and Neutral. The Neutrals are always balanced one where the question of disobey does not arise. The people, generally of middle class having their own limitations to plan their livelihood as well as life as per the circumstances mandatory rules are always obeyed and the pros and cons are rarely detected when rules are applied. E.g. the built up area ratio is based on size of the plot. The requirement of dwelling unit as far as built up area is concern is more but the available land area is limited. Thus requirement cannot be fulfilled on that plot of land. The second limitation is the budget of the construction. At the time of availing the housing loan the legality of the plot as well as construction along with all approvals along with completion certificate or occupation certificate is compulsory to be submitted to the financing agency. The applicable rules and regulations are obeyed by the people in such tight situation but on the other hand, the people who do not need any of the assistance do not follow the rules and regulations because those are harsh for them to obey or unaffordable to obey. So that there are two sets of people one who obeys the rules, as it is the other do not accept by violating them. In such cases it is impliedly understood that the rules, which are not acceptable by mass at will are not with positive effect.

3.7.3.1 MISLEADING APPROACH AND MEASURES

The legislative measures are of preventive, regulative administrative or remedial nature. The concept of prevention works for both the sides as to

the administration side as well as beneficiary side. The prevention is the concept, which normally persons who are prevented do not like as the restriction as well as prevention is something, which does not allow them to act as per their will. Prevention disallows person to do some thing at particular time and at particular place. It does mean that the same person is allowed to do the same thing at other place at other time. E.g. the vegetable market is an essential service to the community and the static place is fixed at certain locations as per the magnitude of the city or town or urban area in particular. To prevent the traffic congestion the hawkers are allowed to sit at some period of time during the day but are not allowed as static occupiers. Same as the roads are made one-way entry for traffic for certain hours.

Measures are taken in respect of for the width of the road where the plots are not of equal magnitude and frontage. The rules of margin for parking are required as per the length, width and number of vehicles to be parked. The width of the margin was decided on the magnitude of the plot rather than the width of the road¹⁶¹

3.7.3.2 RELEVANCE IN IMPLIED TERMINOLOGY.

The implied terminology is taken with two aspects in the subject matter as one is technically legal and the other is legally legal. E.g. In the formation of rules the term used for the directions of the plot of land is front, rear and sides. As the general situation of the plot where there is a road on front side only, it applies as general rule. The different plots have different situations having different magnitudes of size of the plots, different width of the road it abuts, The regulation is for ideal conditions and it is to be impliedly taken as the wider road to be the road in front. The term parking has different situations such as static parking and transitory parking. In no

¹⁶¹ GDCR-2004 12.4.1, p.70

case the parking is allowed as a static parking in the street as off street parking. E.g. the numbers of vehicles parked in the street as off street parking by the students of schools and coaching classes.

The legislative measures are taken by arbitrary ratio to decide the area to be allotted for parking. In the development rules there are two major situations to be handled by the authority are the static entities like buildings, open grounds, parks and water works and the other entity is dynamic or transitory entities such as people, vehicles and even animals on the road. The proper ratio can be worked out by survey of the situation, such a ratio is rarely observed. The implied terminology is defined as an express meaning for the term to be applied technically.

3.7.3.3 CONDITIONAL REGULATIVE MEASURES

Regulative measures also have technical and legal aspects at the time of formation of the rules. The conditions are related with if and but so the conditional regulative measures are relative measures.

If the building is for commercial purpose but due to one or other reason the regulation if permission is non granted showing the reasons, the permission is sought for the grantable purpose and there after the purpose is changed or the building is illegally use for the purpose for which the permission is not granted. Such buildings are tuition classes. In initial stage two or more students are admitted and slowly it terns to a full-flanged tuition class where the other ancillary requirements such as parking space and toilet facilities as well as the light and ventilation also lacks. The Conditional regulative are such that it works relatively and not independently.

3.7.3.4 PRE-CONDITIONAL PREVENTIVE MEASURES

The conditional measures are to be applied to the situation where and when the situation demands for the application of such measures which are counted and accounted to be preventive. E.g. the traffic pattern accepted at the time of festival fairs, during visit of some leaders or any other prominent personality. But these are the pre-conditional preventive measures for temporary period but there are many pre conditional preventive measures, which are of permanent nature like Control of Air and Water Pollution¹⁶²

3.7.3.5 DIFFICULTIES IN IMPLEMENTATION OF RULES

The set legislative measures for development control rules and regulations are framed by which common problems are taken care of those common problems are based on international ecology and climatology as they are taken as the model rules. Amendments, additions, alterations etc. are made according to the situation arise in the concern area. The tendency of human being is same everywhere in the country. The urban areas are facing the similar problems as far as development is concern. The economical condition of people is the prime base of such problems. The rules and regulations are framed are for people with common criteria and living pattern and family pattern as well as lack of education and lack of importance of self discipline and lack of understanding responsibility as citizens for the said regulations. The rules and regulations are complex and controversial at many places, which lead to defective interpretations.

Many places the rules are difficult to be accept as the compulsory or mandatory rules E.g. the width of stair case in individual commercial building where there is on shop with an administrative and account office at mezzanine or first floor is 1.50 mts. the concept of safety is taken care

¹⁶² GDCR 2004 section 23.

of but any thing in excess is poison which nobody likes to inhale as it harms the total process of planning where the economy of the land and materials are concern¹⁶³. The practicality of the rule and ideal condition has no relation as far as the economy and psychology is concern. The rules and regulations most of the time are not based on the actual necessary concept but is taken otherwise and the people most of the time if taken statistically 80% are not following or implementing the rules strictly because of the lack of practical approach to the problem related to the other aspects than mere technicality of the aspect.

3.7.3.6 INTERPRETATION OF LEGAL TERMINOLOGY

Laws require interpretation if they are to be applied to concrete cases, and once the myths, which obscure the nature of judicial processes are dispelled by realistic study at present, as open texture of law leaves a vast field for creative activity, which some call legislative. Neither in interpreting statues nor precedents is judges confined to the alternatives of blind arbitrary choice, or 'mechanical' deduction from rules with predetermined meaning. Very often their choice is guided by an assumption that the purpose of the rules, which they are interpreting is a reasonable one, so that the rules are not intended to work injustice or offend moral principles.

In case of the subject of research the terminology is interpreted expressly and also impliedly. The terminology is having its objective for interpretation. The term is like water in nature it takes shape of a vessel in which it is filled. In case of interpretation of terminology is not based only on its literary meaning but has to be interpreted keeping the overall situation in mind.

¹⁶³ GDCR 2004 section 17.12(1)

Though building by its nature is static the rules applied to form it are not static at a time. The legislative measures are to be taken are interpreted as per situation. Following are the terms, which create contradiction from interpreter to interpreter and from case to case.

(01) Mistake¹⁶⁴

Now to consider the legislative measure for the aforesaid wrongs the detailed interpretation is needed to be taken care of so as to define what does the mistake mean come to wrong conclusion about, misinterpret; form wrong opinion; erroneously take (person or thing) for another;(p.p.) In error, due to ill judged (you are mistaken; mistaken kindness)¹⁶⁵

Error or a blunder, mistaken opinion or act, have to be done that is first rate¹⁶⁶ The word mistake in sec 72 of the Indian Contract Act, includes a mistake of law, money paid under a mistake of law could therefore be recovered¹⁶⁷

The court may rectify a mistake in a written document. Mistake in contract is, an almost general rule, immaterial and inoperative; e.g. an error of judgement as to the value of a thing. Mistake, however, avoids a contract if as to the nature of the contract itself¹⁶⁸ The identity of the person contracted with, where this is material¹⁶⁹, the subject matter of the contract of the identity of the thing contracted for¹⁷⁰ the intention of the promise of one party known to the other party¹⁷¹

¹⁶⁴ Chapter 6, Law of Contract

¹⁶⁵ Oxford Dictionary P.503

¹⁶⁶ Judicial Dictionary p. 637

¹⁶⁷ Indian Steel wire product Ltd. Jamshedpur V. Supdt. of commercial taxes, Singbhum circle AIR 1957 Pat 112] ACLD:

¹⁶⁸ (Lewis v. Clay (1898) 77 L.T.653);

¹⁶⁹ Cundy v. Lindsay (1878) L.R. 3 App.cas 459);

¹⁷⁰ (Raffles v. Wichelhaus (1864) 2H & C. 906; Bell v. Lever Bros.[1932] A.C. 161);

¹⁷¹ (Webster v. Cecil 30 Beav.62)

Mistake is usually no defence in action of tort. In criminal law, mistake of law is no excuse, but mistake of fact (which if true would have justified the act) is a good defence¹⁷². Money paid under mistake of fact may be recovered as money had and received for the use of the person paying it¹⁷³. But money paid under mistake of law is not recoverable, except where paid to an officer of the court¹⁷⁴ or in case of fraud.

In definition or interpretation is mentioned as per the case laws and the other literary meaning in the dictionary but in the case of this research the subject matter is such that the technical word used by planner or designer or architect intentionally to misguide the scrutiniser of the plan at the time of checking the plan and overlooks the matter is interpreted as mistake instead of negligence of the officer.

The total of part measurements should be the total dimension of the plot is not properly shown as to misguide or mislead the person and is interpreted as mistake at the time of the submission.

(02) Misinterpretation

The term misinterpretation is a relative terminology and is taken where the meaning there of is taken adversely to what it should be. Interpretation means ascertainment of the intention of the executants of the document. 'It is common place that words in a statutory provision take their meaning from the context in which they are used.'¹⁷⁵

Technical term can be misinterpreted as the presentation of the area shown in the plan and the actual use of such as loft and mezzanine floor, projected weather shed and balcony. Staircase in the margin is misinterpreted in most of the commercial premises as the staircase

¹⁷² (R.v.Tolson (1889) 23 Q.B.D. 168) q

¹⁷³ (Jones v. Waring and Gillow [1926] A.C. 670).

¹⁷⁴ (Ex p. James (1874) 9 Ch.App. 614)

¹⁷⁵ Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740

leading to upper level shopping is always in marginal area and is always made from material, which can be removed easily at the time of any legal problem.

(03) Misrepresentation¹⁷⁶

Misrepresentation means a false statement, of fact, not of opinion. A transaction, such as sale, induced by a misrepresentation, of a material fact, is voidable, i.e. can be repudiated by the party deceived, if one repudiates it as soon as one discovers the falsity of statement, if it is possible to put the parties in the same position as before. No action will lie for damages for misrepresentation, unless the statement was either made fraudulently with knowledge of its falsity, or was a warranty.

Misrepresentation means and includes, the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

Any breach of duty, which without intent to deceive gains an advantage to the person committing it or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him.

Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing, which is the subject of the agreement.

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to a contract whose consent was so caused by fraud or misrepresentation, may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been, if the representations made had been, if the representation made had been true.

¹⁷⁶ Section 18, Indian Contract Act 1872

Exception: If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of S.17 of the Indian Contract Act the contract never the less, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

The explanation is given is A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable¹⁷⁷

There is difference between misrepresentation or innocent misstatement of fact and fraud or willful misstatement of fact.

“It must be borne in mind that in an action for setting aside a contract which has been obtained by misrepresentation, the plaintiff may succeed though the misrepresentation was innocent; but in an action for deceit, the representation to found the action must not be innocent, that is to say, it must be made either with the knowledge of its being false, or with a reckless disregard whether it is or is not true.”¹⁷⁸

“It is fraud in law, if a party makes representation which he knows to be false and injury ensues, although the motive from which the representations proceeded may not have been bad.”¹⁷⁹

“The principal difference between fraud and misrepresentation is that in one case, the person making suggestion does not believe it to be true and in the other, he believes it to be true, though in both the cases it is misstatement of fact which misleads the promisor.”¹⁸⁰

¹⁷⁷ Sec. 18 & 19 of Indian Contract Act.

¹⁷⁸ Said by Cotton, L.J.

¹⁷⁹ Per tindal C.J. 7 Bing 107

¹⁸⁰ Niaz Ahmad v. Parsottam Chandra, 53 All 374; AIR 1931 ALL 154.

Misrepresentation means statement or conduct, which conveys a false or wrong impression. A false or fraudulent misrepresentation is one made with knowledge of its falsehood, and intended to deceive. A negligent misrepresentation is one made with no reasonable grounds for believing it to be true. An innocent misrepresentation is one made with reasonable ground is, when a person has been induced to enter into a contract by misrepresentation, he, may in general either affirm the contract and insist on the misrepresentation being made good if that is possible; or (2) rescind the contract if it is still executory, and if all parties can be restored to their regional positions; or (3) bring an action for damages; or (4) rely upon the misrepresentation as a defence to an action on the contract .An innocent misrepresentation has no effect on the contract unless it produces mistake excluding true consent, or unless it amounts to a warranty or condition, or unless the contract is one in which good faith is especially required, such as contracts of insurance and family settlements. Specific performance will not be decreed if a definite untrue representation has been relied on. Based on this interpretation or meaning in the fraud

(04) Deviation

Deviation is departure. In marine insurance term indicating an alteration of course from that set down in the policy, a departure, which unless made for avoiding perils annuls the risk of the underwriters. In the case of rules and regulation the deviation is taken as the departure from the original sanction. The deviation is made or happens by certain compulsion.

Notwithstanding any thing stated in the regulations it shall be incumbent on every person whose plans have been approved to submit revised (amended) plans for any deviations he proposes to make during the course of construction of his building work and the procedure laid down for plans or other documents here to before shall apply to all such Revised (amended) plans.

The explanation is given, as this provision does not entitle the owner or his supervisor to make any deviations in contravention of the provision of the Act and these regulations.¹⁸¹

(05) Violation

Violation is an act, which is adverse to the legitimate act. E.g. the terms and conditions of the sanction letter in term of legal and technical aspect. In such case the term is applied to both the aspect of the rule. In case of a legitimate owner if constructs adverse to the sanctioned letter is technically and legally violating rule. There are three different situations in violation.

Technically permissible, legally not permissible: The second one is technically not permissible legally permissible and the third technically and legally both, not permissible.

(06) Irregularly regular

Irregularly regular is the act regular in all respect but the sequence of the process is irregular. The sequences or chain of evidences can prove such act.

(07) Regularly irregular

This term denotes the irregularity is getting repeated regularly. The same act is done or performed at every interval or every stage of progress. The terminology is applied to the time factor of the process of the progress report.

(08) Legally irregular

The nature of rules and regulations is composite. The terminology used for such a form of legislation is legal and technical. The priority or the importance given to legal part of it in all the respect as far as documents are concern the process followed is said to be legal in which the title deeds

¹⁸¹ GDCR 2004 p.. 37 Regulation 5.1 to 5.7

and all other supporting documents along with building plan where all the aspects of technical side is not taken care of. The minimum technical requirements of a sound construction according to National building Code or the regulations specified in the handbook. Any building legally irregular is more dangerous to people residing there in and for the people residing nearby at the time of natural calamities like floods, heavy rains and earthquake or windstorm. The said building can be rectified by additional supports or by strengthening the structure as a remedial measure.

(09) Illegally regular

The situation of such structure is having either a lack of document or a defect in title or the document are adverse to the requisite format but the structure so designed is technically sound and per the technical requirement specified by the National Building Code. Such a situation is harmful the person having the defective title but is not dangerous to the person residing therein or to the people near by. The situation is also rectifiable by executing a document its valid format or obtaining the documents from the relevant offices. In such a case the requirement is mandatory and there is no remedial measures for such irregularity.

3.8 FORMATION OF RULES

The process of the formation of rules is a complex and compound by nature the total process of formation of the rule is to survey the existing framework and consider all aspects, which are necessary to be observed. In the present situation the formation of rules are not exhaustive in any aspect because the formation is done by the person non practising but are representative of different fields like Government and semi government agencies and some from practising the profession. The people create the

main hurdle or problems are with vested interest in the political or administrative aspects.

3.8.1 PROCESS OF FORMATION OF RULES

As per present condition the historical buildings are the base and guide to form the development rules and regulations. The economics sociology and psychology of people play very important role in formation of the rules. The ecology is also an important part of the process. The standards are fixed by keeping the minimum area required and maximum limits along with the area for circulation. The standards fixed for human habitation are different for different set of people. The area which is economically backward area is for economically weaker section after due development in surrounding area is accounted as the area or locality of the developing class and the set of rule for such area is contradictory to the existing set of the rules as on the date is developed, E.g. Chawl building in Bombay and 25 sqmt plot area to the people with below poverty line or with Low Income Group in state of Gujarat in the Urban Area.

In present set up of the legal system that is enforced to stream line the process of Implementation has got different aims and objectives. The need of legal system is based on psychological behaviour of a person or a mass. When legislators propose certain objectives are considered and based on those objectives legislation is enacted. All the laws do not order people to do or not to do things. It is not misleading so to classify laws, which confer powers on private individuals and group of people. The subject matter of research is a part of the system code known as National Building Code 2005 is for the buildings in every part of the Country and each type of building for any purpose or the type. The said code contains PART 3 Development Control Rules and general buildings requirement.¹⁸²

¹⁸² NBC 2005 appendix B

Technical aspects are to be taken care of while framing such rules and along with the Guidelines of State Government for Urban Development and other Statutes such as Transfer of Property Act, Stamp Act, Easement Act, State Town Planning Act, other standards prescribed by Indian Standard Institute known as ISI, Factory Act, Cinema Act and Other Acts specified in appendix B.

3.8.2 OBJECTIVE OF LAW

The objective of this research matter is to find out and suggest preventive measures for the acts or situations, which are adverse to the public interest. The proverb prevention is better than cure is the base. The tendency of human nature is unpredictable as the clear intention, mall intention and clean intention is concern. It is very much obvious that any behaviour of human being is directly proportionate to the increasing desire of the person. No matter the desire is obvious, natural or created. To fulfil such desire the actions and reactions are taking place. The other aspect of desire is such that the resultant acts when take place becomes dangerous to other person. The sound behaviour is again proportionate to the moral of the people or a person or a group of persons. The objective of Law is to control the situation at any point of time. Situation beyond control is the base for amendments in the existing set of Rules. The situation under control is the base for the Rules accounted to be proper or justified. The situation at par at certain point and adverse at other point of time is to be reviewed for improvement for both the aspect administration and technicality and legality of the problem.

3.8.3 POSSIBILITIES OF HARSHIPS

Rules are formed and framed for implementation. Rules after its formation needs justification for their Implementation and implications. The principle

of liability is one of the principles, which signifies the responsibility of the parties on both the sides. In a case when the rule is applied, it is liability of the administrator to observe whether the rule is applied and followed or not and it is responsibility of a person who develops the property within the limits of the rules etc. Administration is authority to implement such set of rules. There are two forms of liability. Civil and Criminal. In the subject matter of this research most of the time civil liability is accounted and the remedy is also of civil in nature.

One of the sub principles is Duties of imperfect obligation and is that, whenever law creates a duty, it also enforces the fulfillment of such duty. Duties of imperfect obligation where the rule is enforced by the authority not to allow any commercial premises in certain residential area and if the residential premises is used as partially commercial the authority cannot take any action until the complaint is made by the persons getting disturbed by such act.

Duty incapable of specific performance due to its intrinsic nature: In a market place the hawkers are not allowed to sit on the roadsides for their business as they obstruct the traffic particularly at peak hours. They are not allowed during non-peak hours, but if they do so, at the most some fine can be charged for breaking the rule.

The levy of the impact fees is the example of such performance where the rules and regulations of the parking space, FSI and other purposes are not followed and the liability of additional benefit is charged for.

Intention is another principle ingredient to examine the rules. Intention is taken as a state of mind while doing certain act. An eviction of rules can be with intention to do wrong act. The rules are also examined in this context. E.g. the parking space is converted into shop and sold at higher rate or parking place is utilised for other purpose than specified and parking is done on road. This creates many severe problems. The intention is again

correlated with the negligence on the other part. The act with bad intention or mal intention can take place only when the counter part is not alert or negligent.

The principle of hardship as an ingredient can be fixed or applied when an excuse is sought for. Anything adverse to rules and regulations can be taken as a case of hardship. In such case no rule can be foolproof if principle of hardship is applied because there is no specific definition of hardship. Wherever the rule is not applicable by one or the other reason the weapon of hardship is used. As it is found that the ingredient of hardship is an inevitable nuisance and is legally illegal implication.

3.8.4 FINDING AND IN FALL IN JUDICIAL DECISION

When legislative measures are examined by keeping certain doctrine or principle as base, the charge can be formed for the remedial approach. In the case of certain adverse acts the reason behind such acts and the intention with which the adverse act is done are to be examined.

In recent time only illegal construction has become issue in the major parts of the Country and specifically in Delhi. Residential premises occupied by political leaders like Prime Minister and Party Leaders are illegal.¹⁸³ The buildings exist since long and are still there but such issues have come forward in recent time. Special legislative measures are going to be enacted to prove them or to establish them legal. The findings are based on the set of the rules and regulations of the date when the adverse act is noticed or found out by the concern authority.

¹⁸³ Appendix C New paper scanned dated 22/10/2005 and Appendix I Translated in English

In medium size city like Rajkot has such findings at certain interval where the buildings constructed are found to be illegal and irregular such as the encroachment on the public streets or common plots. The building demolition squad is engaged to clear the land so encroached land. The negligence on the part of the administration of the authority is also there because the building is such an entity which can not be constructed overnight and if it so it is a visible entity which can be noticed by the people residing in that area and the persons passing by.

The in fall in judicial decision is based on the facts and findings of the case at the time of its notice and in case if it is becoming obstructions to the people or the development authority. The person while committing such act seeks justice, as he was not instructed at the time of construction. This makes the case more complicated to fix the responsibility and liability of the persons involved in the case.

In case of such complications or the mal intention of the persons involved in the act is found or the officers of the authority found guilty the judicial decision is affected by such in fall.¹⁸⁴

3.8.5 UNCERTAINTY IN THE RULES AND RECOGNITION

Surely, a law is really law is a question. Others reply with the insistence that as the base of legal systems there is something which is not law which is 'pre legal' 'mere legal' 'It is just 'political fact' This uneasiness is a sure sign that the categories used for the description of this most important feature in any system of law are crude.

¹⁸⁴ Appendix C News in daily News papers (Scanned)

The case for calling the rule of recognition law is that the rule providing criteria for the system. According to the theory criticised, the foundation of the legal system consist of the situation in which the majority of social group habitually obey the orders consequences of such reaction. The classification of rules, the set identified as statute order or precedent, which has taken the form of rule.

The legislative measures for implication of Development Control Rules and Regulations for building in urban areas of India have given birth to ample of new questions related to the area in terms of land and its status. State, city, town, agricultural or non agricultural, The sub classification of the area of the state is based on the purpose such as industrial, education, recreational, residential and such other specific purposes.

Concerning location of the area under development, the people feel as to why measure is taken. The basis on which, the implementation of such measures depends upon. The reliability of such action and the rules when is framed with some malicious intention or vested interest of a particular person or a group of persons or to rectify the mistake or adverse action of the politician. The Rule does not get recognition but the implementation of such rule is not accepted by mass and opposed by the mass and the uncertainty is created by its conceptions to implementation.

3.9 LAW AND MORAL

The formation of any new law or amendment in the existing legislation is backed by lack of morals. Legal system is the check in this way on the immoral standard of the people or society. The people residing in a particular place have to accept and obey the rules and regulations of the place. The acceptance of law as moral duty and law enforced as duty are

different. One is backed by self-realization and the other is backed by penalty and punishment.

3.9.1 NATURE OF LAW AND LEGAL POSITIVISM

The nature of law is always based on natural law. Whole mankind accepts the natural law. There are many different types of relations between law and morals. There is nothing, which can be profitably singled out for study as the relation between them. It is important to distinguish some of the many different things, which may be meant by the assertion or denial that law and morals are related.

Some times what is asserted is a kind of connection which few if any have ever denied; but its indisputable existence may be wrongly accepted as assigned to some more doubtful connection, or even mistaken for it. Thus it can not seriously be disputed that the development of law, at all times and places, has in fact been profoundly influenced both by the conventional morality and ideals of particular social groups and also by forms of enlightened moral criticism urged by individuals, whose moral horizon has transcended the morality currently accepted. But it is possible to take this truth illicitly, as a warrant for a different proposition: namely that a legal system must exhibit some specific conformity with morality or justice, or must rest on a widely diffused conviction that there is a moral obligation to obey it. Again, though this proposition may, in some sense, be true, it does not follow from it that the criteria of legal validity of particular laws used in a legal system must include, tacitly if not explicitly, a reference to morality or justice.

The Legal Positivism to mean the simple contention that it is in no sense a necessary truth that laws reproduce or satisfy certain demands of morality, though in fact they have often done so. But just because of those who

have taken this view have either been silent or differed very much concerning the nature of morality, it is necessary to consider two very different forms in which Legal Positivism has been rejected.

One of these is expressed more clearly in the classical theories of Natural Law: that there are certain principles of human conduct, awaiting discovery by human reason, with which manmade law must conform if it is to be valid. The other takes a different, less rationalist view of morality and offers a different account of the ways in which legal validity is connected with moral value.

From Plato to the present day which is dedicated to the assertion or to the denial, of the proposition that the ways in which men ought to behave may be discovered by reasoning, The disputants on one side seem to say to those on other, 'You are blind if you cannot see this' only to receive in reply, 'You have been dreaming' this is so, because the claim that there are true principles of right conduct, rationally discoverable, has not usually been advanced as a separate doctrine but was originally presented and for long defended, as part of a general conception of nature, inanimate and living. This view is, in many ways, antithetic to the general conception of nature, which constitutes the framework of modern secular thought.

The modern critics have thought that the claim that laws of proper conduct may be discovered by human reason rested on a simple ambiguity of the word 'law' and that when this ambiguity was exposed Natural Law received its deathblow. It is in this way that John Stuart Mill dealt with Montesquieu, who in the first chapter of the *Esprit des Lois* naively inquires why it is that, while inanimate things such as the stars and also animals obey 'the law of their nature' man does not do so but falls into sin. This mill thought, revealed the perennial confusion between laws, which

formulate the course or regularities of nature, and laws, which require men to behave in certain ways.¹⁸⁵

The former can be discovered by observation and reasoning, may be called 'descriptive' and it is for the scientist thus to discover them; the latter can not be established, for they are statements or descriptions of facts, but are 'prescriptions' or demands that men shall behave in certain ways. The answer therefore to Montesquieu question is simple: prescriptive laws may be broken and yet remains laws, because that merely means that human beings do not do what they are told to do; but it is meaningless to say of the laws of nature, discovered by science, either that they can or cannot be broken.

If the stars behave in ways contrary to the scientific laws, which purport to describe their regular movements, these are not broken but they lose their title to be called 'laws' and must be reformulated. To these differences in the sense of 'law' there correspond systematic differences in the associated vocabulary of words like 'must', 'bound to', 'ought', and 'should'. So, on this view, belief in Natural Law is reducible to a very simple fallacy: a failure to perceive the very different senses which those law-impregnated words can bear. It is as if the believer had failed to perceive the very different meaning of such words in use of bound to as order and bound to as the nature.

Natural law has however not always been associated with belief in a Divine Governor or Lawgiver of the universe, and even where it has been, its characteristics tenets have not been logically dependent on that belief.¹⁸⁶

3.9.2 MINIMUM CONTENT OF NATURAL LAW

¹⁸⁵ The Concept of Law p. 183

¹⁸⁶ The Concept of Law p.184

The Doctrine of Natural Law is part of an older conception of nature in which the observable world is not merely scene of regularities and knowledge of nature is not merely knowledge of them. In considering the simple truth, which is set in the system and its relation with law and morals. Live and let live is the first and last principle of Natural Law. In the subject matter of this research the prime importance is given to Natural Law and the basic concept of Natural law is related to Moral of the person and the integrity of moral standard of people as whole and individual as a person. The lack of morality leads to the formation of man-made law. This is the process, which always swings between trial and error methods. One solution to a particular problem leads to more problems due to lack of morality. The definition of morality is to be understood as to be true to thyself.

3.9.3 LEGAL VALIDITY AND MORAL VALUE

The definition of legal validity is to be examined. The legal validity is validity to any facts figures or document given by law or any document executed is taken as a legally valid document and the content of the document. The validity is also taken as the legal term execution.¹⁸⁷

The process of building construction is based on documentation at every stage of work. The evidences are in the form of documents. The word execution as used in sec. 98, Proviso, Evidence Act in the case of a mortgage bond means and includes not only signature of the executants but the whole series of acts or formalities which are necessary to give the document validity as a mortgage deed like attestation etc.¹⁸⁸

¹⁸⁷ Judicial Dictionary p. 980

¹⁸⁸ Per Hassan J, Kali Charan V Surajbali, 1940 OWN 1077 AIR 1941 Oudh 89

Execution of Document¹⁸⁹ It was held that the word "execution" consist in signing a document written out, read over and understood, and does not consist of merely signing a blank paper. The same view was in other case also.¹⁹⁰

Validity is the word has all different factors as far as the content of the document, the time as and when it was executed and the truth of the content of facts and figures and the signature.

Examination of legal implication of rules and regulations is the most important part and any legal research. Title deeds and relevant documents are most important when an immovable property is concern. The legal validity of title depends on documents or chain of the documents. The bond writer or the advocate prepares documents. The owner of the property gives the content and facts and figures at the time of preparation of the document or the technical consultant, if appointed, has to check the dimensions at the site and the direction of the plot along with the width of the road which is a part of the valid document, having exact situation with plot no., revenue or city survey no., ward number and name of village or town. The final plot No and Original plot number along with Town planning Scheme Number are also to be included or checked if it is included to be more particular if any Public Building is situated is better to be given as land mark. This information what ever is included are sufficient as far as the number of data is required but the other most important aspect of any document is the moral binding or moral value. The facts are included in document should be true. A clause in each and every document where the moral binding is concern the following clause is included in the Document prepared. " The information furnished above (In the document concern) is true and correct in the best of my knowledge and belief. The moral value is a very wide aspect of legislation but there are other loopholes where moral

¹⁸⁹ Shaikh Ebadat Ali v. Mohammad Farred 35 IC 56: AIR 1916 Pat.206

¹⁹⁰ AIR 1934 Lah 293 and Prabhudayal v. Tularam AIR 1922 All 401 (2)

value is depressed by the physical evidential aspects. The evidences which do not have truth and is fabricated does not have moral value but do have legal validity till they are questioned or opposed.

3.10 JUSTICE AND MORALITY WITH RESPECT TO LEGISLATIVE MEASURE

Legislative measures taken, as measures to impart justice are also necessary to be with moral binding and moral value. The legislative procedure is based on documentary proof and evidences and based on such facts and figures the justice is imparted.

In legal procedure evidences are the prime matters to impart justice but the merits are not given on moral values and natural law. E.g. in the urban Land ceiling Act which is repealed as on the day but the content of Act was so contradictory where by fabricating the documents and evidences the person holding excess land could save their rights by submitting necessary forms for the low income group schemes, housing colonies and other such proposed planning. Landowner, who did not do such illegal fabrication of documents and false evidences in due course of time could not save their rights to hold the land and had to surrender land to Government for such schemes.

Morality is identified under the heads of importance, immunity from deliberate change, voluntary character of moral offences, and form of moral pressure. These four features are always and constantly found in those principles, rules and standard of conduct, which are most commonly accounted as 'moral'. The nature of offence is inevitable. Due to certain circumstances At the time of giving justice the implementation legislative measure should be taken care of as hardship may be the reason for which the offence has taken place.

3.10.1 PRICIPLE OF JUSTICE

The symbol of justice is a lady with balance in her hand with closed eyes. In the procedure of formation of legislative measures the ways and means to impart justice is also framed and formed to simplify the process of imparting justices. The Rules and regulations are so formed and framed acceptable to both the parties the Administrators and the landowner or developers or authorised agent of the owner. It indicates that in no case a person has to suffer knowingly or unknowingly and in no case the judgement should favour intentionally to either of the parties. The terms just and unjust are relative to the situation of the matter, which takes shape. Principle of justice is has a very long lasting effect on the base as the subject matter is relative phenomenon where the object is static but the parties are affected where the question is of right, duty power and privileges are concern.

3.10.2 MORAL AND LEGAL OBLIGATION

Legislative measures are formed and framed with different objectives. Such measures are framed for the welfare of the people residing in urban area for which the rules and regulations are made. The framers have different duties and liabilities while framing and forming such set of rules. In law each and every word has got its importance and meaning. No word in the form of a statement or rule or regulation is without meaning. The meaning in this context is not only literarily meaning or the meaning taken from the dictionary but the meaning means the purpose hidden behind the word so used or action so taken. Legal procedure or law itself is with objective based on morality. The meaning of moral in the purview of law or legislation is to be understood first.

Justice constitutes one segment of morality primarily concern not with individual conduct but with the ways in which classes of individuals are treated. It is this, which gives justice its special relevance in the criticism of law and of other public or social institutions. It is the most public and most legal of the virtues. But principles of justice do not exhaust the idea of morality; and not all criticism of law made on moral grounds is made in the name of justice. Laws may be condemned as morally bad simply because they require men to do particular actions which morality forbids individuals to do, or because they require men to abstain from doing those which are morally obligatory.

It is therefore necessary to characterise in general terms, those principles, rules and standards relating to the conduct of individuals which belong to morality and make conduct morally obligatory. Two related difficulties are confronted here. The first word is morality and the all other associated or nearly synonymous terms like ethics, have their own considerable area of vagueness or 'open texture'. There are certain forms of principles of rule, which some would rank as moral and which other would not. Secondly, even where there is agreement on this point and certain rules or principles are accepted as indisputably belonging to morality, there may still be great philosophical disagreement as to their status or relation to the rest of human knowledge and experience.

3.10.3 MORAL IDEALS

Moral obligation and duty are the bedrock of social morality but they are not the whole. Before examining other forms one has to consider an objection to the way in which one has characterised moral obligation. The moral ideals are with or with out direct reference to any necessary content which rule or standards must have in order to be moral nor even to any purpose which they must serve in social life One always insists in all moral

code there will be found some form of prohibition or restriction of the use of violence, to persons or things, and requirements of truthfulness, fair dealing, and respect for promises and declarations if done in front of Judge or any other legal officials. These things, granted only certain very obvious truism about human nature and character of the physical world, can be seen in fact to be essential if human beings are to live continuously together in close proximity and it therefore would be extraordinary if rules are providing for them are not everywhere endowed with moral importance and status which is described. It seems clear that the sacrifice of personal interest which such rules demand is the price which must be paid in a world such as ours for living with others, and protection they afford is the minimum which, for beings as human man kind.

The moral ideals are accounted as the work in pre development phase, development phase and post development phase is to be considered. At present the practice is altogether different in many cases if statistical data is collected more than 75% buildings will be found having different results. At the time of pre development phase the design is prepared as per the prevailing rules and regulations but the deviation or amendments are already planned for the next phase i.e. development phase. The basic structure as foundation or other constructional changes, which are designed for the third as post development stage, is incorporated and after completion the deviation and amendments are done. So the building on paper is as per the rules and regulation but at site the picture is altogether different. The morality is either nowhere or is lowered down and in real sense the trespass, encroachment or adverse to the Moral ideals. The Moral Ideal means the structure should be similar at any period of time according to the rules and regulations i.e. during pre development stage, during development stage and afterwards at post development stage. The administration for such supervision as well as follow up of the developmental activities should be strong and capable of controlling the immoral activities as well as illegal developments.

3.10.4 SOCIAL CRITICISM

One has to think about the need to take precautions against the infringement of law and disobey the orders. The social criticism is one of the examinations of the working of system and its success. The society is incorporated on moral values. Any reforms and amendments or alterations or additions are suggested or criticise by the society. In this case the society does not mean a co-operative society as a legal entity but society as a collective group of alight people who are interested in upliftment of human race and people in general. No society can be based on immoral ideals or objectives for a long time. The society is a group of individuals where all types of people are residing having negative approach to the positive objectives and certain group of persons having positive approach to the positive objective. The legislative measures are the exercise of two set of people one is the administrative and other is ruling party or representatives of people or society still the other set of people who are not directly concern with the problems but are the indirectly attached to the process of working with the local authority and the administrative people thereof are N.G.O. and the associations of professionals like Indian Institute of Architects, Council of Architecture, Institution of Engineers and other local association of structural engineers, Builders' Association, Developers' Organisations, Legal Practitioners, and other licence holders association like surveyors, plan makers, and alike. The society does mean the group of such associations and persons who are affected by the act of administration. The suggestions given by them and the opposition made by them are accounted to be the social criticism. In case of present research the criticism is not backed by moral values of the human existence but is backed by the personal motives and personal existence and the outcome of the self-centered officials, administrators and developers as well as builders are acting adverse to legal aspect of the process and the collective social criticism is taking place on the page of

news paper as the reporting by the reporters as persons representative of the society.¹⁹¹

The final outcome of social criticism is that the law is obeyed and as if no need to take the precautions but is always related to human psychology and human tendency and the inter-relationship of person with society and the inner self consciousness of the person as well as the view towards the justification of the interpretation of the matter under consideration. The factors, which make a person to break the rules or regulation, should be sought. To obtain more than maximum out of the limited resources in case of Land is the reason to disobey the rules. It is a question, can a person harm the other person by taking more than maximum from his or her own resources.

How the authority or the rule maker are loosing in terms of money, by getting less revenue. In terms of power by not able to administer it as the discretionary power depends upon the ownership of the property, to establish the discretionary power depends upon the ownership of the property, to establish the right the documentary proof is needed and right is a legal entity. To get the right established all the legal procedure is to be followed and to get one thing it is obvious to pay consideration as the cost or value of the right and the binding comes to follow the rules of the region. In terms of ethics by not observing the principle of equity and equality as the relative friends of officers and politician are getting more benefit than the normal citizen in terms of time by getting the sanction early or on the spot, more area than available in terms of permissible F.S.I. and purpose orientation than permissible cause and in terms of principle the monetary benefit by acquiring right to be corrupt as there is very rare chances to be checked by the vigilance officers unless and until the aggrieved person complains.

¹⁹¹ Appendix I -News paper reference dated 25.07.2006

When a right is established it becomes compulsory / obligatory to follow the rules & regulations & obey the order. Now deviation will make it a civil offence and no discretion work to get more than permitted and nothing different than allowed within purview of the sanctioning authority and anything adverse to it as is a visible entity the social criticism works to streamline the procedural aspect of the sanctioning authority.

Buildings are the visible entity and cannot be constructed overnight as it needs some time for its technical stability. Due to negligence of the authority such illegal constructions take place and than becomes issue. People unaware of legal procedure or people who knowingly neglects the legality suffers and becomes the victims of the unfair act byf either avoiding the importance of legality or neglecting their own interest and loose their shelter or work place.¹⁹² Even in the Metro City and National Capital i.e. New and Old Delhi. The other cities like Bombay, Surat, Ahmedabad, Baroda, and other State Capitals. The adverse act takes place everywhere is similar in nature and the tendency of people in any Urban part of India is similar or identical in implementation so the Moral ideals along with social criticism in positive way as a continuous process is inevitable for the legislative measure to be implemented successfully. The media like news paper, technical and legal periodicals and television reporting, documentary films and Radio talk by eminent personality like Architects, town planners and other such dignitaries are the best source of social criticism.

¹⁹² Appendix C Paper news cutting dated 18.01.2006

CHAPTER – 4 ADMINISTRATIVE AND ADJUDICATORY MACHINERY FOR IMPLIMENTATION OF DEVELOPMENT RULES AND REGULATIONS

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CHAPTER – 4 ADMINISTRATIVE AND ADJUDICATORY MACHINERY FOR IMPLIMENTATION OF DEVELOPMENT RULES AND REGULATIONS

4.1 INTRODUCTION

The administrative machinery is taken as the local authority or sanctioning authority having sound knowledge of technical and legal terminology. The same is the case with ad judicatory machinery to get the rules implemented in each case without controversy to the interpretation. The mere efficient administration is not the solution, the implementation is the other side of the coin, and one follows the other. They are complimentary and supplementary to each other. The smooth running of the institution is must except in the case of hardships.

Introduction to Concept

The framework of rules and regulations is done by the people who are counted or accounted to be the expert of the subject. The rule when framed comes under the legislative measures. In every continuous process three basic activities take place. The first one is birth or conception that is done by legislators or the rule makers. The second one is nourishment, which is the duty of administrators and adjudicators. The third one keeping check on the process to keep on track is the judicial trend.

The administration in the present situation is based on academic qualifications and that concept is not baseless but is valueless. The rules and regulations concerning administration are meant always be for the ideal situation and circumstances. The rules and regulations are framed not for academic purpose but are for its practical use. The concept of

formation is to keep environment in proper condition. Natural justice is as one of the essential factors. The rules and regulations should be alike and identical for the similar type or people of same category of an area. The right to own property is basic fundamental right but to enjoy that right as per the rules and regulations of an area where it prevails should be mandatory or obligatory as the enjoyment of the right has much to do with other legal aspects of further enjoyment. To dwell there in or to use as the build environment as per individuals requirement and needs.

As per presumption of said task framework of rules and regulations should keep practicality in consideration. If practical experience is lacking, the administration cannot run properly. Administrator or the highest authority of institution requires or needs the experienced personals.

In India, the Legislators are elected by the people. There is no criterion to elect a person who can frame the rules, as the persons sitting in assembly or parliament many times are unaware of the very reason behind the problem. They are supposed to ask themselves a question as to what for the rules and regulations are framed. The process, as undertaken by the legislators is one that in identical situation if rules are different will creates such discrepancies. The process of fixing administrative and ad judicatory machinery is not a simple framework with a flowchart but has to consider many more aspects.

The administration is key process to get the requisite result of any task. The implementation of the bare Acts or statutes is a legal process but implementation of Development control Rules and Regulation is a complex as well as compound process. In this chapter the researcher has tried to give the information of existing machineries and way of their working. The existing machinery has got its plus and minus points.

4.2 CONCEPT OF ADMINISTRATION

Administration is the way of interpretation in relative context. To understand and justify the concept its literal meaning is checked.

Administration means administering the ministry, the government administer is to manage affairs, dispense, supply, furnish, and give justice, sacraments to persons.¹⁹³

The simple meaning is to manage an affair, to simplify the process of implementing the Development Control Rules Regulations and byelaws. The meaning thereof does not clarify the concept of administration as its process depends upon the type of the work to be done in the department and the work to be taken from the officers and staff of the department.

The clear concept is acceptable by the administrator if and only if the process is simple or less complicated in terms of applications and interpretation. Interpretation of terms or relative terms should be in accordance with the context. In present situation, administration works as per legislative guidelines.

The appointment of City Engineers, U/s. 45 U/s. 46 powers and duties of City Engineer and U/s. 50 the conditions of service of statutory officers is stated. Section 45 is not very clear as to the qualifications of the City Engineer. It states that the Corporation shall from time to time, appoint fit persons to be City Engineer. The appointment of such a technical person shall be confirmed after approval form State Government. The term fit is not clear and ambiguous as far as the qualifications and experience are concern. The term “fit” gives discretionary power to the authority to interpret the meaning of term “fit”. The term “fit” can be taken in different contexts.¹⁹⁴

¹⁹³ Oxford Dictionary p. 11

¹⁹⁴ The Bombay Provincial Municipal Corporation Act 1949 Sec. 45 p. 54

4.2.1 IN HOUSE ADMINISTRATION

Introduction

In House Administration is a set up of machinery to handle all affairs as bureaucrats having all different discipline in the set up.

- (a) Village Panchayat
- (b) Nagar Panchayat
- (c) NagarPalika
- (d) Municipal Corporation
- (e) Metropolitan Municipal Corporation
- (f) Urban Development Authority
- (g) Area Development Authority
- (h) Development Authority

As LOCAL AUTHORITIES: The above mentioned all institutions are having different duties to perform but the administration which is related to the building industry as to form Development Control Rules and Regulation to prevent and regulate the development as per the proposed development plan. The categories are allotted or determined by the State Government for each settlement or town or city as the case may be.

In house administration is having two sets of people having same objective but different duties to perform. As far as formation is concern, one set of people is the representative of the public who are suppose to frame the rules and regulation or by laws and other to make follow up of the rules and regulations.

(a) Village Panchayat:

The subject matter for the research is the set up for the urban area. Urban area is defined under the Urban Land (Ceiling and Regulation) Act 1976. Some of the Village Panchayats come under the defined set up. The formation of one set of people who are the representative of inhabitants of village is village president who is normally known, as Sarpanch and other members will be as per the population of the village. The elected persons

form their sub committees for different objectives. One of the objectives is building permission and construction committee. In most of cases, the members of such committees are neither qualified nor competent.

As the building construction techniques and methods of implementation is different from area to area but the ecological minimum standards are similar or having the National Building Code 2005¹⁹⁵ Implementation should be as per the Code but implementation and the follow up is totally ignored or avoided because of lack of competency and man power. Most of the time the political pressure or indulgences are the factors for ignorance and negligence. The development of industrial purpose and other development like clubhouses for recreation or the party plot for entertainment takes place, as there are no restriction on use of land and the technical aspect of the building construction methods are involved.

All the villages are not included in urban area. The Urban Land (Ceiling and Regulation) Act 1976 had ceiling limit for the urban area and the villages covered under that limit were counted to be urban area. Neatly village, which is not included in any of the city area but is adjoining to the city area and the development is of the similar nature as it is in city or town the village land is treated as urban land for the purpose of regulation and such treatment is good for the amalgamation or merger of the village in the city as the part of city under municipal corporation or such higher set up.

Normally the local authority of village panchayat does not have any administrative machinery competent enough to scrutinise the case and administer accordingly. There is criterion a secretary who is popularly known as Talati cum Mantri is appointed by the government as per the revenue code. The procedure followed is to grant permission without any of the technical or legal scrutiny. Or in some cases if the area is under government ownership is taken care of such a procedure by regional town planning office as far as the land use is concern.

¹⁹⁵ NBC 2005 introduction to the code appendix A

(b) Nagar Panchayat:

Nagar panchayat is a local self-government body with welfare of the people residing in the town having population of 10000 as per govt. gazette. The procedure of approval is similar to village panchayat but one qualified person is appointed so as to look into the matter. Very often competency is challenged as the legal part of knowledge and information is lacking. The administrative officer has to play the role of technical person without having technical qualification as the chief officer of the panchayat may be or may not be the technical person. In such a set up, some technical persons are recruited but having lower qualification such as diploma in civil engineering or a civil draftsman who can read the technical drawings but cannot interpret as they are presented. The office is good for keeping record of the documents such as title deeds and proposed plan but cannot do anything more than a record keeper.

(c) Nagarpalika:

Nagarpalika is popularly known as borough municipality which is counted and accounted as urban area as the population of the town when exceeds 50000¹⁹⁶ as per the Gujarat Government Act. The borough municipality is having larger administrative set up than the nagar panchayat. The technical as well as the legal set up is recruited by the local authority but the Rules and Regulations are not followed strictly as the man power according to the duty is concern, is less. The technical staff has to see the infra structural development as well as the individual residential commercial and other development in the same vicinity. The subject matter of research is having a wide canvas to draw a picture by projecting the rate of development of the villages; towns and cities Many Borough municipalities have taken status of the Municipal Corporation within the time frame of the research work. The haphazard development has already taken place in the cities like Junagadh, and Anand in Gujarat, which have achieved the status of the Municipal Corporation. Where the development

¹⁹⁶ Local Act. Volume XI and XII Gujarat Municipalities Act 1963 Sec 4, 4A, 5

cannot be regularised or rectified by any means excepting demolishing the part which is not regular after due development.

(d) Municipal Corporation:

Municipal Corporation is accounted to be the full flange urban area as it becomes the area under ceiling limits. During the existence of the Urban Land (Ceiling and Regulation Act) 1976 was repealed in the year 2002 but the basic developmental criteria as was established is still in existence. The excess land under ceiling limit got developed according to the guideline given in the said Act by the Parliament and was to be adopted by the State Government. The Town Planning Act came in to existence in the year 1976 and there after Urban Development Authority came into existence. The Bombay Provincial Municipal Corporations Act came into existence in 1949 and the Western Zone of India followed the same. Gujarat was separated from Maharashtra in the year 1961. The administrative set up was accepted as per the said Act but after formation of Urban Development Authority, Corporation was considered under such development authority for limited purposes. The set of rules and regulation were not common for the purpose of development. There was all-together a different set up for administration for technical as well as legal department.

In Andhra Pradesh Hyderabad Development Authority came in to existence under Sec. 59 of The Andhra Pradesh Urban Areas (Development) Act 1975 come into force on 11.08.1981 u/s 1.1 to 1.3¹⁹⁷

(e) Metropolitan Municipal Corporation:

The Municipal Corporation is an institution with higher authority along with a wider set up the administration. It includes all the aspects of public welfare work including primary education, water supply, market places, wholesale and retail glossary market, recreational places like parks, gardens, swimming pools play grounds, sport complexes, primary health

¹⁹⁷ The Bhagyamnagar Urban Development Authority Zoning Regulation 1981

centres and housing for economical weaker section and lower income group. The Bombay Provincial Municipal Corporations Act 1949, which is amended 56 times¹⁹⁸ is an Act ever changing so as to up grade the public services in general and for the specific objective in particular. It is necessary to high light the status of the institution as thickly populated urban area having people from different walks of life create a number of problems; the people migrated from villages for work. And stay back. The other set of people are transitory in nature are the students coming from other place to study who will leave the place as soon as their study gets over and other set will come. The people come for service during daytime from near by places and return home in evening. It is population, which is the basic ingredient of an institution to give or change its status. It is population, which is the root cause of any development in a city. To serve bigger mass the administration should also match the requirement of need of the people.

The administrative set up with the set of people for work of specific type like Development Control Rules and Regulations for buildings are part of the whole Act. As specified in the said Act the Byelaws are having very limited control over the built environment than the Development Control rules and regulations.

(f) Urban Development Authority:

The Urban development authorities were established in the State under Urban Land (Ceiling & Regulation) Act 1976. Though the Act is repealed, the institution still remains by keeping its set up for the developmental work in restrictive perspective as to form and frame the development control rules and regulation for the limited purpose with limited liability of future planning for the villages under the Authority.

The Constitution of Urban Development Authority is done where the State Government is of opinion that the object of proper development and redevelopment of any urban area or group of urban areas in the State

¹⁹⁸ Bombay Provincial Municipal Corporation Act 1949 P. 2 1985 edition.

together with such adjacent areas may be considered necessary, whether covered under a development area already declared as such under Sec. 3 or not will be best served by entrusting the work of development or development there of to a special authority instead of to an area development authority, the State Government by notification, declare such area to be an urban development area and constitute an authority for such area to be called the urban development authority of that area and there upon all the powers and functions of an area development authority and relating to the development and redevelopment of a development area under this Act shall, in relation to such Urban Development Area, be exercised and performed by such urban development authority and not by any other authority¹⁹⁹.

(g) Area Development Authority:

The Area development authority was constituted after declaration of a development area under sec. 3, the State Government shall, by notification, constitute an authority for such area to be called the Area Development Authority of that development area, for the purpose of carrying out the functions assigned to an area development authority under this Act.

Every area development authority constituted under sub sec. (1) is a body corporate by the name aforesaid, having perpetual succession and common seal with power to acquire, hold and dispose of the property both movable and immovable, and to contract and by the said name sue and be sued.²⁰⁰

(h) Development Authority:

The Development Authority is a local body having its existence as an independent institution, which works as the agency to develop a certain

¹⁹⁹ The Gujarat Town Planning and Urban Development Act (Act 27 of 1976) sec 22

²⁰⁰ *ibid* sec 5

specified area. E.g. Delhi Development Authority shortly abbreviated as DDA. The limitation to its working field is the development in terms of mass housing commercial as well as market place in the surrounding area of Delhi where the Municipal Corporation limits are extended. There are villages, which are urbanised and the area it covers.²⁰¹

ROLE OF THE ADMINISTRATIVE OFFICER

The key role is to be played by the administrative officers as they have power to frame secondary rules and regulations to streamline the process. In existing machinery his role is specified. The administrative officers are having administrative skills and have to work as per existing laws. The administrative officers are as such representative sent by the Government either State or Central as per the constitution of the institution. In present set up, the Institutions are of different set of administrative heads.

The building regulations are implemented at different levels from Central to State and State to District to Taluka, Taluka to City, Town or Village as the case may be. The role and powers are complementary and supplementary actions and reaction of the administrative authority. The administrative officers are President at Central Government, Governor at State Government, and Collector at District level. To decentralise powers the District Development Officer (D.D.O.) for rural area at district level and Taluka Development Officer as (T.D.O.) rural area at Taluka level are appointed. To decentralise powers Urban Development Authority is formed where the Chief Executive play key role as the administrator. Municipal Commissioner is a person with powers as a sole authority for a City.

The administrative officers are the sole answerable authority in an institution where he/she is appointed and the institution can sue and can be sued by his/her name in official capacity. The administration is a complex process as the legal and technical qualifications are to be one of the requirements for the said administrators.

²⁰¹ Annexure F and Annexure G

4.2.1.1 RIGHTS, POWERS AND DUTIES SPECIFIED.

Before specifying rights, powers and duties the meaning there of to be examined properly to understand the right in its legal term.

