AMBO UNIVERSITY WOLISO CAMPUS

DEPARTMENT OF CIVICS AND ETHICAL STUDIES PROGRAM

PUBLIC ADMINISTRATION AND PUBLIC LAW IN ETHIOPIA (CESt2053)

DEGREE PROGRAM

CREDIT COURSE – 6(10ECTS)

CHAPTER ONE

1. THE NATURE OF PUBLIC ADMINISTRATION

Objectives

After completing this unit, you will be able to:

- Describe the general nature and scope of public administration
- Explain the environmental factors of public administration
- Discuss the various theories and approaches of public administration
- Differentiate public administration from private administration

1.1 INTRODUCTION

Every system of public administration is the product of many influences. Its form and content reflect its historical origin; existing patterns are a composite of practices and procedures of both ancient and contemporary. As White (1955:13) noted, no administrative system can be well understood without some knowledge of what it has been, and how it came to be what it is now. Therefore, when we study public administration, it would be indispensable to look at it from a historical perspective.

The study of Public Administration is strictly related with the very existence and changing functions of the government. Therefore, public administration must always be seen in the context (framework, situations, perspective) of the problems confronting the government. Such problems, inter alia, may include:

- *The conflict between sovereignty and responsibility, or the reconciliation of liberty with the duty to govern. The government must be strong enough to command obedience and ensure compliance to its rules as well as to administer effectively, whilst at the same time being controlled in order to establish responsibility to certain standards.*
- *The need to balance achievement of the common good and with the demands of vested interests.*
- *The need to balance present necessities with future desirability*
- *The need to balance traditional attitudes with scientific curiosity.*

These being some of the challenging problems of the government, its role has developed far beyond the basic and conventional activities of external defense, internal law and order, and tax collection, to an interventionist and active planning role. The government's traditional and changing (modern) roles could be contrasted as having the nature of "prohibition and permission", or "dos and don'ts" respectively.

The original role can be seen as "negative" in that it was primarily concerned with stopping other people from doing something wrong, things that were inconvenient to the society. In contrast, the modern role is more positive in that it focuses in providing for the society large scale and variety of goods and services. The consequence of the changed role of the state is the growth of large hierarchical professional bureaucracies, which is the major area of concern of public administration.

What were the fundamental causes or factors behind the changes in the functions of the government? A complex of combination of factors led to the expansion of the role of the state, and thus of public administration, namely;

(a) Industrialization: the development of industry and the associated growth of towns (urbanization) led to various socioeconomic problems such as those related to housing, health, unemployment and so on. These problems were not satisfactorily resolved through the market system, and thus political demands eventually led to state action.

(b) Social cost: as the scale of commercialization increased, it became apparent that the activities of one organization or individual could impose extra costs upon the society in general; for example environmental damage from pollution. Thus, pressure upon the state both to regulate and to take certain responsibilities upon itself became necessary.

(c) Market inadequacies: certain basic facilities that would bring successful economic growth were not being effectively provided by the private sector. Hence, the state, for example, took an interest in communications: roads, posts, etc quite on early stage.

(d) Political demands: as a result of many factors like those mentioned above, various groups organized themselves in order to present their views politically. Those groups requested an integral and active intervention of the state in their interest and affairs.

In general, public administration showed tremendous growth, both as a profession and as a field of study, alongside (together with, along with, at the side of, in conjunction with) the expansion of government functions and changing trends in its essential roles. This has been manifested through the growth of the institutional machinery and hierarchy of professional bureaucracy as well as through the growing concerns of scholars in the subject.

Another point worth mentioning at this stage is, therefore, to note how public administration has evolved both as a profession and as an academic discipline. Public administration (PA) as an academic discipline (as a branch of learning or as a field of study) is only a century old, while public administration as an activity can be referred to the earliest periods of human history, the beginning of social organizations.

What several writers have agreed upon is that public administration as an activity is as old as civilization, but as an academic discipline it counted only hundred years. In other words, public administration as an activity has existed long before systematic study of the subject began. Official academic status to the discipline didn't come until World War I, until when public administration was recognized as an independent field of study and subject textbooks were published.

This, however, doesn't mean that thinkers in earlier times had never said anything significant about public administration. Functioning of the government machinery has attracted the attention of scholars and administrators in scattered ways since the earliest periods. The point is that, such scattered thoughts didn't constitute a discipline, a systematic study of the subject.

Although we acknowledge the age-old practice of administration, governmental administration of the earlier times (ancient and medieval) differed considerably in its structure and goals from the modern era. Administration of the state in the ancient and medieval periods:

- Was authoritarian, patriarchal and elitist (or discriminatory) in character, informal and fluid structure,

- Maintenance of law and order, collection of revenue, …etc were compulsory functions whereas welfare activities were purely incidental or optionally undertaken,
- The so-called administrators were few in number, selected entirely at the discretion (upon the will) of the monarch and their official status was no better than the personal servants of the king,
- Administrative (state) functions were limited in scope,

In contrast, state administration of the modern era that gave rise in the 19th Century to replace the old patriarchal, hereditary state administrative system has, among others, the following features:

- Takes the form of public bureaucracy, and administrators were recruited on the basis of public law, became more formal,
- More formal structure performing largely within a legal framework,
- Performs multiple of functions, much beyond revenue collection, maintenance of law and order, as well as security functions.
- Tasks becoming by-and-large welfare concern and public oriented,

The present era is that of the modern administrative state. The question is that how does modern administration came to exist and operate? All mass movements since the 18th Century have contributed to the increasing volume, variety and scope of public administration. Increasing population, urbanization, public communications, and mobility diversified governmental activities. Public administration is indispensably (essentially) present in all forms of states, capitalist, socialist, developed or developing in nature.

Modern public administration has assumed more and more functions within its scope and operates a vast array of public laws and provides public services. The scope and importance of public administration increases with an increasing social complexity, specialization and differentiation.