Right Defined: The term 'RIGHT' "comprehends every right known to the law. It includes both corporeal and incorporeal rights including "a right of ownership" The words right, title and interest "occurring in S. 155 of the Bombay Land Revenue Code, have the same connotation as they had in the corresponding words used in the Code of Civil Procedure existing at the time the Bombay Land Revenue Code was enacted."²⁰²

RIGHT means a claim to a thing, which, is so directed for the protection and advantage of an individual is said to be his/her right. It is liberty of doing or possessing something consistent with law.

A right is an interest that is recognised by law. A man is entitled to have it and can be protected by law. The possessor can enforce it by an appropriate action in a court²⁰³. Rights may be divided into:

- (1) Primary, or antecedent, or substantive rights where the act is due for its own sake; and
- (2) Remedial, or sanctioning or adjectival rights which arises out of the infringement of primary rights, and where the Act is made due, merely on default of another act, or the commission of a wrong, with a view to redress of injury to the primary right.

Primary rights may be sub divided into

²⁰² S.M. Jakti v. S.M. Borker AIR 1959 S. C. 282: 1959 SCJ 719

²⁰³ Cf. C.P.C. (Amendment) Act 1951, S. 20; Adaptation of Laws Order, 1950, S. 20; Maloji Narsing v. Sanker saran AIR 1958 All 775.

- (a) Rights in rem
- (b) Right in personam

Legal Rights may be classified into:

- (a) “Privileges”; where the law limits the liberty of others with respect to the person having the right or enjoins others to do something for the advantage of the person entitled to the right;
- (b) “Liberties”; that is, benefits derived from the absence of duties within a certain sphere of activity; The person entitled may do certain acts without being prevented by law, or omit to do certain acts without being coerced by law; as to go where likes, or use his property
- (c) “Powers”; that is the ability conferred by law to determine by one’s own will the legal relations either of himself or of others; as the right to transfer one’s own property or to make a will, or to redeem a mortgage, or to sue for the infringement of right. These are legally vested interests that are used with the active assistance of the laws.

The acts by which, the powers are delegated:²⁰⁴

- (1) Powers directly administered
- (2) Powers delegated.

The distinction between the three may be expressed as follows:

- (a) In the case of privileges, others have to do something, or refrain from doing something;
- (b) In case of liberties, the person having the liberty may do or omit to do, something himself; others have simply to forbear, or acquiesce passively in what the person entitled at liberty to do; liberties are used with acquiescence of law;
- (c) Powers differ from privileges and liberties in as much as they have no active role to play in any action in terms of transfer.

²⁰⁴ Jasjitsingh V. Charanjit Kaur, AIR 1995 P & H 177 at 179

The limitation of delegated powers V/s the powers administered directly.

The other way of exercising power is **discretionary power**. To be more specific the term discretion is defined as the use of private and independent thought. When anything is left to be done according to ones discretion and law intends to be done with sound mind. A legal right is a capacity of asserting a secured interest rather than a claim that could be asserted in the courts.²⁰⁵

"Legality and Regularity". Legality and regularity are well-understood terms and well-recognised grounds of judicial interference on appeal or revision. An order is illegal, if it is opposed to any enactment or any rule having the force of law. It is irregular, if the procedure followed is in violation of the principles of natural justice and fair play.²⁰⁶

"Legally" It is to be noticed that S.30 used the word "legally". It is to be distinguished from "lawful"..... Legal is more appropriate for conformity to positive rules of law, lawful for accord with ethical principles.²⁰⁷ "Legally authorised" denotes that the tribunal or person has been authorised by Statute.

4.2.1.2 LIMITATIONS IN TERMS OF TIME

Limitation is one of the factors to make an in house administration more effective as is essential and inevitable. As per the present situation the

²⁰⁵ Penal Code 1860, Sec 30; Danial Hailey Walcot V. State, AIR 1968 Mad 349

²⁰⁶ Kesava Rao v.Subbaraju, AIR 1957 AP 55

²⁰⁷ Cf. Advocates Act 1961 S. 30 (ii); Zonal Manager, Life Insurance Corporation of India v. City Munsif, Meerut, AIR 1968 All 270.

limitation of time is one of the legal factor. The factor is effective in different situation as per present practice.

The time limit for application is as specified by the local authority prevails and the power to change the limitation is discretionary in case of individual case The in house administration has to work for the sanctioning plan or a project design. No matter what ever is the extent of the project the time limit is same. The project when is under process of sanction has different time limits for different stages. The different local authorities are having their own schedule. For each and every stage and phase of the process the time limit is specified.

In the case of subject matter for research in the situation of present day practice the limitation of time is a term is laid own in paper as it has lost its essential importance. That is because of inefficient workers in the office. As far as implication of development control rules and regulations are concern the limitation of time is playing a vital role in the process. The time limit is a factor, which affects all the aspect of the development. The factor affects in case of earlier than specified, as in time specified and latter than specified. The time limit as specified in the regulations is variable in case of different institutions but when it becomes legal the issue is taken as per the law of limitation.

The delay in time can be done by either from administrative side by the administrative officer holding the delegated powers for certain work to be executed. The administrative aspect is always taken along with the other factors such as powers.

4.2.1.3 LIMITATIONS IN TERMS OF POWERS

The administrative machinery is a complex process having number of components like a machine. The administrative officer is like a main switch

and the other officers of assistant rank or deputy rank are the processors and other are minor parts like fastenings and fittings. In the present practice the powers are expressly or impliedly delegated to the concern officers as the Main administrative head is a coordinator of whole process but independently is not capable doing any work by him. He is the person to get work done by the people having proficiency in their own respective field.

The legal implications are expressly or impliedly related to the integrity of the concern officer and the power one holds at the time of commitment to the task one is assigned to do.

The powers as specified are hold by the persons in the capacity of ones holding an office by capacity to work as an officer in the institutions where the office is static but the powers delegated are transitory.

The powers are hold by a person as a sole power holder, which is static till one, holds office. In such cases the sole responsibility of work and the result of the work are lie with the person holding such power. The limitation of power and extent of limitations are again a relative terminology having no physical magnitude to specify. Such term is having the magnitude measured by the morality of the concern officer.²⁰⁸

In present time the Institution heads have administrative qualifications as knowledge but lack wisdom and experience. He or she has to work as per the report of the work assigned to the subordinate officers.

In such cases the officers are required to have some power in terms of liberty to work to find out the result. In result-oriented process of work, powers are delegated to the person handling the work assigned. In the handbook of the administration the powers are specified as far as the physical aspects are concern like use of funds and way to use funds, use

²⁰⁸ Appendix I Akila dated 09.06.97 after issuing the completion the Commissioner has no power to cancel the sanction of a plan. Civil Judge Patel – RAJKOT.

of manpower and the time limits within which, one has to report the result of such assignments. The term limitation is also implied for the term restriction imposed on the officer so that the integrity of the concern person would not get corrupted.

The process of implication is affected at this stage. The powers are delegated to an officer to scrutinise plans that are prepared by the other professionals and not prepared by himself. The legal aspect of the documentation always based on evidences, which are legible and available at the time of its need. When the powers to scrutinise and sanction is expressly assigned to an officer, it impliedly imposes the restriction on his personal capacity to be a practising professional for the work done by him or her.

The present day practice is the misuse of powers assigned to the officers by overlooking the restriction that is impliedly imposed on them by the misrepresentation and misinterpretation of the power assigned to them and the restriction imposed on them. An officer prepares a plan as per the requirement of the owner of land by overlooking rules and regulation at the local authority, on the people of the city as uniform restrictions imposes those regulations. The same officer having signature of the practising professional and gives sanction to the same presents the plan using all the liberty. Legality of the plan cannot be challenged but the integrity of the officer can be challenged as the implications have already taken place in terms of the irregularity and eviction of the trust put in him as an employee of the institution and also the restrictions imposed on him. The sanction is valid if given within the time limit of his holding the power of concern office.

In relative terminology if this act is to analyse can be counted as theft or cheating as he impliedly cheats the people as whole and himself in particular. If one would like to give similarity to the situation is that in case of travelling by bus if ticket is for a certain destination is limited for the place in bus and the duration of the time till one reaches the place. The holding limited power does not mean to perform limited duties.

4.2.1.4 LIMITATIONS IN TERMS OF DUTIES TO BE PERFORMED

The subject matter for research is to find out the legal implications in all the aspects of the building industry where ever the development control rules and regulations are applied and those include the administrative machinery to work as per the direction given by the authority for the final out come of the project work handed over to the concern officer.²⁰⁹

The set up of the staff of any local authority is having duty partially static and partly transitory. The person has to perform the duty to check the technical aspect of the project scrutinised by him. The set up is of a junior engineer; the assistant town planner and town planner who is the top officer as far as the implementation of the rules and regulation are concern. The duty of each one is to follow the rules and regulations as it prevails at the time of scrutiny of the plan that is the basic legal document as far as technical details are to be included for the execution of the building. The limitations in the term of duties to be performed are to interpret the technical terminology as per the definition given in the Act or handbook respectively. The limitations are specifically to get the adverse matters rectified on the plan it self²¹⁰ and report the same to the higher officer and put a note if any objectionable matter out of the scrutiny arises.²¹¹ The smallest negligence in the detailed scrutiny creates more complications in terms of the technicality or legality of the matter.²¹² Many a times the adverse acts are not reported and matter is allowed even though it is not sanction able.²¹³

²⁰⁹ Appendix I Akila dated 19.01.2006 illegal buildings will be demolished - Mayor of Surat

²¹⁰ Appendix I

²¹¹ Ibid

²¹² Annexure I Akila dated 25.07.2006 Parking place is encroached upon in Rajkot.

²¹³ ibid dated 20.12.2005 70 Residential buildings demolished.

The duty of the technical staff and officers is to be more alert as and when the political leaders or the higher officer in the Government seeks the illegal approval. The moral duty is to report such illegal act to the higher officer and if the higher officer is supporting the illegal act the officer of any cadre can perform his moral duty to report such illegal act.²¹⁴

4.2.1.5 COMPETENCY IN TERMS OF TECHNICAL AND LEGAL ASSIGNMENT

The present administrative procedure is tailor made as the local authority holds power to alter or add certain formalities for the work assigned to them where the liability and responsibility of an officer is not specified because of lack of competency.

Admit and Scrutinise Application:

The Development Control Rules and Regulations is a term that is contradictory by itself. The contradiction is in the case of the terms development and control. Once the development of any area or place is sought for than the expectation of the developer is to develop the place freely and fully as per the desire and public demand. The public demand is the objective of the landowner to construct a building for good monetary return.

The development is a process, which needs control for its desired shape and size of its extent. The application is made for the development of the plot in area specified for the purpose like residential or commercial zone and if the plot does not fulfill the criteria of required ingredients, the permission will not be granted for the desired specific purpose. The technical officers and staff of the local authority in any of the urban area are questionable for their competency in terms of the knowledge, experience and integrity to the work assigned.

²¹⁴ Ibid dated 17.02.2006 More than 10 lac buildings are illegal in Delhi ref. Ekta charka Periodical

In the subject matter of research the terminology used as the condition of having knowledge is bilateral one is acquired and applied and the other is having and depart. Now in present practice the officers of the local authority interpret the terminologies as per their requirement to get the benefit from the other sources.²¹⁵

COMPETENCY IN TERMS OF TECHNICAL ASSIGNMENT

The technically competency is questioned because the annexure which are enclosed with the plans and application the detailing of the construction is not asked for or that is ignored at certain stage.

The structural stability reports are one of the essential documents in case of extension of the building vertically. The report is always for the sake of its existence in the set of document as evidence but it is never checked whether it is authentic or not. During natural calamities like cyclone and earthquake etc. the disaster management has specified certain technical norms to be followed as and when such disaster occurs. The matter is taken for granted and the responsibility of the owner. No staff member of local authority is capable of examining the structural part of the building and cannot scrutinise the structural design so submitted along with the application form and proposed plans. The qualifications required for such post is diploma civil engineer and they are the persons to check the design made by the highly qualified professional like architects and structural designers.

COMPETENCY IN TERMS OF LEGAL ASSIGNMENT

In legal assignments, the document as the enclosures to the application form is the documents counted and accounted to be legal in all respect are the Sale deed of the plot of land under development. The property registration card and City Survey Sanad i.e. an authentic document of land ownership, show dimensions of the property on record, the nonagriculture

²¹⁵ Appendix I Gujarat Samachar Daily News paper dated 24.06.1997 the plans are getting sanction by money power

order, layout plan of the land so as to confirm the situation of the plot on the road specified and the third set is a sketch from town planning department called a final plot “tippan” along with the area that final plot number bears. The legal terminology is again twisted as per requirement of the situation arising and the officer carries the said interpretation forward without going in to details so far as the ownership of the plot is concern. The law of evidence is based on the documents having the condition as on the date for which it is produced. The contradiction in the fabricated documents creates adverse situation that fact is many times ignored by the officer in the present practice and the problem of technical cum legal nature arises which ends in the demolition of the structure.

Scrutiny and sanction are two different stages that make simple bunch of paper to technical based legal document. This document is the basic document, which shows the express and implied application of rules and regulations to control the development in the urban area. The scrutiny is done on all three aspects of the papers having plan as technical cum legal document which bears the name of owner and place where it is going to be erected. The document is conditional and that is why it becomes legal as the adverse act makes the contract null and void i.e. the sanction is cancelled.

4.2.2 EXTERNAL ADMINISTRATION

The external administration is altogether a different concept. The development is prime objective of any local authority and to fulfil the objective the choice of design and construction is to be given to the people for their requirements. The external administration is based on consultants having educational qualifications as well as professional experience of the assignment for which the permission is given to practice in the area under local authority. The external administration is indirectly involved in the development of the area where by the person involved is solely responsible for the act he is doing. The oath is taken for the same on the application form for the submission to get approval for the commencement

of the development and completion in the manner specified in the sanction letter.

The external administrators are not paid by local authority and are not directly involved in the process. They do not work as agents of the landowner. In present day practice building construction industry has become a commodity market where ready-made items are much in demand. Parallely the mass houses in form of apartments, low-rise buildings and high-rise towers are much in demand. The commercial complexes are also in demand as the land value in urban area has gone up very high. One cannot afford to buy a plot of land and construct the business premise there. The implications has much way in this case as person involved indirectly in the development has much to help builder and assist him to get more benefit out of less.

4.2.2.1 QUALIFIED TECHNICAL CONSULTANTS

(a) Civil Engineers: Among qualified technical consultants civil engineer who is eligible to work as engineer is for the purpose of planning the building is required to have certain experience:

The person holding degree of Civil Engineering must be a member of Associate Membership in Civil Engineering of the Institution of Engineers, of India (AMIE) or a degree in Civil Engineering recognised by its equivalent qualification All India Board of Technical Education or a diploma in Civil Engineering recognised by State Board of Technical Examination of any State of India. In addition to the qualification the engineer should have at least five years of experience in professional work if one is holder of Diploma in Civil Engineering/ or AIME²¹⁶

²¹⁶ GDCR 2004 sec.9.3.3 p. 49

In case of State of Andhra Pradesh²¹⁷ the qualifications for the licensing of engineer is the corporate membership (Civil category of the Institution of Engineers or such Degree or Diploma in Civil for Structural Engineering which make one eligible for such membership)

The competence is that the licensed engineer can carry out work related to building permit is entitled to submit:

- (a) All plans and related to information connected with building permit
- (b) Structural Details and calculations of buildings on plot up to 500 sqmts. and 16 mt. Ht.
- (c) Certificate of supervision and completion for all buildings.

Qualification of engineers are same in every urban area but the qualifications in terms of experience in practical field is interpreted as practical time one has spent and not in proficiency of the assignment.

In prevailing practice the Diploma civil engineers are practicing having signature of license holder practitioner or some ITI draftsman working as assistant in a consultant office practices without qualifications of an engineer.

Legal implications starts when such a building is found illegal or irregular or technically unsound, as the structural stability is not taken care of.

In case of such complications the person who is found guilty, of such practice and his/her license will be suspended for a period of time. The employee of local authority also practice privately in the office of consultants, which is against their service rules.

²¹⁷ Hyderabad Urban development Authority Zoning Regulations 1981 and Multi-storeyed Building Regulations 1981

(b) Structural Designer: A Degree in Civil Engineering recognised by All India Board of Technical Education. In addition to said qualification, the applicant should have at least five year experience in structural design, two year of which must be in a responsible capacity in form of structural designer.

Or

A Structural Designer should possess Master's degree in structural engineering from a recognised institute and at least two years experience in structural design work.

OR

A Structural Designer should possess Doctorate Degree in structural design from recognised institute and at least one-year experience in structural design work.

The duties and responsibilities are:

- (01) To prepare a report of the structural design
- (02) To prepare detailed structural design and to prescribe the method and technique of its execution strictly on the basis of the National Building Code or relevant Indian Standard specifications.
- (03) To prepare detailed structural drawings and specifications for execution indicating thereon, design live loads, safe soil bearing capacity, specifications of material, assumptions made in design, special precautions to be taken by contractor to suit the design assumptions etc. whatever applicable.
- (04) To supply two copies of structural drawings to the site supervisor.
- (05) To inspect the works at all important stages and certify that the work being executed is up to the satisfaction of Architect/Engineer.
- (06) To certify the structural safety and overall structural soundness of the building to the Architect/Engineer.

- (07) To advise the Owner/Architect/Engineer for arranging for the tests and their reports for soil, building material etc. for his evaluation and design consideration.
- (08) He shall prepare the revised calculations and drawings in case of any revision with reference to the earlier submission of drawing and design in a particular case.
- (09) To submit the certificate of structural safety and over all structural soundness of building to Competent Authority.
- (10) To inform in writing the Competent Authority within 7 days, if for any reason he is relieved of his appointment/responsibilities as the registered designer for the development.
- (11) Not to provide service to further or advance work of any type on any development that does not comply with the regulation or is unauthorised as per G.D.C.R²¹⁸.
- (12) For Structural Engineers as per Hyderabad Urban Development Authority the qualification to get registration is minimum three years experience in structural engineering practice with designing and fieldwork.
- (13) Graduate in Civil Engineering of recognised Indian or Foreign University and Chartered Engineer or Associate Member in Civil Engineering Division of Institution of Engineers (India) or equivalent Overseas Institution and

²¹⁸ GDCR 2004 9.3.4 p..50-51

- (14) Associate member in Civil Engineering Division of Institution of Engineers (India) or equivalent Overseas Institution possessing exceptional merits.

The 3 years experience shall be relaxed to 2 years in the case of Postgraduate degree of recognised Indian and/or Foreign University in the Branch of Structural Engineering. In the case of doctorate in structural Engineering, the experience required would be one year.

Duties and Responsibilities of Technical Personnel

As specified earlier the implications are arising out of the powers, rights, duties and responsibilities. The legality of such implications starts as and when the duties and responsibilities are fixed by legislation.

It will be incumbent on every licensed personnel in all matters in which he/she may be professionally consulted or engaged to assist and co operate with the Municipal Commissioner of Hyderabad and other Municipal Officers in carrying out and enforcing the provisions of the Hyderabad Municipal Corporation Act, and of any byelaws for the time being in force under the same.

Every licensed Technical Personnel shall in every case in which he/she may be professionally consulted or engaged, be responsible, so far as professional connection with such case extends, for due compliance with the provisions of the Hyderabad Municipal Corporation Act and of any Regulations for the time being in force under the said Act. Or such of them as may respectively be applicable to the circumstances of the particular it will be obligatory to satisfy himself that a qualified and competent 'mistry' or Inspector of works is constantly employed and present on the work to supervise the execution of all work and to prevent the use of any defective material therein and improper execution of any such work.

In every case in which a Licensed Technical Personnel is professionally connected with any building or work upon any premises in respect of

which a right to require set back has accrued or is about to accrue to the Commissioner under the provisions of the said Act or any of them, it will be incumbent on such Licensed Technical Personnel to ascertain whether “the regular line of the street” has been prescribed and whether any portion of the said premises is required for the street or under any pretence whatever, be party to any evasion or attempted evasion of the setback (if any) that may be required.

In every case in which a Licensed Technical Personnel is professionally concerned in connection with any building or work upon any premises designed or intended to be used or any purpose in respect of which the written permission or license of the Commissioner, is prescribed by the said Act as a necessary condition to the establishment or use of such premises for such purpose, it shall be incumbent on such Licensed Technical Personnel, so far as his professional connection with such case extends, to see that all conditions prescribed by the said Act, or by any Byelaw for the time being in force there under, in respect of the premises designed or intended to be applied to such use, are duly utilised or provided for.

A licensed Technical Personnel shall not carry out any work in connection with any building or other erection on a plot of land leased or agreed to be leased by the Municipal Corporation on contravention of any term or condition of lease or agreement for lease.

When a Licensed Technical Personnel ceases to be in the employment for the development work, he shall report the fact forth with to the Authority.²¹⁹ What is applicable to Hyderabad is also applicable to other corporate cities.

²¹⁹ Hyderabad Urban development Authority Zoning Regulation 1981 and Multi-storied Building Regulation Act 1981 P. 38, 39

(c) Surveyors /Plan makers:

The qualifications required for surveyor is a Civil Engineer of any University or Institution recognised by the Government or Institution specially approved by the Authority. Or A Degree of Diploma in Architecture of any University or Institution recognised by Government 220 As per the HUDA for Surveyor I the qualification specified is three years architectural assistantship or intermediate in Architecture with two years experience or diploma in Civil Engineering with two years of experience and Surveyor II Draftsman in Civil Engineering from I.T.I. with five years experience under Architect/Engineer.

The competence of such personnel is limited to small construction upto 50 sqmts.²²¹

The qualified technical consultants are basically having similar qualification with different magnitude for experience but the integrity in the experience is again a matter to be considered in the present day prevailing practice by the external administration. The duties and responsibilities as are specified in the Regulations of HUDA is more specific as to avoid the adverse act at the time of planning where misrepresentation can be prevented or restricted.

Such Technical personnels are different persons, as one cannot take license for both or all three categories cause the experience is counted as per the category one has applied for and one cannot practice with higher category by preparing design and getting signature of the higher category.

4.2.2.2 QUALIFIED LEGAL CONSULTANTS

²²⁰ GDCR 2004 sec 9.3.6 p. 53

²²¹ Hyderabad Urban development Authority Zoning Regulation 1981 and Multi-storyed Building Regulation Act 1981 P. 37

In the present day practice the rules and regulations for development control are framed where the legal terminologies are used. The personnel employed in local authority for such an assignments are technical personnel and not qualified to interpret the legal terminology in its fullest context, as they are complex and compound in nature, further as there are several laws and statutes to be taken into consideration.

(a) Revenue Code

The Legal Documentation are in form of Sale deed, is to be furnished with Non agriculture Order, Sanad, and 7/12, 8-A and 6 are the basic documents to specify the position revenue records, sanctioned layout with all boundary with adjoining revenue survey numbers and the details there of. In prevailing practice, the local authority does not demand the right to title in form of title clearance certificate but requires the certified copies of the above mentioned documents which are the basic evidences to the right to property in the name of owner and the previous owner. The Revenue Code with all sorts of provisions as enacted is a part and partial of the title, Other semi government or financing authorities require such professionals for the title clearance for the safety to their lending money for housing loan. Where the sanctioned plan is one of the documents and not the document as the local authority accepts the documents submitted by the owner's evidence of his right to the property as per Indian **Revenue Code 1954**.

(b) Contract

The process of the implementation of any legal procedure is a part of contract in an express or implied form in present day prevailing practice. The process is a contract between a landowner and technical consultant for professional services and consideration in the terms of professional charges in respect to the services to be rendered and the duties, responsibilities taken liabilities accepted by the consultant. The same process is extended, as a contract between local authority and the owner. Owner or a developer of a property is supposed to submit the documents to the local authority with requisite charges as scrutiny charge,

development charge, dismantling charges, and other specified for the purpose of obtaining sanction or permission to build a building as per the approval given to them. Any adverse act to the sanction letter is a breach of contract and the penalty for such act is supposed to be borne by the applicant or a party contracting for the work done as per **the Indian Contract Act 1972**.

(c) Easement

The law of Easement is specifically applicable to the building where a part or partial of right of other person or persons is involved in the property under consideration. Certain special condition such as right to ventilation and light, right to common passage, right to drain rain water by roof gutter, common wall construction, are the types of easement rights. Now a days commercial complexes, residential apartments the colonial mass housing or co operative housing societies, have added the easement rights. It is now necessary to mention such rights in documents. In prevailing practice the local authority is imposing on no objection letter or certificate from the co owner or co occupant of the premises for the repairs, development or redevelopment. In such cases the issue of co occupancy or co ownership of the premises again raises the implication. For such the complex situation the legal consultant having thorough knowledge, justification to right and basis of natural law also is required as per the **Indian Easement Act 1882**.

(d) Property laws

As the revenue law is important for the specification of the property as and where it is situated and form it carries. These are the marks for identification of that property. No physical identification is given to that property as far as revenue records are concern as those are changed with prevailing practice of specifying as old numbers and new numbers. The subsequent importance is given to the Property Act, which is known as the **Transfer of Property Act 1882**.

The property is to define as to which form is included in the term related to subject matter.

Property is a generic term for all that a person can have dominion over the highest right a man can have to anything. Property is of three types:

- (a) Absolute
- (b) Qualified or Conditional
- (c) Possessory.

Property is the object of rights and duties. The legal science recognises property only so far as it is capable of standing in relation to the human will. It is classified as:

- (a) Physical or corporeal, or material, which is capable of being perceived by external organ of sense This may consist of animate object as sheep, horses cows etc. and inanimate objects movable or immovable.
- (b) Non physical, or incorporeal, or artificial which can not be perceived by senses but is recognised as property in the eye of the law as the good will of a business or patent rights or rights of trademark or equity of redemption and all rights except personal rights.

The word "property" occurring in the Ar. 31 is not confined to the immovable property and elements of hereditability and enjoyment of the benefit without any rendition of services are sufficient insignia of property to invest the cash grants with the characteristics of property as used in art. 31.²²²

In case of the subject matter other property except easement rights are not concern with. The Transfer of Property Act is concern with immovable property and that to in urban area the nonagriculture property in specific

²²² Constitutional Law of India 44th Amendment Act 1978 The sub Heading Right to property Art 31 p. 219

context. The sense of immovable property is having its own characteristics and the ownership changes with the contract of sell but the position or place of property is not changed. Situation in terms of development changes with that the identification also changes as with Town planning Schemes. The plot number is specified for the identifications as original plot and final plot numbers. In case of City Survey office the procedure is as per Ward number. Sheet numbers and Survey numbers is denoted as specified for the identification of the property and as per the Revenue Records the specified as Revenue Survey Number, Plot Number and Village or City's name. All these specifications are for one single property but the administrative offices are different as Revenue Records are with Mamlatdar Office, City Survey records are with City Survey office and Final plot Number. is given by Town planning Department of Local Authority. All three departments are work independently and allot documentation accordingly. Local Authority demands all the documents while sanctioning the plan. The Legal Consultant has to check the record accordingly to avoid discrepancies

(e) Others Procedural Laws:

The present prevailing practice is that cases are taken under procedural laws as Civil Procedure Code and Criminal Procedure Code. The legal consultants are required to know the procedural laws as well as the ancillary enactments and related statutes, orders and circulars for the right interpretation of the problem and to find out solution there of. The procedural laws are also having the time limit to follow the procedure under limitation Act. External legal consultants are required to know and have thorough knowledge of these Acts.

4.2.2.3 QUALIFIED DESIGN CONSULTANTS

Qualified design consultants are specified as Consultants for designs impliedly as the architects are not supposed to design RCC frame/structure Design.

(a) Architects²²³

A person registered under provision of Architect Act 1972 as an Architect or Bachelors Degree in Architecture/Diploma in Architecture Equivalent to B. Arch. with 2 years experience.

The scope, work and competence of architect are as under:

Preparation and planning of all types of layouts and submission of drawings and submit certificates of supervision and completion for all types of buildings.

Supervision and execution of construction work as per specifications and drawings prepared by authorised registered structural designer and engineer.

One shall be responsible for making adequate arrangement to ensure not only that the work is executed as per approved plans but also is in confirmation with the stipulations of National Building Code and I.S.I. standards for safe and sound construction and non-hazardous, functioning of the services incorporated in the building and making adequate provisions for services and equipment for protection from fire hazards as per the stipulations of the N.B.C. in the buildings and shall obtain N.O.C. from the Chief Fire Officer or concerned designated Authority/Consultant before applying for occupation certificate.

One shall on behalf of the owner, apply for the progress certificates, completion certificates and occupation certificate and obtain the same as required under the regulations.

If the services of the registered architect²²⁴ are terminated, he shall immediately inform the Competent Authority about his termination and the

²²³ GDCR 2004 p. 47

²²⁴ Architects Act 1972 Sec 2a.

stage of work at which his services have been terminated. The registered architect appointed as replacement of the preceding architect shall inform about his appointment on the job, and inform the Competent Authority of any deviation that might have occurred on the site with reference to the approved drawings and the stage at which he is taking over the charge, After Competent Authority has inspected the site for his report, the newly appointed architect shall allow the work to proceed under his direction.

The registered architect appointed on the work shall inform the Competent Authority immediately on discontinuation of the services of the registered/structural designer, construction contractor, clerk of works, site supervisor, plumber and electrician and shall not allow the work to continue till the vacancy is filled by appointment of another person and certificate of appointment of such person is submitted in the appropriate Authority.

He/she shall instruct the relevant agency that adequate provisions are made for ensuring the safety of workers and others during excavation, construction and erection.

He/she shall instruct the relevant agency that adequate provisions are made for providing safe and adequate temporary arrangement.

(b) Town Planners²²⁵

The minimum qualification for a town planner shall be the Associate membership of the Institute of Town Planners or Post graduate Degree or Diploma in Town and Country Planning, which makes him eligible for such membership or recognised by the Public Service Commissions for post of Assistant Town Planner.

²²⁵ Hyderabad Urban Development Authority Sec. B-6 p. 38

Competence: The licensed Town Planner shall be entitled to submit all plans and related information connected with development permit of all areas and certificate of supervision for development of land of all areas.

The Town Planner as a part of external administration prevails in the metro cities or mega cities as the larger projects such as Townships; Human Settlements and Colonial layouts are in usual practice.

(c) Landscape Consultants:

The landscape consultants are basically a person with technical background and additional qualification is a diploma or a certificate Course in Landscape Architecture. In any urban area the public places like recreation clubs, picnic spots and public gardens are one of the basic requirements. The qualification is based on the knowledge of natural elements such as landform, natural drainage, soils, vegetation, bioclimate, birds and animals and habits their of.²²⁶ This part of external administration is also getting scope in Mega Cities and Metro Cities.

The institutions like Local Authorities, Municipal Corporations, recreation centers and hotels or resort owners employ the landscape consultants.

(d) Interior Designers

The qualification of Interior designers is a degree or diploma in Interior Designing by any approved institution and a person shall be member of The Indian Institute of Interior Designers. The basic knowledge of building planning and structure is the basic essential of qualification as well as requirement. The Interior designs are directly or indirectly involved in the building industry and the additions and alterations suggested by the Interior Designer are liable for the implication of the rules and regulations. This part of external administration is not directly registered with Local Authority but is employed by the owner of the building. The Interior

²²⁶ On p. 258, Raipur Development Plan, Town and Country Planning Department, Madhya Pradesh

Designers are supposed to know the basic rules and regulations of the Local Authority.

4.3 CONCEPT OF IMPLEMENTATION

The Administration of local authority is not limited to register the applications for development and keep the up to date record but has to process the application for the proper implementation of rules and regulation those are formed and framed to control the development.

4.3.1 IN HOUSE IMPLEMENTATION MACHINERY

The implementations are in two stages as far as development of and land or piece of land is concern. The stages are pre implementation and post implementation. The pre implementation machinery is consisting of technical as well as administrative personnel with accounts section.

(a) PRE IMPLEMENTATION

The recent practice is e -administration works on computer. In the pre implementation the technical staff having technical qualifications and knowledge of Rules and Regulation registers first stage the application for development. The process has been made very simple by the programme having check list data for the scrutinising the plan for building permission. The e-administration has not been prompt, as it ought to be, as the training for the e-administration is not sufficiently accepted by the conventional staff. The pre implementation machinery is having two aspects one is scrutiny and other charges for the developmental process. The charges are to be paid by owner at stages during pre implementation, i.e. at the time of application the scrutiny charges as well as application fees are to be paid. The next stage is post scrutiny. The development charges are with betterment levy and dismentalling charge as the case may be and security deposit is to be paid. The third stage is a post sanction, which the permission fees are to be deposited. The charges are of two types the

amount levied and the amount treated as deposit. Deposit is refunded after successful completion of the project i.e. at the stage of post implementation.

In different set up of Institution or Local Authority the procedures are different but the principle is same and the objective is common i.e. to control the illegal or irregular development. This process is confined to paper work which is counted to be hard copies can be inter changeable any time as and when staff wants prior to sanction as far as pre-implementation is concern.

The second part of pre-implementation is during process of development of the area or property, i.e. during construction or erection of the building. It is duty of the pre-implementation staff to see and check the building on site whether it is according to sanction or not and issue the work progress certificate to the owner or builder as per the case for further stage. The technical staff is bound to have full knowledge and information of case as per the scrutiny and sanction of it.

(b) POST IMPLEMENTATION

Post implementation is the stage of completion where in house machinery in form of Technical officer of the higher grade comes to certify the building as a complete project and issues the occupancy certificate to use the building for the purpose it is certified for sanction. Legal implications arise most at this stage where all types of settings and adjustments are done. The moral standard of the post implementation staffs is at its test at this level.

Post implementation is the stage where the building is certified as completed in all respect. In most of the cases the certificates are issued much earlier than the stage of completion so that any addition alteration, if any to be done can be done without dismantling the approved framework of the building by undue payments to the issuing officer. All illegality flourishes at this stage of implementation. Legally illegal form of

development occurs, because the certification is not as per the sanctioned plan with relevant rules and regulations.

In the case of duties and responsibilities of the post implementation, staff is neglecting or overlooks the illegal implementation. Legal implications arise and problems are created which do not have simple solution.

4.4 ADJUCATORY MACHINERY

The word adjudicatory is a compound word taken here as the administrative and judicial action both at same time. Adjudicatory²²⁷ means to hear, and settle a case by judicial procedure, to pronounce judicially.

Adjudge means to act as a judge. Usually used with on or upon, to award to, to be a judge.

4.4.1 INTERNAL

(a) Technical

In any administrative set up the procedure established or prevails are of standard in nature and even in circumstances. The cases arising at different stages are not identical in nature and different from established procedure. The facts and figures in the documents are different and with contradiction. In the handbook or circulars the responsibilities and liabilities of the Administrator is narrated properly. The term, which is not expressly specified in the handbook as far as the powers are concern, the highest officer is people to use his power as delegated to some of the assistant officer or many a times use as discretionary power to give judgement.

In case of any local authority the administrative officer such as Municipal Commissioner, Chief Executive of Urban development Authority or District Development Officer are being persons having Qualifications and

²²⁷ Universal dictionary p. 29

experience of administration has to take assistance of technical persons like Town Planner or City Engineer in case of Municipal Corporation and its alike local body. The Chief Executive also has to take assistance of Town Planner for his administration and The District Development officer has to take assistance of Executive Engineer when technical problem arises and has to give administrative judgement in technical part of the procedure.

(b) Legal

In the same manner as technical, the legal part of the procedure is taken care of by the legal department of the Local Authority where the cases or problems concerning the legal aspects are studied, such as problems concerning ownership, rights and privileges. Discrepancies in the payments of the charges etc. are within purview of the legal department of the Local Authority.

The internal adjudicatory machinery is to solve the discrepancies in the terms of technical or legal in nature.

4.4.2 EXTERNAL

The external adjudicatory machinery is on professional bases paid by the local authority in case of solving the discrepancies arising out of the procedural work out of the local authority and the owner of land or applicant as far as the subject matter of research is concern.

(a) Technical

In case of technical interpretation of technical terms having discrepancies in a project which is of major importance or in the case of natural calamities like cyclone or earthquake, the technical staff of the Local body if is not competent enough to judge the site condition and situations. The Local body hires services of external adjudicator for the technical suggestion or conclusion or solution to the problem on hand.

In case of other problems like traffic circulation or density diversion, or wastewater treatment or solid waste management the services of technical personnel are hired. The Administrative head uses his discretionary powers to take decision.

(b) Legal

In external adjudicatory machinery the persons having legal qualification and experience are not employees of the Local Authorities but are Legal Consultants for legal opinion in case of any ambiguity in interpretation of legal terms. The legal consultants are retainer on yearly basis. They can practice privately of their own. In local authority where full flange internal legal department does not exist such personnels are appointed for work.

4.5 QUALIFICATIONS AND EXPERIENCE

The term qualification²²⁸ means any quality, accomplishment or ability that makes a person suitable for a particular position or task.

The term also means a degree or diploma or other evidence of successful completion of a course of study or training.

A condition or circumstance that must be met or complied with and also it means restriction or modification.

Qualifications, that which makes a man eligible to do an act or to assume a certain character. It also means a limitation, and a condition in such case is having a wider sense as word the qualification usually mean the educational qualification or academic qualification.

The Total administrative and adjudicatory machinery does not or cannot work with out efficient personnels as employees.

²²⁸ Universal Dictionary p. 1255

The word experience is an abstract term, which cannot be seen and is not visible in any person's personality. The word experience is the term used in each and every field of life including all profession, and businesses. The term is such that it cannot be given to any one but one has to gain out of one's own work or observing others doing certain job and practising by themselves.

4.5.1 ADMINISTRATIVE STAFF

The administrative department of any local body is having its procedural code where the process is described in terms of procedure. The duties and liabilities are also described in details and the cadres are also specified for positions in the institution.

Educational qualification is most prime and basic requirement for the type of job assigned to a person. But mere qualification as an engineer is not sufficient as a technical person. The knowledge is not sufficient as qualification but the understanding of the problems and handling of certain situation is must as qualification. The moral standard of a person needs to be high when one serves certain institution where undue advantages are more. The qualification is subject to the condition and not absolute.²²⁹ The qualification and experience is relative terms and both go together.

Other than educational qualification the sequence of work process is must to be understood as the town-planning department is having the work of development control and regulation.

The set up in each such institutional department is with the town planner. As the head of the department he should have qualification of town planner with basic qualification as an architect or engineer with postgraduate diploma in Town and Country Planning. In addition to that he/she should have worked as assistant town planner for five years or

²²⁹ Judicial Dictionary p. 794

more. He should have vision to foresee the situation, which can arise by certain regulations.

The next is Assistant Town Planner work under Town planner for all the types of work as decision maker for the issue under the powers delegated to them they do not possess absolute power to take any decision.

The junior engineer's qualification is diploma or degree in Civil Engineering. He has no power to act upon and has to perform the duty to scrutinise a plan as per rules and regulations. Interpretation is a matter of experience and practice as the meaning of each term is relative. Thus, experience is one of the basic qualifications apart from educational qualification of junior engineer.

4.5.2 ADJUDICATORY STAFF

The adjudicatory staff of local body is most of the time administrative officer having knowledge of administration and partially legal qualification. Technical staff does the planning and scrutiny and sanctioning of development proposals. In such cases two persons one with technical and the other with do the adjudicatory work administrative cum legal. There is no such specific educational qualification for technical personnel with legal qualifications. Very often they do serve institutions to their fullest capacity as the powers and duties are limitations to their field of work. They are not able to work in adjudicatory capacity because of lack of experience and seniority.

4.5.3 CLERICAL STAFF

The question of technical or legal knowledge is not within purview of clerks. The direct recruit staff of graduate level with different subject is not aware of technical and legal terminology. The basic qualification of staff in this discipline is common for any of the administrative set up.

In short educational qualification for administrative process of technical cum legal discipline is not recruited in prevailing practice, which is one of the factor to create implications in the administrative process of the development permission.

CHAPTER – 5 JUDICIAL TRENDS

- 5.1 Judicial Trend Explained
- 5.2 Justice and Morality
 - 5.2.1 Establishing Facts
 - 5.2.2 Finding out Absolute solution
 - 5.2.3 To Encouragement Justified Acts
 - 5.2.4 Terminology in Legal and Technical Context
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CHAPTER – 5 JUDICIAL TRENDS

5.1 JUDICIAL TREND EXPLAINED

According to the judicial dictionary²³⁰ the term judicial has not been successfully defined. Some times it is contrasted with “administrative” sometimes with “ministerial” sometimes with “executive” and sometimes with the word “non-judicial “. Whatever be the meaning, it is at least certain that the term ‘judicial’ extends to the acts and orders of a competent authority, which has power to impose a liability to give decision, which determines the rights or property of the affected parties. The term “judicial“ embraces even the acts of special tribunals, which though administrative in character, perform the functions resembling those of courts.

Such tribunals may be subject to certiorari and mandamus but appeals against their decisions cannot be taken to a court, without the right being expressly given.²³¹

ADMINISTRATIVE AND JUDICIAL ORDER:

An administrative order would be one, which is directed to the regulation or supervision of matter, as distinguished from an order, which decides the subject of adjudication before the court. One of the tests would be whether a matter, which involves the exercise of discretion is left for the decision of authority, particularly if that authority were a court, and if the discretion has to be exercised on an objective as distinguished from a purely subjective consideration, it would be a judicial decision. It has some times been said that the essence of judicial proceeding or of a judicial order is that there should be two parties and a lis between them, which is the subject of

²³⁰ Judicial Dictionary p. 526

²³¹ Bhai Lal v. Additional Deputy Commissioner, Akola, ILR 1952 Nag. 839: AIR 1953 nag 89 FB 1952 NLJ 613 (FB)

adjudication, as a result of that order or a decision, on an issue between a proposal and an opposition. No doubt, it would not be possible to describe an order passed deciding a lis before the authority that it is not a judicial order, but it does not follow that the absence of a lis necessarily negatives the order being judicial.²³²

The definition states that the term judicial is contrasted with the term administrative. The contrasted term may be taken as opposite or the one which does not supplement the meaning of the term judicial. Any act done adversely or not according to the rules and regulation of the Administrative set up. The concept of an action to be taken against the irregularity in administrative procedure is to be treated as wrong and the penalty is to be imposed there on. Any irregularity in administrative procedure or administration is taken to be an illegal act or not. The legality is specified as the act according to or as specified by rules and regulation of the time when the said act is performed.

For example, the rule for sanctioned plan for payment should be made within some stipulated period X days and the validity of the permission is for some period Y years. Due to change in administrative set up, duties and liabilities of officers, the said time limit is not observed. The condition or the situation of previous Act as being irregular as far as the present condition is concern the overlapping implementation creates irregularity does need judicial response.

Contrasted to “ministerial”: Ministerial Defined: An act is said to be ministerial when it is done by a superior authority which is not a judicial authority.

²³² Shankar Lal Agarwala v. Shankarlal Poddar, 1964 1SCR 717: AIR 1965 SC 507: 1965 35 Com Cas 1

Ministerial Duty

A duty in regard to which no discretion is left in the officer on whom the duty is imposed by, an act which is absolute, certain, and imperative, involving the mere execution of a set task, the law which imposes it prescribing the time, mode and occasion of its performance with such certainty that nothing remains for judgement or discretion.”

The routine duties of the office of a Receiver must be held to be only mechanical or ministerial acts or duties which can be performed with certainty, regularity, without variation and without the exercise of any discretion by the person in charge of the same, but by no stretch of reasoning, the sale of insolvent’s property by a Receiver can be termed as a ‘routine’ duty of the receiver, as he has to exercise discretion reasonably and judicially depending upon the facts of each case to bring the properties of insolvent to sale.²³³

Contrasted to Executive: That the branch of Government that puts the laws into execution as distinguished from the Legislative and Judicial branches.

Executive action: The expression “executive action” in Art. 166 of the Constitution is comprehensive enough to include even orders which emerge after and embody the results of, a judicial or quasi-judicial disposal by Government.

Power of Government: Ordinarily, the executive power, connotes the residue of Governmental functions that remain after legislative and judicial functions are taken away.²³⁴

²³³ Gidda Naga Mallah v. Kothari Laxminarayan AIR 1970 AP 289 (292); Kondaliah J,

²³⁴ Rai saheb Ram Jawaya Kapur v. State of Punjab (1955) 2SCR 225: 1955 SCA 577: (1955) 2 MLJ (SC) 59: (1955) SCJ 504: 57 Punj LR 444: 1955 MWN 973: AIR 1955 SC 549.

Trend explained: Bend or turn away in specified direction, show a certain tendency, general direction or tendency or drift.²³⁵

Judicial Act: A judicial act seems to be an act done by a competent authority upon consideration of facts and circumstances, and imposing liability, or affecting the rights of others.²³⁶

Thus it must be the act of a person or persons who have legal authority to determine questions affecting the rights of parties and in a judicial manner.²³⁷

5.2 JUSTICE AND MORALITY

In order to elucidate features distinctive of law as a means of social control, to introduce elements, which cannot be constructed out of the ideas of an order, a threat, obedience, habits, and generality. So much that characteristic of law is distorted by effort to explain it in simple terms. Thus it is necessary to distinguish from the idea of a general habit that of a social rule, and to emphasize the internal aspect of the rules manifested in their use as guiding and critical standards of conduct. Primary rules of obligation and secondary rules of recognition, change and adjudication have been explained earlier. The main theme of this topic is that so many of the distinctive operation of the law, and so many of the ideas which constitute the frame work of legal thought, require for their elucidation reference to one or both of these two types of rule, that their union may be justly regarded as the essence of law though they may not always be found together wherever the word law is correctly used. The justification for assigning to the union of primary and secondary rules this central place

²³⁵ Oxford Dictionary p.897

²³⁶ Judicial Dictionary p.527

²³⁷ Srirama Rao, v. Suryanarayanamurti 1953 MLJ 542: 1953 MWN 200: 66 Mad 287: AIR 1954 Mad 340.

is not that they will there do the work of a dictionary, but that they have great explanatory power.

The attention must be given to the claim, which in perennial discussion of the essence or the nature or the definition of law, has been most frequently opposed to the simple imperative theory, which is found to be inadequate. This is the general contention that between law and morality there is connection which is in some sense necessary and that it is this which deserves to be taken as central, thought in any attempt to analyse or elucidate the notion of law. Persons advocating this view might not be concerned to dispute this criticism of simple imperative theory. They might even concede that it was an useful advance; and that the union of primary and secondary rules was indeed more important than the orders backed by threats as a starting point for understanding of law. Their argument would however be that it is not enough that even those elements are of subordinate importance. Until necessary relationship with morality is made explicit and its central importance seen, the mists, which have so long clouded the understanding of law, cannot be dissipated. From this point of view the questionable or challengeable cases of law would not merely be the law of primitive societies or international law which have been considered doubtful because of their lack of legislature courts with compulsory jurisdiction, and centrally organised sanctions. From this point of view questionable from this point of view is the title to be treated as law of those municipal systems, which exhibit the full complement of judge gendarme and legislature but fail to conform to certain fundamental requirements of justice and morality. In the words of St. Augustine “What are states without justice but robber –bands enlarged?”²³⁸

Morality: The word morality is attributed from the word moral. In concise Oxford Dictionary defines “moral” concerned with goodness or badness of

²³⁸ Concept of law p.151-152

character or disposition or distinction between right and wrong virtuous in general conduct.²³⁹

The term right and wrong are the relative terms depending upon the time, statute and situation. The application of term and justification of its relevancy plays an important role in parting justice.

There are certain evils, which have nothing to do with time, situations and statutes. Such evils are absolute evils and those are counted to be immoral all the time. Such evils are trespassing, encroachment, irresponsibility, and misrepresentation as it is a part of telling a lie or showing a lie. An absolute wrong can never be moral.

Bad is to be defined first as the term is relative and not absolute. Further bad defined as, (1) inferior, poor in quality, (2) Evil wicked, sinful. (3) Misbehaving, disobedient, naughty (4) Disagreeable unpleasant, and faulty.²⁴⁰ The further bad is defined as, (1) inferior, poor in quality, (2) Evil wicked, sinful. (3) Misbehaving, disobedient, naughty (4) Disagreeable unpleasant, disturbing (5) Un favourable (6) Rotten spoiled, decomposed (7) Harmful in effect detrimental (8) Not able to be recovered or discharged (9) (a) faulty or incorrect (b) Incompetent (10) Not valid or genuine (11) Severe Violent, intense (12) In poor health (13) Sorry, regretful unhappy.²⁴¹

5.2.1 ESTABLISHING FACTS

Law and orders, rules and regulation are to control the society. Any adverse act done by the person in the society is questionable in the eye of law. The act of a person is based on the circumstances and situation. The act, which has taken place, is depending up on the facts, which are

²³⁹ Kuldeepsinh v. State of Punjab AIR 1994 P&H 242 at 247

²⁴⁰ Oxford Dictionary p. 51

²⁴¹ Universal Dictionary p. 124

interrelated with the chain of events, and the events are again linked with the rules and regulation of the time place and situation. The elements of necessity and morality are also interwoven with the act of a person. The judicial trend is for remedy of any thing accounted to be bad, wrong, illegal, irregular unjust etc. An act cannot be justified by the nature of the act but the facts behind the act are to be established as the fact of act is to be justified as to be bad and is taken as the negative approach. The act, which is bad, is not good but along with this relative term why the act done is bad in any of the above-mentioned relative terms, time and circumstance during the happening of the act and reason to do it. The bad act is done knowingly or unknowingly and the Intention of doing such act. The fact is examined from all the aspects and angles.

The meaning of bad is showing negative interpretation. In the event of inferior or poor quality, the fact is to be established as to why the quality of certain materials or in case of services are inferior or poor in quality. The consideration also plays an active roll in the happening of the fact and if the fact established relatively on basis of evidences, the evidence should have the firm backing of laws. In case of Implementation of rules and regulations, any act adverse to the law needs justification and rectification, prevention and finally needs remedy to streamline the process. The judicial trend is needed to protect social rights.

In normal and routine circumstances judicial part does not play any role in administration but the trend depends on the factual aspects of the act needs the help of judicial function to acquire justice. Establishing facts is an exercise to find out whether the act is legal or illegal in other word is whether it just or unjust.

The prime requirement is to establish facts. To define legal meaning and aspect of the word to establish²⁴² has got number of meanings. One of is to ratify, confirm, settle, and to found to create. Founding is not the only

²⁴² Shorter Oxford dictionary p. 271

meaning of the word “establish” and it includes creation also. It also mean to found or base squarely, to make firm or stable, to bring in to existence, create, make, start, originates. Here the word also means,” to bring into existence.”^{243, 244}

The word, establish and establishing have their own interpretation as far as the legality and terminology is concern. The word establish has its static meaning and establishing is a process where the other criterion are present. The objectives are the acts (action) either facts or judicial.

Fact means and it includes anything, state of thing or relation of thing, capable of being perceived by senses; and any mental condition of which any persons is conscious.²⁴⁵

Facts discovered²⁴⁶, “It is fallacious to treat the facts discovered’ within S.27, Evidence Act, as equivalent to subject produced: the fact discovered embraces the place from which the object is produced, the knowledge of the accused as to this and the information given must relate distinctly to this fact. The fact, which is present, is supposed to be found out in case of existing situation when it is to be established. E.G. trespass or encroachment in municipal land or government waste land or unguarded land of any other persons.

Facts in issue, means and includes any fact from which either by itself or in connection with other facts, The existence, non-existence, nature or extent of any right, liability or disability, asserted or denied in any suit or proceedings necessarily follows.

²⁴³ S.Azeez Basha v. Union of India (1968) 2 SCJ 299

²⁴⁴ Panlal v.Magadha University, AIR 1976 Pat 82.

²⁴⁵ Evidence Act 1 of 1872. sec. 3

²⁴⁶ Judicial dictionary p.392

Whenever under the provisions of law for time being in force relating to Civil Procedure, any court records an issue of fact, the fact to be asserted or denied in answer to such issue is a fact in issue.²⁴⁷

Fact relevant to the issue is the one, which is said to be relevant to other when the one is connected with the other in any of the ways referred to in the Act.²⁴⁸

The word fact may be taken to have been used in the sense in which it is used in the law of evidence that is to say as including principal fact to be proved or the evidentiary fact from which the particular fact follows immediately or inference. Facts may be either facts in issue, which are the principal fact matters in dispute, or relevant facts, which are evidentiary and which directly or by inference prove or disprove the fact in issue.²⁴⁹

It is obvious when actions are evil, sinful, wicked and adverse to law means unjust like: Mistake, Misrepresentation, Fraud, Misappropriation, Mischief, Misconduct, Misconception, the facts related to issue are established accordingly.

To find out the relevancy of the fact, as mistake is to be established accordingly and to find out the mistake in fact is an act done knowingly or unknowingly.

The definition of mistake is examined first. The word "mistake means to have wrong idea about the specified matter. Mistake is of two types one is an error committed unknowingly and the other is committed knowingly and taken, as it was committed unknowingly. The word mistake in S.72 of the

²⁴⁷ Evidence Act. 1872 sec. 3

²⁴⁸ Ibid. Sec 5 to 55

²⁴⁹ State of A.P. v. Arisetty Sriramulu, 1956 Andh LT 1021: (1957) Andh WR 451 (FB) 1956 Andh LT 446 overruled

Indian Contract Act includes a mistake of law. Money paid under a mistake of law could, therefore, be recovered.²⁵⁰

Mistake apparent from record. This expression does not mean anything more than error, apparent on the face of record.²⁵¹ Mistake can be complex in form as it can be technical and relates to administrative action and is supposed to be justified as and when it becomes apparent.

E.g. In case of a building plan or a development plan under scrutiny needs both the aspects viz. technical and legal as far as its sanction is concern. The technical aspect is supposed to be taken as per the prevailing rules and regulations and if they are not detailed out in the handbook than NBC 2005 standards are to be followed as specified in the handbook with relevant sections. The rights and title of the property is to be scrutinised keeping its legal aspect in to view. Any aspect if neglected in case of submission is counted to be a mistake on part of the owner. Technical shortcoming is mistake on part of a consultant and administrative shortcoming is noticed is mistake on part of the concern officer. The fact is to be found out by the final authority as to whose mistake it was.

Misrepresentation: A false statement of fact not of opinion. A transaction such as sale, induced by a misrepresentation of a material fact is voidable i.e. can be repudiated by the party deceived, if he repudiates it as soon as he discovers the falsity of the statement, if it is possible to put parties in the same position as before. No action will lie for damages for the misrepresentation, unless the statement was either made fraudulently with knowledge of its falsity or was a warranty.²⁵²

²⁵⁰ Indian Steel and wire Products Ltd., Jamshedpur v. Supt of Commercial Taxes, Singbhum Circle, AIR 1957 pat 112}

²⁵¹ T.S. Balaram v. Volkart Brothers (1971) 2 SCC 526

²⁵² Judicial Dictionary p 635

Misrepresentation means and includes:

The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.

E.g. In practice as per rule it is more often represented that the utility of the room. The building designed for the commercial use knowingly represented as residential to get sanction in the area or zone where commercial use is restricted or prohibited. Instead of shop the area is specified as room on plan, which is illegal as per the Development Control Rule and Regulations.

Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it or any one claiming under him, by misleading another to his prejudice, or the prejudice of anyone claiming under him; E.g. a Civil Engineer having a diploma, puts his signature on plan as an Architect, which is an offence under Architects Act 1972.

Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing, which is the subject of the agreement.

When consent to an agreement is caused by coercion, fraud or misrepresentation, the contract is voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by fraud, or misrepresentation may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

If such consent was caused by misrepresentation or by silence fraudulent within the meaning of Contract²⁵³, nevertheless is, not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

²⁵³ Sec. 17 of The Indian contract Act.

A fraud or misrepresentation, which did not cause the consent to a contract of the party on whom such fraud was practised or to whom such misrepresentation was made, does not tender a contract voidable.²⁵⁴

There is difference between misrepresentation or innocent misstatement of fact and fraud, or wilful misstatement of fact.

“It must be borne in mind that in an action for setting aside a contract which has been obtained by misrepresentation, the plaintiff may succeed through the misrepresentation was innocent; but, in an action for deceit, the representation to found the action must not be innocent that is to say, it must be made either with the knowledge of its being false, or with a reckless disregard whether it is or is not true.”²⁵⁵

“It is fraud in law if a party makes representation, which he knows to be false and injury ensues although the motive from which the representations proceeded may not have been bad.”²⁵⁶

The principal difference between fraud and misrepresentation is that in the one case, the person making the suggestion does not believe it to be true and in other, he believes it to be true, though in both cases it is a misstatement of fact, which misleads the promisor.²⁵⁷

Mischief

A person commits mischief if he with intent to cause or knowingly that he is likely to cause wrongful loss or damage to the public or to any person. Causes the destruction of any property, or any such change in any property or in the situation thereof, or destroys or diminishes its value or utility or affects it injuriously. The offender need not intend loss or damage

²⁵⁴ Sections 18 & 19 of Indian Contract Act.

²⁵⁵ Cotton L.J. Judicial Dictionary p. 636.

²⁵⁶ Per Tindal, C.J. 7 Bing 107

²⁵⁷ Niazed v. Parsottam Chandra, 53 all 374; air 1981 All 154.

to the owner. The property may belong to the offender or to him jointly with others. A man may commit mischief on his property to cause wrongful loss to some person. If a person does any act amounting to mischief in the exercise of the bona fide claim of right, he cannot be convicted of his offence. An act through negligence will never amount to mischief. Mischief cannot be committed in respect of res nullius e.g. a bull set free.

Misconduct²⁵⁸

“Misconduct“ Cannot mean inefficiency of slackness. It is some thing far more positive and certainly deliberate. Charge of misconduct is charge of some positive act or of conduct.^{259, 260}

Misconduct has been defined.²⁶¹ Thus “A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanour, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness.²⁶²

The term “misconduct“ implies a wrongful intention, and not mere error of judgement. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word “misconduct“ is a relative term and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. In usual parlance, misconduct means transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand and carelessness negligence and

²⁵⁸ Black’s Law Dictionary, Sixth edition on Page no. 999

²⁵⁹ Punjab Financial Corporation V. Union Territory, Chandigarh (1992) 64 FLR 600 (P&H)

²⁶⁰ State of Punjab V. Ramsingh (1992) 2 Lab IC 2391 (SC) (1992) 65 Fac LR 448

²⁶¹ State of Punjab V. Ram Singh AIR (1992) SC 2188 at 2190

²⁶² P. Samantha Aiyar’s the Law Laxicon, reprinting Edition 1987 at p. 82

unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the Actor. Misconduct is a violation of definite law: carelessness or abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act and is necessarily indefinite.

5.2.2 FINDING OUT ABSOLUTE SOLUTION

In the chapter - 3 on legislative measures different aspects of measures are discussed. With reference to prevailing system of implementation of building Rules and Regulations, wherein commands and orders are incorporated. The process of formation of laws is not the sole objective of the system. The formation of laws should have relevancy to the fact and act for which it is formed. In any of the problems when arise is backed by its solution. There is always one and only one correct answer to problem there can be some more answers to the same problem they are relative answers. There are some probable change in the situation and the reasoning comes by giving if and but to the fact and the problem becomes more complicated. The problem has got infinite solutions, which are having positive and negative facts and figures to support the situation, which are conditional one.

The absolute solution to the problem arising out of the implementation of legal system can be taken as the solution at the time based or time bound solution. The solution is an end result of the problem for the time it has arisen. The solution to the problem is always transitory as the development of the area is not static in any of the urban area as the new development, when takes place the problems follow the situation.

By-pass roads are meant for traffic diversion. Ring roads are developed as infrastructure and are developed for reducing incoming and out going traffic in city or town. It is reality that the maximum commercial development takes place on by passes or ring roads or out skirt areas.

E.g. The Sarkhej – Gandhinagar High way which is denoted as the National Highway 8C was meant for high speed traffic to by pass Ahmedabad City so that the traffic load on the internal roads would reduce. But the situation is adverse as the commercial, recreational as well as religious buildings have come up on the national highway 8C. The reverse traffic i.e. from extended Ahmedabad come to highway for shopping or for parties or for recreation as clubs is also situated on the Road. So the basic idea of traffic became more complex. Very often there are errors in planning as and when solutions are found out for one problem inadequate solution becomes problem again.

The aim of this research is to find out some solution for refers the problem of static nature and also transitory nature. The legislative measures, are formulated for the solution of the problems in urban areas are taken as solution for the time being. The most burning problem is the excessive construction due to economical and social hardships. The rules are framed for an ideal situation and implemented for the normal situations and common causes.

5.2.3 TO ENCOURAGE JUSTIFIED ACTS

Justified Act: The term just is derived from Latin word *Justus*. It has various meanings and it's meaning is often governed by the contexts. The word just may apply in nearly all of its senses either to ethics of law, denoting something, which is morally right and fair and sometime that which is right and fair according to positive law, it connotes reasonableness and something confirming to rectitude and justice, something equitable, fair.²⁶³ Words and Phrases edited by West Publishing Co. Volume 23, the true meaning of the word 'just' is in these terms:

²⁶³ Vide p. 1100 of Volume No. 50, Corpus Juris Secundum At page 438

“The word justified is arrived from the word **just**. The word is derived from the Latin **‘justus’** which is from the Latin *jus*, which means a right and more technically a legal right- a law. Thus ***jus dicere*** was to pronounce the judgement; to give the legal decision. The Century Dictionary as right just defines the word in law or ethics, and Standard Dictionary as confirming to the requirements of right or of positive law. And in Anderson’s Law Dictionary is defined as probable, reasonable. Kinney’s Law Dictionary defines the word just as fair, adequate, probable reasonable, and *justa causa* as a just cause; lawful ground.”²⁶⁴

“Instruction that plaintiff in action for personal injury had the burden of proving preponderance of the evidence that his claim is just, and that he is entitled to recover, was erroneous, as a just claim is not always a legal claim that may be compensated for in damages, and as ‘just’ may apply in nearly all its senses to either ethics or law, denoting something which is normally right and fair according to positive law.”²⁶⁵

There is no need to refer to other dictionaries or cases in which the word ‘just’ in conjunction with other words like ‘just and reasonable’, ‘just and fair’ and just and expedient’ has been explained by Courts, because the word ‘just’ will take its colour from the main purposes and object of the enactment. Further it has been observed,²⁶⁶ “Even ideas of what is just differ from age to age. What may seem to be just to one man in one age may appear to another man in another age totally differently”. Hence the word ‘just’²⁶⁷ has been used in a very wide and comprehensive sense.²⁶⁸

²⁶⁴ Vide *Bregman v. Kress*, 81 NYS 1072(1073): 83 App.Div. 1

²⁶⁵ *Lake Moncock and C.R. Co. v. Stinson*, 81 So. 512: 77 Fia 333

²⁶⁶ By Rajamannar, C.J. in *V.G. Row v. State of Madras*. [AIR 1951 Mad 147(179)(FB):

²⁶⁷ S. 110.B of the Motor Vehicle Act

²⁶⁸ *M.A. Rahim v. Savari Bai*, AIR 1973 Mad. 83(87): (1972) 2 MLJ 347: 85 MLW 668: 1972 ACJ 470

Justification: A defence or plea that a defendant has good reasons for doing the thing, which he is called upon to answer in an action.

‘Justification’ means that in cases of libel and slander, the defence set up is that the words complained of are true in substance and in act. In civil Proceedings, this is a complete defence; but in proceedings in criminal libel, the defendant must also prove that the words now published for the benefit of the public. In an action of assault, also the defendant may justify the assault by showing that he used violence complained of in defence of himself, his wife, child or servant or of his property. [Harms].

To encourage the acts, which are making the legal system workable with justification is a positive sign of the attitude of the society and people residing there in. As defined the justified act is morally and legally right having positive approach for the solution to a problem.

E.g. in the subject matter of research the present trend is to consider the right and privileges of the aggrieved party.

5.2.4 TERMINOLOGY IN LEGAL AND TECHNICAL CONTEXT

The word, interpret defined: The word interpretation is already defined in the legislative measures (Chapter - 3) while formulating rules and regulation for the said subject. Terminology is subject base and not object base. When the subject matter is formation of law the word is interpreted as legal terminology and when the subject matter is judicial or the justice is based on all the related subjects like psychology, economics, sociology and technical. One aspect may be justified in one case and may not be justified in relation to other subject.

Ascertainment of the intention of the executants of a document is the interpretation when subject matter is specified.

“Interpretation of Constitution” – means. Interpretation is the method by which the true sense of the meaning of the word is understood. The question of interpretation can arise only if two or more possible constructions are ought to be placed on a provision- one party suggesting one construction and the other different one. But not where the parties agree on the true interpretation of a provision or do not raise any question of law as to the interpretation of the constitution.²⁶⁹

Interpretation of Statutes “It is common place that words in a statutory provision take their meaning from the context in which they are used.”²⁷⁰

In interpreting provisions of beneficial pieces of legislation which are intended to achieve the object of doing social justice to certain classes of workers. E.g. the women worker employed in plantation and which squarely falls within the purview of Art. 42 of The Constitution, the beneficent rule of construction which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the living of her previous efficiency and output, has to be adopted by the Court.²⁷¹

In case of interpretation of terminology the term and the meaning there of depends on the act, situation and time of the said act.

In case of interpretation the meaning of the term is stated to understand the situation, the situation is supposed to be examined on the subject base and not the object base. E.g. in the present set up, the rules and regulations are for the development is taking wide care of the situation.

²⁶⁹ State of & K. v. Thakur Ganga Singh, (1930) 2 SCR 386: (1960) Andh WR (SC) 67: 1960 MLJ (Cr) 180: (1960) 1 MLJ (SC) 67: 1960 SCJ 231: AIR 1960 SC 356

²⁷⁰ Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740

²⁷¹ B. Shah v. Presiding Officer, AIR 1978 SC 12

The building plan is sanctioned with purpose base such as industrial, educational, residential, and commercial or any other type. The requirement of toilet facility and parking facility is inevitable as far as its use is concern but by misrepresentation of the fact the building is constructed showing other purpose which does not require the specific requirements and then used for the intended one. In no case the act is justified as the mala fieds²⁷² intention is already becomes evitable and the act is adverse to law.

In other case the building approval is as per the law with all specific requirement fulfilled on plan and there after the said facilities are taken off and the problem is created. As parking is converted into shops or storage space and the vehicles are parked on the roads becoming hurdles to the moving traffic. The act is not justified even though the plan is as per the legal set up.

On purpose base such as understanding the situation depends upon the meaning they're of. Any terminology can be or may be interpreted in different ways, having the simple meaning thereof, the express meaning there of, the implied meaning there of, the relative meaning there of and the absolute meaning there of.

5.3 JUDICIAL NETWORK

Judicial network is an inevitable force to protect social and public rights of the person in particular and people in general. Judicial network is the set up of a group of learned and qualified persons having sound knowledge of the subject matter. The basic parties approaching judiciary to the said set up is property owner land developers, Builders on one side and Authority heads on the other side. Judiciary with legal provisions justifies it by examine the basic facts in context.

²⁷² Bhupendra Singh v. State of Haryana AIR Punj. 406

5.3.1 CONCEPT EXPLAINED

The concept of judicial network is a system having its procedural aspect based on a procedural law. The judicial network is defined as to give justice to the person who is sufferer or has become a victim of an adverse act done by the person having mala fide intentions or benefited by the other law or has taken adverse advantage of powers and rights assigned by the law to the administrator.

The concept is furnished by simple ethics. The legislative measures are if understood properly and taken for granted that those are framed and meant for the public interest. The legal system is always needed for two or more persons and society as whole.

A man in jungle does not need to obey any rule other than natural law if he wants to feed himself. If he grows trees than only he will get the fruits. But if he finds the other man in the same vicinity he gets company of other person but his right to the benefit is divided in to two and has to let go some rights.

If legal provisions are respected by every person in the society the administration too, will function smoothly because it becomes automatic self disciplined process to follow the natural law. Unfortunately, human tendency does not allow other person to enjoy rights, which he is getting by virtue of natural law. The rule of might is right still prevails, if not completely than partially. The cunning always wins the game by cheating other. To keep check and counter check on such acts the administrative set up and auxiliary machinery is needed.

The system of administration is for implementation and observance of rules and regulations. The controversy is bound to arise as it always a fact that in any game one is winner and other is looser. As per human tendency never accepts defeat or loss, wants to gain or regain the thing, or right, which is lost as benefit of the matter. The administrative set up has

already a limited power to set right the controversy arisen out of the act of interpretation of legal rules, regulations and the actual implementation of the rules.

5.3.2 EXISTING SYSYEM

The exiting system in urban area as per set up is different but the concept is very clear that the development of a particular area is to be recorded properly and with uniform rules and regulations as per the legislative measures are taken for the purpose. Development permission is to be taken for a new construction or addition alteration to the structure or for the repairs and renovation of the building. For the purpose of obtaining sanction the Rules and regulations are followed as per the Handbook. The system of parting justice the judicial trend is a process that is a time consuming and the matter is not understood by its proper perspective but based on evidences presented by the aggrieved party and evidences created by defendant for defence

5.3.3 SYSTEM IN PRACTICE

Prevailing system in every urban area is as per the set up of local authority and as per its local procedure. The local self-government frames rules and regulation for the procedure to grant sanctions to building permission for construction and occupancy certificate. In principle it is necessary to obtain sanction prior to the starting of construction but in the areas those are not included in any urban area, the sanction whether obtained or not, makes no difference in the situation. Problem arises when it is included in urban area either in development authority or development areas. The construction or development had done adverse to or not according to rules and regulations as the time factor takes important role to get the shield of administrative set up. The system and procedure adopted in practice is different than described on paper. A small mistake by an officer at the time of scrutinising on paper makes a precedent for the people waiting for adverse act. Prevailing system is to check some cases as test case.

Irregular development is noticed as and when a complaint is made or similar mistake is done by a person is acting adversely. The misinterpretation of terms or delay in procedure by administrative set up in prevailing system is a base to justify or unjustified act. The present trend is that if the aggrieved party if is not satisfied by the action of administration approaches the Civil Court. The opponent elongates the time to enjoy the benefit. Duration of case in court is such that the prevailing rules and regulations may get changed when judgement comes. Other procedures like stay and appeal also consume plenty of time and the Development Control Rules and Regulations loose their significance.

5.4 INTERPRETATION OF LEGAL TERMS

Judicial trend is taken on the basic facts of the case, nature of the action and legal provisions applicable. In Indian legal system the cases, which are related to the land and revenue as well as ancillary to it are mostly decided by civil laws. Term in each statute is defined with context of the application of the said term. The literal meaning of the term (word) is given in the dictionary. But the term is interpreted as per the case and the express or implied application of the same.

The terms interpreted in statute are generalised as far as its implementation is concerned. The applicant and responder, the plaintiff and the defendant are those who are aggrieved and who have aggrieved. In this research the aggrieved parties are considered to be the local authority and/or the other is whose interest is abused.

Judicial remedy finds out the cause of wrong or illegal act and to justify the reaction of the same. In field of building industries there are many statutes, orders, rules regulations and rulings that are to be applied to the acts, which are not according to the prevailing set of laws.

Formation of Rules

The Rules and Regulations are parts of legislative provisions. The legislative measures and judicial trend are two equal and opposite side of a coin. Both the processes have got direct and indirect, as well as express and implied relation. Formation of rules and regulation is the basic necessity to stream line any process. The process can be of any nature. For scientific process the rules and regulation applied accordingly but as far as force is concern if is from one side the opposite side if cannot resist falls down and the rule loses its justification. The Justification in implementation, when power exerted direction exceeds than opposite force the mistake is apparent.

Latent Mistake: The latent mistake is one, which is done or already done, and which already exists the outcome of the same has not developed as fault. Which means it is a dormant mistake. E.g. When a plot is located in total open and where the demarcation of the same is according the document as far as the area and dimension is concern can not be checked by normal process can be found out when the development takes place which cannot be rectified either at the time of development is carried out or development has taken place.

Express mistake: Wall thickness either on one side or both as the case maybe. In common wall construction if the fact is not specified in document. The Plot number is not properly specified while specifying the boundary with directions with reference to North line.

Implied Mistake: (1) An act done knowingly wrong by one attested by the other unknowingly terms as mistake (2) e.g. minimum dimension of the area for specific purpose if is designed purposely less and denoted by other use. If is designed with Type of mistake: absolute mistake or relative mistake legal mistake or technical mistake.

Absolute mistake is one, which is mistake in any case in any situation or circumstances as it can be any one type of types above mentioned.

Place of Mistake: In case of implication of the rules and regulations, the documents, sale deed or purchase deed or on plan, which can be rectified by either of the parties. E.g. In case of the title as far legal part is concern and the area, in terms of size shape is concern, in case of classification of area as zones.

Time of committing mistake: The interpretation of terminology does mean in present set up as a fact is of composite nature to justify the act. The time does not mean time on a clock but the situation cause the situation is arising out of number of happenings.

Intention of committing mistake cans mislead person who committed the act The person instigating to commit adverse act is interpreted as the mistake in fact for a certain specified case and matter. The person knowingly ignores the mistake is termed as an accused as far as per duty and power of administration. An officer from the authority does so to get any consideration from the person who instigates to ignore the mistake. An apparent mistake, which is reflected in the out come a mistake indeed e.g. a heap of sand is supposed to be interpreted as a wrong or an adverse act.

E.g. at proper place the construction already made on government land is again a wrong done by builder or owner. The permanent construction of market place such as community hall and other residential colonies, which at later stage are declared illegal, unauthorised, irregular or as encroachment on the public places or land. In case of Roads or common plots under Town Planning Schemes of urban areas where the development is fast and the administrative machinery is inadequate towards passing information to the concern department, problems are bound to arise.

The person unknowingly ignores the mistake is termed as negligence.

Mistake and Negligence

Literarily meaning of deviation is 'Deflexion of Compass needle by local attraction e.g. of iron in ship.' magnitude of wrong deed and result resulting from deviation to save life or property.²⁷³ Deviation is taken as one of the wrong or matter adverse to law. The deviation in terms of justifying the act or matter is taken as permissible deviation. Permissible deviation in terms of technical terms as far as technical specification is concern, is a deviation, which does not harm.

Violation of a rule: Transgress infringe. A breach of law ;of another's right, This being an express meaning of the legal term but the subject matter of the research is having an implied meaning also. The rule, which is justified in case of its technical aspect, may not be justified in case of legal aspect. As in case of the easement right when the common wall construction when it is allowed by the authority on plan and paper but technically of the fact which is shown perfect on paper is not feasible on site. Parties to that right have to compromise at some place as far as be safety and other matters are concerned.

The term Mistake apparent from the record means the expression does not mean anything more than "error, apparent on the face of record" which must be an obvious and potent

Mistake

In case of mistake direct or indirect apparent or latent express or implied is to be examined on the following factors.²⁷⁴

Direct mistake

In this connection direct mistake is which a person who is directly related to the case does without intention or knowledge. E.g. the acceptance of the document without knowing the content thereof in detail and the facts

²⁷³ Carriage of Goods by Sea Act, 1924, Art.IV, S. 4.

²⁷⁴ T.S. Balaram v. Volkart Bros. (1971) 2 SCC 526: (1971) 2SCWR 259 (1971) SC2204

thereof. The area written in different units does not co-relate with each other or with the prime document.

Indirect Mistake

Indirect mistake is one which is outcome of the chain of direct mistake such as if the plot area is mentioned in units as per the law either in sqmts. or in sqyds. The area of the plot depends upon the size of the plot and size of the plot is again related to the shape of the plot unless and until full details are not specified in the document the error arisen is the indirect one. All enclosed angle should be mentioned in case of plot not being square or rectangular and further one of the right angle should be mentioned when abutting the road.

Apparent Mistake

Apparent mistake is one, which is easily legible in case of the plan, which is accounted as one of the documents, and where the interrelated dimensions do not tally as far as fixed measurements are to be followed. E.g. observing in detail that the depth of the plot is suppose is X Mts., the front margin is to be kept is Y Mts. the rear margin is to be kept is z Mts. then the left over for the legally build able area to the maximum depth usable is $= X - (Y+Z) = B$ When the total of inter related thereof is not = B. The mistake as counted as apparent when noticed but after due scrutiny it can term as misrepresentation if is done knowingly.

The mistake takes place of an offence or wrong deed immediately after notice of it or is acknowledged:

1. After due complaint
2. After comparison of two different situations at same time, or
3. Magnitude utilised for more than maximum & less than minimum.

Mistake to be rectified by ways and means as administrative set up instructs or orders keeping the provision of rules and regulations into consideration and or otherwise if the situation does not permit to rectify

than the matter becomes hardship. The hardship may be legal or technical in nature.

The situations, arising out of the application of law and implications arising there from:

Mistake in case of documentation: The document is that in which the information or details of the establishment of ownership is narrated: The effective area in the case of document is:

1. Name of the owner and age of owner.
2. Date of established ownership and period of holding
3. Place of establishment. As Address of the place in terms of Plot No. R.S No. of Village, Taluka and District.

In case of issuing a Title clear Certificate: Legal opinion of a legal adviser depends upon the facts available / furnished to him/her is with correct information on oath _____. Reliability of the opinion.

In case of approved document in the name of original owner: Legality and validity of a document is questionable when the date of document is prior to the date of sanction.

Document can be when challenged on oath for the ownership for clear title, which prevails. Document can be made predated; post dated or false dated in case of the time is factor to prove the clear title. Any fabricated document cannot justify clear title as and when the checklist with date is prepared and the contradiction comes can be taken as typographical mistake but if is registered on the other date can be said misrepresentation.

Certificate 7/12, 8 & 6/A is revenue record, reliability of the record, content their of and the signing authority. As per revenue code the said record is counted to be reliable document signed and stamped by with authority to sign.

Power of Attorney: Type of the power delegated in the said document time of its validity and the related factors as far as the forgery/fraud is concern. Death of the person holding delegated power or person delegating power, in case of absence of the said condition the legality of the document could be changed. In case of benami transaction, where a person might be there or not or is in name of any fictitious person the presentation of other person as the witness or the person not same in fact.

Deed of Sale Agreement (Satakhat): The agreement to sale is an evidence of owning the property who sales the property and the date time and content of A legal document and the conditions there of shall be checked as the power delegated for certain work and validity there of in case of problems.

For instance:

Facts: (1) a building plan is sanctioned violating the rules and regulation of margin and open area and FSI. An intention to misrepresent the case all the definitions are misinterpreted and the completion certificate issued and unauthorised additional work is included in the said documentary evidence as no follow up is done at the time of issuing the certificate. Competency of the person sanctioning the plan knowing more about other laws than the technical misrepresentation is taken in to consideration.

Misinterpretation meaning is taken in other way when is considered for the judicial trend. While issuing the order as a judgement the trend is to be considered as the concept of positivism. Interpretation is a relative term and is always read with other terminology.

Misrepresentation: Purpose of utilisation: general purpose i.e. school hospital or public building which are owned or undertaken by local authority or trust or private professionals misrepresentation for internal use: i.e. Toilet area used for other purpose or smaller area denoted as puja, fuel or store and so on. In case of ownership if title is defective and

represented as clear one by false signature documents with false information. Relating ownership, time and place.

Technical: Dimensions, size & shape.

Legal: Ownership Supporting Documents.

7/12, 8 & 6A

Power of Attorney

Agreement to Sale

Purchase deed

Index II

Indemnity Bond

Affidavit

Sanad (City survey)

Property registration card

NOC from Co-owner or co-borrower.

The administrative set up is with the persons qualified for the creation of problem to the solution of the problems. The set up should not have political pressure for the act, which is not legal or is not as per the rules and regulations. In most of the local authority there are two sets of persons who are actively involved in the act of development. One set of people is elected body from the City or town as the case may be who may have or may not have vested interest in the development and misrepresentation is most evitable and illegal development takes place as the administrative set up of persons are on service with their vested interest in the salary and may or may not be in the development of City or town as per the rules and regulations. The end result of such misrepresentation is irregular illegal development such as proposed societies not having No Objection Certificates from the concern Authorities, Not having Non Agriculture order from the concerned authority and not having clear title to the property so developed.

The power of attorney is a document, which shows the right as owner has.

The Acts by which, the powers are delegated: (1) Powers directly administered (2) Powers delegated. The limitation of Delegated powers V/s the powers administered directly.

The prime aim of study of this frame is to avoid the litigation from micro level to macro level. Legality of property is based on the title of the property and the same when is established jointly or severally by different authority should not have any contradiction as far as its identification or notification is concern.

In recent trend the administrative set up for implication of building rules and regulations is taken on basis of the procedure practically administered by different categories, where the legality or technicality is ignored and vested interest prevails.

5.4.1 WITH RESPECT TO NATURAL LAW

Interpretation of legal terms with respect to Natural Law is taken as the term is interpreted as it is. As a law of nature is action and reactions are equal and opposite. This means every thing, which is justified in day today routine life. It is necessary in order to elucidate features distinctive of law as a means of social control, to introduce elements cannot be constructed out of ideas of an order, a threat, obedience, habits and generality. That is the character of law distorted by effort to explain it in these simple terms.

The terminology is interpreted in its true sense. It does not have impact of its literary meaning but it reflects the feeling of aggrieved person. In case of an owner old tenanted property sufferers or the buyer of the tenanted property²⁷⁵, cause is the man made law, which has given protection to tenants rather than property owners. The natural law with morality never allows one to grab the property of others. Judicial trend is not to favour one or the other but has to find out a midway solution to justify the act or

²⁷⁵ Appendix I translated news.

rectify act by clear judgement of the forth-coming situation where no discrepancies remain any more. Natural law is not a man made law, which has many provision of if, but provided whether or not. It is the one that justify each and every act of human, animal and vegetation as matter of fact and the abstract term as time, which is not visible, but because of certain act or actions the factor is felt and understood.

Like other laws Procedural Law is based on natural law very often it is in distorted form where the justification of act of people in general and a person as an individual matters much in the way is distorted. Natural law states that when demand takes place supply has got its importance if is timely. Food is useless to a person when is hunger is over because of his death. Rain loses its importance if is late and unable to help the crop to grow. Such is the Procedural Law; takes time and does not allow getting timely results in most of the cases.

5.4.2 WITH RESPECT TO DIFFERENT STATUTES

Interpretation clause is a section of a statute, which defines the meaning of certain words occurring in the other sections.

Interpretation of Statutes “ It is common place that words in a statutory provision take their meaning from the context in which they are used.”²⁷⁶

In interpreting provision of beneficial pieces of legislation which are intended to achieve the object of doing social justice to certain classes of workers e.g. “to a women worker employed in plantation and which squarely falls within Article 42 of Constitution.”²⁷⁷

Legal terms with respect to different statute are taken as the term defined in the respective statute. The legal terminology is having implied and

²⁷⁶ Rammanohar Lohia V. State of Bihar, AIR 1966 SC 740

²⁷⁷ B. Shah. V. Presiding Officer, AIR 1978 SC 12.

expressed and relative interpretation. The word cinema is taken as per the Cinema Act and the detailed requirements are to be followed as per the said Act. Other ancillary services are as per the local rules and regulations. The definition of building is defined in many Statutes like Madras Building (Lease and Control Act (25 of 1949) as applied in Andhra Pradesh.

The term building²⁷⁸ is defined in Chapter 1 as a term in the different statute but the composite term like existing building plan, addition and alteration to the building and revised building plan, proposed building plan are the terms often used when sanction is sought for. This term is relative terms as for granting permission. Providing the evidences to establish the fact proves the terms. Building is defined in number of statutes but the common meaning is the one, which is in dictionary. The composite terminology such as purpose oriented buildings are classified in simple term such as buildings which are other than non residential are residential is not the interpretation of any statute expressly but derived impliedly. In the statute the terminology is having limited interpretation that is related to the objective of that statute. No absolute interpretation is available in any of the Statute as the law are framed and formed based on circumstances and situation, which are co related with the factor, which is denoted as Time, and no single instance is identical or even in all respect. As it is like a circle of a spring and where two end never meets to make a full circle. So the prevailing practice is to interpret term as per desired meaning to prove the fact.

5.4.3 WITH RESPECT TO THE CASE LAWS

Interpretation of legal terms with respect to Different Statute is taken as the definition but the legal terminology as interpreted in case laws cannot be taken as an absolute meaning there of. Relative interpretations are based on the situation, circumstances, evidences, time of interpretation,

²⁷⁸ Appendix H

limitations of understanding of interpreter etc. The judgement of case can be contradictory to the earlier one as the terminology is not taken as it is but is tailor made fitted to situation can be right for one cannot be same for other. The definition of residential building²⁷⁹ is that all buildings other than non- residential buildings are residential buildings. The positivism and negativism is matter of interpretation as per the circumstances and situations. The plot with construction up to plinth is said to be open plot as there are no walls and no roof but is not accounted as vacant plot as the plinth is a part of building but not a building as defined in the definition of building. The plot with only compound wall is an open plot as defined by local authority.²⁸⁰

5.5 DEFINATION OF CONDITION OF HARSHIPS

The literal meaning of hardship is hardness of fate or severe suffering or privation. A phrase, condition of hardship used to indicate judicial decisions which to meet a case of hardship to a party is not entirely consonant with the true principle of the law. It is said of such “Hard cases make bad law.”²⁸¹ The said phrase is for the judicial decision not because hardship is counted, as the law does not have remedy of it the aggrieved party is to be benefited because of it other social, economical or physical or mental conditions such as handicapped persons. Many statues or Set of rules and regulations are keeping provisions for such hardships.

The provisions are out come of the past hardships. The subject of matter of research is concern with static hardships and not the transitory. The transitory hardships are solved by the transitory solutions. Static hardships are the specific type of buildings such as Heritage buildings, Institutional

²⁷⁹ Appendix H

²⁸⁰ Application form of RUDA

²⁸¹ (Black’s Law Dictionary 6th Ed., at 717)

buildings, religious buildings where the sentiments of general public are involved.

Other static hardship is the post planning of the development schemes where certain parts of the defined area is developed or encroachment has taken place and many places the plot area specified in the sale document and the area available on site in actual is different. In such case if the area remains is not according to rules and regulations, still to justify the matter the rules are applied to the plot in extent of the possible by the discretionary powers are to be used.

In case of town planning schemes and other development control rules and regulations authority keeping all minimum standards in consideration prescribes minimum plot area and such minimum standards are not fulfilled by certain class of people and for their livelihood as well as shelter, Low cost housing schemes or slum clearance schemes are introduced in the area which is of middle class locality or high class locality and this part is counted as one of the cases of hardship.

5.5.1 EXTENT OF CONSIDERATION

Hardship once defined is the situation, which is beyond control of rules and regulations, and still that situations cannot be avoided or denied and at last it needs consideration. Each and every situation if is decided becomes a case of hardship because human tendency is to acquire more than what is permissible. Each and every time it is not possible to consider all the cases, as per beneficiary demands. In legislative measures when the formation of rules and regulations are formed and framed, the extent of consideration is always included. There is no specific situation or matter, which is counted to be hardship. The extent of consideration is specified as follows:

“On the receipt of the application for Development Permission, the Competent Authority after making such inquiry and clearance from such

an expert whenever considered necessary for the safety of the building, as it thinks fit may communicate its decisions granting with or without condition including condition of submission of detailed working drawing/structural drawing along with the proposed plan.

The justification of any matter depends on the facts of the case and the circumstance of the person in which one has acted adverse to law. The consideration is also is justified as and when is applied for. The mistake can never be justified as hardship if is knowingly committed. Any situation or circumstances arising out of severe ignorance or negligence also cannot be interpreted as hardship. It does not have absolute integrity in its meaning to make it a criteria for judgement as it is in practice now-a-days.

5.5.2 CHANCE TO BE GIVEN

The justification of an act is difficult task as both the sides are to be examined with all the facts and figures. The information is to be given by the aggrieved party to the Concern authority in writing for the action to be taken against the adverse act. In this case the act cannot be said to be right or wrong even if it is adverse to law because of the of the circumstances and situation and time at the event of that act. Facts are to be examined on its natural base and merits, i.e. as they are. First step is the show cause notice to be served as to find out facts of the other side and also chance is to be given to the other side to clarify the situation and also explain the reason and to show cause for the so called adverse act.

E.g. It is often found out in the cases where old building is demolished where walls are common as shown in the sale deed and when new construction takes place the other party to the common wall brings stay on further construction and on the other side the party undertaking construction submits Caveat to avoid delay or expedite the work whether it is justified or not. In such a situation the chance, which is supposed to be given, is not justified.

Similar situation is for the authority in case of the aggrieved who feels that unjustified act done by the local authority by giving more benefits to one and not to other with some reasons or not in that case also the direct litigation is not done but chance is given to authority to compare the situation.

5.5.3 MILE STONE HARDSHIPS

The mile stone hardships are those, which are having all the matters adverse to law. Every citizen is to be treated equally as far as legality is concern but in the prevailing practice in the matter of commercial complexes in urban area is having hardship, which is accounted to be the mile stone hardship. In case of the building in a city where the front margin is to be kept open for parking the vehicles and the other objective is at the time of widening the Public Street the building is not damaged, but parking due to high value of land the full benefit can be achieved by a builder is by construction of as many shops permissible. The shops on first floor need approach from main roadside and for that the staircase is provided from the ground floor and also from the margin where construction is not permissible. The fabricated ladders are provided which is fully adverse to law but it should also be considered that if the ladder type stair is not provided the value of the upper floor shops becomes less or difficult to sell. Thus, the authority allows which is totally adverse to law and no complaint is filed, heard or not taken action for.

The hardship makes bad law but the made situations are such that the hardship takes place by creating the situations accordingly and their the legal implications are maximum where no actions are taken by the administrative staff and the other discipline can not understand the preplanned creation of the adverse situations. Along with such problems the other hardships are common and usual one, which cannot be eradicated as and when needed

5.6 PROVISIONS IN EXISTING SYSTEM

The existing system has many provisions in terms of action but the reactive provisions are not incorporated. It is a practice in local authority that all the rules and regulation should be carried out and all the instructions shall be followed. The necessity of the part of the procedure for certain buildings is unnecessary but still the procedure is to be followed. Any thing adverse to said rules and regulations could become the cause of rejection. The procedure if is opposed by a group of people collectively can be rectified or modified but once accepted becomes rule for the time duration till next amendment. Cases in courts are comparatively less in number. Administrative head has delegated powers to concern head of the department for acceptance or rejection of the proposal on the merit bases.

In this case three stages are already specified is the conception nourishment and destruction. The judicial Trend is taken as the third stage in this research. As far as legislation is concern the framed rules are ready to implement for both Local authority and an applicant. Local authority specifies the need of the institution in terms of the documents from the applicant to get the sanction. The applicant with healthy attitude if provides all the necessary documents with requisite fees along with necessary signature of the concern persons faces no problem or difficulty in the process except delay in the procedure but no rejection. The delay in process is due to insufficient staff or due to incompetent staff.

In the second type the applicant provides insufficient documents and ask for sanction gets demand in form of queries to fulfil the documentary requirements and the process is carried out. At this stage the applicant has to complete the requirement for further action where he cannot blame or can put allegation for not working or delay in sanction.

The third type of applicants are those who put application perfectly get work done adversely and creates problems to other like the neighbours or

the local authority by encroachment on roads by projections or any other way. Though illegal but would retain the encroached part and would approach Court for justice by presenting fabricated documents or false evidences.

The applicants of first category have no need to approach any body for justice they are justified by themselves.

The applicants of second category have to adjust with the situation by completing all the formalities. The administrative machinery can justify their demands or requirement and no need to approach any Court of law.

The third category of applicants is such that they are aggrieved local authority or local authority has aggrieved them by making them to suffer monetary loss or a loss of stipulated time period. The Justice is in term of satisfaction of one's desire that is aggrieved against the loss of any entity in terms of money, time or property or mental peace. Applicants of this category have to approach Courts

5.6.1 PENAL

The judicial penal action is one of the remedies for aggrieved person against the party, which has aggrieved. This remedy may be in terms of money in form of fine or imprisonment. The penal provisions are as per nature of the offence and seriousness of the offence committed.

The subject matter of research is connected to the building, which is a static entity which is immovable as specified in Transfer of Property Act 1882. In case of any thing adverse to Rules and Regulations cannot be reported, as the building is an entity, which is made up of two components. One of them is raw building materials like bricks, stones, steel, sand, coarse aggregate cement, wood etc. which is visible and the second is workmanship which is not visible by itself but is incorporated when building is getting its semi final shape in form of RCC slab, brick wall, doors,

windows, flooring tiles, etc. and the final shape is a building which should be as defined in the Act.²⁸² Further purpose-oriented building should have the inner components as rooms, toilets, classrooms, and office in case of school building and in case of Cinema theatre a large hall where motion picture is screened. The adverse use of the building sanctioned is for done without permission of concern authority can be an offence under law but in subject matter of research is whether implications are raised there and if yes than the interpretation of penal provision for such an adverse act is sought out. The interpretation can be misuse, misrepresentation of the event. Such is case in all the purpose-oriented buildings.

5.6.2 COMPENSATORY

Provisions for compensation are provided in law. In cases, where the remedy against adverse acts, to the rules and regulations is provided, the Local authority by getting the order from the High Court or the Supreme Court as the case may be for the encroachment on government land or public streets obtains remedy are having .The compensatory part to the aggrieved in this case is that the aggrieved gets his right to property back by demolishing the buildings or other structures there on. In other case where the local authority gives compensation when landowner is aggrieved by local authority by taking the possession of the land for road widening or other such purpose where public is benefited. In such cases court have ordered to give compensation as per the desire of aggrieved person in terms of money or the acquired benefit in terms of FSI of the land whose possession is taken by Local authority.

5.6.3 COMBINED REMEDIES

Provision for combined remedies is also provided when desired compensation is insufficient as far as commodity is concern. The applicant seeks both the remedies with different interpretations by application in

²⁸² Transfer of Property Act. 1882

different courts for one offence or adverse act. Which is also civil wrong at a time.

5.7 DECIDED CASES AND THE JUSTIFICATION

Cases are based on the complaint or application and are, decided on the evidences and facts, which are established on basis of evidences and witnesses available. In case of subject matter report from the experts is sought which is included as annexure or exhibits enclosed along with the application to Court of Law. There are number of cases where the sole subject matter is building and the components are of in terms of land and building there on. Land with Non Agriculture permission is treated as an immovable property where building can be built as per the Sec. 3 of Transfer of Property Act 1882. The immovable means a static element, which cannot be taken else where and the building which is firmly attached to the land as far as the materials are concerned are chemically composed elements such as lime mortar, cement concrete colour or paints and other components can be taken as samples like tiles, plumbing fittings like taps cocks etc. The case of land can be decided as far as its title is concern, because the papers can form the integral part of evidences in form of documents where plot number survey number etc. are specified. Title of the land by document is legally proved ownership but it does not mean that it can be same as site. Before final decision of court the actual place should be checked in terms of its physical existence, Physical verification as far as its size and shape along with the direction of North and other direction becomes necessary.. The land can be justified by the documentary proof by any legal expert, an advocate well conversant with land and revenue code where other aspects like implications of development rules and regulations are concerned.

The building when is one of the issue of the case it is also accounted as immovable property under the same law and is a static entity. The building is a component with two different elements one is the building materials and the second is workmanship, which is done by labours. A case is

decided by relying on a report on the report given by an expert of the subject. The reports contain the facts on which the dispute has arisen but the legality of building cannot be established by facts. In many cases building with property registration card is taken as a valid clear title because the surveyor from the department has physically measured the building and issued a Sanad i.e. certification with basic facts like land and building with specific demarcation as building and open space there in. That can be evidence of the very existence of building that day when it was prepared but cannot be valid evidence forever in court. When cases are decided on any of the issue related to building the very existence of it on paper is accepted as an evidence and not the legally as on the date it is to be checked as on site. A valid sanctioned plan is not mandatory valid document or the occupancy certificate is not counted to be one of the necessary documents. So the justification as far as with limited resources the judges have along with their knowledge and experience tries to justify. In real sense the decided cases can be in favour of either side of the case but positively with all aspect the technically cum legally those are rarely justified as observed. E.g. a building without occupancy certificate cannot be a valid subject matter of the case if the facts are related to the purpose it is used for.

The encroachment, which is demolished by the Local Authority or in case of Delhi, "Union Government is in critical position due to illegal construction in Delhi. The action against illegal buildings by demolition and sealing the property has become a political issue and Delhi Congress president and Councillors have asked for special order to stop such action. The members of Chamber of commerce have also requested The President of India to be mediator in this matter.²⁸³

State Government of Delhi is unable to take any action against illegal Construction by taking shade of legal aspects and Delhi High Court has dismissed the engineers who were responsible for not taking steps against

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illegal construction.²⁸⁴ If the decided cases are justified in its perfect interpretation of the word justification than the Government who is a body making or framing rules does not have to set back and change the Act or Law to justify the buildings which are illegal as on the day reported to be legal.

The Supreme Court also vacates the stay given by High Court of respective State because of the misrepresentation of the facts. The relevancy comes when no facts are hidden. One has to open the door for Fresh air. The resultant factor of law should be one. A building, which is not according to the Rules and Regulation, in any urban area or a building which is adverse to prevailing set of Rules are in any case accounted be illegal on that day that cannot be regularised by taking penalty. By such an act of judgement the persons who are abide by the rules will be punished by not getting the extra benefit as the one who has done wrong. If wrongs are made right by taking penalty or changing the rules and judgements are given proving them to be right cannot be justified as a morally. The building construction is not a transitory activity. When it starts it takes a period of time to be completed and it is well understood that when something gets within overnight or within short time the person having liability to do so should check the act. The facts, which are such cases, is half narrated, as a glass is half filled with water is neither empty nor full. One cannot Judge whether it was empty before it was half filled or was full before half filled the judgement given can never be justified.

5.7.1 TECHNICALITY VIS-A- VIS LEGALITY

The qualification and experience both are essential factors to produce, to nourish, and to judge the proper application or growth. The qualification is must to gain knowledge and information about the subject while experience gives wisdom to justify the act of other.

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A person having qualification of technical subject can read definitions of the technical terminology but cannot apply it as the application needs the experience to act wisely. The interpretation in terms of dictionary meaning is read as the word having its synonym but the real interpretation in practical life is different, which is evident when buildings are not seen but studied and read. The law books are studied and read and applied and many times the matter is between lines, which is known as implied meaning. The express meaning is like mathematic where one plus one as two but in other subjects one and one is eleven where it is implied that there is no plus sign in between. So the conditional circumstance starts that if one and one are two provided plus sign is in between, there the sign has got much more importance than the figures but without figure sign has not got any value. The application of law is more important than by law exists as a book containing certain material. The technical and legal knowledge is that must as plus sign for addition.

One of the highest officer having IAS qualification was checking a file of Town Planning Department where an application was for sub plotting (Sub Division) of one open plot. He asked the officer that as no margins were left in front and side the application should be rejected. He knew the word open margin in front of building but was not aware of the rule that the sub plotting is merely sub division of plots where proposed building plan is not submitted.

It is natural that a person can say about the taste if one knows the taste by one's experience, same is case with building rules and regulations.

The legality checks on basis of external part of the fact as evidence. If a person knows fabrication of documents can find out the difference between original and the duplicate or fabricated. Documents so to judge the static entity there should be a combination of legal as well as technical knowledge and experience is required.

5.7.2 COMPETENCY OF JUDGE TO TAKE DECISION

Under the Indian constitution judiciary is as an independent department. Persons appointed as judge are the qualified law graduate or post graduate in legal discipline. The persons so appointed also have basic knowledge of other discipline such as pure sciences like chemistry, physics, maths etc. Many of them are arts graduate having knowledge of languages, sociology, economics, etc. Commerce graduate having knowledge of economics, negotiable instruments, accounts audit etc. Very often basis of judgement is not wisdom but knowledge. The superfluous knowledge cannot be counted compete-able for the static or long lasting elements like building. A person can be compete-able to judge the incidence in daily routine life but the other specialised field like engineering, building technology, medicine, Arts in terms of real art and other such special aspects need more compete-able person to deliver or issue an order no matter it is in favour of or against the plaintiff. The justification lies in the matter and not in the argument. The argument is an implied terminology which is seen by red glass appears red and with black glass it does not appear and interpreted as the absence of the object but the matter if seen there need to be seen with naked eyes without any partiality. Most of the times cases are dismissed because of the lack of evidences, which are valid as per the Indian Evidence Act.²⁸⁵ Where the integrity of a person making argument is negligible. In case of identical adverse Act the decisions are different stating the circumstance of the party concern. In such cases bigger land the politicians shelter mafias and poor slums are made homeless. This is because of lack of competence including a high standard moral are the basic necessity, which a competent judge should possess.

The judges do not have voice to their inner soul but has to play the record sung by others in terms of case laws which are circumstantial oriented and not the absolute as far as the matter is concern and all the provisions are

²⁸⁵ Sec 63 of Indian Evidence Act.

conditional provisions in manmade law like a shop of readymade garment one can select which suits and fits him/her.

Case/Appeal No: Civil Appeal No. 15581 of 1996 **V.M. Kurian Appellant Vs. State of Kerala and Ors. Respondent, decided on 3/27/2001.**

Name of the Judge: Hon'ble Mr. Justice V.N. Khare and Hon'ble Mr. Justice K.G. Balakrishnan.

Subject Index: Kerala Building Rules, 1964 -- Eight storied building constructed under exemptions of the Rules as per special order of the government -- exemptions subject to conditions -- not complied with -- deviations of high magnitude -- contrary to public safety and convenience - - held order passed by the State Government exempting the provisions of the Rules for constructing an eight storied building was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law.²⁸⁶

5.8 RECTIFICATION IN THE PROCEDURE

The procedure as is followed in present day practice is that case is treated under one of two major part as Civil Procedural Code or Criminal Procedural Code. Though there is a limitation clause the duration of cases are from one month to any number of the years. The delayed procedure loses its worth and importance. In the case of cases relating to property and building if are delayed loses its sentimental value, as the aggrieved is not getting justice in stipulated time. The procedure is so lengthy as part of the procedure is irrelevant but still is incorporated. The undue extension for time limit to the aggrieved or other party for the reason, which is not justified, should be eliminated. The Rent control Act in favour of the tenant, which is directly related to the condition of the building, legality of building and other ancillary reasons makes the property costing as high as unpredictable.²⁸⁷

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The cause of application is important rather than the ancillary information of the application. An adverse act to law is always illegal who so ever does it and who so ever complaints against. The cause is wrong action and is suppose be penalised and if can be rectify within purview then the chance shall be given once is always justified. Instead of many laws concerning building industry one Code such as NBC should be incorporated. Any thing concerning to the land and building should be separated from the other laws. The recent concept of Lok Adalat and fast track courts are successful for the cases, which are not having long lasting effect.

5.9 LIMITATIONS

A Judge when gives judgements are transitory actions and it has their limitations²⁸⁸ of getting information. As the judgements are solely depending upon the facts and figures submitted by the parties and the burden of proof is not on the plaintiff but is always on the defendant the party has to defend himself by the facts where he has to prove that he has not acted adverse to law. The evidences produced by him should be in favour of him in all respect. With the present system the limitations are such that judge has to give judgement on the basis of the argument of the advocates and the limited knowledge of the field and evidences produced in front of him.

Procedural code has become obsolete as all those are based on early days where the social, psychological and economical aspect had much more relevancy with the pure law. Now the trend has changed to electronic media and the adverse acts are more prone to make the effect of law a failure as the fabrication of evidences have become easy and the evidences in form of Compact disc a video recording is accepted by the Courts.

²⁸⁸ The concept of law p.163

The limitation in terms of getting relevant information and to interpret in its absolute meaning makes judgement partial. The insufficient information and knowledge makes the judgement irrelevant with respect to the fact actually has occurred, as justice constitutes one segment of morality. It is primarily concerned not with individual conduct but with ways in which classes of individuals are treated, which gives justice its special relevance in criticism of law of other public or social institutions.

CHAPTER – 6 LEGAL IMPLICATIONS OF SOCIAL, TECHNICAL AND PSYCHOLOGICAL PROBLEMS

6.1 Relative Problems

6.1.1 Legal Social Problems Defined

6.1.2 Aspects Related to Society

6.1.3 Social Aspects Related to Law

6.2 Technical Problems Defined

6.2.1 Related Problems

6.2.2 Legal Aspects Related to Technology

6.2.3 Technical Aspects Related to Law

6.3 Psychological Problems Defined

6.3.1 Related Problems

6.3.2 Legal Aspect Related to Psychology

6.3.3 Psychological Aspects Related to Law

6.4 Inter Related Problems Amongst Sociology, Technology, Psychology and Economics

CHAPTER – 6 LEGAL IMPLICATIONS OF SOCIAL, TECHNICAL AND PSYCHOLOGICAL PROBLEMS

SOCIAL.²⁸⁹

- (a) Living or tending to leave together in communities.
- (b) Pertaining to or characteristic of the activities of and the relations between human beings living in a community.
- (c) Pertaining to human society and its mode of organisation i.e. social classes.
 - (1) Living in an organised group or similar close aggregate: Social insects
 - (2) Pertaining to fashionable or polite society: social grace
 - (3) Pertaining to or occupied with matters affecting human welfare.

The new concept of Social engineering is a process of ordering human conduct so as to make the good of existence. It studies the complex interplay of value both social and individual; underlying the law, the influence of social change of law the effectiveness of law and so forth. In this kind of study law appears as a living thing changing, growing and sensitive to its environment The purpose of law is to further and protect the interest of the society, viz. reconcile conflicting interest. The cardinal task of modern thought about law is that of social engineering. Law is not collection of priori method, abstract rules, but a social process of social and individual interests. It is an instrument of social control operating in society and applicable to conflicting social interests and social problems. Welfare consists in adjusting individual interest with social interest by the device of social engineering.²⁹⁰

²⁸⁹ Universal dictionary p. 1442

²⁹⁰ Social Engineering under Indian Constitution p. 19, 20

TECHNICAL:²⁹¹

- (a) Pertaining to the aspect of an art or science requiring practical, applied mechanical or scientific skills or knowledge
- (b) Qualified or skilled in the practical mechanical or applied aspect of an art or science. Technical expert
- (c) Characteristics of any specialised field or activity: technical terminology.