In the present age, there is hardly any aspect of a citizen's life, which doesn't involve public administration. Public administration is increasingly loaded with additional works and responsibilities like promoting efficiency, egalitarianism (social equality), and rapid socio-economic development.

Gerald Caiden (1971) has listed the following crucial roles as assumed by public administration in contemporary societies:

(i) Preservation of the polity

(ii) Maintenance of stability and order

(iii) Institutionalization of socio-economic changes (not haphazardly)

(iv) Management of large-scale commercial services

(v) Ensuring growth and economic development

(vi) Protection of the weaker section of the society

(vii) Formation of public opinion (working towards public interest)

(viii) Influencing public policies and political trends

The fact that people need public administration to operate well with the aforementioned and more other functions enables it to become a key power constituent (element) both in developed and developing societies alike.

1.2. MEANING AND SCOPE OF PUBLIC ADMINISTRATION

Public administration is the management of governmental affairs or issues at all levels or tiers, national, regional (state), and local. It is the branch of the wider field of administration. There are slight differences between "administration" and "public administration". Different writers defined the term "administration" in various ways.

- For Marx (1964:4), "Administration is a determined action taken in pursuit of a conscious purpose. It is a systematic ordering of affairs and the calculated use of resources aimed at making those things happen which one wants to happen".
- Pfiffner (1960:3) also defined administration as "…the organization and direction of human and material resources to achieve desired ends…getting the work of government done by coordinating the efforts of the people so that they can work together to accomplish their set (predetermined) tasks".

- L. D. White (1955:1) explained, "Administration is a process common to all group effort, public or private, civil or military, large-scale or small scale..."

The important elements of administration, according to these definitions, are cooperative effort, systematic application, and purposefulness.

Public Administration on the other hand can be understood as any kind of administration in the public interest. This simply means governmental administration. Therefore, the difference between "administration" and "public administration" are essentially revealed in their scope, the former being much broader than the later.

There are also differing views regarding the scope and range of activities to be included in public administration. Some thinkers view it broadly to include all governmental activities, while others see it narrowly to consider only those activities concerned with the executive branch of the government. The definitions given by different thinkers show the emphasis they lay on different aspects of public administration. Some of the definitions include:

- "Public administration consists of all those operations with the purpose of the fulfillment or enforcement of policy", L.D White (1955).
- "Public administration is detailed and systematic application of law", Wilson.
- "Public administration is the fulfillment or enforcement of policy as declared by the competent authorities…it is law in action, it is the executive side of the government", Dimock (1937).

There have been also attempt to define public administration with respect to its internal and external dimensions:

- Internal administration is defined to mean the management of an organization or agency that involves systems, processes and methods through which needed resources of personnel, material and technology are used to perform certain prescribed functions.
- External administration on the other hand refers to activities and processes of administration, which are needed to establish and to activate relationships with agencies and groups outside the administrative control of an organization to achieve its objectives.

A system of public administration is the composite of all the laws, regulations, practices, relationships, codes, and customs that prevail at any time in any jurisdiction for the fulfillment or execution of public policy. Functionally speaking also, the art of administration is the direction, coordination, and control of many persons and other resources to achieve some purpose or objective. It is a dynamic art, taking the human and physical resources to the achievement of some required goals.

Generally, public administration is the non-political bureaucratic machinery of the government, but operating within the political context, for implementing its laws and policies in action such as the collection of revenues, maintenance of law and order, maintaining an army, providing/running social and economic services. Public administration is a means by which the policy decisions made by the political decision-makers are carried out.

The following is an all-encompassing definition that consists a list of functions of public administration.

"Public administration is decision-making, planning the work to be done, formulating objectives and goals, working with the legislative and citizen organizations to gain public support for government programs, establishing and revisiting organizations, directing and supervising employees, providing leadership, providing and receiving communications, determining work methods and procedures, appraising performance, exercising controls and other functions performed by government executives and supervisors. It is the action part of the government, the means by which the purposes and goals of government are realized" (Michael P. Barber, 1983:1; Rumki Basu, 1994:)

This comprehensive definition and all points raised under this sub-topic could enable us to understand not only the meaning of public administration, but also its major concerns, aspects, purposes and scope. It is to mean that public administration is concerned with action in particular or concrete situation, but in accordance with long-range objectives.

The immediate objective of the art of public administration is the most efficient and effective utilization of resources at the disposal of officials and employees. The aspects of public administration are innumerable and its scope is generally wide. The scope of public administration

has been broadening from time to time with the growing expectations of people. In other words, what public administration is supposed to do varies with people's expectations of what they should get from the government.

As White said (1955:3), two centuries ago people expected little from government but oppression. A century ago they expected primarily to be let alone, let them free from intervening in their affairs. Now, they expect a wide range of services and protection from the government. Accordingly, government becomes the common agency to explore and preserve mutual interests, and to adjust competing interests through its machinery; i.e. Public administration. .

Public administration is, therefore, the means by which these policy adjustments are made effective. In broad context, the ends of public administration are the ultimate objectives of the state itself-the attainment of the good life.

1.3 THE ART AND SCIENCE EXPOSITIONS OF PUBLIC ADMINISTRATION

Public Administration holds two meanings; firstly it stands for the activity of administering governmental affairs, secondly it is also an academic discipline. The first is definitely an art. What needs analytical explanation is the science aspect of public administration; i.e. is it, as a subject of study of governmental affairs, a science?

There have been many people writing or arguing public administration as possessing an element of science since the 1880s. Woodrow Wilson, who was known as the pioneer of public administration as a subject of study, called it the "science of public administration" as early as 1887.

Willoughby (1927), who was one of the early writers of the field, also declared that the subject matter possessed uniformities analogous to the laws of physical sciences. He wrote that there are certain fundamental principles of general application in public administration analogous to those characterizing any science.