PSYCHOLOGICAL:²⁹²

- (a) Pertaining to psychology
- (b) Pertaining to or derived from the mind or emotions
- (c) Capable of influencing mind or emotions.

6.1 RELATIVE PROBLEMS

The present Development control rules and regulations are framed, formed and implemented in the interest of a society as whole and individual as a case. Social problems are divided into different categories:

Cast and creed, way and style of living, religious belief, pattern of family Joint or split, cultural heritage of people, High class, higher middle class, middle class, lower middle class, lower class and Economical Weaker Section. EWS is different criteria for classifying the social problems.

More often the problems are not absolute, as thing have got the tendency to have cause and always arises because of or out of certain circumstances. The problem as is defined in general terminology as a question or situation that presents uncertainty, perplexity or difficulty or a

²⁹¹ Universal Dictionary p. 1552

²⁹² ibid p. 1242

question put forward for consideration, discussion or solution. It also means dealing with a social or moral problem.

Rules and regulations are framed with certain objectives. They are result oriented in nature as those are with pros and cons. Relative problems mean a social problem having relative factor is economical aspect.

While framing rules and regulations the size of plots are considered keeping the factors for whom, it is to be fixed. The social classes are defined by keeping the income per capita, or per family in consideration as the magnitude of the constructed area and the divisions of such area are kept on basis of affordability in terms of cost or value and not the size of family.

Social problems related to economy: The rules and regulations are accounted for urban areas of India. The first and foremost problem of business and employment is the basic criteria. People from rural area or from other states are migrating to the place where opportunity for business or employment is more and evitable. One of the way is to travel from distant place to the place of work but many a times it is difficult to reach in time people tend to stay in the place of work and that makes the basic reason for creating opportunity of mass housing which is legal in nature but having many problems. Slums on the other side are illegal settlements, which are inevitable in any of the urban centres because of economical reasons.

The possibility of mass housing is generating as many problems as are in a big urban centre. The infra structure facility like water supply, drainage, electricity, roads and transportation are missing scarce or not sufficient.

6.1.1 LEGAL SOCIAL PROBLEMS DEFINED

Legal Social problem is defined as those are different in nature but as far as it is related to this research the problems are related to the legality of

the situation as they arise out of the development of the area. The definition of the developed area is the place or location, which is furnished entirely with necessary infrastructure. The zoning is done by the local authority or by government. The zoning is done as per the purpose of its utilisation. The Zones are demarked as Educational, Industrial, commercial residential and mixed as per the requirement of the development.²⁹³

The rules and regulations are different for different category of buildings; National Building Code 2005²⁹⁴ as per the standards derives the criterion for structural stability and quality of construction purpose.

The development of certain urban area had its own characteristics. The daily consumable items like milk, vegetable, ration, and provisions were the necessity of the dwellers. Slowly, milk booth, vegetable market, hawkers and small shops in the residential premises came up and the small shop gets converted in to a big store. Here starts the legal social problem. The evasion of rules starts in most of the places. One starts shop other starts laundry in residential premises. The business is not limited to the area it self but it gets expanded. The infrastructure becomes short, as the residential development needs peaceful atmosphere, less traffic problem or no traffic. The doctors are needed in each and every area as the emergency arises. The consulting rooms are not opposed but the nursing home or larger hospitals with more traffic and people from other parts coming to that area create social and legal problems.

6.1.2 ASPECTS RELATED TO SOCIETY

The concept of society has come from the definition pertaining to or characteristic of the activities of and the relations between human beings living in a community. Law has given recognition to the society as a legal

²⁹³ The Andhra Pradesh Urban Areas (Development) Act 1975 & The Urban Development Authority Hyderabad Rules 1975 Rule 12 (2) (ii) a, b, c

²⁹⁴ Annexure B

person. The term society is taken as Co- operative housing Society. The term house²⁹⁵ is defined as any building taken on rent which could be used for residence of tenant or any one else permitted by tenants to use it.”²⁹⁶ The word house is not defined in the Bombay Village Panchayat Act, 1933. The Supreme Court said²⁹⁷ that the correct approach is to construe the word in that sense with which people are conversant and the subject matter with statute while dealing would attribute to it. The word house would in ordinary sense include any building, irrespective of its user. To ascertain the meaning of the word ‘house’ one must understand the subject matter with respect to which it is used in order to arrive at the sense in which it is employed in statute. Formerly houses were built so that each house occupied a separate site. In modern times a practice has grown up of putting separate houses one above the other. They are built in separate flats or storeys. For legal and ordinary purposes, they are separate houses. Each is separately let and separately occupied. One has no connection with those above or below except in so far as it may derive support from those below instead of from ground as in the case of ordinary houses.²⁹⁸

It may be stated generally that the word house is a structure of a permanent character. It is structurally severed from other tenements. It is not necessary that a house if adapted for **residential** purposes should be actually dwelt in.²⁹⁹

The idea of varieties of meanings can be had from the subject matter of the statute. A consecrated church was treated as a house as regards the building line that a local authority had a right to prescribe. Under the public health Act, 1885 house was not limited to an ordinary dwelling –house and

²⁹⁵ Judicial dictionary p.465

²⁹⁶ Cf. J&K house and shops rent control Act, Sec. 2(3); Baga Beum v Abdul Ahad Khan, AIR 1968 J&K 59

²⁹⁷ Ramavatar v. Asst. S.T.O. Akola (1962) 1 SCR 279: AIR 1961 SC 1325

²⁹⁸ Yorkshire Insurance v. Clayton 1881 and Grant v. Langston, 1900 AC 383

²⁹⁹ Danial v. Coulsting 1845.

included a day school having no boarders and where none of the staff resided.³⁰⁰

Under Compulsory Purchase Act 1965 'house has been extended to a building which is used for business purposes and is not restricted to mere dwelling houses.'³⁰¹

The weight of judicial opinion is conclusive in favour of the view that the word 'house extends to a building which is used for business and should not be restricted to a mere dwelling house.'³⁰²

In Corpus Juris Secundum³⁰³ it is mentioned that in a legal sense, the word house is more comprehensive, but it is not limited to a structure designed for human habitation, and may mean a building or shed intended or used as a habitation or shelter for animals of any kind; a building in ordinary sense or any building, edifice or structure enclosed with walls and covered regardless of the fact of human habitation. Again in Corpus Juris Secundum³⁰⁴ it is said that under particular circumstances, the term has been held equivalent to and interchangeable or synonymous with building with building and dwelling –house and sometimes premises.³⁰⁵

The popular meaning of the word 'house ' is a place or building used for habitation of man but a house is not the same thing as shop.³⁰⁶

³⁰⁰ Wimbledon v. Hastings (1903) 87 LT 118.

³⁰¹ Judicial dictionary p.465

³⁰² Land law cases and Materials by R.F. Mandaley and M.H. Burn. Third Edition p. 832.

³⁰³ Ibid Vol. 41 p. 364

³⁰⁴ ibid . 41 p. 365

³⁰⁵ Tata F & L Co. v. Gram Panchayat of Pimpri, AIR 1976 SC 2463 (2466, 2467): (1976) 4 SCC 177: 1976 SCC (Tax) 457: (1977) 1 SCWR 30

³⁰⁶ 1974 PLJ 260: ILR (1976) 1Punj 210

6.1.3 SOCIAL ASPECTS RELATED TO LAW

The problem created by persons defining the terms, which is contradictory to the other. The social requirement of any human is residential building mean dwelling unit where he can stay and relax. The word house has lost its entity as its use for business purpose had started.

One category of space is entirely different than the other. A residential³⁰⁷ area or zone is suppose to be calm and quiet place or with less noise and peaceful place. Need to be with more sunlight and ventilation. Should be airy and with less pollution or no pollution. The area should be with gardens and parks as place of recreation. Community space as a community hall is a basic need. These are the inevitable requirement of a residential area or zone is concerned. The regulations are concerned with the present situation and circumstances.

The rules and regulation for commercial zone is different than the residential. They are framed keeping the social aspect into consideration. The Commercial³⁰⁸ zone includes shopping area and market places. The requirement of such area is wider roads for slow moving and fast moving traffic, sufficient parking- space for the static and transitory traffic as the vehicular traffic needs to be adjusted and diverted. The area needed for such type of activities is to be levelled flat and plain ground where hawkers can display their goods such as vegetables fruits etc. Such type of community market does not need multi storey commercial complexes where the people from other distant place come to buy but the daily need and consumable goods are to be made available. A community health centre is included in the commercial activity does not need peaceful area. As specified in the Rules and Regulation the commercial zone or commercial activities are taking place.

³⁰⁷ GDCR –2004 p. 154, 155,156

³⁰⁸ GDCR–2004 p. 157

A commercial premise in the context of classification of rules for electric supply by an electric licensee means nothing more than ‘premises used for purposes for business.’ The words cannot be read as being in contradiction to trade premises. Premises used for coffee hotel must be regarded as commercial premises for purpose of fixing rates for supply of electric energy.³⁰⁹

In a residential block of flats where the permission from the local authority is taken for residential purpose only but the activities like a beauty parlour, tuition classes, doctor’s clinic, consultation room, is taken as commercial activities which is accounted to be non residential activities if is taking place in side the residential flats but are allowed if is in the commercial part of the same building.

Educational³¹⁰ zone has got its own characteristics. The zone is established not basically from the beginning but the renowned institution when gets established in one area which is peaceful and has pollution free atmosphere, ample of space for playground, sufficient space for parking the vehicles of students are now in big number. The specific rule and regulations are framed for regular development and to control the development of educational buildings like Primary and Secondary Schools, Colleges, Institutes and Hostels for Resident Students.

The Governments, State or Central as the case may be, have their norms as far as the requirement of the built up area is concerned. The sanitary facilities and potable water supply is the prime necessities of any school or college.

The education zone is consisting of educational institutions³¹¹ of higher level but the schools of lower category like nursery, kinder garden, pre

³⁰⁹ Palghat Corporation

³¹⁰ GDCR-2004 p. 157

³¹¹ The draft Calcutta Municipal Corporation building rules, 1986 p.58, 61

primary and primary schools are allowed in residential zone as per the prime requirement of the society. These facilities are inevitable as the children of 2.5 years to 7 years of age group and cannot be sent far from residence. For such a requirement, the peaceful area with no traffic or no vehicular traffic is preferred by the authority, while sanctioning the building plan for the said purpose. So for such a purpose the zone created is with mixed development.

The other zone which is specifically created and the regulations are framed is recreation zone where the buildings for specific purpose and specific requirement is permitted. Cinema halls, theatre for performance for drama or variety shows, are the places where people come for recreation but in mass. The zone is specified as recreation or is mixed with commercial as per the development of the city. Cinema theatres are the commercial entity which runs almost 12 hours a day and is for mass entertainment requires wider road as the traffic in peak hours is thick. The norms are followed along with the commercial area, as the circulation of people is more during transitory period.

In this case the rules and regulations are not merely general development control regulation but the Bombay Cinemas (Regulation) Act 1953 (XI of 1953) is to be followed as the precautions are to be taken for prevention of accidents.

6.2 TECHNICAL PROBLEMS DEFINED

The word technical is defined as characteristics of any specialised field or activity: The characteristic of this field of development control is framing or formation of rules and regulations. The meaning of development control is not in clear sense of restriction as the meaning of control is to prevent or to restrict. But technically the term control is the basic characteristics of this set of rules and regulations. Three different conditions are prevailing in any of the situation or circumstance. With an absolute ideal condition if is taken as '0' (Zero) than the situation can be on either side of zero. Technically it

is denoted as - (minus) if it is lesser than ideal and denoted as + (plus) if it is more than ideal situation. The ideal situation does not and cannot prevail for all the conditions and situations so the range is fixed to fulfil the ideal situation. There are all chances to move on either side of the ideal situation and the interpretation of technical terminology plays a vital role in settling and solving the problem.

The definition of house is discussed earlier, which does not give clear interpretation as the building for the solely residential purpose as far as the legal interpretation is concerned but in the technical terminology the word DWELLING UNIT³¹² is used for a clear interpretation. It is defined as a shelter consisting of a residential accommodation for one family provided that the minimum accommodation in a dwelling unit shall be one room of minimum carpet area of 9 sqmts. with minimum side of a room is 2.4 mts. and a water closet. In any dwelling unit the minimum criteria is fixed based on certain minimum requirement, but the family is not defined as to it is for how many persons. The activity that takes place in a dwelling unit is cooking, sitting, eating, studying during daytime and sleeping during night. The area needed by a person is a matter of discussion but the problems starts at this juncture to cover more space from surrounding by covering certain area temporarily and then after it is converted in to permanent structure.

The term dwell means to dwell in and dwelling are the expressions nearly equivalent to 'reside' or residence, A person may dwell in two or more places, and a member of Parliament residing in New Delhi for about three months in the year would "dwell there as well as at this own place.

A Corporation can only 'Dwell" where it carries on business. So the term dwells and as it is a compound word with House has its own interpretation.

³¹² GDCR –2004 2.26 p. 8

The term dwelling house is defined as “Dwelling house belonging to an undivided family” Sec 4, of Partition Act 1960.³¹³ (check year)

The expression “Dwelling Houses” does not merely mean a dwelling house in which the tenant has some permanent sort of residence, but refers to a structure, which is permanent character.³¹⁴

Mere residence by itself is not sufficient for the purpose of drawing inference that the residence was a dwelling house maintained for the assessee; the residence may be as a guest, as a casual visitor or as a licensee.³¹⁵

The words “Dwelling” or “residence” are synonymous with domicile or home mean that place where a person has his fixed permanent home to which, whenever he is absent, has the intention of returning.³¹⁶

There is not much controversy that the provision of Sec. 4 of Partition Act and Sec. 44 of the Transfer of Property Act 1882 are complementary to each other and the terms “undivided family” and “dwelling house” have same meaning in both the sections.³¹⁷

Technical analysis of rules and regulations is not done so as to prevent the trespassing or encroachment on others land or premises or on public roads. The technical problem related to traffic is inevitable in all the urban areas. The increasing number of vehicles such as two wheelers and four wheelers like cars, are becoming problem for the existing road pattern. The old pattern and less width of the roads do not meet the sufficient off street parking space. The transitory parking space on road for the public

³¹³ Krishna Pillai v. Parakutti Ammal, (1951) 2MLJ 496.

³¹⁴ Hem Prova Debi v. sarat Chandra Bose, AIR 1947 Cal 269

³¹⁵ Sec.6 (i) (b) of Income Tax Act. 11961.

³¹⁶ Per Spankie and Oldfield, JJ in Fatima begum v. Sakina Begum. 1 All 51

³¹⁷ Bhim Singh v. Ratnakar Singh, AIR 1971 Orrissa 198(200) R.N. Misra J.

visiting market place, and the audience coming to lecture hall or theatre to see art performance creates technical problems. The haphazard way of parking creates problems like accidents road blockage and disturbance to the people having entrance on the road. During different festivals like Navratri (Garba) in Gujarat, Durga Pooja festival in Bengal, Ganesh Utsav in Bombay and Maharashtra, Holi Utsav in Rajasthan and Uttar Pradesh etc. are the recurring occasion every year and the problems arising out of the observation is related to zoning, psychological problem for those who do not participate and as the traffic, parking, for transitory and static public is a key problem.

6.2.1 RELATED PROBLEMS

The related problems are limited to technical requirement of a particular type of buildings as different types of buildings are required to be built as per the prescribed rules and guide lines pertaining to the construction of the same.

(A) Size of plot with reference to road width:

The Rule has got after effect all the time as the road width is not planned for a longer period. Planning is based on the development of the city or the urban area. The basic cause of the uncertainty of any development solely depends on the rule of regime. The vested interests of politicians and others play a vital role in the planning as observed in the development of the urban area. The zones are also specified after development in the planning procedure

(B) Required F.S.I vis-à-vis. Permissible F.S.I

Any building in urban area has got maximum limits for the constructed area.

F.S.I.³¹⁸, as defined is quotient of the ratio of the combined gross floor area of all the floors including area of all walls except areas specifically exempted under the regulation to the total area of the plot/building unit.

The exempted areas are specified based on the specific use of that area but the required area more often is more than permissible so the exempted area after getting approval is converted in to non-exempted area. i.e. the exempted parking area converted into a shop or godown and the category of the building is changed from residential to residential cum commercial. The problem arises is the off street parking, the road is loaded with vehicle. The residential building converted into Bank, the traffic problem along with the zone is disturbed as the road width is designed and meant for residential development only.

There is always imbalance in the required F.S.I. vis-à-vis. permissible F.S.I. Most of the times the required is more than permissible and the illegality or irregularity arises and to solve such problems the solutions are sought for.

The technicality of physical features does not change and many times it cannot be changed as the size of the plot cannot be changed in the fixed or compact locality in urban areas. The requirement is always larger than permissible. The game of hides and seek takes place as to get more area. The additional area is covered after requisite legal procedure of getting the occupation certificate. The additional construction as is done without prior permission or adverse to the prevailing rules can not be rectified in any case and the remedy remains is the demolition of the additional or illegal or irregular construction or if time limit and rule permits than the impact fees which is a kind of penalty imposed by the Municipal Corporations in Gujarat State as per State's Guide lines.³¹⁹

³¹⁸ GDCR 2004 2.43 page no. 10

³¹⁹ Appendix I.

The solution of impact fees was not the solution with clear line as the parking place which is must in any of the commercial, commercial cum residential or commercial cum institutional buildings and if the said space is covered or utilised for any other purpose the problem of off street parking arises

(c) Category of building (high rise/law rise)

The category of constructed area is related to the services as well as the structural aspect of the building. The precautions are to be kept for the safety against accidents, natural disaster and other hazards. The preventive measures and regulative measures are taken to keep check on the implementation of the said rules and those rules are mandatory to be observed.

(D) Type of construction (load bearing/frame)

The terminology is purely technical as load bearing and frame structure but becomes legal as and when it is specified in any of a document like building permission or the sale agreement or purchase document. The term load bearing or frame structure is having importance in case of any additions alteration or litigation takes place to prove the strength of building or possibility of making any of the alteration by removing certain element like wall or part of slab or addition of some elements which changes the characteristics of the area or use of the building or the space specified as room becomes shop after making alteration in the quality and type of opening and becomes legal entity as the characteristics of the use of the area changes without prior permission. Balcony, which is free from FSI calculation, becomes usable space as study area or store or washing space and most of the places those are merged in to rooms to make them bigger or larger is solely depend on the type of construction.

(E) Cost effectiveness

The term Cost is of Economics as it involves the budgetary part of the process. The implication of development control rules and regulation is directly related to the cost of construction. The legal implication is related

to the cost aspect in many ways. The residential area and the construction cost of the same are taken as to be the low for the people of economical weaker sections and lower income group. The rules and regulations are different or special for the government undertakings, or semi govt. agencies or boards like Housing Boards and Development Authorities of different States and which, are engaged in planning, implementing and allotting the dwelling units in mass.

The dwelling units are transferred, by the beneficiaries illegally on the power of attorney on higher price to the persons who are not eligible to get those benefits of dwelling units. The legality of cost effectiveness as well as the clear title to the buildings comes into the question. The infrastructure facilities are incorporated in the planning for the residential development is used for the commercial as well as industrial purposes.

The checkpoints and follow up is rare process because of less manpower and concern for strict execution.

(F) Purpose as regards to use (private/public)

The Buildings those are in the possession of the Government, semi Government, The purpose may be different like administrative, commercial, institutional, educational and recreational or industrial has to follow the rules and regulations as far as the said buildings are situated in the urban areas. Many times the land is ample and the built up area or buildings are occupying less space does not create any contradiction but quite often the plots on waste water way or waste water stream are owned by the local authority and the buildings are constructed there on lease bases which are sold to private parties and the rules and regulations are not observed by the local authority by itself and the problem arises are countless for all the infra structural facilities like water supply, parking space etc.

The other side of the coin is a building owned by private party and occupied by Government offices for any of the administrative work and the

same problem arises as for the infra-structural facilities as the transitory parking as well as sanitary facilities and water supply as is limited and unhygienic condition as well as filthy atmosphere is created.

6.2.2 LEGAL ASPECTS RELATED TO TECHNOLOGY

Legal aspect related to technology is a matter, which needs consideration. It is found many times that a legal aspect may not fulfil the requirement of its technical aspect. As built up area, carpet area and super built up area are the technical terms which do have the legal standing as and when the interpretation of the said terminology is used in legal documents such as sale agreement, or building plan for the sale agreement purpose. In present days most of the documents have such type of problem as far as the units are concerned. The size and area of the plot, which is written in sale deed with its boundary showing direction, need to be with uniform unit. The metric system, if followed, shall be used uniformly. The sketch form is not included in the document, which illustrates the actual position of the property. The utilization of different materials, which is technically not allowed, is allowed legally.

In present days the sub-plotting plan is one of the necessary element in documentary proof but the legal consultant as are not technical, can verify the paper as an exhibit but do not make evidence, as the site condition is different.

6.2.3 TECHNICAL ASPECTS RELATED TO LAW

The technical aspect related to law is the basic elements like ownership of land in due course of time and the fulfillment of the requisite legality.

As the dwelling unit is must for any family in the urban or rural area, as it is one of the basic needs specified in the Indian Constitution.³²⁰

³²⁰ The Constitution of India, Freedom of Residence Art.19 (1) (e) and 19(5)

The citizen of India must have some work for livelihood and cloths to wear, as society does not allow any one to roam naked on the road. Apart from the cloths as it does not form a part of this research the rest two aspects form the concern.

6.3 PSYCHOLOGICAL PROBLEMS DEFINED

Pertaining to psychology

The class of problem is related to human behaviour and habits of individual and mass in urban area. The formation of rules and regulations in present days are such that it always brings stress and strain to the owner, worker and the staff of the local authority.

The problems are pertaining to:

Time limit

The inter relations in the departments are one of the major cause of the problems as the lack of co-ordination or understanding creates stress and strains. The cause is basic reason for the deviation from rules and regulation as far as the time factor is concern.

Charges, levied by the local authority

The economic problem is also one of the elements to create stress and strains.

The time limits for getting approval are made arbitrarily. The lethargic attitude of administrative set up and delay in sanction also creates stress and strain.

Bureaucracy

The basic cause of this class of problem is bureaucracy as there is lack of competency of interpretation and lack of efficiency as far as other aspect is

concern. The legal aspect is misinterpreted or misunderstood by the concern officer.

Interpretation of the terminology

The rules and regulations are with ambiguous terminology and interpretation thereof.

Implementation of rules and regulation is done with partiality in behaviour as the ruling or governing body is specially taken care of. The local representatives are getting work done over ruling or the by political pressure or threats.

Mind or emotions

The owner is emotionally corrupted by the administrative officers for the permission to act adversely i.e. against rules and regulations which are capable of influencing mind or emotions.

6.3.1 RELATED PROBLEMS

The conception and inception of any legislation is based on the human psychology. The human psychology depends on the social circumstances economic set up and sound shelter. The shortcoming of any of the situations if one does not resist, than the condition of immorality comes in picture. It is obvious that human needs happiness, which is a relative term as far as individual, is concerned. In the event of imbalance in the social status the human tendency tries to reach the upper target.

As the fact of Natural Law is that nature has created all the sources and resources for each and every human for enough food, water, fresh air and a peaceful shelter to live. One should satisfy with the sources and resources, which are given by nature. The physical sources and resources are not enough to fulfil the psychological needs and the problems are created or arise from the dissatisfaction.

The related problems arise from comparison in social status and surrounding circumstances. e.g. The lifestyle of people, an interpretation of terminology is basically for the habitable space and space allotted for the specific activities place therein. The requirement is always inversely related to the sources available and adverse act to legal aspect starts.

6.3.2 LEGAL ASPECT RELATED TO PSYCHOLOGY

In the subject matter of research work it is observed by the personal interview of every class of people in society and individual the legal aspect related to psychology noticed is of two types, external and internal in present sets of rules and regulations. In such type of problems the individual person had many question to the administration and to himself too.

The Rules and regulations are implemented in the urban area as per the guidelines given by State Government to local authorities under certain Statutes and Acts formed by the State Government under policy of Central Government.

The basic problem is restriction on the free use of the plot of land by land owner by restricting the use of land by enforcing the FSI- Floor Space Index and the open margin component which is supposed to be kept as per the regulation not for the benefit of individual who is holding it, but for the society as whole as the street on which the building is getting right to approach as the public streets are the basic skeleton of developmental activities and depending upon the width of the lane, street or road the development is allowed or approved by Local Authority.

In this case if one like to build a school in a lane having width of 6 mts. one cannot fulfil one's desire as the restrictions are imposed by legislative measures.³²¹ Even if the road is within the permissible criteria, the plot

³²¹ GDCR 2004 table no. 12.1 uses not permissible p. 68.

size³²² is another factor to be considered. These many legal restrictions if one wants to fulfil one's desire within limited or existing resources without depending upon any other resources such as legal person like trust, company or association of persons, NGO or such other group of people where the individual desire or decision does not hold good and other is the economical support like borrowing from bank or any other financial institutions because all being legal persons and legally formed institutions need all procedures and results there of also as per the prevailing procedural law.

6.3.3 PSYCHOLOGICAL ASPECTS RELATED TO LAW

The psychological aspects related to law is exactly opposite situation than the legal aspect related to psychology. When the law becomes unbearable binding to a person and one has no way to go along with it and without it with limited resources than the midway is to start with keeping legal aspect into consideration and there after completion with all due procedure acts adverse to law by overlooking all the restrictions keeping aside. The legislative measures are when taken the objective is to fulfil the target fixed. No concrete steps are taken round the year and the local authority does not follow up unless and until a complaint is lodged by any affected or aggrieved person. The morality of most of the people is not questionable but part of the remaining are always under question, as the adverse act has taken place by them. The psychological aspect related to law has taken a specific place in the mind of people.

As mentioned in Para 6.3.2 the compulsion is temporary for any type of building. The building is approved as per the prevailing rules and regulations and thereafter the purpose is changed without prior permission of the Local Authority and as and when it is needed the immoral i.e. illegal or adverse to prescribed law ways and means are adopted knowingly and with intention. In such cases the people who are morally abide by law

³²² GDCR 2004 table no.11.1.A Law rise building, 11.3.1, 11.3.2 and 11.3.3 p.65

suffers the loss that is gained by an immoral or corrupt person in terms of benefits, money or power by acting adversely to prescribed law.

As per the survey made³²³ for the subject matter the psychological aspect related to law is not taken much care of Law and Morality. This goes together. When one is absent the other takes place of the earlier. Where foolproof morality is present there is no need of manmade laws because those are never full proof. If one does not like to part with one own belongings, will never snatch others if he is moral and he will become legal under natural law but on the other side one who act adverse to natural law where he wants to guard his belongings and along with that he wants to snatch the others. When such a situation arises out of immoral psychological aspect, the concept of legal aspect or conception and inception of legislation takes place.

For example a building, which is not sanction-able as per the desire of owner, takes its shape as per the prevailing legal set up of general development control rules and regulations. The plan is so prepared so as to become very easy to convert the building by minor additions and alteration for the desired purpose, which is not permissible under control rules and regulations. Thus and many other ways the building which is legal on record of local authority changes its shape, size and purpose there after and creates nuisance. This defect takes place because of lack of follow up by the administrative wing of local authority. The misrepresentation by one person is spoiling the psychology of other such type of people and encroachment on public streets, Common Open Plots, Waste land owned by State or Central Government and private plot owners who are away from the open plots they own.

³²³ Appendix J. Forms for Survey.

6.4 INTER RELATED PROBLEMS AMONGST SOCIOLOGY TECHNOLOGY PSYCHOLOGY AND ECONOMICS

The problems related to sociology, technology psychology are analysed and discussed under the relative heads but the compound problems, which are arising with all the aspects to gather where the economy plays major role in the total aspect. The society is related as said is with cast and creed, race and religion, disciplined and indiscipline, educated and uneducated etc. but there no economy comes in picture but the same classifications as far as economy is concern as aspect of classification, the people are divided in five different classes among below poverty line and above poverty line are Slums, EWS, LIG, MIG and HIG.

As Union or Central Government has classified the total population in five classes that is slums, economical weaker section, lower income group, middle income group and higher income group. This classification is totally based on per capita or per family income and the relevancy of the criterion is based on the individual case because the government or semi government agencies or boards like State Housing Boards, Slum Clearance Board are the institutions or agencies which are purely based and the concepts of the agencies are as per the guide lines and policy of the Government. The rules and regulations for mass housing schemes are based on the income group and the community which dwells in the housing scheme is of same income group but the classification for the allotment is transitory as the group changes as and when income increases or decreases. But the sociological classification is more of permanent nature and the requirement of the group is also of permanent nature like place to worship, need of market, grocery shop, and so on. The economy factor is affecting all the aspects and the income group is increased as and when the land is having its appreciated value after its development in its utmost capacity The technical problem arises as the area becomes fully developed and the infrastructure as is static as far as roads, water supply, drainage, common amenities and parking space falls short and have seldom chances for improvement.

Finally the problems are of static nature and the solutions are derived from the existing set up are always in short and insufficient requires the implementation of rules in such away where control on all aspects are implied and the implication of rules and regulation has its meaningful application.

The development is directly proportionate to the chance of appreciation of the land value or chances of getting higher income by business or investment. It is also directly proportionate to the class of people not in terms of Income group but with social status is staying or residing or having business in the area developed, developing or under development. It does not have any relation to the basic criteria. That is must the people abiding by law and having the area legally developed by moral support of the people residing therein and the local administration having lawful follow up.

CHAPTER – 7 BUILDING RULES AND REGULATIONS IN OTHER COUNTRIES - COMPARATIVE ANALYSIS

- (a) United States of America**
- (b) United Kingdom**
- (c) Pakistan**
- (d) Malaysia**

- 7.1 Concept of Legislation
- 7.2 Related Factors to Formation of Legislation
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- 7.4 Cultural Background
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CHAPTER – 7 BUILDING RULES AND REGULATIONS IN OTHER COUNTRIES - COMPARATIVE ANALYSIS

- (a) United States of America**
- (b) United Kingdom**
- (c) Pakistan**
- (d) Malaysia**

7.1 CONCEPT OF LEGISLATION

(a) United States of America

The Concept of legislation is based on the different objectives. In case of buildings, the legislation is framed in the form of Model building regulation for protection of public health, safety and welfare.

The Rules and Regulations are formed by BOCA. The organisation was founded in the year 1915, Building Officials and Code Administrators (BOCA) International, Inc. is a non-profit member service organisation dedicated to professional code administration and enforcement for the protection of public health, safety and welfare. BOCA's objectives span both public and professional interests. The organization's primary activities include serving the public need for sound and progressive construction regulation through promulgation of the BOCA National Code series of model regulatory construction codes. The BOCA National Codes are performance oriented model codes responsive to the latest advancement in construction technology and the second is to serve governmental units, code administration personnel, and related building industry professionals by providing authoritative technical, educational and informational services relating to all speciality areas of code administration and enforcement.

States or Local governments design the BOCA National Code for adoption by references only. Jurisdictions adopting them may make necessary additions, deletions and amendments in their adopting document. Incorporation of Any part of the BOCA National Codes in codes published by states, local governments regulatory agencies, individuals or organisations is expressly prohibited. When any jurisdiction adopt one or more of the BOCA National Code the copy of the adopting document to the BOCA Executive offices. Once the material has been adopted by rule-making Jurisdiction, other than by reference, all parties, including the rule-making jurisdiction, may reproduce the material in whole or in part subject only to a nonexclusive, royalty bearing license with Building Officials & Code Administrators International, 4051 West Flossmoor, Country Club Hills, Illinois 60478-5795.³²⁴

The basic difference in the conception when compared with Indian is the formation of the Rules and Regulation. In India the group people who are representative of different organisations form the rules and Regulations but are approved by the ruling party representatives along with administrative executive. The mischief played to protect vested interest are the objectionable part in the formation. While in the Western Countries like USA is having a concept, which takes the help or assistance of a professional body like BOCA.

(b) United Kingdom: England and Wales

This history of modern building legislation goes back to 1845 when the first Public Health Act was passed. Housing was the primary concern and the defects to be cured were mainly damp, structural instability, poor sanitation, fire risk and lack of light and ventilation. In 1877, the first model by-laws were produced as a guide for local authorities, with whom laid the responsibility for setting and enforcing minimum standards. They applied only to “New Streets and Buildings”, but in 1936 new legislation was

³²⁴ Special Note The BOCA National Building Code 1993. Twelfth addition.

enacted covering all buildings and requiring all local authorities to make and enforce building By-laws. At this time, although guidance from central government was given, local authorities hold direct responsibility for building standards and issued their own by-laws which, although generally similar, had individual differences which made it necessary for architects, designing buildings for the first time in particular local authority area, to make sure of obtaining and studying a copy of the by-laws; undoubtedly a time wasting routine! The breakthrough came with issue of the 1952 Model By-laws, series IV (amended 1953), which saw two major advances, Firstly, perhaps as a result of development of all range of new materials, different technique of control was used whereby standards of performance were stated and these formed the This legislation really did cause all building designed offices to pause, think, and realise that, for the first time, they had a significant control system to satisfy, and one which was going to affect all fundamental design traditions. For example, prior to the 52 Model By-laws a decision as between structural steel or reinforced concrete for a frame would be made purely on such criteria as convenience, time for direction and cost. Subsequently the cost and time taken to fireproof steel section could, and often did, sway the decision in favour of reinforced concrete. With hindsight it can be seen that this was really the first, and probably still the most important step from ad-hoc by-laws, (suitable only for use when buildings were a simple matter of bricks and mortar) towards rationalised system under which the controls would gradually developed to embrace most parts of building's skeleton, cladding and services. In 1961, a new Public Health Act was introduced providing for the preparation of a national set of building regulations for England and Wales, but excluding Inner London which had a different system of administration from other local authorities, and was apparently able to persuade the Government that this system suited the special circumstances pertaining in a metropolitan area better than the proposed new standard regulations. After a lot of work by the Building Regulations Advisory Committee (BRAC), the Building Regulations 1965 were produced and came into operation on 1st February 1966. The inevitable drafting mistakes made and, apart from these, the usual processes of

development and invention called for alterations and, in all, a total of seven amendments were issued, the first coinciding with the issue of the Building Regulations themselves, and the seventh and last coming into operation on 1st November 1971. Most of these were a miscellaneous collection of amendments affecting several parts of the Building regulations, but one at least, the famous fifth amendment, concerned only part D - **Structural stability** - and contained entirely new supplementary rules for controlling the design of buildings over five storeys to give protection against accidental loads, such as local explosion. It was issued as a direct result of the inquiry following the Ronan Point Disaster.

In the introduction of the subject matter the basic concept of legislation in any country is for the welfare of the people in general and an individual as particular. The Indian Legislation is based on the British ideology as the Country has quite many Acts framed and introduced by the British administrators prior to independence. In the introduction "Some form of building control has been with us for a very long time. When man first congregating in cities which grew up without any form of control other than that imposed by land ownership, the environment which developed must have been quite dreadful. In this country, the occurrence of events such as the Great Plague and Great Fire of London led the health and safety of the inhabitants. It is these two aspects, which have dominated the power and the prevention of waste or misuse of water have been added."³²⁵

(c) Pakistan

The concept of legislation is the same in most of the countries as objectives are same. In some countries the legislation is having objective of prevention, restriction, regulation, are the basic one, but as the legislation for building industry is with emphasis on certain aspects like environment, technical and social as per the requirement of the people of the country. The development control is not used in terms of restriction but defining terms in its real context. The concept is like India with influence of

³²⁵ Guide to the Building Regulations 1985 for England and Wales p.1-2

British Legislation as prior to independence the existence of Pakistan was not in question but India, Pakistan and England have more or less similar basic concepts with different aspects.

(d) West Malaysia

The concept of legislation in West Malaysia is one consolidated Act includes infra structure such as street drainage and buildings separately under one ACT.³²⁶

It states that: WHEREAS it is desired to introduce in the form of Act of Parliament a uniform system with respect to street, drainage and building in local authority areas in West Malaysia.

AND WHEREAS it is now expedient for the purpose only of ensuring uniformity of law and policy to make a law with regard to local government matters relating to street drainage and building;

As it is specified in the rules and regulations of West Malaysia the infrastructure is treated as different entity as far as laying up the streets maintaining the same.

The Uniform Building By-Laws 1984

In the exercise of the power conferred by the section 133 of the street, Drainage and Building Act 1974, the Minister / State Authority made the by-laws. The concept of formation of legislation is to maintain uniformity in the developmental activities by uniform set of By-laws so as to avoid the contradiction in terms of interpretation of the terminology in terms of legal aspect as well as technical aspect. The terminology in case of the building By-laws are taken in three aspects. The definition given in Sec. 2 of the said By-laws contains the terminology of Legal aspect, Technical aspect

³²⁶ Laws of Malaysia, Street Drainage and Building Act 1974, ACT 133 As updated 20.09.1999.

and Technical-legal aspect. The dictionary meaning of a term is taken in special context for Building and ancillary to building.

“Act” means the Street, Drainage and Building Act 1974.

The Concept is very clear in the respect of the three different elements. Street is not considered as part of building activities as the building is part of the street. The emphasis is given to the prime element in the planning is street. In any developmental activity the Rules and regulation formed are from out to in rather than from in to out. The skeleton in any human body is a prime most necessity to support the outer look as well as the internal organs. In the event of presence of both if third element that is the purpose of their existence and its driving force is not there the presence of both elements does not have any value. So as to the existence of the street in any settlement is the prime most necessary element. The concept is well defined by the Act.

7.2 RELATED FACTORS TO FORMATION OF LEGISLATION

(a) The United States of America

As the building code in The USA is formed by a group of professional people has taken all the aspects in their micro level. The land is ample so the question of encroachment or additional F.S.I. does not come in picture. The important aspect is considered is the technical part of the task is made stronger than legal part of it.

Administration set up, definitions for interpretations of terminology used. The purpose-orientated clause is use or occupancy. Special use and occupancy for specific buildings, General Building Limitations, Technical aspect by type of construction, Precautionary measures for safety, Fire resistant materials and construction, interior finishes. Fire protection systems are having more emphasis. The internal services and exterior services are well specified.

(b) United Kingdom: England and Wales

The regulations are known as Guide to Building Regulations and are not denoted as Development Control Rules and Regulations as it is specified in India. The regulations in U.K. are more subjective than objective. The subject matter is building and the emphasis is put on the materials technical specifications way to use and the workmanship part of the process.

The regulation contain no provision for continuing control over the use of materials following completion of building.³²⁷

(c) Pakistan

In Pakistan the concept is very clear that the regulations are called Building Regulations and not development control regulations. The related factors to frame the regulations are the terminology that is related to building only. The factors are technical and with positive approach. The law should clearly say what one should do and not necessarily detailed out what one should not do. The technical aspects are given much more importance as in given in Regulation for England & Wales.

(d) West Malaysia

The related factors to formation of Legislation are as it is formed under Clause 4 of Article 76 of Constitution of Malaysia. As the desire was to form uniform system was formed on paper as an Act but the commencement, or implementation depends on the will of Minister as after consultation with State Authority appoint different dates for enforcement of law decided and the local authority where those shall be enforced.

The Act gives shelter to the past operation of, or anything done under the provision of, any law relating to street, drainage, and building before commencement of this ACT.

³²⁷ Guide to Building Regulations 1985 for England and Wales p.22

The related factors to formation are the Social, Technical and Legal aspects as the legislation are to control development in uniform and impartial ways and means.

The laws connected to building industries is complex in India which is simple in other Counties as the subject matter is treated separately and the planning is prior to any development. In India the Urban area is denoted by the strength of population in that area and the area when is developing or developed the rules and regulation are implied there on and which has seldom some meaning where in other countries the simple set of control rules and regulation if are uniform, simple and applicable and applied to all the area under the development or even for the area under future development.³²⁸In such cases the;

- 1) Power to make and improve streets
- 2) Power to take land adjoining new streets for building purposes and.
- 3) Power to acquire to be in accordance with law relating to compulsory acquisition.

Local Authority, may recover cost of new street or of widening, opening etc. of Public Street.

The developmental cost is taken from the developer or the frontagers or both so the development is made by the social as well as administrative set up and there the public street is having clear set up without any encroachment thereon.

In such cases law for the developmental activities for all the three components i.e. Street, Drainage and Building enforces the compulsion.

³²⁸ Sec 5,6,7 8,9 of the Street, Drainage and Building Act 1974 (Act 133) amended as on Sep 20 1999

7.3 INTERPRETATION OF TERMINOLOGY

(a) United States of America

Definition of the technical terminology is detailed in the BOCA National Building Code. As the Building Code is prepared by a professional team of people the technical terms are taken in micro level in terms of materials specifications, workmanship and the finished product along with the electrical or mechanical operations.

Scope: Unless otherwise expressly stated, the following words and terms shall, for the purpose of this code, have the meanings shown in this chapter.

Interchangeability: Words used in the present tense include the future; words used in masculine gender include the feminine and neuter, the singular number includes the plural and the plural the singular.

Terms defined in other codes: Where terms are not defined in this code and are defined in the plumbing, fire prevention, or mechanical codes listed in chapter 35, such terms shall have the meanings ascribed to them as in those codes.

Terms not defined: Where terms are not defined through the methods authorized by this section, such terms shall have ordinarily accepted meanings such as the context implies.

The building Code has more emphasis on the technical terminology in legal way as once it is put in black and white with minute details becomes an absolute meaning as far as that term is concerned.³²⁹

³²⁹ The BOCA National Building Code 1993 p.9

(b) United Kingdom

Approved Document to Support Regulation No. 7

Unlike the other Approved Documents all of which relate to one of the 11 parts of schedule 1, this relates directly to one of the principal Regulations. It is masterpiece of brevity, as follows.

Material and Workmanship

7 Any building work shall be carried out with proper materials and in a workman like manner.

Section 1: Materials:

Contents of the section are the specifications of building materials.

Section 2: Workmanship³³⁰

(c) Pakistan

Interpretation in the case of Karachi Building and Town Planning Regulations 1978 contains the set of Rules and Regulations for development of the area. The terminology and definitions are given in relevant part of the enactment. The Regulations are containing interpretation, as other place the term is used is definitions, the terminology used in the set of Building Regulations is international standard. The technical terms as far as space specifications and utility is concern are same but the certain terms are interpreted with reference to context as the word deposit is used for the deposition of solid waste and the same is also used with deposits to be paid to the Local Authority.

The land development is taken in special context where the change in type of use of a structure or land. It is defined as that a change from one designated class of use to a use in another. In case of reconstruction, alteration in size, material change in external appearance of a structure or

³³⁰ Guide to Building Regulations 1985 for England and Wales p.22

land. Material increase in intensity of use of land by manufacturing units, business establishments or residential units, by utilizing a plot of land for mining or excavation. The interpretation of the term development in reference to context is taken with wider perspective where the maintenance of public places or roads is not included.

The terms used in other countries is interpreted in one-way is different in the other as the evidence of permission, cancellation of permission and right to appeal. Under Clause 14 of the said regulations it runs as whenever under any of these regulations the doing or omitting to do anything or the validity of anything depends upon the sanction, permission, approval, order, direction, requisition, notice or satisfaction of the concern authority or any officer duly authorised purporting to convey or set forth such sanction, permission, approval, order, direction, requisition, notice or satisfaction shall sufficient prima-facie evidence thereof.³³¹

Asian Countries such as India, Pakistan and Malaysia is having effect of British legislation where the subjective clauses are incorporated. In interpretation of legal terminology certain clause are incorporated in such a way that it does not have their absolute meaning.

Under clause 15 If any time after permission to carry out building works has been granted, the concern authority is satisfied that such permission was granted in consequences of any defective title of the applicant, material misrepresentation or fraudulent statement contained in the application made under regulations 9, 10 and 12 in the plans, elevations sections or specifications and documents submitted therewith in respect of such building, such permission may be cancelled and any work there-under shall be deemed to have been done without permission ab initio. Provided that the applicant shall have a right to appeal to the concern

³³¹ Karachi Building & Town Planning Regulations Part II p.15

authority within fifteen days of the order of cancellation. The controlling authority may dispose of the appeal preferably within a period of 90 days from the date of appeal.³³²

(d) West Malaysia

Specified internationally and adopted Oxford dictionary, the terminology for building rules and regulations are more precise in interpretation:

The Word arcade is specifically interpreted that it includes verandah but where basic area is not described.

The word building includes any house, hut, shed, or roofed enclosure, whether used for the purpose of human habitation or otherwise, and also any wall, fence, platform, staging, gate, post, pillar, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge or any structure support or foundation connected to the foregoing.

The terminology as far as completion of the building is concern, which is different than the Indian terminology:

Term is specified as Certificate of fitness for occupation, the partial fitness for occupation and temporary fitness for occupation."³³³ The said certificate is granted under the Uniform Building By-Laws.

The term dwelling house is interpreted as it includes a building or tenement wholly or partially used, constructed or adapted for use for human habitation; The guideline and detail of administrative responsibility of all three parties are fixed by giving all the detailed information and interpretation of the terms used in the said legislative measures.

³³² Karachi Building & Town Planning Regulations Part II p.6

³³³ Ins. Act A 903 of Malaysia.

The legal terminology if is very clear and simple to understand and easy to interpret and difficult to distort keeps human moral standard as and where as it is without deviation. There are no room to misinterpret the terms and read between the lines. The clear terminology is defined with possible alternatives.

Submission of plans for approval³³⁴ is the predevelopment phase the terms are defined and the responsibility and the local authority fixes liability. In case of the procedure the methodology is almost same in all the urban areas but the clarity of the terminology plays important part in the implication of rules and regulation or by laws.

7.4 CULTURAL BACKGROUND

(a) United States of America

Cultural background is one of the basic elements to frame the rules and regulations and is directly reflects the implications thereof. Culture includes the way of thinking and behaviour of people. A community or group of people of identical thinking behaves almost similarly when are together. In USA the cultural background is such the persons with more self-centrenature with polite and disciplined communications and with professional ethics mostly do not involve themselves in legal implications. The culture is mixed one but has to follow the one culture as common one.

(b) United Kingdom

The English people are conservative in nature more polite with disciplined behaviour and health conscious. The base for the rules contains, the concern for public health, health and safety at work and housing and building control are the basic supporting Acts show the culture of accuracy as far as the work is concern. The Traffic rules and regulations are observed strictly which lead to safe traffic circulation. They are vigilance so

³³⁴ Part II of Uniform Building By-Laws 1984 (G.N. 5178/85) as on 10/04/1999 Laws of Malasia.

that the rules and regulations are more technical based where illustrative details are included. The education and understanding makes the awareness to their rights and privileges.

(c) Pakistan

The cultural background, as is a communal country has much more impact of the religious beliefs and the impact comes to their legal set up but they are open to accept the positive things from the Global World. The education and understanding have made them to accept the values of legal and technical aspects in the legislation as it appears from the rules and regulations.

(d) Malaysia

The legal implication of Development Control Rules and regulation in Urban areas is based on the basic culture of the society and the group of people residing in the area specified for the development and then after to control the development. The local authority and the administrative set up come in the picture when the phase 1 i.e. pre development phase comes. The control is enforced at the time new development takes place. The development is a natural process as the sources of income and other necessary elements pulls the human towards the sources and resources. The development in such cases is of two types depending upon the cultural background of the resident of that country or the people residing or going to be resident of that developing area. Malaysia in that case is more health and hygiene oriented as the building rules come under the street, drainage and building Act 1974.

7.5 TECHNICAL AND LEGAL IDEOLOGY

(a) United States of America

Rules and regulations are as framed by a professional team is more technical with all statistical data including the constructional details along with material specifications are concerned.

The technical aspects such as Types of Construction, Fire resistant materials and construction, Interior finishes, Fire protection systems, Means of egress, Interior environment which includes the size of the living space in terms of bed room bath room kitchen etc. Energy Conservation, Exterior wall Coverings, Roof and Roof structures, Structural loads, Structural tests and inspections, Foundations and retaining walls, Structural Materials, Concrete, Light weight Metals, Masonry, Steel, Wood, Non structural Materials, Glass and Glazing, Gypsum Board and plaster, Plastic, Electric wiring equipment and systems, Mechanical systems, Plumbing systems, Elevators and Conveying systems.

The legal aspect is also taken with most minimum complications. The legal aspects are taken along with the administrative set up.

Administration

SECTION 101.0 SCOPE

- 101.1 **Title:** These Regulations shall be known as the Building Code of (Name of Jurisdiction) hereinafter referred to as “This Code”
- 101.2 **Scope:** These Regulations shall control all matters concerning the construction, alteration, addition, repairs, removal, demolition, location, occupancy and maintenance of all buildings and structures and shall apply to existing or proposed buildings and structures; except as such matters are otherwise provided for in other ordinances, or statutes, or in the rules and regulations authorised for promulgation under provision of this code.
- 101.3 **Application of reference:** Unless otherwise specifically provided for in this code all references to chapter or section numbers or to provision not specifically identified by number, shall be construed to refer to such chapter section or provision of this code.
- 101.4 **Intent:** This code shall be construed to secure its expressed intent, which is to insure public safety, health and welfare insofar as they are affected by building construction, through structural strength, adequate means of egress facilities, sanitary equipment, light and ventilation and fire safety; and in general, to secure safety to life

and property from all hazards incident to the design, erection, repair, removal, demolition or occupancy of buildings.

Sec. 103.0 VALIDITY

- 103.1 ***Partial invalidity:*** In the event any part or provision of this code is held to be **illegal or void**, this shall not have the effect of making void or illegal any of other parts of provisions thereof, which are determined to be legal; and it shall be presumed that this code would have been passed without such illegal or invalid parts or provisions.
- 103.2 ***Segregation of invalid provisions:*** Any invalid part of this code shall be segregated from the remainder of this code by the court holding such part invalid, and remainder shall remain effective.
- 103.3 ***Decisions involving existing structure:*** The invalidity of any provision in any section of this code as applied to existing buildings and structures shall not be held to affect the validity of such section in its application to buildings and structures hereafter erected.³³⁵

(b) United Kingdom

In the set of Guide to the Building Regulations 1985 is more technically prone as the set is consisting chapter A1/2 and A3 structure B1 Mandatory Rules for Means of Escape in Case of Fire, B/2/3/4 Fire Spread, C site preparation and resistance to moisture, D1 Toxic Substances (Cavity insulation), E/1/2/3 Airborne and Impact sound, F1 and F2 are for Ventilation, G1, G2, G3 and G4 for Hygiene, H1, H2, H3 and H4 Drainage and waste disposal, j1, 2, 3 Heat producing Appliances, K1 and K2/3 for stairs Ramps and Guards, L2/3, L4 and L5 Conservation of Fuel and Power M2/3/4 Access for Disabled People are all technical aspects with detailed instructions are given.

³³⁵ BOCA National Building Code 1993 p. 1

The legal ideology is keen in the aspect of framing rules and regulations 1985.

The Acts of Parliament is taken as the reference for the sections The Fire Precautions Act 1971, The Health and Safety at Work Act 1974 and the Building Act 1984.³³⁶

(c) Pakistan

The technical and legal ideology in Pakistan is clear. The Technical terms are defined is very clear with as far as land use and purpose is concern. The minimum requirement of a habitable dwelling units like one room dwelling and two room dwelling and other building like school and hospital or nursing home is specifically derived.³³⁷

Legal ideology is such that there no place for any implied terminology as far as situation base is concern. The building in case of fully according to rules, with out according to rules and deviated from sanction plans are clearly mentioned. The preventive measures are taken as the notice is suppose be displaced as

Notice

This floor has been designed to sustain an imposed Load of _____lbs per sqft. Kg/sqkm³³⁸

(d) Malaysia

In Malaysia the technical and legal ideology is having balanced importance. The technical terminology along with specifically the dimensions of the minimum or required elements are given and the

³³⁶ Guide to Building Regulations 1985 for England and Wales p.4

³³⁷ Karachi Building & Town Planning Regulations Part I p.25-32

³³⁸ Karachi Building & Town Planning Regulations Part1p.52

detailing for fire retardant, fire safety, and fire resistant material is specified the technicality of all the rules and regulations the terms are very clear.

The legal ideology is clearly mentioned for each byelaw and if any adverse act is done by any of the person directly or indirectly connected to the act there are provisions for those adverse act to be compensated or rectified.

7.6 PRIORITY TO CERTAIN FACTORS.

(a) United States of America

In USA the priority is given to technical part of the building regulations as the building code is by a professional organisation. The technicality of Regulations is detailed in such a way that each aspect is covered.

E.g. Use or Occupancy is detailed as: 301.0 General Clause, 302.0 Classification, 303.0 Assembly use groups, 304.0 Business use groups, 305.0 Educational use groups, 306.0 Factory and Industrial use groups, 307 High Hazard use groups 308.0 Institutional use groups, 309.0 Mercantile use groups, 310.0 Residential use groups, 311.0 Storage use groups, 312.0 Utility and miscellaneous use groups, 313.0 mixed use groups.

More over the other Use or Occupancy is specified,

401.0 general, 402.0 Covered Mall buildings, 403.0 High-rise buildings, 404.0 Atriums, 405.0 Underground structures, 406.0 Open parking structure, 407.0 Private garages, 408.0 Public garages, 409.0 Use Group 1-2, 410.0 Use group I-3, 411.0 Motion picture projection rooms, screening rooms and sound stages, 412.0 Stages and platforms, 413.0 Special amusement buildings 414.0 Airport traffic control towers, 415.0 Outdoor processing facilities, 416.0 HPM facilities, 417.0 Hazardous

materials, 418.0 Use groups H-1, H-2, H-3 and H-4, 419.0 Application of flammatic finishes, 420.0 Mobile units, 421.0 Swimming pools.³³⁹

The ancillary procedural aspects are covered along with technical cum legal requirements.

(b) United Kingdom

In the formation of Building Regulations the priority is given to the technical aspects of the buildings.

In order to deal with an application under the Building Regulations a considerable quantity of paper is now essential (also available in micro fiche) the certain documents are:

The Building Regulations 1985, (SI 1985 No. 1065) known as the principal regulations, The Building (Approved Inspectors etc.) Regulations 1985 (SI 1985 No. 1066), The Manual to building Regulations 1985, the priority is given to all the aspects under mentioned:

Mandatory rules for means of escape in case of fire. (E)

Approved Document to support Regulation 7

| | | |
|---------------------|---|-------|
| | (Materials and workmanship) | (B) |
| Approved Document A | Structure | (D) |
| Approved Document B | Fire spread | (E) |
| Approved Document C | Site preparation and resistance to moisture | (C) |
| Approved Document D | Toxic substances | (New) |
| Approved Document E | Resistance to sound passage | (G) |

³³⁹ BOCA National Building Code 1993 p. 27-52

| | | |
|---------------------|--------------------------------|-------------|
| Approved Document F | Ventilation | (K, P) |
| Approved Document G | Hygiene | (new and P) |
| Approved Document H | Drainage and waste disposal | (N) |
| Approved Document J | Heat producing appliances | (L, M) |
| Approved Document K | Stairways, ramps and guarding | (H) |
| Approved Document L | Conservation of fuel and power | (F, FF) |
| Approved Document M | Access for disabled people | (T) |

The Building (Prescribed Fees) Regulations 1985³⁴⁰

The priority of each aspect is given with all the details of the subject matter as specified.

(c) Pakistan

The priority to certain factors such as aspects related to the infra structural development. The buildings with all the factors related to supply line and all other services are specified by giving priority as the lack of such factors will not make building complete and the building which is not according to the sanctioned plans are not counted as the sanctioned one and the work done is counted as irregular ab initio. The building is defined as spaces, which is related to the volumetric magnitude than area.³⁴¹

(d) Malaysia

The priority is given to the building components that should be of international standard. The priority means the acceptable all the standards are to be included in the Regulations. The standards are similar to the U.K.

³⁴⁰ Guide to Building Regulations 1985 for England and Wales p.8

³⁴¹ Karachi Building & Town Planning Regulations Part1p.22-27

regulations as the components are similar and the requirements are as per local needs of Malaysia.

7.7 LEGISLATIVE MEASURES

(a) United States of America

The BOCA National Building Code, 1993 caring all the aspects. Such as: Accessibility, Special Construction, Construction in the public right of way, Site work, Demolition and Construction, Existing structure, Referenced standards.

(b) United Kingdom

The Legislative measures are taken by considering all the aspects related to building, planning and environment.

The Enabling Legislation:

Whereas this was previously contained in a number of different Acts they are now all concentrated in the Building Act 1984. This is simply a consolidating measure and contains no new legislation. It contains items drawn from 46 other Acts or Instruments, but principally from the following: The Public Health Acts 1936 and 1961, The Health and Safety at Work Act 1974 and the Housing and Building Control Act 1984.

The Act contains the powers to make and enforce Building Regulations. Within these are the so-called 'linked power' which are activated by an application for approval under the Building Regulations, referred to in the Act as 'the passing of plans'. Since under the new regulations plans no longer need to be deposited, in majority of cases they are presumably now activated also by the giving of a building notice. The powers referred to are contained in Sec18 to 29 of the Act. Some of these have been transferred to the regulations themselves, they are Provision of: facilities for Refuse, of

closets, bath rooms, food storage and sites containing offensive material.³⁴²

Two chief authorities are given importance are Local Authority and Fire Authority.

The other legislation incorporated or referred are:

The Building Regulations from only one part of a miscellaneous and widely disseminated mass of legislation affecting buildings. The Following list of legislation affecting Building not necessarily comprehensive.

Factories Act 1961, Office, Shops and Railways Premises Act 1963, Clean Air Act, 1956, Highways Act, 1980, Town and Country Planning Acts 1962 and 1971, Housing Act, 1961, Cinematograph Act 1909 and 1951, Fire Precautions Act 1971, Water Acts 1945,1973,1981 and 1983, Control of Pollution Act 1974, Education Act 1980. Local Government, Planning and Land Act 1980.

Various local acts: Some Local Authorities, mainly Country Councils with **large urban populations**, have considered the provisions of the various Acts to be inadequate to meet their requirements. To remedy this they have obtained parliamentary consent to the making of local Acts. These remain in force. There are 25 such Acts and they are each concerned with one or more of the following:

List of requirements of particular relevance, which appear in the Local Acts.

- a. Requirements as to safety requirements for parking place.
- b. Access for the fire brigade
- c. Fire precautions in certain large buildings.
- d. Fire and safety precautions in public and other buildings

³⁴² Guide to Building Regulations 1985 for England and Wales P.4

- e. Further precautions against fire in high buildings
- f. Provisions of means of escape from fire in certain buildings
- g. Separate drainage system
- h. Retaining walls
- i. Requirement as to paving of yards and passages (extended to other buildings than houses)³⁴³

Thus the preventive regulative mandatory recommendatory and penal provisions are incorporated while framing the legislative measures.

(C) Pakistan

The legislative measures are not denoted as Development Control Regulations but the situation is so created that the development is controlled ab initio.

Legislative measure is of preventive cum restrictive nature.

No person may carry out land development or permit land development without a development permit except in compliance with the requirements, restriction or condition of:

- (a) These regulations; (b) any applicable detailed plan; (c) any applicable general standards and area standards; (d) any applicable land grant; (e) any applicable sub-division plan and (f) the conditions attached to a development permit, it granted subject to conditions.³⁴⁴

The development permit is of two types viz. as general and special. All ancillary provisions are provided along with.

³⁴³ Guide to Building Regulations 1985 for England and Wales p.7 and 8

³⁴⁴ Karachi Building & Town Planning Regulations Part II p.9

(d) Malaysia

The legislative measures are to maintain the public street without encroachment the remedial and preventive measure is taken by the authority by providing Boundary stones.

Boundary stones

It runs as the local authority may set up or affix to any premises abutting on a public street, boundary stones or other marks to denote the length, width and alignment of such street.

Penalty

Any person who removes, defaces or injures any stone or mark set up in accordance with this Act shall be liable on conviction to a fine of not exceeding five hundred Ringgit.

The duty is imposed on the owner or the occupier to protect boundary stones The owner and occupier of any premises in or against or to which such stone or mark is set up or affixed shall protect the same.

The expense of replacing any such stone or mark shall be paid by the occupier or, if the premises are unoccupied, by the owner, and shall be recoverable in the manner specified in rules.

In Malaysia the legislative measure for the streets drainage and infra structure facilities are taken as Important and the buildings are taken as part of the Act. Not only buildings create the environment so development control is accounted for the interior and exterior aspect in Malaysian Rules and regulations. The word control is not used expressly but at each stage of development the implied restriction is imposed.

7.8 ADMINISTRATIVE SET-UP

(a) United States of America

Section 104.0 Department of Building Inspections

- 104.1 **Code Official:** The department of building inspection is hereby created and the executive official in charge thereof shall be known as the code official.
- 104.2 **Appointment:** The code official shall be appointed by the chief appointing authority of the jurisdiction; and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.
- 104.3 **Organization:** The code official shall appoint such number of officers, technical assistants, inspectors and other employee as shall be necessary for the administration of this code and authorised by the appointing authority.
- 104.4 **Deputy:** The Code official is authorised to designate an employee as deputy who shall exercise all the powers of the code official during the temporary absence or disability of the code official.
- 104.5 **Restriction of employee:** An official or employee connected with department of building inspection, except one whose only connection is that of a member of the board of appeals established under the provision of Sec.121.0 shall not be engaged in or directly or indirectly connected with the furnishing of labour, directly; materials or appliances for the construction, alteration or maintenance of a building, or preparation of construction documents thereof, unless that person is the owner of the building; nor shall such officer or employee engage in any work that conflicts with official duties or with the interests of the department.
- 104.6 **Relief from personal responsibility:** The code official, officer or employee charged with the enforcement of this code while acting

for the jurisdiction, shall not there by be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to person or persons or property as a result of any act required or permitted in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of this code; and any officer of the department of building inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

104.7 **Official records:** An official record shall be kept of all business and activities of the department specified in the provisions of this code, and all such records shall be open to public inspection at all appropriate times and according to reasonable rules to maintain the integrity and security of such records.

Section 105.0: **Duties and Power of Code Official**

105.1: *General*, 105.2: *Applications and permits*, 105.3: *Notices and Orders*, 105.4: *Inspection*, 105.5: *Identification*, 105.6: *Rule making authority*, 105.7: *Department records*, 105.8: *Annual Report*.

Section 106.0: **Approval**

106.1: *Approved materials and equipments*, 106.2: *Modifications*, 106.2.1 *Records*, 106.3: *Used materials and equipment*, 106.4: *Alternative materials and equipment*,

Section 107.0: **Application for permit**

107.1: Permit application: An application shall be submitted to the code official for the following activities, and these activities shall not commence without a permit being issued in accordance with section 108.00.

1. Construct or alter a structure
2. Construct an *addition*
3. Demolish or move a structure
4. Make a *change of occupancy*
5. Install or alter any equipment, which is regulated by this code.
6. Move a *lot* line, which affects an existing structure.

107.1.1: *Repairs*. 107.2: *Form of application*, 107.3: *By whom application is made*, 107.4 *Description of work*,

107.5: **Construction documents**: The application for permit shall be accompanied by not less than two sets of **construction documents**. The code official is permitted to waive the requirements for filing construction documents when the scope of the work is of a minor nature. When the quality of materials is essential for conformity to this code, specific information shall be given to establish such quality, and this code shall not be cited, or the term "legal" or its equivalent used as a substitute for specific information.

107.6: *Site plan*, 107.6.1: *Private sewage disposal system*, 107.7: *Engineering details*, 107.8: Amendments to application: 107.9: *Time limitation of application*

Inspection

Professional architectural and engineering services³⁴⁵

³⁴⁵ BOCA National Building Code 1993 p. 2-3

(b) United Kingdom

The administrative set up in England and Wales is counted to be an excellent document. It contains what has never previously been available, a complete guide to the procedures required to obtain approval under the Building Regulations.

There are three sections dealing with the following:

Section 1 The application of the Regulations.

Section 2 The procedures to be followed.

Section 3 The regulations and supporting documents.

Application

The regulations apply throughout England and Wales and since 1st July 1987 to inner London also. They apply to building work in general, controlled services and fittings and to material change of use. There are some exemptions (See schedule 3)

Repair work is not controlled, but if this involves a major reconstruction it may be.

Two systems of Control

An applicant has two options. He can apply to the Local Authority or alternatively appoint an approved private inspector. The procedures for both are set out in detail. In practice the second alternative does not exist at the moment since private inspectors must be covered by an approved scheme of insurance (approved by SoS) and to date none exist (except for special arrangements made by the NHBC).

Full plans, Building Notice and Contraventions and other procedure as specified.³⁴⁶ As regards the Local Authority system there are also two options

³⁴⁶ Guide to Building Regulations 1985 for England and Wales p.9

(c) Pakistan

M.P. and E.C.³⁴⁷ hereby delegate to the Concerned Authorities listed in Schedule A, Powers and duties assigned by these regulations, subjects to any modifications described in Schedule 'A'.

From time to time M.P. and E.C. may by notification, modify or withdraw from any Concerned Authority and such powers or duties, or add to or revise the list in Schedule A subject to approval of the Government and may also recommend the revision of the boundaries of any of the jurisdiction of any Concern Authority specified there in.³⁴⁸

Where schedule contains the Concern Authorities along with their jurisdiction and Power they hold, They are: Karachi Metropolitan Corporation, The director of Urban design of the Karachi Development Authority, Cantonment Boards of The Ministry of Defence, Karachi Port trust, Pakistan Railways, Sind Public Works Department, Pakistan Public Works Department, Sind Industrial Trading Estates Karachi.³⁴⁹

(d) Malaysia

The Administrative set up as local authority holds powers to implement the Rules and Regulations Notices to new buildings, order to review safety and stability in the course of erecting of building, Revocation approval of any plan, specification and permission, Inspection of erection of building at any stage and taking sample for analysis, Penalty for failure of Building or earth work, Demolition or removal of unauthorised building, penalty for letting out and sale of unauthorised building, Modification or waiver of By-laws, Land to be set apart for back-lane, Prohibition of building on insanitary ground.

³⁴⁷ **Master Plan and Environmental Control Department, KDA**

³⁴⁸ Karachi Building & Town Planning Regulations Part II p. 29

³⁴⁹ Ibid p. 33-34

The buildings are constructed on public sewer with out prior permission of local authority, execution of order for demolition.³⁵⁰

The local authority delegate powers to the Concern Officer to act on behalf of the Administrative officer

7.9 JUDICIAL TREND AND SET-UP

(a) United States of America

Section. 116 Violations: (As an adverse act)

Section 116.1: ***Unlawful acts***: It shall be unlawful for any person firm or corporation to erect, construct, alter, extend, repair, remove, demolish or occupy any building or structure or equipment regulated by this code, or cause same to be done, in conflict with or violation of any of the provision of this code.

Section 116.2: *Notice of violation*:

The code official shall serve a notice of violation or order on the person responsible for the erection, construction, alteration, extension, repair, removal, demolition, or occupancy of a building or structure in violation of a detail statement or a plan approved there under, or in violation of a permit or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

Section 116.3: *Prosecution of violation*:

If the notice of violation is not complied with promptly, the code official shall request the legal counsel of the jurisdiction to institute the appropriate proceedings at law or in equity to restrain, correct or abate such violation or require the removal or terminate of the unlawful occupancy of the

³⁵⁰ Sec 70-85 of the Street, Drainage and Building Act 1974 (Act 133) amended as on Sep 20 1999

building or structure in violation of the provisions of this code or of the order or direction made pursuant thereto.

Section 116.4 Violation penalties:

Any person who shall violet a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, construct, alter or repair a building or a structure in violation of an approved plan or the directive of the code official, or of a permit or a certificate issued under provision of this code, shall be guilty of a(Specify offence) , punishable by a fine of not more than (amount) or by imprisonment not exceeding (Number of Days) or both such fie and imprisonment. Each day of that violation continues after due notice has been served shall be deemed a separate offence.

Section 116.5 Abetment of violation:

The imposition of penalties herein prescribed shall not preclude the legal officer of the jurisdiction from instituting appropriate action to prevent unlawful construction or to restrain correct or a bate a violation, or to prevent illegal occupancy of a building, structure or premises or to stop an illegal act, conduct, business or occupancy of a building or structure on or about any premises.

Section. 117.0: Stop work Order includes:

117.1: Notice to owner and 117.2: is unlawful continuance.

Section 118.0 Certificate of Occupancy includes:

118.1: General, 118.2: Temporary occupancy, 118.3: Issuance of certificate 118.4: Content of certificate

Section 119.0 Unsafe Structures and Equipments include:

119.1: Conditions, 119.2: Record, 119.3: Notice, 119.4: Method of service 119.5: Restoration and 119.6: Disregard of notice.³⁵¹

³⁵¹ BOCA National Building Code 1993 p. 7

Section 121.0: **Means of Appeal include:**

121.1 Application for appeal, 121.2 Membership of Board, 121.2.1 Qualifications the board of appeals shall consist of five individuals, one from each of the following professions or disciplines.

- 1) Registered design professional that is a registered architects; or a builder or superintendent of building construction with at least ten years experience, five of which shall have been in responsible charge of work.
- 2) Registered design professional with structural engineering or architectural experience.
- 3) Registered Design professional with mechanical or plumbing engineering experience; or a mechanical or plumbing contractor with at least ten years experience five of which shall have been in responsible charge of work.
- 4) Registered Design professional with electrical engineering experience; or a electrical contractor with at least ten years experience five of which shall have been in responsible charge of work.
- 5) Registered Design professional with fire protection engineering experience; or a fire protection contractor with at least ten years experience five of which shall have been in responsible charge of work.

121.2.2: Alternate members, 121.2.3: Chairman, 121.2.4: Disqualification of member: A member shall not hear an appeal in which that member has any personal or financial interest. 121.2.5: Secretary 121.2.6 Compensation of members.

121.3: Notice of meeting, 121.4 Open hearing, 121.4.1 Procedure, 121.5 Postpone hearing, 121.6: Board decision, 121.6.1 Resolution 121.6.2 Administration,

121.7 Court review: Any person, whether or not a previous party of the appeal, shall have the right to apply to appropriate court for a writ of

certiorari to correct errors of law. Application for review shall be made in the manner and time required by law following the filing of the decision in the office of the Chief administrative officer.³⁵²

(b) United Kingdom

Part III: 10 Relaxation of requirements powers to dispense with relax requirements. (1) This Regulation delegates to the Local Authorities powers of the SoS under Section 8(1) of the Act to relax or dispense with any of the requirements. (2) If the Local Authority refuses an application it must inform the applicant of the contents of Section 39(1) and (3) of the Act (appeals against refusals etc.) If the Local Authority does not notify the applicant of its decision within two months, refusal is assumed and an appeal can be made. Under the Act an appeal must be lodge within one month of the date of the notification of refusal. The notice of appeal must set out the grounds on which it is based. It is submitted to the SoS via Local Authority.

The application of aggrieved person is processed and the action is taken as per time limit specified.³⁵³

(c) Pakistan

Chapter VI under Section 36 In order or notice of determination made by concern Authority or MP and EC (Authority under S.B.C.O, 1979) under this regulation shall served in manner prescribed in a, b, c, and d of section 27(4) of this regulations.

Where a hearing has preceded the making of the order or determination, any other person who appeared at the hearing and requested such service.

³⁵² BOCA National Building Code 1993 p.7- 8

³⁵³ Guide to Building Regulations 1985 for England and Wales p 13

Under Section 37 Appeal

Within Thirty days from the date of service of any order of a concerned Authority under these regulations and aggrieved person so served may appeal to MP and EC (Authority under S.B.C.O., 1979) which shall give him an opportunity to be heard before such officer within such reasonable time as shall as designated by MP & EC. (Authority Under Sind Building Control Ordinance 1979)

Finality of orders for determination, effect of inconsistency with other provision and Amendment of regulations are also included.³⁵⁴

(d) Malaysia

Section 86 Nuisances liable to be dealt with summarily under this Act. For the purposes of sections 87, 88, 89 and 90. Any premises or part thereof of such a construction or in such a state as to be a nuisance or injurious or dangerous to health;

Section 87 Notice requiring abatement of nuisance, Section 88 On non compliance with notice nuisance order to be made and

On complaint of Local Authority a Magistrate's Court hearing the complaint may make on such person a summary order, in this act referred to as a "nuisance order"

Nuisance order, abatement order, prohibition order,

When to specify work to be executed:

An abatement order or prohibition order shall, if the person whom the order is made so requires or the court considers it desirable, specify the works to be executed by such person for the purpose of abating or preventing the recurrence of nuisance.

³⁵⁴ Karachi Building & Town Planning Regulations Part II p.32

Closing Order and condition of closing it. Cancelling closing order are issued by the court as per the provisions are made.³⁵⁵

The penalty provision is made for non-complying with order. A Court making any order under this section may require any person on whom any order is made to pay all costs and expenses incurred obtaining the order.

Mandatory order issued by Court, terms are of mandatory order specified therein, and penalty clause is included for noncompliance.³⁵⁶

Provision as to appeal against order is made in Section 92 penalty where appeal fails and provision for proceedings pending appeal is incorporated in the said section.

Proceedings where owner is unknown, where the name or address of the owner of any premises with regard to which a Magistrate is empowered to make a mandatory order is unknown and cannot with reasonable diligence be discovered, such court may issue a summons addressed to the owner of the premises.

Such summons may be served in the manner specified in section 120.

If owner does not appear upon the hearing of the summons, such court may make an order upon him in his absence as it might have made in his presence except that it shall not inflict any fees upon him.

Over and above these provisions Section 94: In case of urgency order be made *ex parte*. Protection of the State Authority and officers is given from

³⁵⁵ Sec 86-87 of the Street, Drainage and Building Act 1974 (Act 133) amended as on Sep 20 1999

³⁵⁶ the Street, Drainage and Building Act 1974 (Act 133) amended as on Sep 20 1999 sec. 91

personal liability. Indemnity by local authority, Power to enter upon lands for the purpose of this Act.³⁵⁷

7.10 SOCIAL, TECHNICAL AND PSYCHOLOGICAL PROBLEMS.

(a) United States of America

In U.S.A. the social problems do not have much importance as the culture of U.S.A. is of mixed type, which does not have its basic original culture. People residing there are self-centered and workaholic. The weekends are the time to think about their social life and they do consider that aspect. As the Indians have migrated in big numbers, social functions, festivals and occasions are celebrated with interest. The buildings like Derasar, Temples, etc. have come up and classical music, Yoga, etc. activities have created interest in people. This and many other activities do take place but as the culture is discipline oriented the traffic problems or congestion is very rare as observed by the persons interview had said.

Technical problems are least as the buildings are of wood in many states and the concrete towers are in the central part of the city. The technology is such that any problem if arises can be solved within no time and the building regulations are observed properly. All the materials are standard specifications of material is also specified in the regulations with all the detailed uses of the same the technical problem so far as regulations are concerned are rare. The people residing there do not have time to do any adverse act, which can lead them to any legal discrepancies.

Psychological problems concern to regulation or development is not thought of as the planning of each area is so technical and mechanically designed that all have to follow the similar pattern for their livelihood. Most of the persons are living under stress and strain to get more money and

³⁵⁷ *ibid* Sections 95-97

they least care for other problems in general. They do not consider more about regulations and planning as the Government takes sufficient steps for the development.

(b) United Kingdom

The social problems in U.K. is a like any other European countries, the English people are actually conservative in thinking and self-centred but are very much disciplined people. The social and psychological problems are taken care of as the society is having a typical culture. Technical problems are no questions as they are suppose to follow the rules and regulation as they are. The development is fast and the Government gives all the necessary aids to met with any of the social, psychological and technical problems as and when arises.

(c) Pakistan

The separation in 1947 of British India into the Muslim state of Pakistan (with two sections West and East) and largely Hindu India was never satisfactorily resolved, and India and Pakistan fought two wars - in 1947-48 and 1965 - over the disputed Kashmir territory. A third war between these countries in 1971 - in which India capitalized on Islamabad's marginalization of Bengalis in Pakistani politics - resulted in East Pakistan becoming the separate nation of Bangladesh. In response to Indian nuclear weapons testing, Pakistan conducted its own tests in 1998.

The condition of social problems is there as far as the people with different school of thought are concern. The disciplined people are having the habits and living standards of international standard. The building industry is as similar to the other Asian Countries. The technical problems are less as the Rules and regulations are framed in detail so there are less ambiguity in the interpretation there of.

(d) Malaysia

Malaysia is a federation of 13 states and 3 federal territories with a parliamentary system of government based on periodic multiparty elections in which the ruling National Front coalition has held power for more than 40 years. Opposition parties actively contest elections, but face significant obstacles in competing with the long-entrenched ruling coalition. However, in November 1999 elections, opposition parties won roughly 25 percent of the seats in the Federal Parliament, and an opposition party also retained control of one state government and gained control of another. The Constitution provides for an independent judiciary; however, government action, constitutional amendments, legislation, and other factors undermine judicial independence and strengthen executive influence over the judiciary. The impartiality of the judiciary appeared to improve during the year,

Malaysia is an advanced developing country with a population of approximately 23 million, an estimated per capita gross domestic product of \$3,850, and an unemployment rate of roughly 3 percent. Following nearly a decade of strong economic growth averaging over 8 percent annually, it was hit hard by the 1997 regional financial and economic crisis. After contracting by 7.5 percent in 1998, the economy began to recover, and expanded 6.1 percent in 1999 and 8.3 percent in 2000. In response to falling demand in export markets, economic growth slowed during the year. Analysts expect the economy to grow from 1 to 3 percent during the year. The Government has continued with its stimulative fiscal and monetary policies.

The Government generally respected its citizens' rights in some areas; however, its record was poor in a number of other areas, and significant problems remain as they are.

This is the country, which goes from without to within. Infra structural facilities are taken care of and the maintenance of services are also taken

care of along with the building from inside also taken care of by the Rules and Regulations where the adverse acts are well taken care of Local Authority gets full support of the departments of the Government for the steps against adverse acts.

The legal implications as are arising in India are much more than any other countries under study. Due to third world and developing country, the poverty, lack of moral responsibility and corruptive officials, lack of integrity in administrative wing of Local authorities in working is apparent as comparison is done. No Country has perfect legal system but the developed Country such as USA, UK has better set of Rules and Regulations and the loopholes are minimum. There are less chances of unethical practice because of the strong administration.

CHAPTER – 8 CONCLUSION AND FINDINGS

- 8.1 Analytical
- 8.2 Critical
- 8.3 Hypothetical Findings
- 8.4 Suggestions

CHAPTER – 8 CONCLUSION AND FINDINGS

8.1 ANALYTICAL

The subject matter of research is concern with human tendency towards static entity like land and building, which will last long whether a person lives or not. The implications arise while dealing with people, administration and environment.

As said, 'Truth is stranger than fiction,' the actual position is different. This can be compared with as elephant has two types of teeth, One, which are visible, does not do the work which teeth ought do. The actual teeth in use are never seen. It is true that building does not do any thing by itself but others do some thing, which is adverse to the existing rules and regulations. A static entity like building narrates everything without uttering a single word if one knows the language of building, one can read and write about it.

Since 1974 the researcher has observed legal implications arising out of complex and compound nature of Rules and Regulations for Development Control. Situations and circumstances in society are such that though the building is a static entity the Rules and Regulations are ever changing which are observed by transitory entity like human being. The analysis and criticism is done chapter wise.

Chapter – 1: Introduction

While introducing the subject matter the terminology that is defined is to find out the legal implications of development control rules and regulations for buildings in urban areas of India.

Through out the practice as an architect, the researcher has always taken care of prevailing laws, by-laws and finally Development Control Rules and Regulations for the Buildings as to avoid unnecessary implications and

litigations. In federal country like India the Central and State Governments have their own-decided responsibilities but the Central Government prescribes policy, which the State has to follow.

Out of such policy the Urban Land (Ceiling and Regulation) Act 1976 had come into existence, which had tremendous effect on the real estate market in general, and Building Industry in particular. The objective of bringing Urban Land (Ceiling and Regulation) Act 1976 was to benefit urban poor to get shelter in the area they work by the housing schemes under sec. 20 and 21.

The market value of urban land was much higher than any smaller town or village, which was not covered under Urban Land Ceiling Act. The researcher has expressly specified that the word urban area be used as per definition of the ULC Act 1976. Urban area as per definition was controlled by the Additional Collector Urban Land Ceiling and was planned by the Urban Development Authority constituted under the said Act. The land value fixed by the competent authority under ceiling limit was much lower which was in no case affordable by the landowner of bigger estates. The land was under control instead of free hold. The Housing schemes and the commercial as well as the other development were also affected by the said Act.

Before the constitution of Area Development Authority and Urban Development Authority, the Municipal Corporation looked after the City independently and the rest of the surrounding area outside the Municipal limit was taken care of by village panchayat for all types of development including building permission which had not to follow the complex set of Rules.

The building industry is ever growing industry and cannot be controlled totally in all respect, as it has always remained seller's market. The vested interest in property has created problems and the legal implications have taken place.

The town planning scheme as would be prepared by the Town Planning Department of Municipal Corporation inside the Corporation Limit and by Town Planning Department of Urban Development Authority or the Area Development Authority as the case may be. The preparation of Town planning schemes had taken very long duration from conceptual planning to the final stage and that long duration had helped the estate owner and agents as well as brokers to play mischief to cover the land and make encroachment to create legal discrepancies. The people with political backup and slum dwellers as well as other people with similar malicious intention would buy the land and start development prior to the town-planning scheme was finalised. By such action the town planning schemes were delayed as to clear the encroachments on the public streets and Town Planning Scheme Roads.

There were hurdle from two sides one was control on land and price of the land in urban area and the other word used was urban agglomeration, which was under the purview of the competent authority. The building construction of fixed area with fixed cost of construction was to be observed rules and regulations as per guidelines.

Chapter – 2: Historical Perspective

The buildings, which are heritage buildings with sentimental value, are having certain quality and aspects of the purpose orientation as the basic guidelines for framing rules and regulations.

The conclusion is that the local authorities in urban areas of India define the types of building, which are listed. There are its international terminologies for purpose oriented buildings such as Schools Colleges, Hotels, Industries Residential buildings etc. from house to bungalow and mass housing, from raw houses to multi-storeyed apartments and Commercial complex as one building to multi unit commercial market such as agriculture produce market, wholesale consumer market are the terms not merely terms to define but the purpose oriented buildings create

certain situation which has effect on static as well as transitory problems. In case of historical buildings, which are counted to be and accounted, as Heritage buildings are now a-days used for different purposes than they were designed for. E.g. palaces are used as Government offices, hotels or public library or bank. The changed purpose has changed its original planning by making additions and alterations and the purpose for which it was designed did not remain any more. Development is ever changing process and has to remain in pace with the changing time. The buildings which are designed for one purpose with its locations and area and environment, by changed purpose the facilities will not be sufficient as required, the legal implications are expressly arise. Many historical buildings are preserved as Monuments also to draw the attention of tourist.

In Chapter – 3: Legislative Measures

The measures are so taken till date is analysed by its principle. More vigilance makes man more offensive as the nature of human as by itself is egoistic and greedy, no matter whom so ever he or she is.

Preventive measures are for the welfare of the people, but in practice has hazards are rarely prevented. To prevent accidents on roads the traffic pattern is oriented but lack of supervision makes the problem worse. The high rise buildings are given incentive to use more F.S.I. as much as 1.9 to get more open space on ground did not work as the open ground was covered by one or the other way after occupancy certificate was issued.

The regulatory measures are also proven weak, The people are unaware or ignorant of the rules and do not take care to observe them. The measures when ignored by the responsible officers by corruptive approach the regulative measures loose their importance.

Mandatory measures like fire-fighting system with instruments, are, must in any high-rise. The corruptive officer amends the rule by over sighting law. Low-rise apartments with mixed development are without parking facilities. The building completions are issued prior to its real completion.

Recommendatory measures such as ramp width leading to basement or the width of staircase in commercial buildings and industrial buildings are specified without basic thought as for use, which is unacceptable to majority of landowners.

Legislative measures are defined in terms of their preventive, regulative, mandatory, recommendatory and penal nature. These are the classifications of different Rules and Regulation as independent Rules or Regulations.

The legislative measures are not of static nature as like building and the ancillary services. The legislative measures are analysed but the provisions are made with its objectives. The application of the legislative measures is as per the area specified in the master plan. The doctrine based regulation has not served its purpose as the doctrine like preventive measures though are incorporated in set of rules and regulation as to prevent the health hazards by preventing open gutter or drainage system, One way traffic to prevent accidents and high parapet to prevent over falling.

The basic necessity to take the legislative measures is to stop the water enter the premises for ever or for longer, but those are not capable of stopping the flood as there are number of loop holes in the measures so taken.

If a person with Below Poverty Line is allotted and permitted to build a house on a plot admeasuring 25 sqmts. Where the family is much bigger than the normal one is bound to encroach the surrounding land if is open or encroach upon the public road. Here the matter is the minimum requirement and not the income. As per ecology any human need 0.90mt.X 1.80 mts. area to sleep no matter he is poor or rich. The alternative measures can be worked out to avoid such implications.

Chapter – 4: Administrative and Adjudicatory Machinery for Implementation of Development Rules and Regulations

The Administrative set ups of all different departments are not in co relation with one another. It is utmost necessary to keep check on the developmental activities such co-ordination is necessary. The procedural aspects do not co-inside with each other. Different departments are busy with their own affairs and situation is in mess since many years.

E.g. Ceiling was on open vacant land as declared by landowners at the time The Urban Land (Ceiling and Regulation) Act 1976 was imposed. The declaration was merely on paper in the office of the competent authority but not on actual site. The trespassers and encroachers had taken chance to grab open vacant land which was unmarked or the owners of the land were not present at the place where the land was under ceiling.

Due to ceiling on land value the generation of black money had taken place in full flange. The schemes under section 20 & 21 of the said Act were altogether different on paper than on site.

The misrepresentation was the prime activity at the planning stage as the ceiling was on the built up area of the tenement or flat. There was ceiling limit on the cost of construction of the dwelling unit in urban area where the cost of construction was much higher than rural area or the area where ceiling limit was not imposed.

The permissible area per dwelling unit was fixed to 40 sqmts. and 80 sqmts. The Income per family was accounted for the allotment of dwelling where the false statement were incorporated as far as the affidavit and indemnity bond as well as other documentary proof were to be submitted as evidences for income.

The legal implications as are result of an on going process which is not visible and evident, but is reflected in the building when takes its shape as well as the documents when are presented to any local authority.

The first escape is the documentation as the affidavit and indemnity bonds are the documents which are not mere stamp paper which contains some writing there on but has some other value where the moral of the person is included in the words written there on. Any person, who does not respect moral value of any event or situation in life, makes mess for himself and creates hurdles to the others with whom he deals with in the society and administration of local authority.

Preparation of plan for proposed building is to foresee future but a sanctioned plan as a documentary proof or evidence. It becomes record of the institution as paper presentation in form of plan and other documentary evidences. Once plans are submitted becomes history in the office of the local authority and becomes a record or evidence for future to narrate the control rules and regulation as on the date of sanction. The other part is a building, which is constructed as per plan, becomes a demonstrative record to mention the legal and technical aspect of that building. if and only if the administrative officer or technical staff supervise the situation and act according to the law as on date it prevails. But it does not happen as the administrative machinery fall short in quality of work as moral has gone down by lack of responsibility, not understanding liability, corruptive mentality and ignorance as well as negligence and in quantity as the number is less than required Technical staff. Most of the time the problems arise because of lack of efficiency negligence of the staff etc. The applicants or owners or architects becoming victims of such an attitude of the administrative as well as technical staff. The work of the person who offers undue money to get undue advantage and priority to the person-offering bribe makes officer lethargic to the regular work.

As it is true that to clap you need two palms and if only one is use to bang to wall is not a clap but is to hit and is never to be said a clap. So to avoid such undue activities the procedure should be in black and white with the flow chart of the process as to clear the smooth working of the institution as well as owner.

In western countries the rules are of precautionary measures rather than the preventive. The persons are made conscious to be safe by following the rules where the safety factor is kept 1.00 or maximum 1.20 where as no such caution is said if is in ISI code than the supervision is not there. So the material and workmanship is not up to standard and there the implication in terms of technicality starts. And eventually turns into legal as the implied terminology is used as load bearing building and building with RCC frame.

In the counter part of this Chapter the adjudicatory machinery is discussed. In practice there is no different set up for such duty and responsibility. The adjudicatory is the set up does not work by it self. It works on demand. Plan once sanctioned is dormant till the progress certificate is ask for and on other hand if it is not demanded the concern officer does not care to check. The adjudicatory staff is the same in case of the deviation of construction in terms of design and materials specified. The notice is issued if severe or drastic changes are noticed. In practice such work is objectionable by people and the local authority. In such a case the adverse act can be regularised or rectified if the scope is there in construction process. The administrative orders are within the purview of the administrative officer if it is in public interest and if the adverse work done is not in the interest of the institution. When the judgement of the adjudicatory officer is non acceptable by the aggrieved applicant, he seeks the help of judiciary.

chapter – 5: Judicial Trends

The concept is that many aggrieve one of the parties aggrieved by the other or in case of three or more, one or one in such case the help or intervention of judiciary is needed aggrieves many.

To seek the help of judiciary both the parties should have sufficient reason to get justification for their rights. The adverse act or an offence is in terms of physical encroachment or in terms of mental harassment by defecting

the title by fabricated proof. To prove the first right or an absolute right a party has to be well prepared by understanding the cause and the type of adverse act which is done by opposite party. The party has to prove its vested interest in the property.

In this chapter the step to get the judicial help are explained. The justified reasons and causes are specified by which a person is or would be aggrieved by the other party/ies. This entitles the person to approach the Court.

As the procedure is under C.P.C. or Cr.P.C. as per the application or F.I.R is made.

Judiciary is an independent organ of Government of India and with all respect they appoint the Judges well qualified as far as educational qualification is concern. When case is presented various aspects are incorporated which are to be interpreted with respective terminology. The arguments are made by using different interpretations of single term in case of controversial issue of the case. Development control Rules and Regulations have their clear interpretation of terms then only one meaning is followed by both the parties. One term is interpreted differently in different laws as per the requirement of the same law and has vast application to prove and defend one self. There are different types of wrongs being done in the implementation of such rules which are with intention or without intention and one knowingly and other unknowingly so the analytically the wrong are specified as to be the base of the possible terminology of wrong or adverse act in legal respect.

Chapter – 6: Legal Implications of Social, Technical and Psychological Problems

The analytical conclusion is based upon three aspects of the problem with co-relationship with economic aspect also. The need of Rules and Regulations arsis where ever society is established. Society is by the

people, for the people and to fulfil requirements of the people. Legislation is also framed by the people, who are ruler i.e. People of Governing party is for the people who is general public and is to fulfil the need or requirement of the general public or is welfare of the general public. The problems prevailing in existing situations are the cause of adverse act.

Socio-Psycho combined aspects are leading to implications or various natures where the legal implication is one of them. Is correlated with the other aspects too.

The Analysis is based on the problems of physical nature which have their origin in related to mental and sentimental nature.

The Economy is the basic factor, which is correlated to all the three aspects under consideration.

Chapter – 7: Building Rules and Regulations in Other Countries - Comparative Analysis (a) The United States of America, (b) The United Kingdom, (c) Pakistan, (d) Malaysia

The comparative studies of different aspects of the development rules for building are made. The reason behind such a comparison is to find out the intensity of implications in other countries when Set of Rules and Regulations are applied. The technicality of the subject matter can never be made subordinate as it Rules the situation. When a building is constructed the more thrust should be given technicality of the one and the other becomes subsidiary to them when the implementation is done prior to that the Legality of the land and other aspect should be taken care of. The priority changes with time and situation along with the circumstances. Prior to construction all the formalities of legal nature should be given priority to avoid implications arising out of them. While Construction or erection of the structure only priority to technicality should be taken care of to avoid technical implications arising out of the situation.

The Regulations are framed by purely professional group of people in USA, which are more technical than legal. As the society is law conscious need not be made aware of the importance of legality. It is with U.K. the technical aspects are given more importance than the legal one. Malaysia and Pakistan also trail in similar situation, as the governing party is more responsible to control irregular development.

The following questionnaire was given to 100 architects at a National convention from different States. The filled forms returned were 50 and the properly and fully filled up were 40.

QUESTIONNAIRE 1

A. GENERAL

All the alternatives are possible answers. You are requested to give grade as per your priorities: as 1, 2, 3, & 4 & if any more answer is there kindly put 0 and put your statement.

1 In your opinion the existing building bye laws are derived from:

- | | |
|--|---------|
| <input type="checkbox"/> Existing Historical Buildings of more than 100 years | 4-100% |
| <input type="checkbox"/> Existing Buildings more than 60 years & Less than 100 years | 3-100% |
| <input type="checkbox"/> Existing Buildings less than 60 years & more than 10 years | 2-50% 1 |
| <input type="checkbox"/> Existing Rules and Regulations | 1-50% 2 |
| <input type="checkbox"/> | |

2 What do you think to be the main reason for formulating the BUILDING BYE-LAWS is:

- | | |
|---|--|
| <input type="checkbox"/> Synchronization of building designs. | |
| <input type="checkbox"/> Better land utilization | |
| <input type="checkbox"/> Better space utilization (in three dimension). | |
| <input type="checkbox"/> Better resource utilization | |
| <input type="checkbox"/> | |

All 100%

- 3 What is your observation regarding the size of RESIDENTIAL Units has been What is your opinion in the development of WORK PLACES in Urban areas have moved
- | | |
|------------------------------------|-----|
| ___ Reduced | 50% |
| ___ Increased | 10% |
| ___ Remained same | 20% |
| ___ Nothing can be said in General | 10% |
| ___ | |
- 4 What is you opinion in the development of WORKPLACES in Urban areas have moved:
- | | |
|----------------------|-----|
| ___ To the centre | 5% |
| ___ To the periphery | 25% |
| ___ Haphazardly | 60% |
| ___ Liner | 10% |
| ___ | |
- 5 What do you feel about the existing Rules & Regulations & BYE-LAWS are:
- | | |
|--------------------------------------|------|
| ___ Standard | |
| ___ Tailor-made | |
| ___ Readymade to fit the requirement | |
| ___ Derived/Copied | |
| ___ | 100% |
- 6 In your opinion which aspect should be taken care of while formulating building BYE-LAWS
- | | |
|----------------------|-----|
| ___ Socio Legal | 10% |
| ___ Technico Legal | 60% |
| ___ Socio Economical | 20% |
| ___ Psycho legal | 10% |
| ___ | |
- 7 In Your opinion what do you understand as legal implication is:
- | | |
|--|----|
| ___ Strictly as per the Rules and Regulation | 5% |
|--|----|

- | | | |
|-----|---|-----|
| ___ | Technically deviated but legally sound | 25% |
| ___ | More legal & less technical | 10% |
| ___ | Equal | 60% |
| ___ | | |
| 8 | In your opinion how far a fixed frame work as per ecology and standard size will help to frame building bye-laws: | |
| ___ | To its fullest extent | 25% |
| ___ | More technical & Less legal | 30% |
| ___ | More legal & less technical | 40% |
| ___ | Equal | 5% |
| ___ | | |
| 9 | The local self Government which makes building bye laws is: | |
| ___ | Village Panchayat | 0% |
| ___ | Municipal Boards | 0% |
| ___ | Municipal Corporation | 80% |
| ___ | Development Authority | 20% |
| ___ | | |
| 10 | The object of NBO Code is: | |
| ___ | To ensure soundness of construction | 25% |
| ___ | To ensure minimum standard of construction in the Country | 60% |
| ___ | To ensure best utilization of building materials | 5% |
| ___ | To ensure best utilization of space (in 3 D.) | 10% |
| ___ | | |
| 11 | The object of ISI Code pertaining to building industry is: | |
| ___ | Same as NBO Code | 90% |
| ___ | Different from NBO Code | 0% |
| ___ | More Similar & Less different | 10% |
| ___ | More different & less similar | 0% |
| ___ | | |
| 12 | The Distinction between a Village & City is based on: | |
| ___ | Area | 0% |

- | | | |
|-----|--|------|
| ___ | Type of main business activity | 0% |
| ___ | Education of people | 0% |
| ___ | Population | 100% |
| ___ | | |
| 13 | The distinction between a town & City is based on: | |
| ___ | Area | 0% |
| ___ | Extent of Industrialization | 0% |
| ___ | Type of Local Authority | 0% |
| ___ | Population | 100% |
| ___ | | |
| 14 | Framing of Laws for regulating construction activity falls within the power of: | |
| ___ | Parliament | 0% |
| ___ | State Legislature | 25% |
| ___ | Development Authorities | 50% |
| ___ | Local Self Governing Body | 25% |
| ___ | | |
| 15 | What is the number of UNION ACTS regulating construction activities according to you opinion is: | |
| ___ | ONE | 75% |
| ___ | TWO | 10% |
| ___ | THREE | 10% |
| ___ | More | 5% |
| ___ | | |
| 16 | Number of State Acts governing the building Activities in Your STATE according to your opinion is: | |
| ___ | ONE | 75% |
| ___ | TWO | 20% |
| ___ | THREE | 5% |
| ___ | More | 0% |
| ___ | | |
| 17 | Number of sets of Bye laws framed by local self Government in Your Area is: | |

| | |
|---|------|
| ___ ONE | 100% |
| ___ TWO | 0% |
| ___ THREE | 0% |
| ___ More | 0% |
| ___ | |
| 18 In Your opinion which aspect should be given priority while framing the building Bye-laws: | |
| ___ Stress on Legal aspect | 10% |
| ___ Stress on Technical Aspect | 10% |
| ___ Stress on Socio-economic Aspect | 20% |
| ___ Stress on preservation of environment | 60% |
| ___ | |
| 19 What Roll does the historical building play in formulation of Bye Laws is to arrive at: | |
| ___ Technical conclusion | 10% |
| ___ Technical Legal conclusion | 35% |
| ___ Socio Legal conclusion | 50% |
| ___ Psycho legal conclusion | 5% |
| ___ | |
| 20 In your opinion what is the purpose of Bye laws followed by execution: | |
| ___ After the execution of Historical Buildings | 5% |
| ___ At the time of Construction | 10% |
| ___ Before planning the building | 60% |
| ___ Trial &Error | 15% |
| ___ | |
| 21 What is your opinion about Historical buildings are: | |
| ___ Use oriented | 20% |
| ___ Technically Sound | 60% |
| ___ Legally Sound | 15% |
| ___ Comprehensive | 5% |
| ___ | |
| 22 Please mention the nature of litigation in priorities relating | |

- to the building industry:
- Under Easement Act 35%
 - Under Defective Title 50%
 - Under ULC ACT 1976 10%
 - Under IPC 5%
 -
- 23 Which Contractual obligation Result in least litigation OR matter of Controversial is:
- Land Owner & ARCHITECT 80%
 - Land Owner & Local Authority 5%
 - Land Owner & Developer 10%
 - Land Owner & Neighbour 5%
 -
- 24 Whether assimilation of concern Sections/portion of Various ACTS/LAWS effecting building Bye law litigation is:
- Necessary 70%
 - Not necessary 10%
 - Does not make any sense 15%
 - Will help to save time 5%
 -
- 25 What do you feel after your experience the present building bye laws require amendments to make it practical:
- Liberal 20%
 - Strict 15%
 - Consolidated 30%
 - Exhaustive 45%
 -
- 26 What is the extent of Implementation of Bye laws in your area as per your opinion & Experience:
- 100% 10%
 - Between 75% & 99.9% 30%
 - Between 50% & 74.9% 50%

- ___ Between 25% & 49.9% 10%
- ___
- 27 The Outcome of the litigation relating to building construction has achieved:
- ___ Desired result 10%
- ___ Undesired result 20%
- ___ Satisfactory 10%
- ___ Cannot Opine 60%
- ___
- 28 In your opinion the Cases relating to the building Bye laws are more with:
- ___ Express Deviation 60%
- ___ Implied Deviation 25%
- ___ Relative Deviation 10%
- ___ Forced Deviation 5%
- ___
- 29 In your opinion the LEGAL ACTION against breach of any of the condition shall be prosecuted in
- ___ Special Court 60%
- ___ Tribunal 10%
- ___ In Legal Cell of the office 5%
- ___ By the Chief Executive of the Concern Authority 25%
- ___
- 30 What is your opinion for the deviation from the sanctioned plan is taking place in the most of the cases are due to
- ___ Very strict rules 10%
- ___ Very flexible rules 40%
- ___ Misrepresentation 35%
- ___ Contradiction in relative terminology 15%
- ___
- 31 What is your impression regarding the operative mechanism of building bye laws by the OFFICERS Concern is:

| | |
|--|-----|
| ___ Fully satisfactory | 5% |
| ___ Non Co operative | 40% |
| ___ Creating unnecessary quarries | 10% |
| ___ CURRUPT/Red Tapism | 45% |
| ___ | |
| 32 What is your opinion for the New concept of the set of Comprehensive consolidated code for Building Bye Laws should have: | |
| ___ PREVENTIVE Measures | 80% |
| ___ REGULATIVE Measures | 10% |
| ___ PROGRESSIVE Measures | 5% |
| ___ Restrictive Measures | 5% |
| ___ | |
| 33 What is your impression regarding the Administrative Machinery is utilizing their: | |
| ___ Limited Discretionary powers | 10% |
| ___ Unlimited Discretionary powers | 70% |
| ___ Limited Delegated power | 5% |
| ___ Unlimited Delegated power | 15% |
| ___ | |
| 34 What is your opinion regarding the competency of local authority in scrutinising the building plan prepared by an ARCHITECT after due experience, is comparatively: | |
| ___ More | 0% |
| ___ Less | 15% |
| ___ Average | 65% |
| ___ Nil | 20% |
| ___ | |
| 35 What is your opinion for true interpretation and visualization for preparing a Building plan in all the respect the other discipline is competent | |
| ___ More | 0% |
| ___ Less | 20% |

___ Average 50%
___ Nil 30%

QUESTIONNAIRE 2

B. JUDICIAL TREND AND ADMINISTRATIVE MACHINERY

Name : _____

Address : _____

Professional : _____

Experience _____

Type of projects handled:

Commercial / Residential / Institutional / Industrial / Others

Concept: **JUDICIAL TREND:**

To regularise

&

To prevent irregularity in Building Industry:

Physical variation: Like variation in margin/FSI/height/built up area etc.

Material variation: Load bearing/R.C.C. Frame/Steel Frame

Please render you opinion:

(A) Whom do you hold responsible in case of irregularity in building as per concept para 1 & 2

(i) Institutional : Trust / Board / Corporate Body
Trustee Chairman Managing Director

(ii) Builder oriented : Partnership Firm / Limited / Pvt. Ltd.
Managing Partner Managing Director

(iii) Private : Sole Owner

or

ARCHITECT/ENGINEER/PLANNER 70%

or

Officer of the concern Authority 30%

(B) What type of communication do you prefer to prevent irregularity in building industry as far as byelaws are concern?

(a) One person responsible 60%

(b) Solely dependent upon consultant 20%

(c) Group of people to take decision 20%

(B-1) If one person, what will be your approach to render your service by:

(i) Interpreting law in its exact meaning 60%

Or

(ii) Interpreting according your requirement 25 %

Or

(iii) Twisting it according to clients desire by manipulation

If none of above method then 15%

According to you which building is accounted to be fully legal PI. give reason/s:

(a)

(b)

(c)

(C) Co ordination of various Govt. Dept. related to sanction and according/confirming ownership (title)

(i) Person to department 70%

(ii) Department to Department 10%

(iii) Department to person 20%

(D) Is it necessary at the time of purchase and registration of the same the building plan existing/proposed should be the part of necessary document

YES / NO

85% 15%

ADMINISTRATIVE AND ADJUCATORY MACHINERY

- (a) Please tick / What type of administrative set up you will prefer for getting approval of BUILDING PROPOSAL
 (i) Technical (ii) Legal (iii) Technico legal
 30% 20% 50%
- (b) What is more important /functional to prevent irregularity in building Byelaws
 (i) Clear definition without any option 80%
 (ii) Clear definition of legal terminology 10%
 (iii) Clear definition of technical terminology 10%
- (c) A Building is legal if
 (i) Technically sound but not according to bye laws Nil
 (ii) As per bye laws but technically not sound 10%
 (iii) Technically and legally as per bye-laws 90%

While Designing:

- (1) Do you visit the proposed site before designing? 80% 20%
 Yes / No
- (2) Do you check the other legal documents such as layout / N.A. Order/Sanad/ULC NOC/Property Card etc.? 25% 75%
 Yes / No
- (3) In case you find any discrepancy would you like to get it rectified?
 100%
 Yes / No
- (4) If the building proposal is irregular/illegal would you like to rectify?
 Yes / No
 If yes 100%
 (a) By complying necessary information Yes/No
 40%
 (b) By bribing officer & obtain the sanction Yes/No
 If Yes 60%
- In your opinion who is responsible for all scandals

Owner / Officer / Architect

50% 40% 10%

8.2 CRITICAL

One cannot criticise the aspect without analysing the same. Each and every element on this earth, visible or invisible, Physical or metaphysical, has positive and negative quality. Though the term positive or negative is again being a relative term the general aspect is well taken care of.

The thing, which is not right, is wrong but what is right than it cannot be said it is one, which is not wrong. They are interrelated but both do not have equal value. One is having higher value than the other. One is absolute and other is relative. One is independent and other is dependent. Human nature is egoistic which would never like to depend on the other. So the earnest choice is to be independent of all.

The Morality of each human plays a vital role in the approach towards living or leading one's life.

An immoral person will never accept immoral reactions from the opposite persons. A thief when steals from somebody's property never like to be aggrieved. An encroacher will never wish or allow some one to encroach upon his land. So the right is prime most factor of living beings on this earth.