Collections of papers were also presented in 1937 on the subject under the title of "Papers on the Science of Administration". Writers of those papers reflected their positions in that for any

discipline to claim the title and status of science, there should exist a body of principles embodied in it. The essential characteristics of science are absence of normative (or ethical) values, predictability of behavior, and universal application.

Hence, public administration can obviously be rated as a science if it proves that it has developed a set of principles and acquires all the above three features. The question again is that does public administration have a set of such principles and features? Many writers agree in that counter arguments in public administration to deserve a science position are feeble (weak, meager) and insufficient. Rather, the last hundred years have seen remarkable development of the science of public administration. Evidences of which are:

- The transformation of the laissez-faire (liberal, nonjudgmental) state into the modern welfare state has enlarged its sphere, added to the functions of government and aroused interest in the problems of efficiency in government, which remained to be an art for long proceeding by way of trial and error.
- The works of industrial engineers, like Taylor, pioneered the scientific methods with emphasis on experimentation, observation, collection of data, classification and analysis, and the formulation of laws and principles.
- The development of other administration components such as organizing, planning, personnel administration, and budgetary control as a result of the progress of the scientific method.
- The veritable (genuine) contributions of writers from different disciplines (backgrounds) to administration and management such as Fayol, Peter Drucker, and others show that it is derived from a body of cross-cultural studies.

All these arguments are aimed to strengthen discussions in understanding and accepting public administration to be called as science. In this regard, we find commentators arguing against the clarity of public administration to be entitled the status of science. Rumki Basu (1994:5), for example, said that all the three features are yet imperfectly present in public administration.

In other words, the debate is that public administration cannot be called a science until the following three conditions are fulfilled.

- The place of normative values in public administration should be clearly identified and made clear,
- Greater understanding should be gained of human nature in the field of public administration.
- The principles of administration could be derived from a body of cross-cultural studies, thereby making them relatively free from cultural bias.

Generally, as Leonard White (1955:8) said, whether or not administration is, or ever can be, reduced to a validated universal laws remains a topic of lively argument.

On the one hand it is stated that every administrative situation is unique, both in its human agents and in its external influences, and the factors that enter into any administrative act are so numerous and complex. Thus, it is impossible either to define all of them or to assign their relative importance as a science. In the stream of administration, only unique events could occur, not repetitive units whose dimensions and relations are subject either to measurement or to controlled experimentation.

On the other hand, studies of individuals' behavior in their work environment asserted that uniformities of individual and group conduct do appear. These uniformities based on human nature may be described in the form of propositions that could be tested by observation and experiment.

1.4 PUBLIC ADMINISTRATION vs. PRIVATE ADMINISTRATION

Generally speaking, although the administration of public and private affairs differ at many points and vary in form and purposes, there are underling similarities in their processes. Among a number of distinguishing factors between public administration and private business administration, the following could be considered as the major ones.

(a) The Political environment: public administration is concerned with the implementation of decisions made within the political system. In a democratic system, the policies of the government duly approved by the legislature should represent the political will of the people, or at least the resultant of the activities of the various competing political interests in the society. In consequence:

(i) The government creates individual rights and imposes constraints on individual and group behavior (ii) The administrator is in frequent contact with his clients and his major concern is with equity and impartiality (iii) Administrative procedures are built around strict compliance with the law. On the other hand, private industry is essentially guided by the principles of profit maximization and doesn't act as an arbiter between conflicting social interests.

(b) Social costs: public administration decision-making varies from that of private business in that where private business is primarily concerned with questions of financial cost and benefit, public administration is intimately concerned with the concepts of social costs and benefits in addition to those of a mere financial nature.

(c) Public interest: Public administration is often evaluated by the ability to operate in a manner so as to maximize and integrate the public interest, whereas private business is evaluated on the basis of profit maximization. In other words, although efficiency is axiom number one in the value scale of both public and private administration, in private business it has to do with the minimization of cost and maximization of profits, while in the context of public administrative system the aims are more complex to include other concepts like public service, public accountability, and social responsibility. Therefore, the differing aims require efficiency to be redefined in connection to public administration. In practice it is much more difficult quantify in financial terms the substantial investment of resources undertaken by the public sector.

(d) Instability: As a result of operating in a political environment, public administrators are faced with a much greater turnover of political leadership and consequent changes in policy than is encountered in private business.

(e) Allocation of responsibilities: the method of allocation of functions in the public sector is often based more on political considerations than pure test of efficiency, as it would be done in the private sector.

(f) Functions: Public administration is faced with a much wider variety of functions than those operating in private business, and also deals with matters, which are the exclusive jurisdictions of central administration such as defense, and law and order.

(g) Decision criteria: Decision-making in public administration is unlike that of a private organization whose customers are free to take or leave the organization's products or services. Public administration decision-making is often not based on commercial forces. Rather, the public, who are in a sense the "customers" of its services, indicate their interests and views via their political representatives. All decisions of public administration take place against the background of public criticism.

Besides to the above-mentioned differences, public and private administrations could also vary in many respects. For example, as the nature of the basic administrative problems in public and private sectors varies substantially, decision-making inevitably varies accordingly. Whilst the business (private) sector is strongly oriented to market innovation, public administration can be said to be concerned more with market compression.

The extent and magnitude of the vise versa influences of the two administrative systems are quite different. Private administration is highly affected by the decisions, laws, and procedures of public administration. From the outset, private sector is supposed to fulfill certain requirements imposed by the government (public sector) before it starts to operate, and to respect and adhere to public laws. On the contrary, public administration is less likely to be affected by private administration in the same manner.

1.5 THE ENVIRONMENT OF PUBLIC ADMINISTRATION

Environment in the context of this topic refers to actors and forces that affect or determine public administration. The environment under which public administration operates, that would have major implications on its success or failure as well as in shaping its basic features, can generally be classified as internal and external.

Internal environment refers to those conditions, which are in most cases within the control of the administration yet having their own challenges and/or advantages. This may include the organization itself and groups and individuals within the organization, the material, financial, and other resources available for the organization and so on.

The organizational structure and the pattern of authority in the formal hierarchy, the purpose and tradition of the organization, historical legacies or traditional practices of the administrative systems, the internal network and working procedures, etc have influences on the administrative efficiency and effectiveness of a given organization or country. The behavior and structure of formal and informal groups like peer groups, labor unions, and advisory council have also strong influence on the style of administration. The type and sufficiency of materials, skill, knowledge, and finance are considered as environmental factors internal to the organization that highly determine the administrative style and the accompanying success or failure of administration.

External environment on the other hand is that, which is outside the control of the administration but having major impact in shaping the features and determining the success or failures of the overall objectives that public administration wants to achieve. The external environment can be generalized as political, economic/ecological, social, and technological (PEST) each of which reflected in many ways. For example we can consider:

- Politically, the type of government and the resultant constitution, policies, laws and directives; national and international political trends and changes; bilateral and multilateral agreements and policies;
- Economically, national economic trends and level of growth and development; the global market and economic situation as well as the extent of mutual economic assistance and cooperation;
- Socially, population/demographic trends and changes; societal beliefs, values, attitudes, cultures, and lifestyles; public expectations and demands;
- Technologically, ability or access to use the type of technology being used elsewhere in the world, such as in communication and production;

All these have their own effects on the administrative system of a given country or organization. Thus, public administration has always to keep on with close scrutiny and be aware of what is going on or what exists in both the internal and external environment. As the internal and external

environments do have influences on the features, structures and goals of public administration, there are apparent differences in developed and developing countries in these regards.

1.5.1 PUBLIC ADMINISTRATION IN DEVELOPED (INDUSTRIAL) COUNTRIES

In the context of this note, the term "developed" or "industrial" societies refer to those countries of Western Europe and USA where industrialization has brought about major changes in economic structure and growth accompanied by political and administrative modernization.

Nevertheless, it should be noted that administrative modernization is not a typical or exclusive feature of developed countries. Because some developed countries might not have modern administrative system, while we could find a developing country that employs modern administration.

Despite individual differences, the following are some of the important features of administrative systems of developed countries as a group that differentiate them from the developing ones:

1. Government organization is highly distinguished and functionally specific and the roles are based on achievement criteria than on attribute or assumed power. The bureaucracy is marked by a high degree of specialization. Recruitment of personnel is generally based on merits.

2. Laws and political decisions are largely rational. Public policy making is effectively made by professional public administrators.

3. Administration has become to take all-encompassing functions that affect major spheres of the lives of citizens.

4. There is high correlation (association) between political power and legitimacy (legality) and there is an extensive popular interest and involvement in public affairs.

5. Incumbents of political or governmental offices are generally considered as lawful or reasonable holders of those positions, and transfer of power and positions tend to occur in accordance with prescribed rules and procedures.

In summary, we can generally say that the nature of public administration of these industrialized countries can be differentiated from those of the developing ones in structure and function. Structurally and functionally they tend to resemble to the Weberian model of bureaucracy.

The fact that bureaucracy in these countries exhibits (demonstrate) high degree of professionalism in turn is the result of various factors like educational background, career orientation and standards of competence applied in recruitment to the public service. Due to a relative stability of political systems in these societies, bureaucracy is fully developed with fairly clear roles and practical acceptance as an autonomous institution. In terms of function, bureaucracy is primarily involved in rule application, but performing secondary functions of rule making.

Public administration in these countries is more responsive and responsible to the public; provides efficient and effective public services; performs both routine and welfare tasks. For such and many other reasons, citizens of the industrial societies often view public administration as an impartial and expert body of professionals intellectually equipped to cope with their administrative needs.

In theory, the tasks of public administration in industrial societies do not differ from the developing ones where the primary task of public administration is to implement public laws and policies. However, empirical studies proved that features of an administrative system highly relates to the environment they exist. Therefore, the roles and challenges of public administration in developed countries have to be viewed in their particular socio-economic and cultural context.

For example, public administration in developed societies is extremely affected by the development of modern science and technology, and communication networks. Relative autonomy of institutions in developed countries has also its own (special) administrative problems, reflected in terms of lack of coherence among numerous service and regulatory organizations or agencies.

Generally, according to Rumki Basu (1994:43), developed countries (especially in Europe) are typical examples of what is known as the "administrative state"; and the bureaucracy in these states mainly perform three types of functions:

1. Regulatory and preventive functions, enforcing laws, collecting revenue, and protecting the state against external aggression.

2. Service functions, providing services like education, health, culture and recreation, social insurance, unemployment relief, housing, transportation, and communication.

3. Entrepreneurial (commercial) functions, operating industrial enterprises, loaning funds and so forth in order to maintain or increase economic growth and development of their respective societies.

1.5.2 PUBLIC ADMINISTRATION IN DEVELOPING COUNTRIES

Many of the developing countries have got their independence from colonialists immediately after the Second World War. Despite a wide range of differences in terms of the location, resources, history, culture, political systems, and development patterns of these countries, they as a group can be called (characterized) as "developing".

Most of these new self-governing states have been in the process of transitions, facing serious problems of social turmoil and disturbances, economic depression (downturn) and administrative chaos (confusions). Yet, a great degree of reliance has been made on the staggering state and bureaucracy for achieving developmental goals and solving all sorts of social dilemmas and problems.

These realities have been seriously challenging public administration of developing countries. The following points are indicative of general administrative patterns currently found in developing (third world) countries.