The study is made critically as to why implications arise and when it gets established.

The fact which came as reason is that WHEN MORALITY ENDS LEGALITY STARTS and once the legality has enter the field of social economical technical, and all other aspects a vicious cycle starts which never ends until it is eradicated.

There is one village in Saurashtra called Rajsamadhiyala where people are so well disciplined that no one lock house. People keep their village clean. No body has fear of theft and tress passing as it was reported on T.V. One should respect law when it is enacted for benefit of people in general. All might not need its implementation. Due to a class of people who finds loopholes from every law and new enactment is needed. People were living peaceful in the past when such a complex and compound legal system was not there.

While doing adverse act a person should fore see the consequences thereof. Law should be their as precautionary measures.

In India the terminology is GDCR mean General Development Control Regulations. The term is misrepresented. Actually the rules and regulations are general irregular development control regulations.

Progress of the society is by high moral high thinking and simple living. Where the complexity is not accepted or welcomed as it creates controversy in implementation.

8.3 HYPOTHETICAL FINDINGS

When Morality Ends... Legal Implications Starts... To end the implications moral standards require strengthening. This will result into self-discipline and respect for Natural and manmade laws as morality is the base of any progressive society and development therein.

(01) During the research work the researcher has found out that the basic rules and regulations are created by positive objectives to improve living standards of the people in general and poor in particular have failed to do so. The concept of development control is not fully accepted by the people of urban areas.

(02) During study and survey it is found that very few buildings are as per the prescribed rules. Many of them were with approved plan but not according to approved plan. The necessity had forced the people to construct as per the sanctioned plan but had altered after getting occupancy certificate because of the requirements of financing institutions like Banks and Housing Boards etc. The necessity of a module with minimum discrepancy as far as plot of different size and area is concern is now necessary.

(03) During studies of different plans Rules and regulations in all areas under urban agglomerations are similar as are based on ecology but not affordable by people; the areas are misinterpreted by giving space the other name for area of utilization

(04) The terminology such as Built up area, Carpet area, Super built up area are defined evenly but the application there of is made differently. The terms are applied for Flats, shops on ownership basis are taken on percentage basis and not the actual to sell the property at lower rate and to get the desired amount, the term super built up is used³⁵⁸.

(05) The sizes of the spaces in terms of three dimensions the area and height specified for difference class of people are different. As in low-cost housing the area is to its minimum and the height is also less compared to ecological need of human being with standard height.

(06) The most of the litigations are pertaining to the ownership right or right to title. This occurs from the adverse acts are trespass physically encroachment on the property or false documentation by making the title defective. The development control rules and regulations are accepting the ownership right by sole ownership, irrevocable power of attorney, and in case of developers by development agreement. The purpose is not served fully as various documents are showing the right as owner and all are

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required by the concern local authority does not cross check and the property card is one of the reliable document as in the revenue code the survey numbers are changed and discrepancies arise between old and new numbers.

(07) The property when purchased and developed has a considerable time period. The description of the property as an immovable property has identifications as Revenue Survey Number or City Survey Number as the case may be. The plot with building and plot without building has much difference as the interpretation of land as vacant land the property transferred are plot with a building there on for safety of it possession but actually such is not the case on the site. The Laws are used to escape from the liabilities. The interpretation is made so flexible that the basic object of the rule does not remain any more.

(08) The right of easement is studied thoroughly as and when the question arose or its succession when property having the right of easement changes it ownership and purpose. The implications arise out of the ownership of easement right. As per present practice the Owner and developers are keeping the right of easement with them of the building, which is sold, to different purchasers. The right of basement and terrace is not transferred to the association of persons. Cellar for parking and terrace is used for meetings or such other work. By holding such right the additional construction is made and parking is sold by constructing shops. Thus right of easement is abused in many cases.

(09) The findings for the capabilities of the different authorities are in question. The staffs are highly paid. Very often concern persons are rarely on their table during office hours. In the present trend, Mobile phones have made them liars. The facilities have increased but the integrity to work has decreased.

The amounts of corruption in terms of money and sentiments have increased. Town planner to the administrative staff are desirous to get some thing from applicants.

(10) The public purpose word is justified but the concept is not justified as the common plots of societies and other open plots for public purposes are encroached by poor people or by so called rich industrialists, political persons and such type of persons by constricting small temples, or other amenities which are not according to its purpose as is kept for. The purposes are not justified.

(11) The reason for the encroachment on road streets and lane is one, which is public property where no single person can take objection for the encroachment. The local authority is responsible to get the encroachment clear but the ignorance of the staff waits till some agitation takes place. Parking on roadside for longer time is one of the encroachments during peak hours and the hawkers are other nuisance as the commercial place is very expensive.

(12) During research it is found out that the technical staffs has lost its efficiency and the office procedure is made computerised. The problem has become more severe. What ever is fed to computer while programming, needs the same type of data to be fed to the application form. It does not accept specific data other than is in programme. The persons sitting to receive the application knows only to receive application and cannot do anything more than that. So-called modernization has corrupted the moral of engineers in terms of knowledge and efficiency.

More over the following things are found out that the changes in the buildings after completion are done by both category of people such as higher income group and the urban poor. The mass housing schemes for urban poor have been successful for time being i.e. till the stage of allotment. There after selling to the people for getting more money on power of attorney base as the building is non transferable for certain number of years as the term was 10 to 15 years and For LIG and EWS 20 years.

The Rules and Regulation are framed with complexity by putting conditional close where a person can change the condition and after completion regains the same. The Simple Rules where the local authority is affected and is having its interest can stop this. Such as common plots, Public Roads and streets, Public gardens and parks, Schools owned, multipurpose halls and Auditoriums etc. run by local authority.

8.4 SUGGESTIONS

For general public by minimum Rules and Regulations the ways and means of corrupt practice can be reduced to minimum by overall control is to be implemented by rules and regulations.

The Minimum Rules are to control implications four factors, which are;

- (01) Front Margin as per the width of public street
- (02) Height of the building Low rise and High Rise
- (03) Maximum Permissible built up area on Ground and
- (04) Maximum Permissible FSI without any thing free from.

In such cases the discrepancies will be minimum. The awareness of the legal form of such rule if understood by the people will prevent them to do adverse act.

The above four factors are basic and should be included in all the development control rules and regulations. The less adverse acts will lead to least implications.

As the administrative and adjudicatory machinery is weak and not capable to cope up with fast development has to restrict themselves with their own affairs instead of getting bribe to allow people to do adverse acts.

The staff for pre implementation and post implementation should be different, so that the factor of adverse act will not be confined to one officer.

The Surprise checking should be done by a team consisting of technical cum legal persons from external administration to give the report along with a video recording along with site condition report and the charges should be borne by the applicant will make applicant always conscious against doing adverse act.

The legal implications are most undesirable element in society, which is not visible by itself but can be experienced by a person aggrieved. He suffers from mental and physical stress to get it eradicated. This is successive in nature as far as the building is concern till the adverse act is rectified or building is demolished partly or fully which causes the waste of money time and manpower this cannot be repaid till any building which is found illegal or irregular should be made to its shape by making it regular. As per Supreme Court has given ruling³⁵⁹

A concise **National Building Code 2005 (Technical)** is already in existence the similar **National Building Code (Legal)** should be framed to reduce legal implications.

The Third World Country like India where people are living below poverty line cannot afford such massive waste on one side and stress on the other side. The position of Urban poor is bad. On one side big buildings are getting demolished because of irregularity and poor are losing their houses because of encroachment on vacant land and roadside, as they cannot afford even a small shelter in urban area, at their work place. They too cannot afford to come from near by villages as the transportation is also become expensive to them. Saving resources or utilising them at proper place can solve the problem, which is with high magnitude.

³⁵⁹ Appendix H

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- 51 Rangnath v. Periakaruppan. S. 13(1) Explanation (iii) taken with S. 8, 9. 78 of Negotiable Instruments Act AIR 1957 SC 815

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- 53 Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740
- S 54 State of M.P. v. Ramchandran Bhagose Kanchi, (1972) 22 MPLJ 176: AIR 1977 MP. 68
- 55 Sajjan Singh v. State of Rajasthan, Cf. Constitution of India, Arts. 13(2) and 368 Constitution of India Art. 286(3) AIR 1965 SC 845.
- 56 Sir Dinshaw v. G. B. Badhas, 70 Bom LR 632: AIR 1969 Bom 151
- 57 Shiw Bahadur Singh v. State of U. P., 1952 SCJ 563: 1953 Cr. LJ 1480: AIR 1953 SC 394
- 58 State of Tripura v. J Mohini Mohan AIR 1957 Tripura 22; AIR 1947 PC 19; (1949) 4 DLR 20 (Bom); (1951) 5 DLR 107 (Simla); 54 IA 126;
- 59 State of U. P. v. Firm Deo Dutt Lakhan Lal, AIR 1966 All 73 (FB). Cf. Defence on India Rules, 1962 5, and U. P. Foodgrains (Control, Requisition and Distribution) Order, 1963, Cls. 3-B, 18 and 19;
- 60 Sadruddin Suleman Jhaveri v. J.H. Patwardhan, Constitution of India Art. 31; AIR 1965 Bom 224.
- 61 State of W.B. V. Nripendranath Bagchi (1965) 2 SCA 884: AIR 1966 SC 447
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- 63 Shahnawaz Begum v. Potina Srinivasa Rao, Madras Building (Lease and Control) Act (25 of 1949) (as applied to Andhra Pradesh), Ss. 2(1) & 2(4); AIR 1964 AP 233.
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Immovable Property Tax Act (17 of 1940), S. 4(1) (g); AIR 1963
SC 1459
- 67 State of Bihar v. Sir Kameshwar Singh (AIR 1952 SC 252(311)).
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- T 68 Teja mohan v. Maugubhai Mehta AIR 1970 Guj 209 (215); M.U.
Shah, J.
- U 69 United States v. Wanderlick (1951) 342 US 98
- W 70 Webster v. Cecil 30 Beav.62
- Z 71 Zonal Manager, Life Insurance Corporation of India v. City
Munsif, Meerut, Advocates Act 1961 S. 30 (ii); AIR 1968 All 270

APPENDIX A

Salient Features of NBC 2005

- 1) Inclusion of a complete philosophy and direction for successfully accomplishing the building projects through Integrated Multidisciplinary Approach right through conceptual stage to planning, designing, construction, operation and maintenance stages.
- 2) A series of reforms in building permit process.
- 3) Provisions to ensure and certification of safety of buildings against natural disaster by engineer and structural engineer.
- 4) Provision for two-stage permit for high-rise and special buildings.
- 5) Provision for periodic renewal certificate of occupied buildings from structural, fire and electrical safety point of view.
- 6) Provision for empowering engineers and architects for sanctioning plans of residential buildings up to 500 m².
- 7) Inclusion of detailed town planning norms for various amenities such as educational facilities, medical facilities, distribution services, police, civil defense and home guards and fire services.
- 8) Revision of parking requirements for metro and mega cities.
- 9) Updation of special requirements for low income housing for urban areas.
- 10) Inclusion of special requirements for low income housing rural habitat planning.
- 11) Revision of the provisions for buildings and facilities for physically challenged.
- 12) Fire safety norms completely revamped through detailed provisions on Fire Prevention, Life Safety and Fire Protection.
- 13) Inclusion of new categories of starred hotels, heritage structures and archaeological monuments for fire safety provisions.
- 14) Substitution of halon based fire/extinguishers fire fighting system.
- 15) Promotion to new/innovative building materials/technologies.

- 16) Inclusion of latest provisions for earthquake resistant design and construction.
- 17) Inclusion of details on multi-disaster prone districts.
- 18) Inclusion of new chapter on design and construction using bamboo.
- 19) Chapter on prefabricated and composite construction for speedier construction.
- 20) Updation of provision of safety in construction.
- 21) Complete revision of provision on building and plumbing services in line with applicable international practices.
- 22) Provisions on rainwater harvesting.
- 23) Inclusion of new chapter to cover landscaping needs.

APPENDIX B



National Building Code of India 2005 (NBC 2005)

The National Building Code of India (NBC), a comprehensive building Code, is a national instrument providing guidelines for regulating the building construction activities across the country. It serves as a Model Code for adoption by all agencies involved in building construction works be they Public Works Departments, other government construction departments, local bodies or private construction agencies. The Code mainly contains administrative regulations, development control rules and general building requirements; fire safety requirements; stipulations regarding materials, structural design and construction (including safety); and building and plumbing services.

The Code was first published in 1970 at the instance of Planning Commission and then revised in 1983. Thereafter three major amendments were issued, two in 1987 and the third in 1997.

Considering a series of further developments in the field of building construction including the lessons learnt in the aftermath of number of natural calamities like devastating earthquakes and super cyclones witnessed by the country, a Project for comprehensive revision of NBC was taken up under the aegis of National Building Code Sectional Committee, CED 46 of BIS and its 18 expert Panels; involving as many as 400 experts. As a culmination of the Project, the revised NBC has now been brought out as National Building Code of India 2005 (NBC 2005).

The comprehensive NBC 2005 contains 11 Parts some of which are further divided into Sections totaling 26 chapters (see Annex 1). The

salient features of the revised NBC (see Annex 2) include, apart from other changes made, the changes especially in regard to further enhancing our response to meet the challenges posed by natural calamities and reflecting the state-of-the-art and contemporary applicable international practices.

CONTENTS OF NBC 2005

| | | |
|-------------|----------|---|
| PART | 0 | INTEGRATED APPROACH – PREREQUISITE FOR APPLYING PROVISIONS OF THE CODE |
| PART | 1 | DEFINITIONS |
| PART | 2 | ADMINISTRATIONS |
| PART | 3 | DEVELOPMENT CONTROL RULES AND GENERAL BUILDING REQUIREMENTS |
| PART | 4 | FIRE AND LIFE SAFETY |
| PART | 5 | BUILDING MATERIALS |
| PART | 6 | STRUCTURAL DESIGNS |
| Section | 1 | Loads, Forces and Effects |
| Section | 2 | Soils and Foundations |
| Section | 3 | Timber and Bamboo |
| | 3A | Timber |
| | 3B | Bamboo |
| Section | 4 | Masonry |
| Section | 5 | Concrete |
| | 5A | Plain and Reinforced Concrete |
| | 5B | Prestressed Concrete |
| Section | 6 | Steel |
| Section | 7 | Prefabrication, Systems Building and Mixed/ Composite Construction |
| | 7A | Prefabricated Concrete |
| | 7B | Systems Building and Mixed/Composite Construction |
| PART | 7 | CONSTRUCTIONAL PRACTICES AND SAFETY |
| PART | 8 | BUILDING SERVICES |

- Section 1 Lighting and Ventilation
- Section 2 Electrical and Allied Installations
- Section 3 Air conditioning, Heating and Mechanical Ventilation
- Section 4 Acoustics, Sound Insulation and Noise Control
- Section 5 Installations of Lifts and Escalators
- PART 9 PLUMBING SERVICES**
- Section 1 Water Supply, Drainage and Sanitation (including Solid Waste Management)
- Section 2 Gas Supply
- PART 10 LANDSCAPING, SIGNS AND OUTDOOR DISPLAY STRUCTURES**
- Section 1 Landscape Planning and Design
- Section 2 Signs and Outdoor Display Structures

APPENDIX C

News Paper Cuttings (Scanned)

1. **80 % buildings** are illegal in **New Delhi** reported to Delhi High Court by Municipal Corporation of Delhi. 2 pages
2. To implement **Town Planning Schemes**, the hurdles are in form of encroachments: to remove this **Rajkot Municipal Corporation** has approached the Supreme Court of India.
3. **From Prime Minister to President of ruling party** stays in **illegal buildings**: The **Delhi** High Court has given order to dismantle it.
4. **“Sara-Sahara Complex”** building of Dawood Ibrahim dismantled in Mumbai with tight security.
5. The Computerisation and modernisation made a mess in **Rajkot Municipal Corporation**.

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બિ એનેસ મેટ્રો મેટિની વામ્સ વીક એન્ડ ઈન્દ્રધનુષ ફિટનેસ PTA અર્પણ સિટી લાઈફ ફન ક્લબ આંગિકમ

ગુરુવાર, ૧૯ જાન્યુઆરી ૨૦૦૬

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દેશ વિદેશ

બોલો, દિલ્હીનાં ૮૦ ટકા મકાન ગેરકાયદે છે!
એમ.સી.ડી.એ દિલ્હી હાઈ કોર્ટને જણાવ્યું...

નવી દિલ્હી: એમસીડીએ બુધવારે દિલ્હી હાઈ કોર્ટને અનુરોધ કર્યો હતો કે દિલ્હીમાં તબક્કાવાર ધોરણે ડિમોલિશન કરવાની પરવાનગી આપવામાં આવે. એમસીડીએ જણાવ્યા અનુસાર રાજધાનીમાં ૮૦ ટકા વ્યવસાયિક અને રહેણાંક વિસ્તારોનું બાંધકામ અનધિકૃત છે.

દિલ્હીમાં અનધિકૃત બાંધકામ તોડવાના કામમાંથી અમે ચ્યુત નહીં થઈએ, એમ કોર્પોરેશને ભારપૂર્વક જણાવ્યું હતું. દિલ્હી શહેરમાં મોટા પાયે બિલાડીના ટોપની જેમ ફાટી નીકળેલા બાંધકામ માટે જવાબદાર અને નિયમનું ઉલ્લંઘન કરનાર મુખ્ય વ્યક્તિઓને પ્રારંભિક તબક્કે લક્ષ્ય બનાવવા કોર્પોરેશને દિલ્હી હાઈ કોર્ટની પરવાનગી માગી છે.

જસ્ટિસ વીજેન્દર જૈન અને જસ્ટિસ રેખા શર્માની ડિવિઝન બેન્ચ સમક્ષ રજૂ કરાયેલી એક એફિડેવિટમાં એમસીડીએ જણાવ્યા અનુસાર મુખ્ય ઉલ્લંઘનકર્તાઓમાં મોટા શોરૂમ, રિટેઈલ શોપ, રેસ્ટોરાં, હોલસેલ દુકાનો તેમ જ શોપિંગ મોલનું ગેરકાયદે બાંધકામ કરનારાઓનો સમાવેશ થાય છે.



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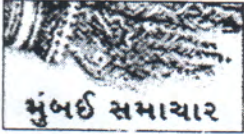
| | |
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| USD : | 44.42 |
| GBP : | 78.54 |
| EUR : | 53.89 |

Commodity

| | |
|-----------------|------------|
| Gold : | 7910 10gm |
| Silver | 12855 1 kg |
| Silver : | |

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| NSE : | 2829 | - 4 | ▼ |
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ગેરકાયદે બાંધકામ તોડવાની ઝુંબેશને લીધે દિલ્હીમાં રાજકીય ગરમાગરમી વધી ગઈ છે. આ અંગે એમસીડીએ આપેલા 'સ્ટેટ્સ રિપોર્ટ'માં દાવો કર્યો છે કે વિજિલન્સ વિભાગના સંશોધનને આધારે અમે દંડ સંબંધિત પ્રક્રિયાની શરૂઆત કરી છે. તેમાં જુનિયર ઈજનેર તથા સહાયક ઈજનેર સ્તરના ૧૧૩ અધિકારી વિરુદ્ધ પ્રક્રિયા શરૂ કરી દેવામાં આવી છે. (એજન્સી) ■

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80 % buildings are illegal in **New Delhi** reported to Delhi High Court by Municipal Corporation of Delhi.

ચાર ટી.પી.સ્કીમોમાં દબાણો હટાવવા સામેના હાઈકોર્ટના હુકમ સામે સુપ્રીમનો સ્ટે

રાજકોટ મહાપાલિકાને દબાણો હટાવવા કાનુની માર્ગ મોકળો

રાજકોટ, બુધવાર
રાજકોટમાં ટી.પી.સ્કીમ નં. ૪, ૫, ૬, ૭માં દબાણ હટાવવામાં અસરગ્રસ્ત મિલકતધારકોએ હાઈકોર્ટમાં દાદ માંગતા કલેક્ટરને રજૂઆત કરવા અને નિર્ણય ચતા સુધી દબાણ હટાવવા સામેનો સ્ટે

નગરરચના યોજનાની અમલવારી મૂશ્કેલ બનતી લાગતા મ્યુ.કોર્પો.એ સુપ્રીમકોર્ટના દ્વાર ખખડાવ્યા

આ અંગે આજે મહાપાલિકા સૂત્રોએ જણાવ્યા પ્રમાણે ગત ૫ માસમાં ચૈયા ટી.પી.સ્કીમ-૪માં નટરાજનગર મફતિયાપરા, ચૈયાધાર, શક્તિ સોસાયટી

સહિતના વિસ્તારોને આવરી લેતા ટી.પી.સ્કીમ નં. ૫, ૬, ૭માં દબાણ હટાવવાને સ્તા કલેક્ટરે કરાવવાની કાર્યવાહી હાથ ધરાવતા અ. સામે અગાઉ કુલ ૨૪૧

હાઈકોર્ટે આપતા આ સામે મહાપાલિકાની અરજી કાઢી નંબાયા બાદ મહાપાલિકાએ સુપ્રીમકોર્ટમાં સોલીસિટર જનરલ મારકન્ટ દાદ માંગતા સુપ્રીમકોર્ટે હાઈકોર્ટના ઉપરોક્ત ઓર્ડરો સામે વચૂગાળાનો સ્ટે આપ્યો છે.

અરજદારોએ હાઈકોર્ટમાં અરજી કરતા દબાણ હટાવવાની કાર્યવાહી કલેક્ટરના નિર્ણય ચતા સુધી મોકુફ રાખવા હુકમ થયો હતો. આનાથી મહાપાલિકાને

ટી.પી.સ્કીમની અમલવારી સામે પ્રશ્નાર્થ ઊભો થતા મ્યુનિ.કમિશનરની સૂચના અને માર્ગદર્શન હેઠળ મહાપાલિકાએ ૧૫૩ ઓર્ડર સામે સુપ્રીમકોર્ટમાં અપીલ કરી હતી. મ્યુનિ.કમિશનરે જણાવ્યું કે દબાણો સામે સ્ટે આવતા જે દબાણો લોકોએ સ્વેચ્છાએ હટાવ્યા હતા ત્યાં ફરી મકાનો ચણાવા લાગ્યા હતા અને અન્ય લોકોએ સ્વેચ્છિક રીતે ભાંધકામ હટાવવાનું મોકુફ રાખી દીધાનું જાણ પર આવ્યું હતું. દબાણકર્તાઓની રજૂઆત સાંભળવામાં સમય જાય તો વધુ દબાણ થઈ શકે તેવું પણ મહાપાલિકાએ આજે જણાવ્યું છે.

સુપ્રીમકોર્ટે દબાણો હટાવવાનો માર્ગ હાલ પુરત મોકળો કરીને ઉપરોક્ત હુકમો સામે વચૂગાળાનો સ્ટે આપ્યો છે. આ અંગે વધુ સુનાવણી હવે પછી થશે.

To implement Town Planning Schemes, the hurdles are in form of encroachments: to remove this Rajkot Municipal Corporation has approached the Supreme Court of India.

To implement **Town Planning Schemes**, the hurdles are in form of encroachments: to remove this **Rajkot Municipal Corporation** has approached the Supreme Court of India.

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રાજકોટ મહાપાલિકામાં આધુનિકરણ સર્જી ઉપાધિ ઓનલાઈન બિલ્ડીંગ પરમીશન આપવા જતા સર્જાતો ગૂંચવાડો

રાજકોટ, મંગળવાર

રાજકોટમાં જેટલી ઝડપથી સાધનોનું આધુનિકરણ થાય છે તેટલી ઝડપથી સ્ટાફનું આધુનિકરણ શક્ય નથી અને તેથી કોમ્પ્યુટરાઈઝેશનથી અનેકવિધ પ્રશ્નો ભૂતકાળમાં સર્જાયા બાદ મહાપાલિકાએ તાજેતરમાં મિનિટોમાં જ બાંધકામ પરવાનગી

ઓનલાઈન આપવાની વાતો કરીને ટાઉન પ્લાનીંગ વિભાગની કામગીરીમાં કરેલા કોમ્પ્યુટરાઈઝેશનથી ઉલટો ગૂંચવાડો સર્જાતા કામનો ભરાવો થઈ ગયાનું અને લોકો ધક્કા ખાતા હોવાનું બહાર સ્પષ્ટવ્યું છે.

પખવાડિયામાં માત્ર ૮ પ્લાન મંજૂર થયા! કોમ્પેક્ટ ડીશથી લોકોની કામગીરી, ખર્ચ અને સમયમાં ઉલટો વધારો થયો

બાંધકામ પરવાનગી સહિતનું કામ સરળ-ઝડપી બનાવવાના હેતુ સાથે મહાપાલિકાએ ઓન ધ સ્પોટ બાંધકામ મંજૂરી મળે તેવી જાહેરાત કરીને અપનાવેલી વ્યવસ્થામાં અરજદારને એક સી.ડી. આપવામાં આવે છે. સી.ડી.નો પ્રોગ્રામ એવો છે કે જેટલું બાંધકામ કરાયું

ફાઈલ વળી ઢેબરરોડ પરની મુખ્ય કચેરીએ આપવાની જ્યાં દસ્તાવેજોની ચકાસણીનું લંબાણપૂર્વકની કામ પૂરું થાય પછી જ કાયમી અને કાનુની મંજૂરી મળે છે.

હવે લોકોની ઉઠેલી ફરિયાદ મૂજબ ઓનલાઈન પ્લાન ઈનવર્ડ કરાયાની વાતો માત્ર ગૂલબાંગો સાબિત થઈ છે. મોટાભાગે પ્લાન મંજૂર જ કરાત્સ નથી. અત્યાર સુધીમાં ૧,૧૦ વ્યક્તિઓ આવી સી.ડી. લઈ ગઈ છે પરંતુ, મંજૂર થયેલાં પ્લાન માત્ર ૮ છે અને તેમાંય ૬ પ્લાન તો બે દિવસમાં જ મંજૂર થયા છે. અધિકારીઓ પાસે પુરતી સી.ડી. પણ ઉપલબ્ધ નહીં હોવાની ફરિયાદ છે. લોકોની એવી પણ ફરિયાદ છે કે કેટલાક જુના પ્લાનો સામાન્ય કચેરી છતાં નામંજૂર કરી દઈને તેનો 'ઝડપી નિકાલ' કરાયો છે જેથી આ પ્લાન ફરીથી સી.ડી.માં મુકવા પડે.

ઈજનેરી વર્તુળો જણાવે છે કે સી.ડી.ની પ્રથા પછી દસ્તાવેજો સ્કેન કરવાની ઝંઝટ

ઉભી થઈ છે અને અધિકારીઓ આવો આગ્રહ રાખી છે. પરંતુ, ચીફ ટાઉન પ્લાનરે જણાવ્યા મુજબ આવો આગ્રહ રખાતો નથી. રકમ ભરવા માટે મુખ્ય કચેરીએ જવું પડે છે. પ્લાનનું ઈનવર્ડનું કામ લગભગ ઠપ્પ થઈ ગયું છે.

આશ્ચર્યજનક વાત એ છે કે કોમર્શીયલ પ્લાન માટે હજુ આવી સીસ્ટમ અપનાવાઈ નથી તેથી તેનું કામ મેન્યુઅલી કરાય છે.

કોમ. પ્લાન હજુ મેન્યુઅલી થાય છે, સી.ડી. આપ્યા છતાં મૂળ ફાઈલ તો દેવી જ પડે

પરંતુ, મોટાભાગે આ કામગીરી પણ ઠપ્પ થઈ છે. લોકો સિટી સિવિક સેન્ટરથી મહાપાલિકા વચ્ચે ધક્કા ખાતા જોવા મળે છે.

આ અંગે મહાપાલિકા સૂત્રો જો કે એવો દાવો કરે છે કે સી.ડી. ની સાથે હાર્ડકોપી ન રખાય તો ભવિષ્યમાં કાનુની પ્રશ્નો ઉભા થઈ શકે એટલે બેવડી કામગીરી અનિવાર્ય છે. પરંતુ, સી.ડી.માં દસ્તાવેજની પૂરેપૂરી વિગતો નિવાર્ય બનાવી શકાય છે.

રાજકોટમાં દૈનિક પંદરથી વીસ બાંધકામ પરવાનગી માંગવામાં આવતી હોય છે. કાયદેસરનું મકાન બનાવનારા લોકો પર કાયદાના અસંખ્ય નિયંત્રણો સરકારે લાદી દીધા છે, જ્યારે સૂચિત સોસાયટીઓના નામે ગેરકાયદે મકાનો આવા એક પણ નિયંત્રણ વગર બેધડક બને છે, વેચાય છે, લોકો રહે છે. લોકોએ લોન સહિતની કાર્યવાહી માટે ફરજિયાતપણે બિલ્ડીંગ પ્લાન, બી.યુ.પી. મેળવવા પડતા હોય મહાપાલિકા આ ગરજનો લાભ ઉઠાવીને અરજદાર પાસેથી હાઉસટેક્સ, બેટરમેન્ટ લેવી, ખુલ્લા પ્લોટ પરનો વેરો એકસાથે વસુલી લે છે.

અધિકારીઓ કહે છે સી.ડી. પરત આવતી નથી, લોકો કહે પ્લાન મંજૂર કરાતા નથી

હોય તે મૂજબ જ માર્જીન સહિતની જગ્યા છોડી હોય તો જ સી.ડી. મંજૂર થાય. આ સી.ડી.માં તમામ વિગતો સાચી છે તેવી બાહેધરી ઈજનેરે આપવી પડે છે. સી.ડી.માં વિગત ભરીને સિટી સિવિક સેન્ટરમાં રજૂ કરતા તુરંત બાંધકામની પ્રોવિઝનલ મંજૂરી બાદ જરૂરી તમામ દસ્તાવેજો, પહોંચોની

The Computerisation and modernisation made a mess in Rajkot Municipal Corporation.

Appendix D

HARYANA URBAN DEVELOPMENT AUTHORITY

WELCOME MESSAGE

The main objective of any organisation should be public Service & Welfare. HUDA is committed to these high ideals. With a view to being in greater transparency in its functioning, HUDA now goes online. This should help the public, in general and the allottees, in particular, in having complete information regarding HUDA's setup, procedures, policies and guideline etc. However, the information provided on this website is for guidance purpose of general public about the present rules & regulations and procedures of HUDA. It is not a legal document, and as such it cannot be reproduced in any legal matter. As and when the policies or regulations are changed, the same shall be applicable

Broad Working of the Organisation

The Haryana Urban Development Authority (HUDA), a statutory body of Haryana Govt. was constituted under the Haryana Urban Development Authority Act, 1977, Before the constitution of HUDA, the Deptt. Of Urban Estates, which was established in the year 1962, used to look after the work concerning planned development of urban areas and it functioned under the aegis of the Town & Country Planning Deptt. The functioning of the Urban Estates Deptt. was earlier regulated by the Punjab Urban Estates (Development & Regulations) Act, 1964 and rules made there under and the various development activities used to be carried out by different departments of the State Govt. such as P.W.D (B&R), Public Health, Haryana State Electricity Board etc. But it was observed that the involvement of several agencies in the development of Urban Estates at various places had given rise to problems of coordination with the result that growth of most of Urban Estates became slow and caused unnecessary dissatisfaction among the plot-holders in particular and public

in general. Besides, as the Deptt. had to follow the financial rules and regulations of Govt., the arrangement of finances and sanction of estimates took a long time and the development works had not kept pace with the required standards of physical development. It was also considered that being Govt. department, it was unable to raise resources from various lending institutions although there were various financial institutions in the country to finance urban development programs, which could be availed of. Thus in order to overcome all these difficulties and to achieve the expeditious development of urban estates, it was felt that the Deptt. Of Urban Estates should be converted into such a body, which could take up all the developmental activities itself and provide various facilities in the urban estates expeditiously. Accordingly, the Authority has taken over work which was being handled by individual departments. The main functions of Haryana Urban Development Authority are as under: -

- To promote and secure development of urban areas with the power to acquire, sell and dispose off property, both movable and immovable;
- To acquire, develop and dispose land for residential, industrial and commercial purpose;
- To make available developed land to Haryana Housing Board and other bodies for providing houses to economically weaker sections of the society; and to undertake building works.

ADMINISTRATIVE SET UP OF HUDA

The Authority consists of a Chairman (Minister for Town & Country Planning & Urban Estates Deptt.), a Vice Chairman (Chief Secretary to Govt., Haryana), a Chief Administrator and such other members (not more than 12 but not less than 6) appointed under notification issued from time to time provided that the number of non-official members shall not, at any time exceed three . The HUDA has various wings, like Urban Branch, Engineering, Town Planning and Architecture, Financial, Legal and Monitoring. The Chief Administrator at the Head-Quarters is the overall in-

charge and responsible for discharging functions of the Authority assisted by four Zonal Administrators, posted at Panchkula, Faridabad, Gurgaon, Hisar and one Administrator at H.Q. The Chief Administrator is guided by the policies framed by the Authority headed by the Minister-in-charge (designated as the Chairman of the Authority) of the Town & Country Planning Departments, under Section-8 of the HUDA Act, 1977

FUNCTIONS OF VARIOUS WINGS OF HUDA.

ZONAL ADMINISTRATION

HUDA has so far setup 27 Urban estates throughout the state. The work of these Urban Estates is being looked after by four zonal Administrators assisted by six Estate Officers and 11 Asstt. Estate Officers. The main functions of these Estate Officers are to sell developed and undeveloped plots of all categories of land and realise the amount of installments. All the financial receipts of transactions are looked after by the Estate Officers and channelised through the Accounts Branch of Head Office for expenditure on development activities. These estate officers are also responsible for perusing the matters relating to the construction activities within the frame work of construction and building rules applicable thereto. The Administrators act as co-ordinators between various wings, engaged in the planned urban development of the respective areas and are responsible for the implementation of various schemes/projects being executed in these areas. The zonal Administrators are located at following places: -

URBAN BRANCH

Administrator posted at H.Q. is overall in-charge and responsible for co-ordination among different wings of the Authority. All the matters relating to policy matters and allotment of land to various institutions etc. are also being dealt by him. The financial and administrative powers have also been delegated to him.

ESTABLISHMENT

Establishment work of HUDA is looked after by the Secretary HUDA. He also conducts the meetings of the Authority and rule branch of HUDA is also headed by him.

ENGINEERING WING

The Engineering Wing is headed by the Chief Engineer assisted by Works Divisions which are scattered all-over the State. The work of the Engineering Wing comprises of assistance in the selection of an area for development and its execution, preparation of estimates for infrastructure, construction of infrastructure for the development including public building, tree plantations, development of Parks and maintenance of infrastructural services. The Chief Engineer is the Professional Head of the Engineering Wing. The entire state is divided into 6 circles, 24 Divisions and 89 Sub-Divisions headed by Superintending Engineers, Executive Engineers and Sub-Divisional Engineers respectively. As soon as the land is acquired and handed-over to the HUDA, infrastructural development works are taken up by the Engineering wing as per approved layout plan of the area, and after providing the basic infrastructural facilities, possession of the plots is handed over to the Estate Office, who in turn offers the possession to the respective allottees. The basic infrastructural facilities include the approach road, Electrification, water supply and sewerage facilities. The other infrastructural activities like community buildings, parks and other facilities are taken up simultaneously and are linked with the inhabitation in the Urban Estate.

FINANCE WING

The Finance/Accounts Wing is headed by the Chief Controller of Finance which comprises of Sr. Accounts Officer at the Head Quarters and with all the Administrators assisted by Accounts Officers and supporting staff posted in all the Estates, Circle, Divisional offices etc. This Wing is responsible for the financial management of the Authority. The existing system of accounting at all levels including that of Engineering Wing is basically on the pattern of P.W.D. which is being replaced by the

commercial system of accounts in such a way that it yields information required for planning and control of different functional areas and in the preparation of managerial reports. Similarly, the planning and control of material stores is of crucial significance which is being improved through introduction of performance budgeting, materials and inventory planning and control based on net work and cost control techniques

HUDA is working on no profit no loss basis and carrying out its activities by circulation of funds. The funds generated out of sale of residential, industrial and institutional plots are invested in acquisition of new areas, which enable HUDA to generate more plots for the public and more funds for the development works and new acquisitions.

The Price fixed on no profit no loss basis is charged from the plot holders with the stipulation that any enhanced compensation in the land cost awarded by the courts under section-18 of the Land Acquisition Act shall be recoverable in addition as and when such eventuality happens.

The plots to the Economical Weaker Section of the Society are provided on a subsidized rate of Rs.500/- per Sq.yd. in of Urban Estate, Panchkula, Gurgaon and Faridabad, Rs. 400/-, per Sq.yd. at Karnal, Panipat and Bahadurgarh and Rs. 300/- per Sq.yd in all other Urban Estate, and the loss on this account is charged from the higher categories of the plots through cross subsidization.

ARCHITECTURE AND TOWN PLANNING WING

The Architecture and Town Planning wings have been established at the Head-Quarters to look after the work of perspective Planning for establishment of new urban estates, research and development of zoning and architectural controls, the design of city centres, planning of commercial area, landscape, designing of parks and open spaces including nurseries and all other works of urban design. The Town Planning wing is headed by a Chief Town Planner (HUDA) who is assisted by a Senior Town Planner & District Town Planners. Architecture wing

comprises of Senior Architect and his staff for preparation of Architectural controls and Architectural designs of all buildings constructed by HUDA. On the Architecture side there is a Landscape Architect also for designing parks, open spaces and gardens. The Town Planning Wing has also been entrusted with the job of designing and issue of advertisements in the newspapers regarding sale of sites in City Centres, Shopping Centres and residential / industrial sectors in all the Urban Estates.

MONITORING CELL

In order to monitor the progress of the developmental works done by the field offices on regular and timely basis a Monitoring Cell was set up at the Head Office of the Authority which is headed by the Deputy Economic & Statistical Adviser and supporting staff at the field level. The work relating to the regular systematic inflow of performance data and its appraisal for future planning of urban development is being done by this cell.

LEGAL CELL

The HUDA is an organisation which deals with the acquisition and disposal of developed land for various purposes and accordingly legal complications of various natures do arise which are being taken care of by the Legal Cell of the Authority which is manned by a Joint Director (Legal) with the necessary supporting staff both at the Headquarters and field offices.

LAND ACQUISITION DIVISIONS

The acquisition of land for urban development is undertaken by four Land Acquisition Officers of the Urban Estates Deptt. at the instance of Authority. The State Govt. on the request of the Authority acquires land under the provisions of the Land Acquisition Act, 1894 and after taking possession of land, transfers it to the Authority on payment. The overall cost of acquisition and enhanced compensation if ordered by the court is paid by the HUDA out of its own funds.

(a) Market Rate Compensation to Land Owners

Before 09.02.1995 the award for land acquisition was announced on the basis of rates determined by concerned District Collector who was the Competent Authority under Revenue Law to assess such rates. The assessment was based on the average of registered sale transactions during the last 5 years prior to the Section-4 notification in respect of adjoining lands of similar category. (The claims U/s 9 of the Land Acquisition Act filed by the Land Owners/interested persons were also taken into consideration by the Land Acquisition Collector before announcing the award.)

However, it was felt that the above mentioned collector rates did not reflect the actual market prices and therefore on 09.02.1995 Government constituted a committee comprising of the following officers to decide the market price to be paid to the land owners in case of acquisition by the Government.

The above instructions of the Government were modified on 20.06.1995 by changing the composition of the committee thus: -

- Divisional Commissioner Chairman
- Dy. Commissioner concerned Member Secretary
- Representative of the concerned Member Department.
- District Revenue Officer concerned Member

The above committee is to determine the market price by taking into consideration the average of 1 year sale price and not of 5 years as was the practice earlier.

In short, the Land Acquisition Collector announces the award taking into consideration the rates so fixed by the committee headed by the Divisional Commissioner as well as the claims received U/s 9 of the Land Acquisition Act filed by the land owners and the interested persons. However, the land owner has the option of requesting the Collector to refer the matter to the

court U/s 18 of the said Act, if he is not satisfied with the award given by the Land Acquisition Collector.

(b) Stages in acquisition, planning and development of a sector

The Town & Country Planning Department of the State has prepared/ finalised development plans of various towns/controlled area taking into consideration the further needs of Industrial, Residential and commercial sectors so as to ensure proper and planned urban development, exercising the powers inherited by sub-section (4) of section 5 of Punjab Development Act, 1963. There is a laid down procedure for acquisition of land for the development of residential, Industrial, Institutional as well as Commercial sectors/area while identifying the land for a specific purpose aspects local requirements, demand sale potential accessibility viability are taken into consideration, thereafter the identified land is notified. The objections to the proposed acquisition are invited and after hearing the objection received by a standing joint inspection committee the land is finally acquired.

Once the land is acquired, possession is taken over and layout plan/zoning plan of the area is finalised, the plots provided in the layout plan are floated for allotment. Development works are undertaken as per approved demarcation plan and after completion of development works, possession is handed over to the allottees

(c) Release of land

Once the land is notified under section 4 of Land Acquisition Act, the land owners and other persons, whose land is acquired may file objections to the acquisition of their land under section 5A of Land Acquisition Act. The standing joint inspection Committee constituted under the chairmanship of zonal Administrator, HUDA, considers the objection so received and submits its recommendations. Normally the land falling under the following categories is considered for release from acquisition.

- Land falling under structure of A & B class existing prior to notification under section-4, providing these structures do not fall in the proposed road, or green belt area.
- Land falling under the existing place of worships.
- Land under the ownership of Waqf board.
- Land against which licenses for setting up a colony has been granted by the competent authority.
- Land under the ownership of Govt. of India. Such land is acquired by way of transfer.
- Any other land which State Govt. may decide not to acquire.

GOVT. LAND SCHEME

Haryana Govt. took a decision in the year 1987 to utilise the surplus Govt. lands for generating resources for State Exchequer. The Council of Ministers in the meeting held on 14.12.87 had approved the general scheme of alienation of surplus Govt. land and properties which had been identified by the concerned Deputy Commissioners in consultation with the departments concerned in various towns of Haryana. These lands were then transferred to the Department of Town & Country Planning, Haryana for further alienation to HUDA for development and disposal. In all 14 schemes have been taken up with an area of 455.95 acres out of these 14 schemes, 9 schemes were commercial in nature, 4 residential and 1 industrial scheme.

Since disposal of plots under Govt. Land Schemes through auction has not worked well. It has been decided by the govt. that balance residential plots under Govt. Land Scheme falling in low potential areas may be floated and the plots may be allotted through draw of lots.

MANDI TOWNSHIP AREAS

Consequent upon the winding up of the Colonization Department with effect from 30th September, 1983 vide Haryana Govt. Town & Country Planning Department's notification No.18 (43) 85-2TCP dated 19.9.83, the

Mandi Portion of 31 Mandi Townships established by the Colonisation Department were transferred to the Haryana State Agricultural Marketing Board and the remaining portion of the 29 Mandi Townships came to the share of Haryana Urban Development Authority. As a sequel to the HUDA become a successor organisation to the colonisation Department for all intents and purposes for Township areas.

The total land measuring 3516.439 acres (including vacant land measuring 1316.81 acres Colonisation Deptt. were taken over by HUDA on 11.9.87. As a sequel to that HUDA became a successor organisation to the Colonization Department for all intents and 3422 vacant plots) of 29 Mandi Townships established by earstwhile purposes for Township Areas.

APPENDIX E

10 Point Instructions on Demolition of Unauthorized Construction in Delhi

Minister of Urban Development and Poverty Alleviation Shri Jagmohan has said that 581 unauthorised constructions in Delhi have already demolished in the last two months by the Delhi Development Authority, New Delhi Municipal Council and Municipal Corporation of Delhi They have also booked 472 buildings and sealed 61 buildings.

Chairing the meeting of the Parliamentary Consultative Committee, attached to the Ministry of Urban Development and Poverty Alleviation here today, Shri Jagmohan apprised the Committee of the progress made under the special drive launched against the land and building mafia to rid the city of the menace of unauthorised construction and illegal encroachments. The meeting was convened to review the progress of the drive against illegal/unauthorised constructions in Delhi; preservation of green areas; scheme of rejuvenating culturally significant towns; and closure of industries in Delhi under the orders of the Supreme Court.

The Minister informed the Members that the following ten pin-pointed instructions had been issued to Delhi Development Authority, New Delhi Municipal Council, and Municipal Corporation of Delhi and the progress is being monitored. All illegal constructions should be demolished, not cosmetically but in Toto. The cost of demolition should be recovered from the illegal builders within 15 days of demolition. In case of non-payment within 15 days, the amount due should be recovered as arrears of land revenue. In all cases of illegal constructions, prosecution should invariably be launched against builders under the Delhi Municipal Corporation Act, Delhi Development Authority Act, New Delhi Municipal Council Act, etc. and the cases followed vigorously with the police authorities/courts. Wherever the property is on lease, action should be taken under the terms

and conditions of lease agreement and re-entry effected within the shortest permissible period under such lease agreement. After re-entry, physical possession of the property should be taken by invoking the provisions of Public Premises Eviction Act and damages collected immediately. The rates of damages/misuse charges should be the same as per the formula followed by the L&DO and approved by the Ministry of Urban Development. In case of DDA flats, where constructions have come up beyond the condonable limits, cancellation of allotment should be carried out in addition to the demolition of the additional construction. Orders in respect of condonable and non-condonable items are being issued separately.

In cases, where after demolition, reconstruction is done, personal responsibility of the officer in-charge should be fixed and departmental action taken against him. In cases where illegal construction have taken place on rural-agricultural lands, action under the Provisions of the Delhi Land Reforms Act, 1954, should also be taken and such lands should be taken over as per provisions of the Delhi Land Reforms Act. Action in this respect should be taken as soon as the plots are cut by the colonizers and construction done in the shape of boundary walls, etc. In other words, construction should be nipped in the bud. If it comes up, it should be demolished immediately. Action in this respect should also be taken by the concerned local agencies / DDA as per the bye-laws pertaining to lay out /service plans, etc. In all cases where party obtains stay / status quo orders, prompt action to get the stay order vacated should be taken and higher court moved, wherever necessary. All Senior Field Officers should be asked to carry out physical inspection of the area under their charge and the Supervising Officer should also make surprise checks to ensure that the subordinate staff takes immediate action to check/demolish unauthorized construction. Deterrent action should also be taken against the subordinate staff such as Building Inspectors, Junior Engineers, Assistant Engineers, etc. who do not take prompt action. Field officers should be asked to maintain field diaries and submit them to the Supervisory Officer regularly.

A Flying Squad has been constituted in the Ministry and if, as a result of findings of this Squad, it is found that subordinate staff has not done its duty or not carried out the aforesaid instructions, strict action against the Subordinate/Supervisory Staff would be taken by the Government, Shri Jagmohan added.

Cases of blatant violations in affluent colonies like Vasant Vihar, Safdarjung Enclave and Pamposh Enclave were entrusted to the CBI for enquiry. As a consequence of this, CBI have registered a number of cases and conducted search at 38 places. Likewise, CBI has also recently conducted raids at the premises of seven DDA officials and a few property dealers. As many as 22 FIRs have been registered and about half a dozen officials have been arrested. In the case of one Junior Engineer, as much as Rs. 7 crore disproportionate assets were found.

Shri Jag Mohan also informed the Parliamentary Consultative Committee that Delhi Development Authority has been instructed not to permit restaurants in green areas. Existence of such restaurants not only violated the sanctity of the green but also undermined the norms of healthy environment. In this connection, he cited the example of 'Park Baluchi' restaurant in Deer Park/Rose Garden, Hauz Khas.

It has, therefore, been laid down as a Government policy that no restaurant would be allowed in any green area in Delhi. If any exception has to be made, it should be made only in those cases where there is no habitation - residential or commercial - within 300 meters of the park. Even in cases, where exception is made, only small kiosks should be allowed. Such a kiosk should be allowed to serve only soft drinks, tea and coffee and snacks, which go with such drinks. Its working hours should correspond to the timing of the opening and closing of the park.

The Minister explained that special emphasis was being given to the redevelopment of cities of special significance as these cities were the

repositories of cultural wealth of India. In this connection, he had visited Madurai, Trichy, Indore, Ujjain and Hyderabad. He indicated how efforts were being made to make these cities not only vibrant centers of civic life but also of economic and social advancements.

As regards the case of closure of certain industries in Delhi, under the orders of Supreme Court, the Minister told the Parliamentary Consultative Committee that for the last several years the issue had all along been between the Court and the Government of National Capital Territory of Delhi. So far as the Ministry of Urban Development is concerned, it has already been submitted before the Supreme Court, and it would again be submitted before it at the next hearing, that, since the implementation machinery is with the Government of National Capital Territory of Delhi and the local agencies, and the Ministry has no administrative control over the said Government, the Ministry cannot play any meaningful role. The Court order of November 14 itself read as under: "From the affidavit on behalf of the Union of India filed in the Court today and as contended by Shri Kirit N. Raval, learned Additional Solicitor-General, it is evident that it is the N.C.T., Delhi which ultimately is the authority which has to implement the orders of this court or the directions which may be issued by the nodal agency"; We are only concerned with the implementation of the orders"; In the first instance, we, therefore, issue notice to the Chief Secretary, Delhi and also to the Commissioner, M.C.D. to show cause why they should not be punished for contempt for the continued inaction on the part of the M.C.T., Delhi and for the non-compliance of the various orders passed by this Court starting from 1996 and including the orders dated 8.9.1999, 30.8.2000 and 12.9.2000 regarding the closing of the polluting units situated in the residential areas"; Orders with regard to the continuance of the nodal agency will be passed on the next date of hearing."

Shri Jagmohan indicated that by putting up the hoarding and posters on the public and private buildings, the face of Delhi was being uglified. He had started a campaign against such hoarding and posters. Instructions

have been issued to the Commissioner, Municipal Corporation of Delhi, Delhi Development Authority, New Delhi Municipal Council and Police Commissioner asking them to take strict action under the laws and bye laws and also under the West Bengal (Prevention of Defacement of Property) Act, 1976.

Shri Jagmohan said that he had also drawn the attention of these authorities to the orders issued by the Supreme Court which inter alia observed: "It is obvious that every hoarding, other than traffic signs and road signs on the roadsides have to be removed irrespective of its kind. We reiterate the direction given in our order dated 20.11.1997 (M.C. Mehta vs. Union of India (1997) 8 SCC 770 the order made by us even in respect of the hoarding is required to be implemented notwithstanding any other order or directions including stay orders/injunctions granted by any authority, court or tribunal to the contrary."

Besides Minister of State for Urban Development and Poverty Alleviation Shri Bandaru Dattatarya, following members of Parliament were present at the meeting: Shri Banarsi as Gupta, Shri Nepal Chandra Das and Smt. Shyama Singh.

APPENDIX F

THE VIGILANCE DIMENSION OF DELHI DEVELOPMENT AUTHORITY

(Valedictory Address on 18.2.99 in the DDA Training Programme for
Vigilance Officers)

N Vittal, Central Vigilance Commissioner

The Delhi Development Authority (DDA) is an important organisation, especially in Delhi. To borrow the old advertisement slogan of Burma Shell, "DDA is in Delhi's Life and part of it".

- 1) Practically every citizen of Delhi has to interact sometime or other with DDA.
- 2) While the DDA is so important, significant and vital for the development of Delhi, when it comes to reputation, I understand, it has a very poor reputation so far as its image as a clean organisation is concerned. Of course, India itself has a very poor reputation as a corrupt country. Transparency International, a German NGO, has a corruption perception index of countries in which countries are arranged in the order of honesty. India ranks 66th out of 83 countries. This means that 65 countries are less corrupt than India and 17 are more corrupt.
- 3) I wonder if we make a corruption perception index of the offices in Delhi, where will DDA figure? While in this programme you have been examining different aspects of vigilance, as CVC, I would like to give you an overall perspective of how I look at the issue of vigilance. We can compare the issue of corruption to a jungle. I have, from the perch where I am sitting, an overall view of corruption at the national level and at different levels in Government of India organisations. Those who are at different levels may have

different perceptions. If corruption is a jungle, I am able to see the whole jungle and understand the ecology of corruption. Some may look at individual trees, big trees of corruption symbolised by those who are powerful. These people do not seem to come under any punishment at all. There is an old Sanskrit shloka - Ashvam naiva, gajam naiva, vyagram naivacha naivacha, aja putram balim dathyat devam durbala gataka - which says that even the Gods are against the weak. When it come to sacrifice, we do not sacrifice a horse or an elephant or even for that matter a tiger. What ultimately is used for sacrifice is the poor goat. But, as against this, let us also recall that there is another Sanskrit shloka that it is the responsibility of the state or the king to protect the weak. Durbalasya balam raja, balanam rodanam balam. For the child crying is the strength and for the poor and the weak, it is the king who is the protector. The vigilance officers should look upon the issue of vigilance in DDA and making DDA a cleaner organisation with a better reputation as a lifetime mission.