1. The basic pattern of public administration is imitative (copied) rather than indigenous (original). All developing (third world) counties, including those that were not colonized have deliberately tried to introduce some version or style of the bureaucratic model of administration from developed countries, most notably from colonial masters. Hence, it would be predictable for ex-colonies to resemble in terms of their administrative pattern.

2. The bureaucracies are deficient (lacking) in the requisite skills necessary for development programs. In spite of abundance (plenty) of labor (employable manpower) in relation to other resources in most of the developing countries, trained administrators with management capacity, developmental skills, and technical proficiency are extremely in shortfall.

3. Emphasis to non-productive orientations is another tendency (trend) of the bureaucracies of these countries. Much bureaucratic activity is channeled towards the realization of non-developmental goals. According to Riggs, bureaucrats prefer to personal expediency or convenience as against principled public interest. This in turn may include practices like:

- Non-merit considerations influence greatly assignments, promotions, dismissals, and other personnel practices,
- Widespread corruptions,
- Using the public service as a substitute for a social security program, or to relieve the problem of unemployment. Thus, there is always a surplus of employees in the public services

4. Extensive (huge) discrepancy or disagreement between form and reality, which Riggs has called it "formalism", is another distinguishing characteristic of administrative trends of developing countries. In other words, bureaucrats pretend as if they make things they ought to be done while the reality tells different from what they say. They try to fill partially the gap between expectation and reality by:

- Enacting laws that cannot be enforced,
- Adopting personnel regulations that are peacefully by-passed,
- Announcing programs for delegation of administrative authority while keeping tight control over decision-making at the center,
- Reporting as if production targets are met, which in fact remain only partially fulfilled,

5. The bureaucracy in developing countries is likely to have high degree of operational autonomy as a result of several operating forces in newly independent states. These operating forces could be factions created by colonialists within a given country, national and international organizations etc. Political role of the bureaucracy in these countries vary significantly.

Regardless of the aforementioned limitations of the current administrative patterns of developing countries, the immensity of the developmental problems and the urgency to look for solutions have thrust upon (or forced) the state to bear or shoulder the principal responsibility of achieving developmental goals.

In other words, despite sever handicaps like shortage of capital, skilled manpower, and lack of developmental infrastructure that they inherited from colonialists, the Third World governments are confronted with rising expectations of the people they have to administer. Besides, Third World governments have been expected to deal with curtailing social dislocations such as mass rural-urban migration, sever unemployment, riots (social unrest) and community clashes.

With such challenges and confrontations, public administration still becomes the main agency of socio-economic changes; changes not only in terms of formulating and implementing long-term plans, but also in the context of establishing modern institutions or organizations equipped with the necessary skills.

1.6. **EVOLUTION OF PUBLIC ADMINISTRATION: ADMINISTRATIVE THOUGHTS AND APPROACHES**

THE STUDY OF PUBLIC ADMINISTRATION

As White (1955:13) puts it, no administrative system can be well understood without some knowledge of what it has been, and how it came to be what it is. Once we said that the age of public administration as an activity is traceable to human civilization itself while as an academic discipline is relatively younger, we then need to see its phylogeny, how it evolved and passed through several stages, how it became important to study public administration as an independent academic discipline. Although the art of administration has been practiced for centuries, it has not been widely written about until recent years. In other words, in spite of the fact that the system of administration continued to expand and adapt itself to changing conditions, professional attention to the field was almost entirely lacking until the end of the 19th century.

Professional publication on public administration dates from the famous essay of Woodrow Wilson (1887) in title "the study of public administration". Consequently, the study of public administration became systematic after 1900. The study of public administration began in the United States and got acceptance as a complete discipline. Hence, the evolution of the subject has been largely associated or seen in the context of the US.

There have been many ways adopted to study public administration. The first systematic approach notably used in America was through law and was devoted to the legal organization of public authorities, their legal forms of action, and the limits of their power. Subsequently came systematic writing primarily concerned with the nature of administrative institutions, an approach related to the scientific management movement.

More recently, attention has been given to historical and biographical materials that reveal the evolution of administrative systems and trends in thinking about administration. Sociologists have also explored the nature of public administration as one among many significant social structures. All of these approaches were relevant to establish wisdom and understanding about the subject. Hence, the study of public administration has advanced to an extraordinary degree particularly since 1920.

Modern public administration was first taught as part of a training course of public officials. The subject was largely compiled and taught by generalists, or known as "cameralists", in a descriptive manner. Initially, civil service recruits had to study law, and gradually public service training schools started offering courses on administrative law in America and all over Europe. The study of public administration has now become a staple curriculum in many colleges and universities.

However, in English-speaking countries emphasis was on generalist administrators and circumstances were unfavorable for the emergence of a discipline of public administration at the initial stage. In these countries, administration was considered more of an experimental art rather than a subject to be taught theoretically. Later on, with the expansion of governmental functions, training of practitioners in the art of public administration was deemed paramount.

The expansion of governmental functions gave raise for public administration as an activity to become highly diversified, complex and specialized. Therefore, there was a growing need for

better management of public affairs through scientific investigations, for specialized training of public servants in the USA.

Many factors have contributed towards the growth of the study of public administration in the USA and gradually all over the world as a separate discipline. To mention the major ones;

(i) The development of modern science and technology made an impact on the lives of the people and the functioning of the government. This is to mean that rapid technological development created large-scale social dislocations that made state intervention imperative and desirable. Hence, scholars came to pay increasing time and attention to the problems.

(ii) The scientific management movement founded by F.W. Taylor, which began in the USA towards the end of the 19th century, gave great impetus to the study of public administration throughout the world. The message of his thesis was that all work processes are separable into units; the efficiency of each unit can be tested and improved; the techniques can be extended upwards in every organization, making efficient and rational.