- 4) In the corruption jungle scenario, while some may look at individual trees, many are only counting the leaves. If you ask the common man in Delhi today, he will give probably individual cases of how when he interacts with the junior officials in DDA, he is harassed and probably asked to pay bribes. Is there a way out? I would like you to first appreciate the global perspective of corruption and then what we can do in DDA.
- 5) The mission statement of the German NGO Transparency International sums up the challenge of corruption very effectively. *Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and particularly hurts the poor.*

- 6) Corruption is, in the ultimate analysis, anti social. We may tend to look at corruption essentially an economic crime where a public servant misuses his position to acquire illegal wealth. Nevertheless, as our experience with the Bombay Blast Case shows, a corrupt custom official for the sake of a few lakhs of rupees can permit the import of RDX to be smuggled and help the anti social forces perpetrate a crime in which innocent lives are lost. Corruption thus becomes an anti-national treacherous act.
- 7) Corruption in a way can be looked upon as the AIDS of a modern society. Acquired Immunity Deficiency Syndrome makes a person vulnerable even to the mildest of the diseases. Corruption by weakening the various institutions of a democratic civilised society makes the society vulnerable to anti national and anti social elements.
- 8) Corruption has recently figured in global discussions on trade also. The collapse of the so called tiger economies of the South East Asia among other things is also attributed to the degree of corruption in these countries which led to wrong investment decisions, diversion of financial capital into unproductive sectors resulting in the currency crisis and economic collapse. Incidentally on December 17, 1997, the United States signed the OECD convention on combating bribery of foreign public officials in international business transactions. 34 countries have agreed to enact criminal laws, which will closely follow the prohibitions in United States Foreign Corrupt Practices Act.
- 9) We must be able to understand the sources of corruption before we go into the issue of whether there can be legal prevention and judicial control over corruption. The degree of corruption depends upon three factors. The first is the individual values cherished by a person. This depends upon his religious background, his family background and the culture in which he is brought up. The second

factor that affects the level of corruption is the society values. India for instance has become a society where we perhaps take a very tolerant view of corruption. We find that only those who have either money or power are able to get things done and the common citizen therefore finds that at every place, when he interfaces with any public office, he has to bribe. The third factor that affects the level of corruption is the system of governance, the legal framework and the institutions that form the basic structure of government.

10) Corruption in our system flourishes because of five factors.

These are:

- Scarcity of goods and services
- Red tape and delay
- Lack of transparency
- Cushions of safety, which have been created by the legal system on the principle that everybody is innocent till, proved guilty. The legal provisions and procedures are effectively exploited by the corrupt to escape punishment.
- Tribalism or the tendency of the corrupt to defend each other in organisations.

11) If we have to think of legally preventing corruption, we will have to see whether we can frame laws in such a way that these five basic factors, which promote corruption, at least in the Indian context can be checked. In the Indian context there are four major players in corruption. These are the **neta** (the corrupt politician), **babu** (the corrupt official), **lala** (the corrupt businessman) and the **dada** (the criminal). The issue of criminalisation of politics is one, which has been debated in the past and is a reality today. If we are thinking of using legal measures to prevent corruption and use judicial control, we must be able to see to what extent the measures we take will impinge on this quartet of players because each one of them is influential in our society and the test of any law is to see whether it

is able to prevail against influential people. The Supreme Court has been invoking the principle that however high you may be in any society, the law is above you. But the people are likely to go by what really happens in practice rather than lofty ideals of judiciary proclaimed in judgements. The proof of the pudding is in the eating. Whether we are talking in terms of legal prevention or judicial control over corruption, the test must be whether the laws are able to prevent corruption and the judiciary is able to effectively punish the corrupt. At least so far as the Indian context is concerned, our laws do not seem to have been effective so far.

- 12) The Santhanam Committee recommendations of 1962 led in 1964 for the Government of India to set up the Central Vigilance Commission under an executive order and continued for 34 years in that position. The CVC was essentially an advisory body. The Supreme Court in the Vineet Narain case on December 18, 1997 ordered that the CVC must be made into a statutory body. The Supreme Court also mentioned that the CVC must be selected by a committee consisting of the Prime Minister, the Home Minister and the Leader of the Opposition. In the light of this order, the Central Vigilance Commission (CVC) Ordinance was promulgated on August 25, 1998. A Bill was introduced to replace the Ordinance on December 7, 1998 but as this could not be passed, a fresh Ordinance was passed on January 8, 1999. A genuine attempt has been made by the government to make the CVC into an effective instrument to check corruption. The independence of the CVC, who is appointed by the President, is ensured by the Ordinance, assuring a four-year tenure.
- 13) As the first CVC under the new dispensation, I would suggest a three point plan to check the level of corruption in our system. The first is to look at the whole issue corruption like handling Malaria. One can deal with individual cases or Malaria or one can prevent the breeding of mosquitoes. In our system many a time, the laws

themselves encourage corruption or provide ground for exploitation. Obsolete laws can be very conducive for corruption. There is therefore need for introducing a sunset principle so that obsolete and obscure laws do not become an instrument for corrupt public servants to exploit the public. The principle in the United States of sunset laws can be useful in this context.

- 14) There a number of detailed procedures in every government department, which also are breeding grounds for corruption. Section 8(1) (g) of the CVC Ordinance 1999 says that the CVC will *"exercise superintendence over the vigilance administration of the various Ministries of the Central Government or corporations established by or under any Central Act, Government companies, societies, local authorities owned or controlled by that Government."* Using these powers, I have issued orders to plug loopholes in the system. For instance one order issued is to ban post tender negotiations. Another order visualises computerisation of the banking systems at least to the extent of 70% by the year 2001. The statutory powers of the CVC and the power of superintendence if interpreted liberally can really create an environment by which the CVC can monitor the activities of departments and organisations under his jurisdiction and ensure that effective prevention of corruption is made through law.
- 15) Equally important is the need for transparency. We have already seen that lack of transparency is one of the causes for corruption in our system. The speedy enactment of a Freedom of Information Act may go a long way in checking corruption. I am also thinking of initiating a systematic process by which we can look at the points of interface with the public and the government organisations and how lack of transparency is exploited by the public servants and breeds corruption. If these critical information is made transparent by an order of CVC and implemented, this will be another method of checking corruption by law. Greater transparency and empowering

of the public therefore is the second major method of effectively using law to prevent corruption. An increasingly aware public can be an effective support to the authority in checking corruption.

- 16) In the context of DDA, I would like the vigilance officers to first look at how public are treated in DDA offices and how corruption flourishes because the lower functionaries who are interacting with the public are able to keep control over either certain papers or information. The DDA has published a Citizens Charter. If only this charter is implemented, there will be a lot of improvement from the vigilance angle. I would like the vigilance officers of DDA to become the champions of public by ensuring strict compliance of the Citizens Charter.

- 17) If we make a comprehensive list of points of harassment and corruption in DDA, then CVC can issue an order under Section 8(1)(g) of CVC Ordinance 1999 on the following lines: -
 - (i) Certain information must be made transparent and published on the notice board. It may be recalled that the CVC Order dated 18.11.98, under Section 8(1)(h) of the CVC Ordinance 1998, covers this aspect of transparency. A copy of the order of 18.11.98 may be seen in **Instructions**. Transparency is one method by which the lower the functionaries in DDA can be prohibited / prevented from exploiting the poor.

 - (ii) The second source of corruption is delay in processing of papers. If we can look at the system and see how some of the paper movement can be expedited or even references to different levels can be avoided, it will be in the public interest. In other words, if we go in for a business process reengineering of the way DDA functions, perhaps we would have taken a step to prevent further corruption. One can take a view that vigilance officer is supposed to look only at cases of corruption. There is nothing to insist that the

vigilance officer should commit intellectual hara-kiri and be like eunuchs in the Mughal harem watching the peccadilloes that are going on and not taking any action to check such corrupt practices. After all if the vigilance officers were to come up with suggestions about how corruption can be checked by changes in the process and if this can be further backed up by a formal order of the CVC, how can the DDA refuse to implement it? After all we will also be creating public opinion that DDA will be ready for a clean up.

- 18) In this connection, it will not be out of place to recall what the Transparency International Report 1998 says. *Containing corruption in a sustainable way will not be achieved through one-off seminars and workshops. Mere talk shops are not going to change anything. Still less, is it going to be achieved through partnerships between agencies and governments alone. Almost invariably these are seen as self serving party political exercises, conducted by and for the benefit of those (rightly or wrongly) already viewed as deeply implicated in the processes we are working to contain. Unless civil society is a full partner, a fully independent partner and fully supportive of the processes under way, these exercises and action plans will lack legitimacy, and they will risk being little more than flannel.*
- 19) Ultimately, if we want to use the law for checking corruption, we should look at the basic motivation for corruption. It is greed. Greed flourishes when it is known that even if one is caught, one can get away lightly. Only can perhaps escape by engaging the best legal brains by using the same corrupt money itself. If one eventually goes to jai, the illegal wealth and property amassed by corrupt means can still be retained. I have therefore been arguing that the best method of checking corruption is to have a law, which will lead to confiscation of property. The Chairman of Law Commission also agrees with this view and has in fact drafted a Bill called the Corrupt Public Servants (Forfeiture of Property) Bill 1999. We do not know

when this Bill will be enacted. The logic advanced by the Law Commission Chairman will be relevant at this stage.

It is true that the Prevention of Corruption Act, 1988 provides for confiscation of assets of public servant which are in excess of his known sources of income but such forfeiture can come about only after the public servant is convicted for the relevant offence (section 13(1)(e) under the Act. There is also in vogue a pre-independence law, i.e., Criminal Law Amendment Ordinance 38 of 1944 which provides for attachment of properties of a public servant who is accused of corruption. But, here again, the confiscation can come about only pursuant to an on the basis of conviction for corruption. Similar is the position under the Prevention of Money Laundering Bill, 1998 introduced in the Parliament recently. The Bill defines the expression "money-laundering" to mean owning, possessing or otherwise dealing in the "proceeds of the crime", and confiscation of proceeds of crime is possible only after a person is convicted of one or the other offence mentioned in the Schedule to the Bill. Part V of the Schedule mentions some of the offences created / recognised by the Prevention of Corruption Act, but quite significantly the offence of possession of disproportionate assets (dealt with under clause (e) of sub-section (1) of section 13) is not one of the offences mentioned in the Schedule. Perhaps the said offence did not fit into the scheme of the Bill. Be that as it may, the fact remains that there is no law in force in the country for providing for forfeiture / confiscation of the ill-gotten assets / properties of the holders of public office similar to SAFEMA. Merely sending the corrupt holders of public office to jail is no remedy; it is no solution. It doesn't really hurt them. Unless their ill gotten assets are forfeited to the state, the canker of corruption cannot be really tackled. Hence the necessity of the proposed measure.

- 20) Simultaneously, it will be useful to use the existing laws also. The Government of India had passed an act called the **Benami**

Transaction Prohibition Act in 1988. It is surprising that even after more than 10 years, the procedure has not been prescribed. As a result the law is not implemented. I have moved the government in the revenue department to empower the CVC under this act so that the CVC can use the law to increase the risk for corrupt people and also curb effectively the tendency for corruption.

- 21) Ultimately we come to the conclusion of what will be the use of the training program we have had so far. I hope it helps you to improve your performance especially from the point of view of technical aspects of conducting investigations, enquiries and departmental proceedings. As I have mentioned, the cushions of safety we have created for the corrupt people are contained in the various procedures and the pronouncements of the CAT and court judgements, which are exploited by the corrupt to escape punishment. As vigilance officers you can prevent this happening.

APPENDIX G

MUNICIPAL CORPORATION OF DELHI

OFFICE OF THE COMMISSIONER, TOWN HALL, CHANDNI CHOWK,
DELHI-110 006

PUBLIC NOTICE

AGH ZONE, SHAHDARA (SOUTH) ZONE, PUBLIC NARELA ZONE

The Hon'ble Supreme Court of India, vide Judgement dated **16.02.06** passed in IA No. 22 in WP(C) No. 4677/1985, titled MC Mehta V/s Union of India & others has directed the **Municipal Corporation of Delhi** to give wide publicity to stop misuse of Premises (Major violations where commercialisation of building is more than fifty percent) on their own by owner/occupier, within a period of **30 days** in respect of premises on roads having width of **80 ft.** or more. The Hon'ble Court has further directed that it shall be the responsibility of the owner/occupier to file within **30 days** an affidavit with the respective Zonal Deputy Commissioner of MCD stating that the misuse has been stopped. All the violators must take note that no individual notice shall be issued by the **MCD**.

By **this public notice**, all such violators (roads identified, to begin with, are listed below) are called upon to stop misuse of residential premises for commercial use on their own within **30 days** from the publication of this Notice.

All concerned must take note of the contents of this Notice for compliance of the directions of the **Hon'ble Supreme Court of India**.

COMMISSIONER

SOUTH ZONE

- 1 Aurbindo College road, Gitanjali road (Malviya Nagar) from S.Band road to Press Enclave road
- 2 Aurbindo marg, MB road to AIIMS
- 3 S.Band road (Outer ring road to outer ring road) Malviya Nagar
- 4 Between Block E & F East of Kailash from Lala Lajpat Rai Marg to Raja Dhir Sen Marg
- 5 Raja Dhir Sen Marg (Passing through D Block East of Kailash to Sant Nagar)
- 6 Road passing along Block E & F, East of Kailash and A Block, Amar Colony from Jamrood pur T-junction to Garhi crossing
- 7 Hansraj Gupta Marg from Central School to Lala Lajpat Rai Marg passing through B, M & S Blocks, GK-I
- 8 Road passing through GK Enclave and Pamposh Enclave from Hansraj Gupta Marg to Outer Ring Road
- 9 Africa Avenue Ring Road to Outer Ring Road
- 10 Jhandu Singh Marg from Ring Road to Green Park
- 11 Main road of Green Park Extn. From Jhandu Singh Marg to Aurbindo Marg
- 12 Mehrauli Gurgaon Road from Andheria moar to Gurgaon border.
- 13 Lala Lajpat Rai Marg from Joseph Tito Marg to Nehru Place crossing.

CENTRAL ZONE

- 1 Ring road from AIIMS to Toll Bridge
- 2 Bhismpitamah Marg from Ring road near N-I, NDSC-I to X-ing Lodi road
- 3 Lal Bahadur Shastri Marg from Ring Road near crossing Mool Chand to Lodi Road flyover
- 4 Lajpat Nagar-II, Shiv Mandir Marg from round about M Block to DJB office, Jal Sadan
- 5 Road between K & O Block, Lajpat Nagar-II from Ring Road to round about M Block Lajpat Nagar-II

- 6 Feroz Gandhi Marg Lajpat Nagar-II from K Block Lajpat Ngr-II to Lal Bahadur Shastri Marg
- 7 Veer Sawarkar Marg Lajpat Ngr-II from K Block to Lal Bahadur Shastri Marg
- 8 Mathura road from Sai Hospital Bhogal to Badarpur Border
- 9 Kalka Devi Marg from Village Garhi to near LSR College crossing Lala Lajpat Rai Marg
- 10 Raja Dhir Sen Marg from crossing to Captain.Gaur Marg to Sant Ngr
- 11 Maa Anandmai Marg from Kalka Mandir to crossing of MB road
- 12 Guru Ravi Dass Marg from Y-Point Maa Anandmai Marg near Masjid to MB road
- 13 Okhla State Marg road No.13 from crossing of Ravi Dass Marg to round about to Maa Anandmai Marg

SHAHDARA (NORTH) ZONE

- 1 GT road From old Yamuna bridge to Khera village
- 2 Wazirabad road From Wazirabad bridge to UP border
- 3 Road No.68 From road No.66 to crossing with Road No.69
- 4 Loni Road From GT Road crossing to UP Border
- 5 Road No.66 From GT road crossing to Wazirabad road crossing
- 6 Brahmpuri main road From crossing with Road No.66 to crossing with Wazirabad road
- 7 Mauj Pur road From crossing with Marginal Bandh road to crossing with Road No.66
- 8 Road No.64 From GT road crossing to Road No.70
- 9 Road No.62 & 70 From GT road crossing to Wazirabad road crossing
- 10 Mandoli road From Rathi Mill to Rly crossing Ashok Nagar
- 11 Road No.65 From GT road crossing to Zafrabad Road No.66

SHAHDARA (SOUTH) ZONE

- 1 Road No.57 from GT road to Telco via Karkari moar

- 2 Vikas Marg from Marginal Bundh road to crossing Road No.57
- 3 Khichripur road from NH-24 crossing to Kondli T-point
- 4 Patparganj road from NH-24 to Jheel chowk
- 5 Road from Road No.57 to Gagan Vihar
- 6 Road from Gharoli village to Gharoli Dairy Farm along community hall Gharoli
- 7 Road between Gharoli Dairy Farm and LIG flats Mayur Vihar Ph-III
- 8 Road from Kotla road to Lal Bahadur Shahstri Hospital (back side) Block 11-12, Kalyanpuri
- 9 Road from Sai Chowk to Rly. line, IP Extn. Opp. Saraswati Apptt
- 10 Laxmi Ngr main road from Vikas Marg via Vijay Chowk Khureji, Patparganj road
- 11 Road No.57 to upto Babu Ram School

KAROL BAGH ZONE

- 1 Shanker road (Pusa round about to Upper Ridge road round about)
- 2 Patel road (Pusa round about to Najafgarh road)
- 3 Pusa road (Pusa round about to Link road round about)
- 4 DB Gupta road (from Faiz road to Military road)
- 5 Arya Samaj road (Link road round about to Military road)
- 6 Faiz road (Link road round about to New Rohtak road)
- 7 Girdhari Lal Goswami Marg (Patel Road Ring Road)
- 8 Gurudwara Road (From DB Gupta road to Pusa road)
- 9 Satyam Cinema road (Patel road to DDA complex near Satyam cinema)
- 10 Rama road (from Najafgarh crossing to Patel road)
- 11 New Rohtak road (from Faiz road to Zakhira flyover)
- 12 Saraswati Marg from D.B.Gupta road to Arya Samaj road.

NAJAFGARH ZONE

- 1 Mehrauli Mahipalpur road from Mehrauli to Mahipalpur
- 2 Road from outer ring road to Jwalaipuri via GH-14, Paschim Vihar

- from Outer Ring Road to Rohtak road
- 3 Palam Dabri road from Pankha road to Palam Railway crossing
 - 4 Najafgarh Phirni road
 - 5 Sultanpuri road from Rohtak road to Pooth Kalan village
 - 6 Jalebi chowk to S Block Bus stand, Mangolpuri
 - 7 ST Block road Mangolpuri via J Block from PWD road to S Block Chowk
 - 8 Rohtak road from Peeragarhi chowk to Tikri border
 - 9 Outer ring road from Mangolpuri chowk (RHS) to Meera Bagh
 - 10 Pankha road (RHS) from C-1 Block, Janakpuri to Vasant Park
 - 11 Premsukh road from Outer Ring Road to SS Mota School
 - 12 Road between K, O & L Block SRQ(Ph-III), Mangolpuri from A Block Akhara to S Block crossing
 - 13 Road between E & F Block, Sultanpuri from Sultanpuri main road to MCD School, G Block
 - 14 Road passing through C Block(Police Stn. Road) Sultanpuri from Sultanpur main road to Mangolpuri drain
 - 15 New NH-8 (Mahipalpur village only) from Cremation ground to Mehrauli Mahipalpur road
 - 16 Old NH-8 from New NH to Haryana border
 - 17 Main Mehrauli Gurgaon Road (Western Side) along Ghitorni village only
 - 18 Main road Rajapuri from Madhu Vihar drain to DPS School
 - 19 Najafgarh Bijwasan road from Najafgarh town to Kapeshera
 - 20 Najafgarh Nangloi road from Najafgarh town to Nangloi
 - 21 Delhi Najafgarh road from Najafgarh to Kakrola Regulator

WEST ZONE

- 1 Rohtak road from Zakhira crossing to Outer Ring Road
- 2 Shivaji Marg (NG road) from Zakhira to Kakrola Regulator
- 3 Shiv Dass Puri Marg, Moti Nagar from Moti Nagar crossing to Ring Road
- 4 Ring Road from Punjabi Bagh, Rohtak Road to Mayapuri Rly

- crossing
- 5 Rama Road from Patel Nagar road crossing to Ring Road
 - 6 80' Road, Mansarover Garden from Ring Road to Ring Road (U-shape)
 - 7 Vishal Cinema road, Vishal Enclave from Najafgarh road to Road No.28
 - 8 PWD road No.28, Raghubir Nagar from Ring Road to Vishnu Garden
 - 9 PWD Road No.29, Raghubir Nagar from PWD Road No.28 to Rohtak Road
 - 10 Shaheed Bhagat Singh Marg (Jail Road) from Tilak Nagar round about to Janak Setu
 - 11 Goswami Tulsi Dass Marg, Hari Nagar from Maya Puri road to Shivaji Marg
 - 12 Road in A Block, Rajouri Garden from Najafgarh road to J-19, Rajouri Garden
 - 13 Maya Puri road from Ring Road to Pankha road
 - 14 Major Sudesh Kumar Marg, Rajouri Garden from Ring Road to Najafgarh road
 - 15 Keshav Marg, Rajouri Garden from Major Sudesh Marg to Subhash Ngr bus route
 - 16 Major Sunil Bakshi Marg, Bali Ngr from Najafgarh Road to Ring Road
 - 17 80' road, Subhash Ngr from Cambridge School, Rajouri Garden to bus route Subhash Nagar
 - 18 100' Chowkhandi Road from Najafgarh road to Subhash Ngr drain
 - 19 100' road, Khyala from RB Jain Hospital, Chaukhandi to Patel Chowk, Vishnu Garden
 - 20 100' road, Khyala from Keshopur Mandi to RB Jain Hospital, Chaukhandi
 - 21 80' road, Vikas Puri from Bhumia Mandir, H-3 Block Vikas Puri to Gujrawala Apartment
 - 22 Vedic Marg, Ashok Nagar from Jail road to 3-Block, Ashok Nagar

- 23 Ganesh Dass Khatri Marg, Ganesh Nagar from Guru Amardass Public School 20-Block, Tilak Ngr to Outer Ring Road
- 24 Old Pankha Road from New Pankha Road to NG road
- 25 Janak Puri Marg (100') (Lal Sai Mandir Marg) from Jail road to Pankha road
- 26 Mall Road (between C-5C & C-6B) (80'), Janak Puri from Vidya Marg, Janak Puri to Pankha Road
- 27 Ram Mandir Marg (80'), Janak Puri from Vidya Mrg, Janak Puri (C-5B Block) to C-3 Road, Janak Puri
- 28 Dabri Road (80'), Janak Puri from Pankha Road to Janak Puri Marg
- 29 B-1 Marg (80') Janak Puri from Najafgarh Road to C-2B, Janak Puri Marg
- 30 B-2 Marg (80') Janak Puri from Najafgarh road to Janak Puri Marg (Bharti College)
- 31 Virjanand Marg, Vikas Puri from Najafgarh Road Vikas Puri to Outer Ring Road
- 32 PWD Road No.237, Hastal from Najafgarh drain Hastal to Kali Basti Bridge Vikas Puri
- 33 Nangloi-Najafgarh Road from Ranhola Village to Baprola Village
- 34 North West Avenue Road Club Road & Ch.Balbir Singh Marg, West Punjabi Bagh from Ring Road to PWD Road No.29
- 35 Baba Nivriti Nath Marg, Paschim Puri from Club Road to Pocket-1, Paschim Puri
- 36 Rohtak Road from Punjabi Bagh crossing to Peera Garhi, Rohtak Road
- 37 Ch. Balbir Singh Marg, Paschim Vihar from PWD Road No.,30 to Rohtak Road
- 38 PWD Road No.30, Paschim Vihar from PWD Road No.29 to Outer Ring Road
- 39 Outer Ring Road from Peera Garhi, Rohtak Road to Distt.Centre, Janak Puri
- 40 Tilak Ngr round about from Najafgarh road to round about Tilak

Ngr

CITY ZONE

- 1 Asaf Ali road from Delhi Gate to Ajmeri Gate
- 2 Esplandaded road from Chandni Chowk to Pai walan road
- 3 Chamalian road from Pahari Dhiraj road to Rani Jhansi road
- 4 New Darya Ganj road from Ring road to Subhash Marg
- 5 Idgah road from Rani Jhansi Marg to Qutab road
- 6 Sadar Thana road from Sadar Thana chowk to Bara Tooti chowk

CIVIL LINE ZONE

- 1 Satyawati Marg from Shakti Ngr chowk to Police Station Roop Ngr passing through Govt.Sr.Sec. School No.1 Roop Nagar
- 2 Lothian Road from Lothian Bridge to Ritz cinema passing through GPO
- 3 B.C.Block Wazirpur Indl.Area peripheral road from Factory No.B-1 to Factory No.B-5/2 passing through State Bank of India
- 4 A Block Wazirpur Indl.Area opp. Tool Room Centre (peripheral road) from 100' road to Celebration Banquet Hall passing through A-17, Wazirpur Indl. Area
- 5 Road between A & B Block, Wazirpur Indl. Area from Ring Road to Under bridge Ashok Vihar passing through Megh Raj Sweet
- 6 Hamilton Road from Lothian Road to near dalao passing through IInd entry of Old Delhi Rly.Stn.
- 7 Jahangir Puri Main road from GT road to Police Stn.
- 8 Burari Road from Outer Ring Road to Bandh Road
- 9 Road No.40 from Inderlok to Kali Dass Marg passing through Subhadra Colony
- 10 Kingsway Camp Road from Ganda nallah to Dhirpur village passing through Infectious Disease Hospital
- 11 Mall Road (PWD Road) Khyber Pass to Mukarba Chowk passing through Model Town
- 12 GT Road from Ghanta Ghar to Azadpur Bus Trml passing through

Shakti Nagar

- 13 Banda Bahadur Road from Mall Road to Avtar Marg passing through Mukherjee Nagar
- 14 Parmanand Road from Banda Bahadur Marg to Kingsway Camp Rd passing through Parmanand Colony
- 15 Timarpur Road B.D. Estate from Mall Road to Outer Ring Ring (adjoining B.D. Estate)
- 16 Malka Ganj Road from Malka Ganj chowk to GT Road
- 17 GT Road Azadpur road chowk (PWD) from Azadpur chowk to Outer Ring Road passing through Adarsh Nagar
- 18 Gokhley Rd from Metro Stn. Kashmere Gate to Zorawar Singh Marg passing through Mori Gate round about
- 19 Sarai Phoos Road from Barafkhana chowk to Rajinder Market passing through Queen Marry's School
Model Town Part-II road from Mall Road to end of Model Town
- 20 passing through Model Town Part-II
- 21 Ring Road from Azadpur chowk to Prembari bridge (left side)

ROHINI ZONE

- 1 Road No.41 from Wazirpur Depot to Rithala
- 2 Road No.43 Britannia Chowk to Mangolpuri Indl. Area
- 3 Gopal Mandir road from DDA Water Tank to X-ing Road No.41
- 4 Lancer Road Prashant Vihar to Village Rajapur
- 5 Dividing Road of Sector 6 & 7 Rohini, Aggarwal Sweets to Ambedkar Hospital
- 6 Road from Block A & F, Sector-11, Rohini from Block A to F
- 7 Main Road from Sachdeva School to Badli village, Rohini
- 8 Ch. Gulab Singh Marg from GT karnal road to Haryana canal
- 9 Rampura village main road from Rampura village soap factory to Hansapuri road.
- 10 Guru Birjanand Marg (Sainik Vihar) from Sant Ngr chowk to Road No.44
- 11 AC Block road from Ring Road to AE Block, Shalimar Bagh

(Bhagwan Mahavir Marg)

- 12 Maharishi Dayanand Marg from Ring Road opp. Richi Rich to DAV School
- 13 Madhav Marg, Keshav Puram from C-8/11 Lawrance Road to C-34, Lawrance Road
- 14 Auchandi Road from GT Karnal Road to Village Barwala
- 15 Swami Narain Marg from DJB office near Gulab Singh Marg to Najafgarh drain
- 16 Jaipur Golden Hospital road from Pathar Market to village Naharpur
- 17 Avantika Road from Polo Star School To Rajiv Gandhi Cancer Hospital, Sector-5
- 18 Dividing road of Sector 7 & 8 from Pocket A-1, Sector-7 to Road No.41
- 19 Dividing Road of Sector 15 & 16 from Guru Nanak Polytechnic to Police Post, Sector -18 Rohini
- 20 PWD road to Sector-16 & 17, Rohini from supplementary drain to Police post
- 21 PWD road between Sector 2 & 3, Rohini
- 22 Railway road from Road No.43 to Rly.crossing Sri Nagar
- 23 Kabir Dass Marg from Road No.41 to Road No.44
- 24 PWD Road No.37 from Najafgarh drain to Prembari bridge
- 25 Road No.3 from Ring Road to village Begampur
- 26 Deepali Chowk to Vijay vihar
- 27 PWD road from Bansal Palace Banquet Hall to Delhi Police Crime Branch, Sector-17, Rohini.
- 28 Road from Metro Station Rithala to Sector-11, Rohini.

SADAR PAHARGANJ ZONE

- 1 GT road from Barafkhana to Ghanta Ghar
- 2 Roshanara road from Malka Ganj to T-junction with Rani Jhansi road
- 3 Deshraj Bhatia Marg from Pahar Ganj chowk to Idgah road

- crossing
- 4 DB Gupta road from Ajmeri Gate crossing to Faiz road crossing
 - 5 Qutab road from New Delhi Rly.Stn. over bridge to Pul Mithai
 - 6 Rani Jhansi road from round about Panchkuian road to Barafkhana
 - 7 Azad Market road from Pul Mithai to Rani Jhansi road
 - 8 Maharaja Agarsain Marg from Qutab road to Rani Jhansi road
 - 9 Bahadurgarh road from Qutab road to DCM Chowk

NARELA ZONE

-- NIL --

Municipal Corporation of Delhi

Details Of Unauthorised Constructs Booked As Per D.M.C.Act 1957 **Period 1st Jan 2001 To 31st July 2005 In The Areas Falling Under** **The Jurisdiction of M.C.D.**

DETAILS OF PROPERTIES BOOKED DURING 1.1.2005 TO 31.7.2005

| S No / File No, With Date | Property No. & Address | Extent of Unauthorised Construction/With Date of booking |
|----------------------------------|-----------------------------------|--|
| 1/B/UC/CZ/045 dt. 4.1.2005 | 91, Mandakini Enclave | 4.1.2005, Unauthorised construction at open court yard in rear side room and front side balcony covered by side walls |
| 2/05 dt. 4.1.2005 | E-183-190, LPN-I | 4.1.205, deviation against SBP No. 209/B/CZ/04 dt 25.1.2004 in the shape of excess coverage infringement of set backs at Basement GF & raising of walls & cols at FF |
| 4/05 dt, 4.1.05 | 152/2, Hari Nagar Ashram | 4.1.2005, u/c of property No. 152/2 Hari Nagar Ashram of GF & FF |
| 5105 dt. 4.1.2005 | 152/3, Hari Nagar Ashram | 4.1.2005, u/c at GF. FF, SF at Hari Nagar Ashram |

APPENDIX H

Supreme Court Cases

(Case/Appeal No: Civil Appeal No. 15581 of 1996)

V.M. Kurian Appellant Vs. State of Kerala and Ors. Respondent, decided on 3/27/2001.

Name of the Judge: Hon'ble Mr. Justice V.N. Khare and Hon'ble Mr. Justice K.G. Balakrishnan.

Subject Index: Kerala building Rules, 1964--Eight storied **building** constructed under exemptions of the Rules as per special order of the government-- exemptions subject to conditions--not complied with-- deviations of high magnitude--contrary to public safety and convenience-- held order passed by the State Government exempting the provisions of the Rules for constructing an eight storied **building** was contrary to the mandatory provisions of the Rules and therefore, is not sustainable in law.

2002 SCCL.COM 091(Case/Appeal No: Civil Appeal No. 1605 of 1999)

Shabir Ahmad Appellant Vs. Sham Lal and Anr. Respondents, decided on 2/8/2002.

Name of the Judge: Hon'ble Mr. Justice Syed Shah Mohammed Quadri and Hon'ble Mr. Justice S.N. Variava.

Subject Index: East Punjab Rent Restriction (Chandigarh Amendment) Act, 1982 -- Section 13(3)(a)(i)(a) -- eviction petition -- ground of bonafide requirement of the respondents for residential purposes -- definition of residential **building** -- if a **building** is being used solely for the purpose of business or trade, it is a non-residential **building** and a **building** other than a non-residential **building** is residential **building** -- whether the respondents are entitled to seek eviction of the appellant under Section 13(3)(a)(i)(a) of the Act? -- held no -- eviction petition dismissed.

(Case/Appeal No: Shiv Dayal Soin & Sons Pvt. Ltd. and others Respondents)

Union of India Appellant Vs. Shiv Dayal Soin & Sons Pvt. Ltd. and others Respondents, decided on 2/26/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice Ashok Bhan.

Subject Index: Displaced Persons (Compensation and Rehabilitation) Act, 1954 — plot leased — house constructed on leased land — alleged contravention of terms of lease deed by its use for non-residential purposes — held respondent no. 1 after having constructed a house, did not contravene the terms of the lease merely because he let out the **building** for non-residential purpose -- appeal dismissed.

(Case/Appeal No: Civil Appeal No. 3714 of 2003)

Shri Bimal N. Desai Appellant Vs. State of Karnataka and others Respondents, decided on 4/25/2003.

Name of the Judge: Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice Arijit Pasayat.

Subject Index: Karnataka Government Parks (Preservations) Act, 1975 -- Section 3 -- whether the diminution of the area notified as an area within the limits of the Park is violative of any of the provisions of the Act or any other statutory or constitutional provisions; whether neither Section 3 of the Act nor Section 21 of the General Clauses Act can be pressed into service for deleting the land and **building** once notified to defeat the very purpose and object of the Act of preserving open space and whether issuing of notification to diminish the preserved area will be ultra vires of the provisions of the Act when the laudable object of the Act is to preserve parks in open spaces to create and maintain healthy and eco-friendly atmosphere, in our view, require to be left open.

(Case/Appeal No: Civil Appeal No. 10461 of 1983)

State of Maharashtra and another Appellants Vs. B.E. Billimoria and others Respondents, decided on 8/14/2003.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice S.B. Sinha.

Subject Index: Urban Land (Ceiling & Regulations) Act, 1976 -- interpretation of provision of Section 2(q) vis-à-vis sub-section (9) of Section 4 of the Urban Land (Ceiling & Regulations) Act, 1976 -- as to whether two strangers acquiring property jointly would come within the definition of 'person' as contained in Section 2(i) of the Act; and (ii) whether clause (i) of Section 2(q) would be applicable in a case where the **building** did not exist on the appointed date.

(Case/Appeal No: I.A. Nos. 24, 25, 28 and 29 (in Writ Petition (C) No. 725 of 1994))

In Re: News item Published in Hindustan Times Titled "And Quit Flow Maily Yamuna" Vs., decided on 12/12/2003.

Name of the Judge: Hon'ble Mr. Justice S. Rajendra Babu and Hon'ble Mr. Justice G.P. Mathur.

Subject Index: **building** plans -- sanction -- allowing of increased FAR and the number of floors permitted in 1998 -- no dwelling units will be created -- no stress on the services -- to give a little more accommodation without adding to the burden of the infrastructure facilities -- so as to enable the authorities to sanction plans in the manner indicated in the letter dated 27th November 2001.

(Case/Appeal No: Civil Appeal No. 49 of 1999)

M/s. Teri Oat Estates (P) Ltd. Appellant Vs. U.T., Chandigarh and others Respondents, decided on 12/19/2003.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice S.B. Sinha.

Subject Index: Capital of Punjab (Development and Regulation) Act, 1952 read with the Chandigarh Lease Hold of Sites and **building**, Rules, 1973 and the Public Premises, (Eviction of Unauthorized Occupants) Act, 1971 - - power of resumption of land/ **building** of the first respondent in favour of the appellants -- by reason of the auction held, the land in question has been sold in favour of the appellant. A letter of allotment has been issued in terms thereof. The appellant has been put in possession of the purchased property. In law he was entitled to raise constructions and in

fact he has raised a six storied **building**. He has paid a part of the first instalment and during pendency of the proceeding before the High Court has paid a substantial amount together with interest @ 12% p.a. as enhanced from time to time -- in a situation of this nature, having regard to the rival claims made by the parties, if the default is not absolute wilful or a dishonest one but occasioned due to situation which may be beyond one's control, the statutory right of the respondent in resuming the land may not be appropriate, if the entire dues stand discharged -- if the intention of the allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8(A) can be taken recourse to -- cannot but deprecate the conduct of the appellants in not making an endeavour to pay the instalments within a reasonable period. They, thus, did not pay the entire amount of the first instalment within the stipulated period; only a part payment was made in the year 1990 and 1992 by that time even the second instalment became due. They did not make any payment before the revisional authority despite the order passed by the appellate authority -- the appellant in C.A. No. 49 of 1999 should deposit a further sum of Rs. 15,00,000/- (Rupees fifteen lacs) with the Estate Officer, Chandigarh within a period of ten weeks from date of receipt of a copy of this order, which, in our opinion would meet the ends of justice

(Case/Appeal No: Civil Appeal No. 8561 of 1997)

Howrah Municipal Corpn. & Others Appellants Vs. Ganges Rope Co. Ltd. & Others Respondents, decided on 12/19/2003.

Name of the Judge: Hon'ble Mr. Justice Shivaraj V. Patil and Hon'ble Mr. Justice D.M. Dharmadhikari.

Subject Index: Howrah Municipal Corporation Act 1980 -- Howrah Municipal Corporation **building** Rules 1991 -- grant of sanction for construction of three floors -- the learned Single Judge in his order found that although the sanction for construction for additional three floors to the existing complex, sought by the respondent-company, was delayed by the Corporation without any justification, its prayer for grant of sanction for additional three floors cannot be granted as the Howrah Municipal

Corporation **building** Rules 1991 framed under the provisions of Howrah Municipal Corporation Act 1980 have been amended and the resolution of the Corporation issued thereunder prohibit multi-storeyed construction above one plus two floors on G.T. Road, Howrah -- Division Bench held that sanction for construction of the multi-storeyed complex of respondent - company up to fourth floor having been granted by orders of the High Court in the earlier Writ Petition with liberty reserved in favour of the company to seek sanction up to 7th floor, it was not open to the Corporation to refuse sanction only because after expiry of the stipulated period of sixty days provided in the rules for grant of sanction or refusal and expiry of the extended period granted by the High Court, **building** Rules have been amended prohibiting construction of multi-storeyed **buildings** above third floor on the G.T. Road, Howrah -- on appeal held the 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the **building** Rules -- in the matter of sanction of **buildings** for construction and restricting their height, the paramount consideration is public interest and convenience and not the interest of a particular person or a party. The sanction now directed to be granted by the High Court for construction of additional floors in favour of respondent is clearly in violation of the amended **building** Rules and the Resolution of the Corporation which restrict heights of **buildings** on GT Road -- the learned Single Judge was right in rejecting the prayer of the respondent company in public interest and the Division Bench of the High Court committed an error in directing grant of sanction for further construction above four floors to the respondent company in clear violation of the existing **building** rules and the resolution of the Corporation

(Case/Appeal No: Civil Appeal No. 12984 of 1999)

Friends Colony Development Committee Appellants Vs. State of Orissa and others Respondents, decided on 11/1/2004.

Name of the Judge: Hon'ble the Chief Justice and Hon'ble Mr. Justice Ashok Bhan.

Subject Index: Unauthorised Construction -- by a builder -- in a multi-storied **building** -- High Court permitted the possibility of regularisation of

unauthorized construction to be explored -- the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions -- the application for compounding the deviations made by the builders should always be dealt with at a higher level by multi-membered High Powered Committee so that the builders cannot manipulate. The officials who have connived at unauthorized or illegal constructions should not be spared. In developing cities the strength of staff which is supposed to keep a watch on **building** activities should be suitably increased in the interest of constant and vigilant watch on illegal or unauthorized constructions -- the controversy should not have been brought to an end by the High Court merely by directing reconsideration of the application of revised **building** plans submitted by the respondent builder. The matter needs a further probe and hearing in public interest -- the present case shall be determined by reference to the regulations as were prevailing prior to the coming into force of the Cuttack Development Authority (Planning and **building** Standard) Regulations, 2001.

(Case/Appeal No: Civil Appeal Nos. 6798-6799 of 2004 (with CP(C) No. 410/04 in SLP(C) No. 1562/02, CP(C) No. 411/04 in C.A. No. 5556 of 2001))

Palitana Sugar Mills Pvt. Ltd. and another Appellants Vs. State of Gujarat and others Respondents, decided on 10/15/2004.

Name of the Judge: Hon'ble Mr. Justice K.G. Balakrishnan and Hon'ble Dr. Justice AR. Lakshmanan.

Subject Index: Appeals against the final judgment and order passed by Gujarat High Court -- vast land sold by sale Deed by former ruler land vacant land -- applicability of ULC Act or ALC Act -- various proceedings were initiated again and again by the authorities which have already been concluded by various orders of the Tribunal, the High Court and of this Court -- appeals allowed in part and collector Bhavnagar directed this Court -- to grant non agricultural permission in respect of the land of about 76 acres 36 guntas comprised in Survey No. 469/1 Bhavnagar District

after collecting the non-agricultural tax calculated at the rate of 5% per sq. mt. -- the Commissioner of Bhavnagar Municipal Corporation is directed to consider the application for sanction within four weeks the lay out and **building** plans as per the current development control rules and pass order in accordance with law -- direct respondent Nos. 1 & 2 to collect non-agricultural permission charges and conversion charges for the lands bearing Survey No. 470/1, 471/2, 471/3 and 472 situated at village Vadva, Bhavnagar as prevalent in the year 1981 -- direct respondent Nos. 1 & 2 to collect non-agricultural permission charges and conversion charges for the land bearing Survey No. 469/1 as prevalent on 24.2.2003, which is the date on which the appellants had applied for the grant of non-agricultural permission for the said survey number and on receipt of payment to grant the non-agricultural permission in respect thereof as applied for.

(Case/Appeal No: Civil Appeal No. 2671 of 2004 (with C.A. Nos. 2684, 2682, 2686, 2681, 2695, 2670, 2688, 2679, 2698, 2697, 2693, 2690, 2678, 2683, 2689, 2694, 2699, 2685, 2680, 2692, 2687, 2711 and 2712 of 2004))

Rajinder Singh Appellant Vs. State of Haryana and others Respondents, decided on 12/2/2004.

Name of the Judge: Hon'ble the Chief Justice, Hon'ble Mr. Justice G.P. Mathur and Hon'ble Mr. Justice P.K. Balasubramanyan.

Subject Index: Punjab Scheduled Roads and Controlled Areas Restriction of unregulated Development Act, 1963 -- sections 4, 5, 7(1), 8 and 12 -- notice issued to the appellant to stop unauthorised construction of the shop -- there is open transgression of the relevant provisions of the Development Act and the authorities were fully justified in directing the appellant and others to remove their unauthorized constructions -- the Act seeks to achieve the object of leaving clear areas adjacent to scheduled roads intended for swift and safe moving of vehicular traffic. Any attempt to defeat that object by putting constructions of dhabas, residential or industrial **buildings** against the terms of the Development Act, would tend to affect public safety and endanger lives and property and courts must

discourage such attempts -- the appellants are given time of two months from this date to remove the offending constructions.

(Case/Appeal No: Civil Appeal No. 1415 of 1999(with C.A. Nos. 1416 of 1417 of 1999))

R & M Trust Appellant Vs. Koramangala Residents Vigilance Group and others Respondents, decided on 1/19/2005.

Name of the Judge: Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice A.K. Mathur.

Subject Index: Public Interest -- petition challenging the **building** licence against construction of the multi-storeyed multi-apartments on Site Nos. 403 and 443 in IInd and IIIrd Cross in III Block, Koramangala Layout, Bangalore on the ground that it is illegal, void and prayed for quashing of the licence and direction to demolish the **building** already constructed on the site -- submitted that the residents in the area had acquired sites and built houses on the understanding and under the bona fide belief that the lay out would be developed and maintained in accordance with law -- the menace of multi-storeyed and multi-apartments **building** in the Bangalore city particularly in Koramangala lay-out which is considered to be a posh and prestigious lay-out, had been increasing -- Multi-storeyed **buildings** and multi-apartment **buildings** were causing stream on the public amenities. It was alleged that the property developers by using their influence and money are getting licences against the statutory prohibitions -- the Karnataka High Court directed the Corporation not to issue licences to any third party for putting up multi-storeyed and multi-family dwelling apartments in the sites allotted by the B.D.A. -- Held the Division Bench concluded that the view taken by the learned Single Judge is right that the licence granted in favour of Respondent Nos. 4 and 5 is contrary to law and liable to be quashed -- Court does not find that the Municipal Corporation has committed any illegality in granting permission to the appellant for raising construction up to third floor -- permission granted by the Bangalore Municipal Corporation to the appellant for raising the construction up to third floor is not in violation of any of the provisions of the Act and the Rules -- delay is a very important factor while exercising

extraordinary jurisdiction under Article 226 of the Constitution -- there is no prohibition under the provisions of the Act and Rules putting the ceiling on construction of the multi storey **building**

(Case/Appeal No: Civil Appeal No. 2733 of 2001)

Mahendra Baburao Mahadik and others Appellants Vs. Subhash Krishna Kanitkar and others Respondents, decided on 3/16/2005.

Name of the Judge: Hon'ble Mr. Justice B.P. Singh and Hon'ble Mr. Justice S.B. Sinha.

Subject Index: M.R.T.P. Act, 1989 -- Section 44 and 53 -- unauthorised construction -- regularisation -- the jurisdiction of a local authority is confined only to deal with application for grant of permission for construction as contained in Section 44 of the MRTP Act whether at the initial stage or when a notice is served under Sub-section (2) of Section 53 of the MRTP Act. The power to grant such permission could be exercised only within the purview of the **building** Bye-laws. Therefore, being beyond the scope of Section 44 of the MRTP Act, the Municipal Council did not have any jurisdiction to direct regularization of such unauthorized constructions by reason of the said resolution or otherwise. The power of the Municipal Council, it is trite, being confined to the provisions of the said Acts, no action could be taken by them contrary thereto or inconsistent therewith -- The Municipal Council is hereby directed to carry out the order of the High Court, as expeditiously as possible and not later than four weeks from date.

(Case/Appeal No: Civil Appeal No.4801 of 2005)

Indian City Properties Ltd. and Another Appellants Vs. The Municipal Commissioner of Greater Bombay and Another Respondents, decided on 8/5/2005.

Name of the Judge: Hon'ble Mr. Justice Ruma Pal and Hon'ble Dr. Justice AR. Lakshmanan.

Subject Index: A) Mumbai Municipal Corporation Act, 1888 -- Section 299 -- notice issued to the appellant -- to the effect that the Corporation would take possession of "certain land not occupied by a **building**" forming part

of the premises within the regular lien of public street as prescribed by the Commissioner -- validity of -- the power to take over possession conferred on the Commissioner under Section 299 in respect of certain structures is a summary power. B) Mumbai Municipal Corporation Act, 1888 -- Section 296 -- it is always open to the municipal authority subject to the provisions of the Act, to acquire any land or **building** under Section 296 of the Act.

APPENDIX I

News Listed & Translated

A. News from Newspapers

01 Date of giving Drainage and water supply connection Gujarat
to the illegal Constructions (Buildings) built up to Samachar
31.12.96 extended by Ahmedabad Municipal 31.03.1994
Corporation.

02 It is reported that in Delhi the tenants of shops are Gujarat
against new ruling of Rent Act. The landlords of shops Samachar
are favouring and demand to implement the amended 25.03.1997
law arguing for capital appreciation is not taken and
they are not benefited because of low rent, which is
not able to fetch money to by toothpaste.

The new building owner is not letting their building to
the tenants because of the rent act, which is favoring
the tenant. It is suggested by the columnist that if the
Rent act is amended by considering the benefit to both
the Building owner and tenants, which will effect the
society at large.

03 It is further suggested that the unoccupied or vacant Gujarat
premises should be made fit to let out. According to Samachar
the thoughts given by Shri Pravin Mahadevia for 25.03.1997
Ahmedabad that the amendment in Act should be
such that the Building owners are inspired to let out
their building and fetch rental income and by this the
people in need of rented house can get thee premises
properly. Which is unoccupied or vacant till this day. It

is also reported that due to such positive action the infra structure facilities can be used at its fullest extent and less need to provide new infra structure facilities by this the More House tax income can be generated.

It is also suggested that the chowls, Tenements and buildings should be constructed for rental income and for that the rules should be simplified and modified accordingly.

- 04 The Suggestion is also incorporated that by increasing height of the building the expenditure on infrastructure can be curtailed and the people can get rental building easily. The danger signal is given by the columnist that the Rent act Modification should such that it can protect the right of Land Lord rather than Tenants. Gujarat Samachar 25.03.1997
- 05 It is reported that Ambika Realities Pvt Ltd obtained the building plan and permission from Municipal Corporation. The Completion certificate was also obtained. The Corporation asked for revised plan for the said building and in case of default the building plan and occupancy will be cancelled. The Builder sought for stay. The ruling was that once sanctioned plan cannot be cancelled was the ruling of civil court, which was in favour of Builder. Akila 09.06.1997
- 06 The participation of Chamber of Commerce of Navanagar (Jamnagar) held that the Infrastructure and other facilities should be improved for near future as the development is going to occur. Gujarat Samachar 23.06. 1997
- 07 It is reported to District Collector by putting allegation Gujarat

that by paying Rs. 50,000 as corruption to the officers of Town Planning Department of RMC the building plan sanction is obtained without authenticated documents such as Sanad, property registration card and N.A. order. This was reported for the case Near ATIKA, for a piece of land admeasuring 15184 sqmts. of R.S. No. 327 & 328. C.S. No.329 on Gondal Road 58 11 old and 5812 new plots which are plots owned by Govt. Samachar 24.06.1997

08 Municipal Commissioner stopped the construction of multi story building on Yagnik Road for its construction for not getting approval and the application was adverse to the rules and regulations. Sanctioned plan and the Consulting Engineer were given a show cause notice. Gujarat Samachar 25.06.1997

Comment.

It should be noted here that as per the architects Act1972 the Word architect shall be used by the Members of the Council only. Under Sec. 2

09 The fabricated document was produced by Patel Vihar Construction to get the Construction Contract of The Income Tax Building Situated on Race Course Ring Road. The Firm used the Letterhead of RMC. The city engineer denied for issuing the certificate. The concern officer of RMC took no action and the responsibility was laid upon the C PWD. Gujarat Samachar 25.10.1998

10 The district Collector of Rajkot had announced that the people affected by operation demolition of Shapar Veraval Industrial area will be given alternative land Gujarat Samachar 25.10.1998

admeasuring 50 sqyrd each which is an excess land held by Government under ULC. The EWS section of people can not grab land for their shelter but Govt. will take certain action to rehabilitate them by making residential building for them by assistance of RMC and Govt. Financing Agency in the T. P. scheme area of villages like Mavdi, and Raiya.

It was suggested in the report which is going to be sent to the district collector that the area under which the operation of demolition was taken place on Govt Land of village Raiya, the list of the victims shall be prepared and the priority should be given to the victims as and when the re-plotting of the evacuated land will take place.

- 11 The Construction of the buildings was demolished by RMC officials because of the purpose of the building was altered and some of the buildings were unauthorised, as the plan were not approved by RMC. And some were in the proposed society where the legal title to construction or ownership was defective in the area known as village Mavdi the extended City Limit of RMC. Gujarat Samachar 25.10.1998
- 12 The chief officer of the Dwarka Municipality had issued a show cause notice to the elected president of Municipality to vacate the land voluntarily and inform the officer, which is illegally encroached by him. The president had given a legal notice alleged to defamation and had put the allegation that the officer is misusing the power held by him and had stated that he has not encroached upon any land owned by Gujarat Samachar 25.10.1998

Municipality.

- 13 The Operation demolition should not be accounted as successful work but the concern officer and the staff of the Local Authority should do the prevention of encroachment. In such cases the poor people are becoming victim of the operation but the politicians or other persons with money and/or muscle power should be thought a lesson. It is said that the responsibility of estate officer or other concern officer should be fixed and should work accordingly. The encroachment is allowed first and the demolition there after is not the good way of administration.

Akila
21.03.2005

Swami Dharmeshwarji has said that by construction a temple on others land as an encroachment is not a work counted to be good but is evil by itself. The Swamiji had appealed to the administration not to favour any religion in particular and act against the other. All should be treated equally.

- 14 The Thickly developed location was under operation of Demolition as the show rooms shops, offices were the target was to widen the 9.00 mts. T.P. Road.

Akila
19.05.2005

- 15 The District Collector of Rajkot has undertaken the operation of Demolition of illegal encroachment by local people of the Industrial Area of Village shaper and Veraval. The land R.S. No. 305 that is Government land was evacuated and the land worth of Rs. 4 Crores was freed.