(iii) The gradual evolution of the concept of welfare state, which decisively shifted the philosophy of state functions everywhere from the traditional laissez-faire to that of social welfare. The welfare movement has tremendously enlarged the scope of governmental functions and administration since public administration has become the chief instrument of social welfare.

(iv) The movement of government and administrative reform which took place in the early years of the 19th century in USA to look for remedies of the then problems envisaged or encountering the civil service. The impact of the reform movement in the US government permeated American Universities to popularize the study of public administration.

1.7 ADMINISTRATIVE THOUGHTS (ORGANIZATIONAL THEORIES)

Organization theory has developed rapidly since 1920s, which have much relevance to public administration. The primary purpose of organization theory as an academic study is to understand and explain:

(a) Organizational problems as they relate to the structure of public departments, their interrelationships, coordination, and internal functioning.

(b) How people in organizations behave and how organizations function.

The relevance is particularly apparent to those public sector organizations that are concerned with the provision of goods and services. However, two important points should be noted in considering these theories:

(1) Organization theory doesn't exist as a coherent and universally accepted set of concepts.

(2) Organization theory is not traditionally concerned with public administration. It is thus necessary when applying such theory for public administration to bear in mind that whilst organizational features may be similar, public administration operates in a much different institutional setting.

Three broad schools of thoughts to organization or administrative theory may be discerned namely, "classical" or equally known as "scientific administration", "human relations" or "behavioral", and "systems" theories. Each of these broad thoughts, which will be discussed as follows also consist different sub-theories.

1. THE CLASSICAL THEORY

The classical theory of organization is also known as the structural theory or the scientific administration theory and its foremost proponents were Frederick W. Taylor, Henry Fayol, Luther Gulick, James Mooney, to mention a few. The most important concern of the classical theory is the formation of certain universal principles of organization. It deals with formal organizational structure, the study of activities that have to be undertaken to achieve objectives, and the grouping of such activities to achieve efficient specialization and coordination.

In some books, we may find scientific management (administration) theory as an independent school of thought or theory treated separately from the classical theory. However, in the most acceptable presentation, scientific management theory could be fairly seen under the general category of the classical approach or school. The study of scientific administration began with the

advent of scientific management founded by Frederick W. Taylor, who lived from 1856-1915 and has been called the “father of scientific management”.

The following are brief statements of the main features of the classical school or approach to organization.

Determining objectives: the basic purpose of determining organizational objectives is seen as being to:

- Establish management priorities
- Indicate key departments and activities
- Provide consistency of human and materials organization with the objectives

Specialization and groupings: the classical theory treats specialization as the basis of efficiency, and consequently places emphasis on the most effective management groupings of specialist functions.

Grouping: the approach identifies four relevant factors in grouping:

- Span of control: the classicists consider that one manager is only capable of controlling a limited number of subordinates.
- Economies of scale: grouping should be made to produce or achieve economies of scale both from the technical and resources aspects, and from the management aspects.
- Coordination: grouping may be justified and should be operated to achieve coordination or integration of individual effort
- Unity: key activities that have long-term nature may be grouped under higher management for direct supervision, to place highly interdependent units under a unified head.

Delegation: the approach believes that delegation defined as "the institutionalized right to make decisions or give orders on behalf of an organization" should be to the point closest to that of operation or job to be done and identifies factors relevant to delegation:

- It makes possible the achievement of economies of scale and specialization
- It diffuses the authority to make decisions to lower levels of the organization thus enhancing initiatives and job satisfaction as well as identification with the goals of the organization

Divisionalisation and decentralization: divisionalisation refers to dividing the organization into units based on such factors as product type, geographical operation, etc while decentralization is the systematic delegation of authority to all organizational units.

Specifying responsibility: responsibility is a corollary of authority, the natural consequence of exercising power. The classical approach thus emphasized the need for clear specification of responsibility for the following reasons:

- To avoid vague assignments that would result in confusion and jurisdictional conflict
- To make accountable those who are assigned with certain jobs and given responsibility
- To limit interference by supervisors

Line and staff relations: the classical theory emphasized the need for the establishment of line and staff relationships, as well as relationships between superiors and subordinates for the following reasons:

- It establishes official lines of communication throughout the organization
- It establishes to who each subordinate is accountable
- It establishes responsibility for coordination of the functions of subordinates.

Line functions are conceived of as vertical relationships and staff services as horizontal supporting activities, the former being direct contributors and the later indirect contributors to the fulfillment of the overall organizational objectives.

All these being the major assumptions of the school towards organization, it tries to apply the scientific method to obtain desired results in the workplace. Briefly, the scientific method uses the following steps to achieve an objective:

1. Identify the proposition (objective)
2. Acquire information about the proposition through observation
3. Formulate a hypothesis about the proposition
4. Investigate the proposition thoroughly by controlled experiments
5. Set priorities and clarify the data obtained

6. State tentative answer to the proposition

7. Adjust and implement the answer to the proposition

The school, most notably Frederick W. Taylor, also believed that management, not labor, was the causes of and potential solution to problems in industry. Taylor called for a mental revolution to combine the interest of labor and management into a mutually rewarding whole. He emphasized the importance of mutual understanding and building better management and labor relations.

Henry Fayol is a French contemporary of Taylor who came up with a concept or theory under the general category of the classical school or approach known as "Administrative Management theory". He made valuable contributions to administrative thoughts and development. Fayol focused on the enterprise as a whole, not as a single segment of it, and he emphasized rationalism and logical consistency.

Fayol's Administrative Management theory was often considered as the first complete theory of management, the focus of which was on the job of the chief executive and on the principle of unity of command. He divided all activities in an organization under six groups; technical, commercial, financial, security, accounting and administrative.

He further propounded (advocated) the following fourteen principles of organization; namely, (1) Division of work, (2) Authority, (3) Discipline, (4) Unity of command, (5) Unity of direction, (6) Subordination of individual interest to general interest, (7) Remuneration of personnel, (8) Centralization, (9) Scalar chain, (10) order, (11) Equity, (12) Stability of tenure of personnel, (13) Initiative, and (14) Esprit de corps. The last one, Esprit de corps, is a French term that denotes feelings of pride, care and support for each other etc, that are shared by members of a group.

Mooney and Reiley, in their famous work known as "the principles of organization", have also argued that all organization structures are based on a system of superior-subordinate relationships arranged in a hierarchical order termed as "scalar principle". According to this principle, in every organization there is a grading of duties in varying degrees of authority and corresponding responsibility. The "scalar principle" has its own principle, process and effect termed as leadership, delegation and functional definition.

Luther Gulick who has been considered as another notable thinker of the classical school, defined major managerial techniques by an acronym known as "BOSDCORB", each letter standing for planning, organizing, staffing, directing, coordinating, reporting, and budgeting.

In general, the classical or scientific management school has contributed tremendous administrative knowledge to us. Its essence is the development of an inquiring mind, searching for more knowledge, more facts, and more relationships. Historically, it is associated with economic considerations such as cost, time use, and efficiency supported by research methods of other disciplines.

Advocates of this school firmly believe that better management is possible by using scientific method, and best management is never permanently attained because continuous new knowledge paves the way for constant improvement. Moreover, the school tried to replace rule-of-thumb methods by scientific methods. It sought to analyze existing practices; study works for standardization and improvement. On the human side, the school suggested the highest degree of individual development and reward through fatigue reduction, scientific selection to match individual's abilities to their jobs, and wage incentives.

In general, the major theme of scientific management was that work could be studied scientifically, work processes are separable into units, the efficiency of each work unit could be tested and improved through careful scientific analysis, and the techniques could be applied universally.

There are, however, certain criticisms made by different commentators as the classical theory has its own defects. These include:

- Underlying assumptions: the basic classical assumptions have been challenged in that they oversimplify, and fail to take account of the development of small informal groups and sub-groups, which may be at odds with the overall organizational goals.

- Problem definition: the classical approach presumes both the importance and the ease of defining objectives and fails to recognize that in public administration the definition of such objectives is interwoven with broad political process. In other words, there are problems in

defining and quantifying objectives in public administration particularly where social criteria are involved.

• Means, not ends: the approach concentrates on the means whereby objectives may be achieved, but gives little or no guide to the relevant elements of establishing ends. Consequently, the approach is unrelated to the social and political problems faced by public administration.

2. THE HUMAN RELATIONS (BEHAVIORAL) THEORY

This theory involves the study of motives and behavior and the development of criteria to help design an organization that stimulates members to cooperate in achieving organizational aims. The behavioral approach generally belongs to the neo-classical school of thought, focusing on the behavioral, humanistic or human relation aspects of administration for which Elton Mayo is known as the major contributor of the thought.

It is primarily concerned with the analysis of the behavior of groups and individuals within the organizational context. Much of their work is experimentally based and concludes that social classification must be taken into account when explaining behavior.

According to behavioral thinking, it is important that organizations should devise objectives taking into account the needs of their staff as well as those of the organization as a whole. For example, positive measures to stimulate cooperation and to avoid conflict should be made. In practice, the neo-classical (behavioral) approach is concerned with the following:

(a) Needs and wants: the approach involves the study of an individual's wants and needs, stimulating factors that help to satisfy needs and achieve organizational goals. Needs have to be classified as physical, safety, social, egoistic, and self-actualization. Thus, an organization should offer incentives to satisfy such needs as well as effectively subjugate (suppress) personal values of individuals to those of the organization.

Incentives may be defined as "the appeals an organization makes to the personal values of employees to induce them to accept organizational values". Incentives can generally be classified as:

(i) Material inducement,

(ii) Opportunities for distinction, honor and recognition,

(iii) Good physical working conditions,

(iv) Personal confidence and satisfaction in social relationships within the organization,

(v) Conformity with habitual practices, and

(vi) Feeling of participation and belongingness,

(b) Work groups: the approach recognizes the influence of a group on the individual's attitude and behavior. It points out that an individual doesn't operate in isolation, and in particular:

- He/she tends to conform to group pressure.
- His/her attitudes and morale are influenced by group associations.
- Problem solving and leadership are often group functions.

(c) Supervisory behavior: this is treated as a vital factor in influencing work group behavior, as the supervisor represents the link between the group and the formal organization.

Writers like Barber (1983:37-41), underscore the importance of behavioral studies in organization and expose the failures of public administration to consider behavior as an influential factor. According to this author, public administration studies tend to concentrate on the machinery of administration, to the exclusion of those factors influencing behavior in organizations and consequently that of organizational effectiveness. However, any public administration system depends for its effectiveness on both organizational factors and behavior within the structure of that organization.

Generally, the approach is concerned with inter-group behavior and study of relations between groups rather than between individuals and emphasizes the power of groups in decision-making. However, group participation in this regard is criticized for the following reasons:

(a) It increases group domination of its members

(b) Responsibilities become blurred

(c) Group and expert judgments may conflict

(d) The cost of reorienting supervisory functions may exceed the benefits of group participation

(e) The process is not automatically effective and depends greatly on supervisory and management attitudes

The behavioral (neo-classical) criticism of the classical school shows that scientific administration is ignores the impact of staff satisfaction and psychology on the performance of the organization as a whole. The classical concentration on specialization, span of control, etc, is rejected as being inconsistent with needs and wants.

In conclusion, the classical (scientific administration) and neo-classical (human relations or behavioral) approaches vary in the following important aspects:

(a) Whereas the human relations school is concerned with the organization evolving effectively from inter-personal behavior, the classical school predetermines the organization within which individuals are required to function

(b) The human relations approach results in a comparatively flat organizational structure, whereas the classical approach results in a pyramidal structure

(c) Authority is regarded by the human relations approach as a social factor, but as organizational factor by the classical approach

(d) Interdependence is a key factor in the human relations approach, which considers that the classical definition of responsibility creates competition.