Akila
19.05.2005

- 16 The prices has boost up for the land for commercial

Gujarat

- purpose. The Municipal Corporation has sold the land at the higher rate without black money component. The upset price was Rs. 4000/ sqmts. was sold at Rs. 13850/ sqmts and earned revenue of Rs. 1.21 Crores. Similarly in other place the upset price was 2000/ sqmt. was sold at Rs. 4050/sqmt. and earned revenue of Rs. 59 Lac. Samachar 19.05.2005
- 17 The Residents on Dudhsagar Road whom the Notices were issued had co-operated in the operation demolition of the part of their building to widen the T.P. Road. Akila 21.05.2005
- 18 In the industrial area of Village shaper Veraval on N.H. 8 B the operation demolition had taken place to remove encroachment by people. Land worth of Approximately Rs. 50,00,000 was freed and due to absence of officers of NH authority the land encroached upon was not evacuated. Akila 21.05.2005
- 19 In Jetpur the Industrial building for textile has covered the Government land. The complaint was lounged but No action was taken, as the Building owner (Encroacher) is a political leader of the area. In operation demolition only poor are made the victims as reported. Gujarat Samachar 21.05.2005
- 20 In the same town the place reserved for parking in commercial complexes were sold to the people by converting the space in to shops. The Local Authority i.e. Municipality of Town has not taken any action against the builder knowing the adverse action of the builder. It is also reported that the members and Gujarat Samachar 21.05.2005

residents of the Co-op. Hos. Society on Junagadh Road had encroached upon the natural wastewater way by constructing building on the way.

- 21 It is reported that In Junagadh Municipal Corporation Gujarat the similar problem o encroachment exists and the Samachar action is going to be taken after the date of show 21.05.2005 cause notice is over.
- 22 The chief officer of Veraval Municipality had Gujarat announced that the process of removing the Samachar encroachment of the political leaders or other such 21.05.2005 people will take place soon.
- 23 The occupants off Gondal Road near Panchsheel Soc. Gujarat voluntarily dismantled buildings. It is reported that the Samachar T.P. Road of 24 mts. road connecting to Krishnanagar 23.05.2005 Main Road. of T.P.S. 4 was encroached by people constructed 2 storied buildings there on. It was questioned that the recurring grant of the road was misappropriated or had used elsewhere as the encroachment was there since last many years.
- 24 The Buildings with due Completion certificates were Gujarat demolished by RUDA and Estate Department of RMC Samachar at T.P. Scheme To 14 at village Vavdi on 150'0 Ring 24.05.2005 Road Rajkot Bye pass connecting Gondal Road and Mavdi chowk. This matter arose because of revised plan for the bye pass. The Ruda has agreed to pay Compensation to the aggrieved party.

The 25 sqmts. plots will be allotted at any other alternative location and the old temple along with

15+24 residential units and 8 misc. buildings.

- 25 Computerised Infrastructural facility availed on the Akila Amin marg by RMC worth of Rs. 62, Lac. Under 18.08.2005 Concept of E-Governance such facilities were provided and many more will be started in due course as reported. Facilities such as Payment of taxes. New water Connection, Birth and death certificates Complaint Booth, Soap and establishment Licence, Building Plan permission and any other issue pertaining to Municipal corporation.
- 26 The Ruling Party, The Mayor had created an obstacle Gujarat by fixing Grill not to allow the opposite party to reach Samachar near him but the opposition had made the attempt to 19.08.2005 cross the grill.
- 27 Gujarat High Court has fixed with SUO Motto the Gujarat liability of revenue officers. The order issued by the Samachar State Govt., through the revenue dept. of the State 24.08.2005 with Ref. to the sp. Civil application No. 13308 /2004 released on 07.07.2005. Issued a Circular to All the District Collectors to inform the department furnishing all the detailed report of the encroachment, Name of encroacher, type of encroachment along with place and the name and designation of Concerned responsible Revenue officer.

The Administrative wing of each concern department is in tension.

- 28 No sufficient toilet facilities available in India. IT was Gujarat reported that only 20% of total population is availing Samachar the facility in Gujarat while 34% of total rural 24.08.2005

population of India is availing these facilities. Central and State Government along with the officers of UNICEF will try to promote the percentage of toilet facilities to eradicate the polio from the country. The financial assistance / aids will be made available by UNICEF. The new generation should be made aware of Health and hygiene for bright future.

- 29 Dilapidated buildings in South Bombay have become problematic matter as the old buildings are collapsing on and often have made people afraid of the situation. The Municipal Commissioner of BMC had discussed the issue with The Prime Minister as the people residing in these buildings are mostly immigrants and are supposed to be taken care of. The buildings are Gothic Victorian Style Heritage buildings, which are, neglected ones. Gujarat Samachar 24.08.2005
- 30 T. P. Scheme Roads are implemented for 24 mt. Width near marketing yard the N.H. 8 and Rajkot Bypass. 111 Person were given notices and 10 persons had demolished voluntarily. Notices were issued to 319 persons, the encroacher of land falling under T.P. Roads in Raiya, bearing T. P. Scheme No. 16. and ordered to demolish and remove the debris voluntarily after due time limit the procedure will be carried out to prepare the roads. Akila 30.08.2005
- 31 The proposed Four tracks Road finally became three tracks due to insufficient width of the existing road and the facility for vehicles by paying was left a side to less response as reported. The similar proposal was for roads with thickly traffic was also left aside because of Gujarat Samachar 10.10.2005

the condition to pay and park where the people did not accept payment.

- 32 The Notices are issued by RMC under Sec. 268 of Gujarat BPMC Act 1949 to the occupants of Commercial complexes for vacating the parking area. In case of failure to do so the Building will be sealed 69 Building Complex were included in the list of defaulters in the area such as Kalawad Road, Yagnik Road, University Road, Amin Marg Indira Circle. Gujarat Samachar 01.12.2005
- 33 The Chartered Architect/Engineer can sanction Single window Building Plan; The recommendation was included in the draft policy for National Urban Housing and Habitat Policy 2005. The incentives in tax benefit for new housing are also included the draft policy. ULC Act is already repealed and the State Govt are asked follow the instructions but in many States the ULC Act is still in practice. The Model Municipal Law drafted by The Central Govt is supposed to be accepted by all the State Government. The Rent Control Act should be amended by the State Govt. as per the guidelines of Central Govt to promote and give incentives to the Rental Housing. Akila 03.12.2005

The Document Registration procedure should be simplified was added. The State Govt are instructed to Computerise the procedure and has to report in due time limit. The Central Govt will frame the Model Act for Apartment building. The State Govt. shall have to frame their own Apartment Ownership Act.. To promote the Housing the definition of Developed Land shall be specified. The infra structural facilities will be

specified by the central Govt.

- 34 The time limit of Notice is over and the operation will start soon. Akila 19.12.2005
- 35 The demolition is to be started in Kiran Society on Hari Dhava Marg in Rajkot. Appx. 70 illegal buildings are going to be demolished by RMC for widening the 50' T.P. Road. Of Scheme No. 11. Akila 21.12.2005
- 36 The Commercial building was sealed by estate branch of Jamnagar Municipal Corporation because the common parking was use for other purpose than planned for. This was done as the encroachment in parking place was creating the problems of traffic in the city and the Notice was issued but response was not sought for. The action was taken against the adverse use. Due to this 51 shops and 2 Govt. offices of irrigation dept. were affected. Gujarat Samachar 11.01.2006
- 37 80% Illegal Buildings in Delhi. Akila 18.01.2006
- Delhi Development Authority has requested to grant permission from Delhi High Court to dismantle the illegal Construction of Political Leaders and others.
- Note:** Support document provided in Appendix C (1)
- 38 The Mayor of Surat City has given an assurance to keep the operation of Demolition of the illegal Building will be carried on in the Area of Varachha Road. The demolition will take place in whole of the city area wherever encroachment has taken place. Akila footnote 197 19.01.2006

To solve the traffic problem the Mayor has given instruction to the Traffic police to prevent the procession on the Main Roads in case of disobeying the order the persons will be arrested.

- 39 To Promote higher education The Central Government Akila
has proposed and directed to state Govt to give land 06.02.2006
free of Cost to the Private Institutions not taking Govt.
aids. In connection to this it is reported that there are
349 Universities exist in the country and 16000
colleges are affiliated to the respective universities
only 9% of population is studying of the age group of
18 to 23 years. To match the demand and supply the
Govt. is interested to increase capital investment for
Higher Education.
- 40 Delhi has become Capital of Illegal constructions. It is Akila
reported that more than 10 lac buildings are illegal. In 17.02.2006
last 5 years only 750 Buildings out of these 500 were
commercial and 250 were residential were dismantled.
Where, the land admeasuring 3,40,000 sqmts. were
freed from encroachment. In this connection the
inquiry against 113 officers were carried out and 8
officers were suspended. Leader, administration and
estate mafia are collectively involved; the process is
slow even after order issued by the High Court. The
Ruling Party is ready to change the Master Plan to
keep the illegal buildings status quo.

The Delhi Development Authority has divided the city
in to 12 Zones for demolition The Authority reported a
list of 18271 illegal buildings to the Delhi High Court

which includes Shops, Show rooms and encroachment on Government Land. This number is apart of total illegal construction but if total 12 Zones are taken under consideration than more than 10 lacs of building are estimated to be illegal.

The survey undertaken by a new magazine recently started naming AKTACHAKRA, reports that out of total unauthorised encroachment 90% is by Politicians only.

The area Such as Lajpatnagar, Karol Bagh and South extension are having large of illegal encroachments.

It is also reported that In Constructing One illegal building the revenue is one Crore than out of that appx. 25 to 30% amount is distributed to different Govt. Departments.

The Villance officer Mr. Pradip Shrivastav had advised to take action against 94 officers. And 325 officers are in BLACK LIST.

The Delhi Government is proposing to develop the city area and on other hand proposes to demolish 6,00,000 shop which are bread and butter to 25,00,000 people.

One hand the social services like NURM and on other hand such destructive actions are taken is a naked fact.

41 The demotion of 159 building started in Ward No. 3 of Akila

Rajkot city, the area is included are Parsananagar, Zulelal Nagar etc. which are encroachment on waste water way which was proposed to be 18 mt wide. Thousands of people were affected and became Homeless. Due to Political pressure the Officially declared that the width of the wastewater way would be 12 mts. only. 27.02.2006

- 42 The Benefit of Impact fees will not be revised; The illegal construction will be demolished. Akila 28.02.2006

The Minister for Urban Development has announced in State assembly that the benefit of regularise building by payment of impact fees was announced in the year 2000 and due to earth quake in the year 2001 the time limit was extended up to 31/03/2003. The time limit is over and the applications received during the valid time period under process. He said that the illegal construction would be demolished in due course.

- 43 The Mayor of Rajkot intervenes in the affairs of town planning department to change or alter the T.P. Scheme No. 7 to help the illegal encroachers. Akila 18.03.2006

- 44 Union Government in critical position due to illegal Construction in Delhi. Gujarat Samachar 12.04.2006

The action against illegal buildings by Demolition and Sealing the property has become a political issue and Delhi Congress President and Councillors asked for special order to stop any action. The members of Chamber of commerce have requested The President

of India to be mediator in this matter.

State Govt of Delhi is unable to take any action against illegal Construction by taking shade of legal aspects and Delhi High Court has dismissed the engineers who were responsible to take steps against illegal construction.

- 45 The supreme Court had given Stay against the demolition of the religious premises. on the Public street as illegal encroachment. The stay was given in connection with the Order given by The Gujarat High Court. The Municipal Commissioner and Police Commissioner of The Municipal Corporations Such as Ahmedabad, Surat, Vadodara and Rajkot along with Chief Secretary of Gujarat State and DGP (Director General of Police) of Gujarat State. The additional solicitor General had suggested that in the situation of such communal disturbance the Court should give Stay order for communal peace and harmony. Gujarat Samachar 05.05.2006
- 46 To prevent Fatal accidents in the City of Rajkot the Police commissioner has asked The Municipal Commissioner a piece of land outside City limits to park the vehicles owned by travel Agencies. The plot, which was proposed before 10 years, is now the plot for commercial purpose specified by Town Planning Officer. Which cannot be allotted for any other purposes such as parking. The Police commission is considering extending the limits for prevention of vehicular traffic in City area. Gujarat Samachar 12.05.2006
- 47 Traffic problem due to 2000 buses is as their dues to Gujarat

- lack of inter relation between the concern Govt. Department and due to political indulgence the plan was dropped. The traffic problem in city area could not be solved as the Travels Co. has stated that they are parking the vehicle in their own premises. The RTO has filed case against 150 bus owners. Samachar 12.05.2006
- 48 Due to Complaints from public the District collector ordered 8 teams to survey the encroachment made by enchrocher on the land owned by The RUDA. I.e. Navagam, Madhapar Hadamatiya, Maliyasan and many more. Gujarat Samachar 13.05.2006
- 49 The reserved plot for public garden in T.P.S. No. 7 was encroached by the person for washing the textiles was noticed by Municipal Commissioner and had ordered to Town Planner for further action to be taken. Akila 15.05.2006
- 50 On Sant Kabir Road 6 Commercial Complexes and 2 residential buildings were demolished to clear the Scheme Road width of 15 .00 mts. in T. P. Scheme No. 7. Gujarat Samachar 16.05.2006
- The total no. of buildings demolished are 49. And the land admeasuring 7,000 sqmts were freed from encroachment.
- 51 The Authority will keep check on the activities of the builders and developers and real estate agents. Any thing adverse to laws or byelaws or regulation will be prosecuted and the licence of defaulter or ill practice will be suspended. The Buyer can confirm the status of the building by checking the register of Authority for Akila 23.05.2006

their satisfaction and requirement. The said Authority is named as “Real Estate Management (Regulation and Control of Activities) Bill. The powers to solve The Discrepancies between Allot tee and developers will be delegated to the Authority. This draft bill is for the Union territories and Delhi. In near future the State Govt has to follow the same.

- 52 The basis and contents of stay given by Supreme Court against High Court should disclosed in front of the public or the victims before the operation of demolition. Was asked by an advocate of Rajkot. Akila 30.05.2006
- 53 Decentralization of Building department and Water supply, Zone wise By Rajkot Municipal Corporation because of the magnitude of area is extended to 104 sq kms. after 1973.A.D. The Decentralization was done in ABD prior to this. Gujarat Samachar; 31.05.2006
- 54 Illegal Construction has taken place in the Shopping Centre Built by Rajkot Municipal Corporation. Gujarat Samachar 22.06.2006
- The encroachment to the 4’ wide passage was included in the shop by the shop owners at Sinduriakhan Shopping Centre, which was constructed by Municipal Corporation in 1992. It was reported that the shop owners had made applications in 2001 for regularising the matter but no response was given at on the date of report by RMC.
- 55 The Bombay High Court ordered to demolish the religious Buildings, which are encroachment on the Gujarat Samachar

- public property and illegal. 22.06.2006
- 56 R.S. 156 to 200 of village Raiya The official and legal buildings are in curtail because of the proposal of wider road instead of 9 mts. to 12 mts. in Revised T.P. Scheme. No 22. Akila 22.06.2006
- 57 Zero level parking is not observed by building department of municipal Corporation by constructing 30 cms. High footpath on roadside, which is an obstacle for vehicle to be parked at the parking place of the building, which at 0 level in front of the building. Gujarat Samachar 23.06.2006
- Due to this discrepancy the Road becomes narrower for the vehicular Traffic. Because of this The Rule of zero level parking cannot be observed by the people.
- 58 Municipal Commissioner is aware of the situation of encroachment in the area under T.P. Scheme No. 7 on air port road The misunderstanding between Administrative officers and Ruing party had clash and after due understanding No demolition operation had taken place. The encroachment over 32 Waterways is listed but no action is taken till date. Aji River area is also encroached upon by Brick Kiln is as it is so the flood problem is likely to be there and Ranchhodwadi case is made dormant after transfer of the District collector who was keen to take action against the case. Gujarat Samachar 29.06.2006
- 59 Rajkot municipal corporation will prepare the Master for 2021 where the limit will be extended to include areas under Rajkot Urban Development Authority; The Akila 06.07.2006

issue was discussed with Officers from World Bank.

- 60 The Municipal Commissioner has ordered the officer from all the three the departments viz. town planning, estate and building construction to survey and take action against the persons who have evaded the parking rule of GDCR 2004. Gujarat Samachar 12.07.2006
- 61 It is reported that the Notices were issued to different person evading the GDCR. Among them are 174 agencies were given notice for Hoardings, Notices were issued to 4000 Persons for illegal Construction and 68 Building owners for evading Rule for parking by insufficient parking place. No follow up was done or actions were taken against notices. Gujarat Samachar 12.07.2006
- 62 Dilapidated Public Toilets were demolished by Department of Solid waste Management of Rajkot Municipal Corporation under guidance was Environmental Engineer. Akila 22.07.2006
- 63 Rajkot Municipal corporation removes the raised parking in front abutting to road. To implement the Zero level Parking on the Main Roads like Yagnik Road, Sadar Bazar, Limda Chowk and Moti Tanki Chowk. The operation was undertaken by Town Planning department of RMC. The partiality was observed in the operation by giving the time limits to the Political Leaders. Akila 25.07.2006
- 64 The E-Sanction has completed 1 year. Within this duration the permission for residential building 3430 proposals with 3,16,069 sqmts. 44 proposals of low Gujarat Samachar 16.09.2006

rise, 9 religious buildings, 65 Industrial, and 85 commercial building sanctions were given.

Excluding of 3 petrol pumps, 3 schools and 2 Hotels. The total expansion rate is 1.50 sq Km. Per year and out of this more than 60 % is Residential.

- 65 The Municipal Corporation has collected Rs. 443 lac as different Charge as follows: Gujarat Samachar: 16.09.2006

Sub Plotting Charge

Development charge

Betterment Levy (Actually Levied on Land)

Jgya Rokan Charge (Charge taken as an advance from applicant for area occupied by Building materials)

Regulation fees (If Construction is prior to the sanction)

Dismantle Charge (In case of existing building to be demolished, Amalgamation Charges ,Scrutiny Charges,Open Plot Tax,Amenities Fees (Other than T.P. Scheme Area),Drainage Tax,Mobile Tower Fees

Members Proposed "(Suchit)" Society has not to pay any fees because the title to land is not clear.

- 66 New Technology of Fibre Concrete introduced. The Discussion during Engineers day at Rajkot. Gujarat Samachar 16.09.2006

- 67 The Rajkot Municipal Corporation has demolished 1390 illegal buildings, which are encroachment upon the municipal land. The land admeasuring 1,63,375 sqmts. is estimated worth of Rs. 95.60 Crores. Akila 20.09.2006

- 68 Supreme Court has given a ruling for The building already constructed without any permission or Plan deviated from Officially sanctioned is not supposed to be demolished. This ruling is given on the appeal from the Jain Monk Munishri SubratSwami and Jain S.M.P. Sangh, Kurla, Bombay Akila 14/10/2006
- 69 Detail information about Carpet area, Built up area and super built up area is given for knowledge of general public so as to be aware of the fact at the time of buying a building or a flat Akila 28.10.2006
- 70 Premise of 300 sq. yrds is sold at Rs. 70,000/- A survey was held by a group of people for the Building market in World. Where the Expensive Cities are Milan in Italy is worth 8 Crores, Burmuda, Paris and Dublin (Ireland) 6 Crores, Rome 5 crores where as in Resonable rates in India Rajkot about 35 Lac, Beijing (China) 30 Lac, Shanghai (China) 29 Lac and Bootto, 25 Lacs. The said land will be used for a show room as reported Akila 30.10.2006
- 71 The Cinema Houses are now a days in trouble as the Home theatre as well other Multiplexes are coming up. Astron Cinema is going to be closed down in the thickly populated with highly commercial and with heavy traffic problematic area in the heart of the developed City of Rajkot. Gujarat Samachar 31.10.2006
- 72 Anti corruption Bureau has undertaken an operation in the residential premises of the Town Planner of Rajkot Municipal Corporation to hold property more than his legal income. He is holding, a bungalow of worth 75 Lac, a luxury car and many other properties Akila 31.10.2006

at different places. His bank lockers are also sealed and the cash as well as ornaments were founded from his residence as well as other documentary proof of other properties are still under search

- 73 Decentralisation of administration of Municipal Corporation is not effective as the applicants and other people have to go the Central office till day and no officer is taking responsibility of any of the duty un assigned. Akila 31.10.2006
- 74 The Municipal Corporation of Rajkot has collected Rs. 1.18 Crores within last 6 months as Building Constuction cess as per the direction of Central Govt. for the labour welfare schemes which is as high as Rs. 30/sqmt. which is is one of the charges to be paid to municipal corporation for getting building permission, sanction and completion. Akila 01.11.2006
- 75 Ceiling of commercial premises in Delhi has taken a turn. The aggrieved businessman of the Delhi where police and people involved had tassel announced Delhi bund. Private Doctors and Nurses supported the bund. Delhi Government had made an application in The Supreme Court of India against the businessmen. Gujarat Samachar 02.11.2006
- 76 A traffic circle has proved to be useless as it is not been a solution to the traffic problems at the junction of 150' Road and 100'. The Mayor has proposed a three tiered parking to solve the problem. Akila 03.11.2006

B. News from Website

The Gujarat Town Planning and Valuation Department The Director of Municipalities

Gujarat Municipal Finance Board The Urban Development and urban housing department came into existence in July 1983. The institutions under the department are as follows:

- Gujarat Housing Board
- Gujarat Slum Clearance Board
- Gujarat Urban Development Company limited are the agencies directly working under this department
- The State government has constituted
- Urban development authorities,
- Area development authorities and designated,
- 116 Municipalities as area development authorities for planned urban development in the state.
- The District Urban Development Agencies (DUDA) have been set up at district level in the state

Gujarat - "The Urbanized State of India" Situated on the western coast of the India, the State of Gujarat is an industrial powerhouse with an enviable track record of development during the last four decades, having reduced its dependence on agriculture and textiles. With just 5 per cent of the India's total population and 6 per cent of geographical area. The State is experiencing high urbanization with 37.67 per cent of the population living in 242 urban areas as per population census 2001.

The seven Municipal corporations and 141 municipalities in the State, Town Planning & Valuation Department, The Director of Municipalities, Gujarat Municipal Finance Board, Gujarat Housing Board, Gujarat Slum Clearance Board, Gujarat Urban Development Company Ltd etc. are

working under the Urban development & Urban Housing Department in The State Government has constituted Urban Development Authorities, Area Development Authorities and also designated municipalities as an Area development Authorities and also constituted the District Urban Development Authorities for planned development of urban areas in the State

Efficient Town Planning and Prompt Implementation

The State Government would amend the town development acts with specific reference to city land development and town planning to attract private investments for land development in urban areas. New policy for integrated township development would be evolved. To expedite prompt completion of town planning schemes and thereby accelerate progress of urban areas, necessary amendments would be made in Gujarat Town Planning and Urban Development Rules & Regulations

During the year 2005, 74 primary town-planning schemes would be declared.

During 2005, 125 new and comprehensive town-planning schemes would be prepared

During 2005, 350 town planning schemes and 127 developmental maps would be digitized

To formulate town-planning schemes and expedite their execution, necessary amendments would be made in rules and regulations to enable recruitment of private consultants and avail their services

As a part of town planning, rainwater harvesting would be introduced in phased manner starting with large buildings

Regional Planning

Planning at regional and town level for development of coastal cities to attain economic development in view of globalization

Special developmental planning for towns located near the border

There are 13 tribal cities, which act as tribal development centers, and where the economic and market activities are pursued. These centers provide cultural identity of their respective regions. Urban areas in such centers may be developed economically with reference to their hinterland, while ensuring preservation of their culture

Special plans would be evolved to provide appropriate facilities at pilgrim places in the cities. As these places witness large gathering of pilgrims, facilities like Sulabh toilets, drinking water, parking space, Pathik Ashram and rest houses / inns would be developed and Mission will be constituted to speed up reforms and infrastructure investments in the urban sector. This body will mobilize funds, introduce new technologies and facilitate HRD (Human resource Development) and IEC (Information, Education and Communication) activities

Urban Leadership Development

The State Government firmly believes that the success of urban development depends on urban leadership. Therefore, to make local urban bodies more responsive to the people and increase their efficiency, leading training institutes would impart training on leadership development, legal provisions for urban development etc. The training would cover areas like urban development activities, modernization and urban services, so that the citizens become conscientious about the civic duties.

It is planned to observe Urban Development Year-2005 program as the State program and not limited to the Urban Planning development. Let us start with the determination and spirit of urban community and treat this program as the year endeavour from 20 million urban residents

APPENDIX J

Role of Architects in Disaster Management

- By Ravindra Deshmukh & G. P. Krishnamurthy

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Architecture is designing of Building and the spaces around them. Beyond this/not much is thought about Architecture or about other responsibilities of an architect as a professional as well as trustworthy member of society. Buck Minster Fuller called our living planet the Spaceship Earth with human being as on board travellers. This automatically vests in architects the responsibility of keeping our planet in the best possible condition, so that the upheavals on it are less vulnerable to the populace at large. "India has been traditionally vulnerable to natural disaster on account of its unique geo- climatic conditions. Floods, droughts, cyclones, earthquakes, and landslides have been recurrent phenomena. About 60% of the land mass is prone to earth quake of various intensities; over 40 million hectare is prone to floods, about 8% of the total area is prone to cyclone and 68% of the area is prone to susceptible to drought. In decade 1990-2000, an average of 4344 people lost their lives and about 30 million people were affected by disaster every year. The loss in terms of private, community and public assets has been astronomical' (Government of India –2004 p3). During 1974 –2003 the world experienced 6367 natural disaster out of which 2566 or 40% were in Asia alone. India was hit by 303 natural calamities during the period out of which 72 occurred during 1999-2003 period. Total number of victims in India (people killed and affected) of natural disaster during 1974-2003 numbered 1 billion out of 5 billion people affected world wide, which amounts to 36 percent world population being affected by the natural disasters in 30 years proceeding the year 2003. India ranks very high in the ratio of inhabitants to victims of natural disaster during 1974-2003 as per the Centre for Research on the Epidemiology of Disaster's International Disaster Database. "Just as the occurrence and impact varies across regions, different disaster types

cause varying level of mortality, injuries and physical damage to infrastructure and agriculture. They also strike with varying rates of frequency, intensity and predictability” (GUHA-SAPIR et. al. 2004, p30).

‘It seems diagrammatically opposite fields being brought together in rather artificial manner’ – this is the perception most architects have about linking disaster management speciality and their own profession of architecture. They believe that developing expertise in the field of disaster management is not their forte. However, it is an important emerging area of speciality common to all professions, architecture included.

When a disaster strikes, it does not distinguish wish between different professionals. It hits all in a similar manner. Hence, as a responsible citizen it becomes important for an architect to know more about disaster and what role one can play in mitigating its effects.

MEANING OF ‘DISASTER’

“Natural events become disasters only when human settlements are not prepared to withstand them; very often, because of lack of precautionary planning” (Gelman & Macias 1984, p.507). What is a disaster then? It is define as a calamitous event that warrants help from outside the community affected; it indicates that the affected community members are unable to help themselves. The situation is out of their hand and they need to seek help from others beyond the affected zones. According to Crisin Clark (in Hewitt, 1983) ‘Disaster is an event which seriously distracts normal activities’. The routine schedule of work or activity is gravely hampered. Disaster is also defined as interface between an extreme physical event and a vulnerable human population. Toblin-writes “also in Hewitt, 1983),“ Disaster implies the occurrence of unusual event which was not adequately predicted in time or place to allow measures to be taken for the protection of threatened people and property”. The definition relates “event”, ‘people’ and ‘shelter’, and is important from ‘architect’ point of view. Architect work in various sector of building industry as designers, site architects, project managers, developers etc. It is necessary for them

to know about disaster as an event that would adversely affects their projects. They need to know about the ways of making their buildings safer than before. World Health Organization in 1995 states; 'A disaster can be defined as any occurrence that causes damage, ecological disruption of health and health services on a scale sufficient to warrant an extraordinary response from affected community'. There are many disasters either in India or elsewhere, which are important for study (Table). 'Disaster' is a word of French origin. 'Des' means bad and 'Astre' means star. So, disaster means a catastrophe due to bad star in astrology or a misfortune. Predicting any impending disaster with mathematical accuracy as always been illusive. (Our modern science remains woefully inadequate when we use it to try to predict what Mother Nature might have up her sleeve during our life times" (Zebrowski 1997, p.162). What concerns an architect is reasonably safe design that would perform well during an unfortunate event. So, the design is not only for gravitational loads alone, but the factor of safety and component design should be decided to reasonably cater for extra stress build up due to a disastrous phenomenon, such as heavy flooding, earthquake tremors of high intensity or bomb-blast. 'Such global catastrophes may occur with little or warning. Is this some thing to loose sleep over? I, for one, will be more comfortable if I know some one knowledgeable is loosing sleep over it" (Zebrowski 1997, p.225). This clearly underlines the importance of architect as one of the responsible and knowledgeable professional.

DEALING WITH DISASTERS

Almost 75 percent India's land mass is under constant threat of some kind of disaster like earthquake, cyclone or drought. Disasters are natural events in normal course of happening, unless otherwise induced by human intervention. The strategy to deal with disaster has undergone a sea change in the last one decade. Routinely thought as a 'patch up' exercise during fifties and sixties, it now assumes a new dimension of a pro-active plan. The following table explains the new mindset:

This shift in the thought process has considerably changed the whole outlook toward this critical aspect that impacts human survival. In fact, this is not a new thought. The commonly used phrase “United we stand...” Adequately explains it. So this thought process calls for bilateral cooperation across communities, neighborhoods, towns, states and nations. It also calls for networking at various levels of operations. Each settlement, community neighborhood and town is under the shadow of the circle of no end. When a major catastrophe takes place, assistance funds are diverted from those provided for development. Due to this the development opportunities in areas vulnerable to disaster get affected. In the event of a catastrophe, greater dependence is on further assistance. This leads to crisis. With increased vulnerability, there is a need for more humanitarian assistance. It is difficult to come out of this vicious circle. Any disaster will simply fuel it to aggravate. One can at best, effort to minimize its effects.

The building industry sector usually turns a blind eye to consider disaster impact as an assumption to realize a project. This is mainly due to economic reasons. The situation is worse as well trained and enlightened human power is not easily available in construction projects. Architect being at the centre stage of the entire development and execution process, s/he can influence and guide various segments of construction management groups on consideration of disaster –resistance as a design and quality consideration. It is interesting to note that even after some nation- impacting disasters such as Latur earthquake (1993), Bhuj earthquake (2001) and Indonesian Tsunami (2004), there is still widespread ignorance, nay apathy toward cities and their vulnerability to such events. Even now the universal not –to-me syndrome is widespread. Many urban, conglomeration are on a delicate threshold of disaster in waiting. “ We can not be ‘that’ disaster prone Third World. We belong to First World City – called – Mumbai (mis) located in the Third World Region. This is quite the sentiment of an upper Mumbai resident. As if First World cities where disaster proof!“ (Bhatia 2003, p. 27).

UNDERSTANDING DISTASTER MANAGEMENT PLAN

Preparing a 'plan' is critical for any eventuality-be it building a project or implementing a scheme deciding a road map of development. Disaster management plan is a strategic course of action directed toward reducing to a great extent vulnerability of people and property with respect to a variety of disaster specific to region or to the organization. As a planner designer and innovator of creative designs, an architect needs to study, understand and contribute to the local disaster management initiatives the salient features of a DM plan are:

- It is structured; systematic and laid down procedure of what needs to be done before, during and after catastrophic event.
- Disaster Management can vary form town to town
- Each district has its own disaster management plan in place
- Each state has own disaster management plan to be activated
- Each nation has its own disaster management strategies to be look into by successive governments.

Disaster management plan covers all phases of total management include signal detection when imminent disaster is predicated and appropriate action initiated, preparation relates to actual strategy to face the event – it could be moving to a safer place or remain secure at a place and prepare for defense, containment refers to how to control and limit the damaging effects of a disaster and, finally, recovery a post-disaster phase in which projects like rehabilitation, reconstruction, retrofitting and undertaken.

ROUTINE EMERGENCY AND DISASTER

Many a times the words like 'emergency' and 'disaster' are used interchangeably. For some people emergency and disaster are event of same gravity. However they are not.

Disaster is and event causing great distress. It is sudden crushing misfortune. Where as emergency is a sudden and un-expected turn of events calling for immediate action. There is a significant difference between normal emergency people experience and the disasters.

Emergency can be handled locally; disaster is simply over whelming to be handled that way. It is important to understand various facets of these two often-used words.

ARCHITECT'S RESPONSIBILITY

Architect is one of the distinguished professionals contributing to Nation's development through the practice of architecture. By virtue of his/her professional status, s/he also is a responsible citizen of the country. As a responsible citizen and a technocrat, it is his/her responsibility to look after the welfare of people in general and that of professional clients in particular. This can primarily be achieved by making buildings and projects safer than before. The following points would be significant to consider:

- It is necessary to self educate on anatomy of disaster and their effect on people, shelter and environment.
- Familiarity and deep knowledge on disaster specific to region in which an architect normally would practice.
- Understanding and actively supporting governmental strategies of mitigating disasters.
- Coming in forefront to offer gratis services to government in reconstruction, retrofitting of building and in post disaster evaluation
- Voluntarily be on the disaster management committees formulated by the local Government especially under 'shelter'
- Understanding current research being done at various disaster management centers, and by the non-governmental organizations.
- Assuming consideration of disaster as a constraint while conceptualisation of design ideas.
- Simplification and development of building form that will behave in the best possible way during an extreme event.
- Managing a building project with stringent quality control and workmanship.

Understanding a human resource in a important aspect of an architect's inter personnel relationship skill. Gauging the situation and reacting to it in

the most suitable manner is a skill to be honed. In the event of a disaster-strike in a region, it would be logical to seek external help from other regions especially those, which were struck previously by similar category of disaster. "A unique experiment during the program was the involvement of masons that had received training in the earthquake rehabilitation in Gujarat. These masons came in from Gujarat and camped in the island (Port Blair in Andaman) for the period of the project. Having experienced a disaster in their own lives, the masons could empathize with the survivors. This translated into rapid and efficient performance for completing the project in shortest possible time" (Joshi and Gupta, 2006, p. 34).

CONCLUSION

At a global level, disaster management is an emerging speciality that at best is less than half a century old. Sporadic efforts were made before 1950s to address the issue; however it got momentum and universal acceptance learning through disasters over decades. In India disaster management is barely a decade old. It received impetus five year back. It began with the major strategic initiative of the government transferring disaster management from its traditionally positioned location in the ministry of agriculture to a new location under ministry of home affairs. Technological advancement through research is an integral part of development and vulnerability reduction initiatives. "Perhaps what is needed most of all is the technology transfer – getting research findings and recommendations into the hands of the policy makers, legislators, and finally into the operating manuals of architect, planners and developers" (Havlick 1984 p.401). Capacity building of professional with respect to disaster risk management, therefore, becomes imperative. It was intensely felt after the Bhuj earthquake. Therefore, the Ministry of Home Affairs, Government of India embarked upon a massive capacity building initiative directed toward engineers and architects. The salient features of this program are: building collapse being identified as major issue in earthquake vulnerability; adequately covering issue of seismic safety of construction, ensuring seismic safety in construction, including focusing on certain limitations. "While structural safety is the main focus of engineers,

the structural configurations chosen by architects control the overall behaviour of structures during earthquakes” (MHA, 2004 p3).

Disaster management is a multidisciplinary forum and not an exclusive domain of a particular profession. Architecture is highly interdisciplinary. As it relates to technology on one-hand social sciences on other, it has direct relationship with this emerging discipline. Nonetheless ‘architecture’ and ‘disaster’ are two ends of the same process of development – one initiates construction and the other counters it!

Table: Significant Disaster in India and Abroad

| Manmade | Natural |
|---|---|
| <p>Fire: Mainly due to electric short circuit and human neglect. Meerut (2005) exhibition carnage is a recent example. Kumbhakonam School Fire of July 2004 cannot be forgotten. Earlier, Mysore studio fire of March 1989 is also significant.</p> <p>Explosion: Due to deliberately planted devices or industrial mishaps. Common in terrorist’s activities. Mumbai train blast (July 2006) is a case in point. The event of bomb blasts at Bombay Stock Exchange Building in August 2003 is not yet forgotten.</p> <p>Nuclear Fallout: Aging reactors, low maintenance and human error result in this disaster Chernobyl (June 1996) is an example to remember.</p> | <p>Earthquake: Shaking of land surface due to tectonic plate movements. Latur (1993) Bhuj (2001) and Kashmir Border (2005).</p> <p>Flood: Rise in water level due to heavy rains, snow melting, dam burst etc. Panshet dam burst causing massive flooding in the city of Pune (1962) flash floods due to incessant downpour in Mumbai (2005) are important examples.</p> <p>Drought: Severe shortage of water and failure of crop due to scarcity or no rain period. Gujarat and Bihar have sufficiently experienced it.</p> <p>Ecological Disaster: Excessive mining, deforestation etc. trigger</p> |

| | |
|---|---|
| <p>Terrorism: It is not possible guess the nature of havoc or disaster it can create. Bomb blast, fire, shootout, and other newer ways to victimize vulnerable population are the techniques. Parliament shootout (December 2001), Attack on World Trade Centre twin towers in September 2001 shook the world.</p> <p>Air crash: Results due to human or machine error: It could also be due to terrorist activity. Kanishka (December 1972) Air India aeroplane crash due to implanted explosive device is well known. Also, significant and well documented is the Boeing 747 aeroplane crash into Bijlmermeer Amsterdam (October 1992).</p> <p>Train Accident: Attributed mainly to human error, landslides or human intention Matsyagandha Express bogies toppling from a bridge into valley on Konkan railroad (June 2004) is a recent example.</p> | <p>imbalance in environment that has cascading effect on ecology of the region. India is most vulnerable near seaport and water front region.</p> <p>Landslide: Results from earth tremour or from heavy rains that make mountaintops weak for collapse. Varunavat Parvat landslide event (2003) in Himalaya is a glaring example.</p> <p>Forest Fire: India is so far lucky to get spared from this. Indonesian fire of February 1997 called for World attention causing irreparable damage to the extent of US\$1 billion.</p> <p>Tsunami: Mainly earthquake induced but also can cause due to underwater land slide, reef-break of rarely can be due to major of other celestial object from outer space hitting ocean. The recent Banda Aceh (December 2004) seismic tsunami caused heavy damage in many countries, including eastern shores of India.</p> |
|---|---|

APPENDIX K

Survey Questionnaire – (general)

Ref. No.: PHD/Quest/01

Date: 02/1/94

Dear Friend,

HAPPY NEW YEAR

With a good wishes for the New year I would like to seek your assistance to arrive at some concrete solution to formulate the Building Bye laws as well as Rules & Regulations to be the least complicated and Legally feasible to implement.

The purpose of doing this exercise is my Research Work for Ph.D. in subject LEGAL IMPLICATIONS OF BUILDING BYE LAWS in Urban areas of India under ULC ACT 1976.

In this questionnaire the alternative given by me is all-positive at one or other places. You are requested to give the Grades according to priorities as per your practical experience as an expert person in this field.

Your name & other details which are for my findings will be kept confidential & if any body has any suggestions or thing to say can very well write to me on the address given in the card along with.

Please fill up the Details given below.

Name: Ar. _____ Qualifications: _____

Address: _____ City: _____

State: _____

Whether Your Area of Work is under Urban Land Ceiling?

Yes No.

If Yes then Class A B C D

Practising Since: 194_, 195_, 196_, 197_, 198_ 199_.

Types of Projects: Residential / Commercial / Educational / Institutional / Others.

NOW YOU ARE REQUESTED TO Proceed:

| | |
|---|--|
| | All the alternatives are possible answers. You are requested to give grade as per your priorities: as 1, 2, 3, & 4 & if any more answer is there kindly put 0 and put your statement. |
| 1 | In your opinion the existing building bye laws are derived from: ___ Existing Historical Buildings of more than 100 years ___ Existing Buildings more than 60 years & Less than 100 years ___ Existing Buildings less than 60 years & more than 10 years ___ Existing Rules and Regulations ___ |
| 2 | What do you think to be the main reason for formulating the BUILDING BYE-LAWS is: ___ Synchronization of building designs. ___ Better land utilization ___ Better space utilization (in three dimension). ___ Better renounce utilization ___ |
| 3 | What is your observation regarding the size of RESIDENTIAL Units has been What is your opinion in the development of WORK PLACES in Urban areas have moved ___ Reduced ___ Increased ___ Remained same ___ Nothing can be said in General ___ |
| 4 | What is you opinion in the development of WORKPLACES in Urban areas have moved: |

| | |
|---|---|
| | <input type="checkbox"/> To the centre <input type="checkbox"/> To the periphery <input type="checkbox"/> Haphazardly <input type="checkbox"/> Liner <input type="checkbox"/> |
| 5 | What do you feel about the existing Rules & Regulations & BYE-LAWS are: <input type="checkbox"/> Standard <input type="checkbox"/> Tailor-made <input type="checkbox"/> Readymade to fit the requirement <input type="checkbox"/> Derived/Copied <input type="checkbox"/> |
| 6 | In your opinion which aspect should be taken care of while formulating building BYE-LAWS <input type="checkbox"/> Socio Legal <input type="checkbox"/> Technico Legal <input type="checkbox"/> Socio Economical <input type="checkbox"/> Psycho legal <input type="checkbox"/> |
| 7 | In Your opinion what do you understand as legal implication is: <input type="checkbox"/> Strictly as per the Rules and Regulation <input type="checkbox"/> Technically deviated but legally sound <input type="checkbox"/> More legal & less technical <input type="checkbox"/> Equal <input type="checkbox"/> |
| 8 | In your opinion how far a fixed frame work as per ecology and standard size will help to frame building bye-laws: <input type="checkbox"/> To its fullest extent <input type="checkbox"/> More technical & Less legal <input type="checkbox"/> More legal & less technical <input type="checkbox"/> Equal <input type="checkbox"/> |
| 9 | The local self Government which makes building bye laws is: |

| | |
|----|---|
| | <input type="checkbox"/> Village Panchayat <input type="checkbox"/> Municipal Boards <input type="checkbox"/> Municipal Corporation <input type="checkbox"/> Development Authority <input type="checkbox"/> |
| 10 | The object of NBO Code is: <input type="checkbox"/> To ensure soundness of construction <input type="checkbox"/> To ensure minimum standard of construction in the Country <input type="checkbox"/> To ensure best utilization of building materials <input type="checkbox"/> To ensure best utilization of space (in 3 D.) <input type="checkbox"/> |
| 11 | The object of ISI Code pertaining to building industry is: <input type="checkbox"/> Same as NBO Code <input type="checkbox"/> Different from NBO Code <input type="checkbox"/> More Similar & Less different <input type="checkbox"/> More different & less similar <input type="checkbox"/> |
| 12 | The Distinction between a Village & City is based on: <input type="checkbox"/> Area <input type="checkbox"/> Type of main business activity <input type="checkbox"/> Education of people <input type="checkbox"/> Population <input type="checkbox"/> |
| 13 | The distinction between a town & City is based on: <input type="checkbox"/> Area <input type="checkbox"/> Extent of Industrialization <input type="checkbox"/> Type of Local Authority <input type="checkbox"/> Population <input type="checkbox"/> |
| 14 | Framing of Laws for regulating construction activity falls within the power of: <input type="checkbox"/> Parliament <input type="checkbox"/> State Legislature |

| | |
|----|---|
| | <input type="checkbox"/> Development Authorities <input type="checkbox"/> Local Self Governing Body <input type="checkbox"/> |
| 15 | <p>What is the number of UNION ACTS regulating construction activities according to you opinion is:</p> <p>ONE TWO THREE More</p> |
| 16 | <p>Number of State Acts governing the building Activities in Your STATE according to your opinion is:</p> <p><input type="checkbox"/> ONE <input type="checkbox"/> TWO <input type="checkbox"/> THREE <input type="checkbox"/> More <input type="checkbox"/></p> |
| 17 | <p>Number of sets of Bye laws framed by local self Government in Your Area is:</p> <p><input type="checkbox"/> ONE <input type="checkbox"/> TWO <input type="checkbox"/> THREE <input type="checkbox"/> More <input type="checkbox"/></p> |
| 18 | <p>In Your opinion which aspect should be given priority while framing the building Bye-laws:</p> <p><input type="checkbox"/> Stress on Legal aspect <input type="checkbox"/> Stress on Technical Aspect <input type="checkbox"/> Stress on Socio-economic Aspect <input type="checkbox"/> Stress on preservation of environment <input type="checkbox"/></p> |
| 19 | <p>What Roll does the historical building play in formulation of Bye Laws is to arrive at:</p> <p><input type="checkbox"/> Technical conclusion</p> |

| | |
|----|--|
| | <input type="checkbox"/> Technical Legal conclusion <input type="checkbox"/> Socio Legal conclusion <input type="checkbox"/> Psycho legal conclusion <input type="checkbox"/> |
| 20 | <p>In your opinion what is the purpose of Bye laws followed by execution:</p> <input type="checkbox"/> After the execution of Historical Buildings <input type="checkbox"/> At the time of Construction <input type="checkbox"/> Before planning the building <input type="checkbox"/> Trial &Error <input type="checkbox"/> |
| 21 | <p>What is your opinion about Historical buildings are:</p> <input type="checkbox"/> Use oriented <input type="checkbox"/> Technically Sound <input type="checkbox"/> Legally Sound <input type="checkbox"/> Comprehensive <input type="checkbox"/> |
| 22 | <p>Please mention the nature of litigation in priorities relating to the building industry:</p> <input type="checkbox"/> Under Easement Act <input type="checkbox"/> Under Defective Title <input type="checkbox"/> Under ULC ACT 1976 <input type="checkbox"/> Under IPC <input type="checkbox"/> |
| 23 | <p>Which Contractual obligation Result in least litigation OR matter of Controversial is:</p> <input type="checkbox"/> Land Owner & ARCHITECT <input type="checkbox"/> Land Owner & Local Authority <input type="checkbox"/> Land Owner & Developer <input type="checkbox"/> Land Owner & Neighbour <input type="checkbox"/> |
| 24 | <p>Whether assimilation of concern Sections/portion of Various ACTS/LAWS effecting building Bye law litigation is:</p> |

| | |
|----|--|
| | <input type="checkbox"/> Necessary <input type="checkbox"/> Not necessary <input type="checkbox"/> Does not make any sense <input type="checkbox"/> Will help to save time <input type="checkbox"/> |
| 25 | What do you feel after your experience the present building bye laws require amendments to make it practical: <input type="checkbox"/> Liberal <input type="checkbox"/> Strict <input type="checkbox"/> Consolidated <input type="checkbox"/> Exhaustive <input type="checkbox"/> |
| 26 | What is the extent of Implementation of Bye laws in your area as per your opinion & Experience: <input type="checkbox"/> 100% <input type="checkbox"/> Between 75% & 99.9% <input type="checkbox"/> Between 50% & 74.9% <input type="checkbox"/> Between 25% & 49.9% <input type="checkbox"/> |
| 27 | The Outcome of the litigation relating to building construction has achieved: <input type="checkbox"/> Desired result <input type="checkbox"/> Undesired result <input type="checkbox"/> Satisfactory <input type="checkbox"/> Cannot Opine <input type="checkbox"/> |
| 28 | In your opinion the Cases relating to the building Bye laws are more with: <input type="checkbox"/> Express Deviation <input type="checkbox"/> Implied Deviation <input type="checkbox"/> Relative Deviation <input type="checkbox"/> Forced Deviation <input type="checkbox"/> |

| | |
|----|--|
| 29 | <p>In your opinion the LEGAL ACTION against breach of any of the condition shall be prosecuted in</p> <p><input type="checkbox"/> Special Court</p> <p><input type="checkbox"/> Tribunal</p> <p><input type="checkbox"/> In Legal Cell of the office</p> <p><input type="checkbox"/> By the Chief Executive of the Concern Authority</p> <p><input type="checkbox"/></p> |
| 30 | <p>What is your opinion for the deviation from the sanctioned plan is taking place in the most of the cases are due to</p> <p><input type="checkbox"/> Very strict rules</p> <p><input type="checkbox"/> Very flexible rules</p> <p><input type="checkbox"/> Misrepresentation</p> <p><input type="checkbox"/> Contradiction in relative terminology</p> <p><input type="checkbox"/></p> |
| 31 | <p>What is your impression regarding the operative mechanism of building bye laws by the OFFICERS Concern is:</p> <p><input type="checkbox"/> Fully satisfactory</p> <p><input type="checkbox"/> Non Co operative</p> <p><input type="checkbox"/> Creating unnecessary quarries</p> <p><input type="checkbox"/> CURRUPT/Red Tapism</p> <p><input type="checkbox"/></p> |
| 32 | <p>What is your opinion for the New concept of the set of Comprehensive consolidated code for Building Bye Laws should have:</p> <p><input type="checkbox"/> PREVENTIVE Measures</p> <p><input type="checkbox"/> REGULATIVE Measures</p> <p><input type="checkbox"/> PROGRESSIVE Measures</p> <p><input type="checkbox"/> Restrictive Measures</p> <p><input type="checkbox"/></p> |
| 33 | <p>What is your impression regarding the Administrative Machinery is utilizing their:</p> <p><input type="checkbox"/> Limited Discretionary powers</p> <p><input type="checkbox"/> Unlimited Discretionary powers</p> |

| | |
|----|---|
| | <input type="checkbox"/> Limited Delegated power <input type="checkbox"/> Unlimited Delegated power <input type="checkbox"/> |
| 34 | What is your opinion regarding the competency of local authority in scrutinising the building plan prepared by an ARCHITECT after due experience, is comparatively: <input type="checkbox"/> More <input type="checkbox"/> Less <input type="checkbox"/> Average <input type="checkbox"/> Nil <input type="checkbox"/> |
| 35 | What is your opinion for true interpretation and visualization for preparing a Building plan in all the respect the other discipline is competent <input type="checkbox"/> More <input type="checkbox"/> Less <input type="checkbox"/> Average <input type="checkbox"/> Nil <input type="checkbox"/> |

THANK YOU very much for:

Sparing your precious time

and

Sharing your knowledge

To be helpful to me

To achieve my goal

THANKING YOU ONCE AGAIN

AR. (MISS) ILA LODHAVIA

Sankalp

Sardarnagar Main Road,

Rajkot - 360 001

(F-5413)

Name : _____
Address : _____
Professional : _____
Experience _____

Type of projects handled:

Commercial / Residential / Institutional / Industrial / Others

Concept: **JUDICIAL TREND:**

To regularise

&

To prevent irregularity in Building Industry:

Physical variation: Like variation in margin/FSI/height/built up area etc.

Material variation: Load bearing/R.C.C. Frame/Steel Frame

Please render you opinion:

(A) Whom do you hold responsible in case of irregularity in building as per concept para 1 & 2

(i) Institutional : Trust / Board / Corporate Body
Trustee Chairman Managing Director

(ii) Builder oriented : Partnership Firm / Limited / Pvt. Ltd.
Managing Partner Managing Director

(iii) Private : Sole Owner

or

ARCHITECT/ENGINEER/PLANNER

or

Officer of the concern Authority

(B) What type of communication do you prefer to prevent irregularity in building industry as far as byelaws are concern?

(a) One person responsible

- (b) Solely dependent upon consultant
- (c) Group of people to take decision

(B-1) If one person, what will be your approach to render your service by:

- (i) Interpreting law in its exact meaning
Or
- (ii) Interpreting according your requirement
Or
- (iii) Twisting it according to clients desire by manipulation

If none of above method then

According to you which building is accounted to be fully legal Pl. give reason/s:

- (a)
- (b)
- (c)

(C) Co ordination of various Govt. Dept. related to sanction and according/confirming ownership (title)

- (i) Person to department
- (ii) Department to Department
- (iii) Department to person

(D) Is it necessary at the time of purchase and registration of the same the building plan existing/proposed should be the part of necessary document

YES / NO

ADMINISTRATIVE AND ADJUCATORY MACHINERY

(a) Please tick / What type of administrative set up you will prefer for getting approval of BUILDING PROPOSAL

- (i) Technical (ii) Legal (iii) Technico legal

- (b) What is more important /functional to prevent irregularity in building Byelaws
- (i) Clear definition without any option
 - (ii) Clear definition of legal terminology
 - (iii) Clear definition of technical terminology
- (c) A Building is legal if
- (i) Technically sound but not according to bye laws
 - (ii) As per bye laws but technically not sound
 - (iii) Technically and legally as per bye-laws

While Designing:

- (1) Do you visit the proposed site before designing? Yes/No
- (2) Do you check the other legal documents such as layout/ N.A. Order/Sanad/ULC NOC/Property Card etc.? Yes/No
- (3) In case you find any discrepancy would you like to get it rectified? Yes/No
- (4) If the building proposal is irregular/illegal would you like to rectify? Yes/No
- If yes
- (a) By complying necessary information Yes/No
 - (b) By bribing officer & obtain the sanction Yes/No
- If Yes
- In your opinion who is responsible for all scandals
Owner / Officer / Architect

Kindly furnish your honest opinion and oblige

Thanking You,

Ar. (Miss) ILA LODHAVIA