3. THE SYSTEMS THEORY

In some literatures, we may find systems theory as being one of the theories that are within the category of the "Modernization School of Thought" along the Contingency Theory and Management Process Theory, while in some others systems theory is recognized as an independent school of thought. This approach concentrates on decisions that need to be made to achieve objectives, and the organization is thus designed to facilitate decision-making.

The systems approach treats organization as an example of a "system", i.e. a set of interdependent parts forming a whole with the objective of fulfilling some definable function. An organization is essentially regarded as a decision-making system and treated as being built up from the analysis of information requirements and communications networks. It, thus, treats the process of decision-making as basic to the determination of objectives and policies. The methodology of the systems approach consists of the following steps:

(a) Specifying objectives

(b) Establishing subsystems (main decision areas)

(c) Analyzing these decision areas and their information needs

(d) Designing the communication channels to facilitate information flow within the organization

(e) Grouping decision areas to minimize communication problems. In practice, the approach illustrates the importance of organization of information, the advantages of projects rather than functional divisions and the need to concentrate centrally the information network

Within the systems theory, the contemporary approach to the theory of organization is to abandon the idea of treating organizations as the mere passive instruments operating in response to external pressures. Rather, organizations are regarded as semiautonomous systems, which develop their own internal goals; having their own performance and conservation (survival) objectives.

All schools of thoughts on organization have developed mainly to explain aspects of performance and behavior that can be observed. From the point of view of the practicing administrators, each

school is likely to offer useful perspectives and be helpful in revealing past weaknesses and enabling the establishment of better structure.

4. THE BUREAUCRACY THEORY

The term "bureaucracy" is a combination of two words; i.e. "bureau" and "cracy". "Bureau" means an office or organization established to perform certain activities, or it may mean a government department, while "cracy" denotes a form of governmental rule. In this consideration, bureaucracy simply means a form of rule or activity exercised/practiced by governmental offices.

In its literal meaning, "bureaucracy is a system of official rules and ways of doing things that a government or an organization has, which are complex in nature; or a system of government in which there are a large number of state officials who are not elected".

Bureaucracy was first used in France as "bureaucratic" in the eighteenth century to refer to "the government in operation". Classical writings on bureaucracy can be traced to several sources, notable contributors of which were Karl Marx, Max Weber, and Robert Michels.

Prior to the tremendous contribution of Max Weber, Karl Marx attempted to explain bureaucracy in a scientific manner. He tried to conceptualize the role of bureaucracy in his works on state organizations, while developing a critique of the political economy of capitalism that existed in Europe in the 19th century.

Different from Weber's understanding of bureaucracy as an ideal type that can exist only in abstraction, Marx examined it as a set of relationships that arise in a specific socioeconomic context. Marx said, "Bureaucracy considers itself the ultimate finite purpose of the state".

Marx also mentioned about the spirit (typical feature) of bureaucracy. According to him, the universal spirit of bureaucracy is the secretiveness, the mystery (strangeness) sustained within it by hierarchy and maintained as a closed corporation. He further believed that authority is the principle (source) of knowledge, and the desiccation (preservation) of authority is its sentiment by maintaining obedience to fixed normal activity, fixed principles and loyalty.

For individual bureaucrats, the state's purpose becomes their private purpose of hunting for higher position and making a career for themselves. According to Marx, the bureaucrat cannot be a rational actor in terms of competence. Its hierarchy of structure means a hierarchy of knowledge, thus comprehensive knowledge is impossible in a situation where knowledge is deliberately split up into practical reality and bureaucratic reality. Generally, Marx as quoted in Rumki Basu (1994:79), described bureaucracy as follows:

The bureaucracy is a circle from which no one can escape. Its hierarchy is a hierarchy of knowledge. The top entrusts the understanding of detail to the lower levels, whilst lower levels credit the top with understanding of the general and so all are mutually deceived".

From his explanations, we can understand that he has overemphasized the malicious (evil) side of bureaucracy, and his view is in clear contrast to the conception of his countryman, to the Weberian conception of bureaucracy as "rationalization of organization". Nevertheless, whatever arguments he has made and explanations he provided about bureaucracy, public administration as a discipline didn't care much for his views since it was not his purpose to develop a theory of public administration. He simply wrote a critique on bureaucracy alongside his famous critique of the political economy of capitalism.

Robert Michels, who is equally known in the theory of bureaucracy, on the other hand concentrated his analysis on the internal politics of large organizations and to the phenomenon of elite domination in organizations. His observation was based on the internal structure of the German Socialist Party, which was supposed to be organized along democratic principles yet the reality was quite different, and he discovered that the system was oligarchic. He concluded that all big organizations tended (had a propensity) to develop a bureaucratic structure that ruled out the possibility of internal democracy.

The various meanings, which have been given to the term, include the following:

(a) Institutional meaning: the term "bureaucracy" may refer to government by appointed or recruited officials as opposed to government by elected representatives. Alternatively, it may be used to indicate that, although representative government exists, the dominant role is held by officials. These definitions, however, tend to be inadequate in that they fail to distinguish those

common situations where government consists of a combination of elected and non-elected members and officials.

(b) Activity of officials: in contrast, a definition may be attempted from the aspect of what officials do or how they behave. In this regard the following interpretations exist;

(i) Derogatory: the synonymous use of "bureaucracy" and "red tape", resulting from the real and supposed difficulties of dealing with the official environment. This is however an extremely offensive yet subjective meaning of bureaucracy.

(ii) Regulated system: a regulated administrative system operating through complex interrelated organs,

(iii) Methodological: a study of methods based on either the first (i) or the second (ii) points above,

The definition based on the activity of officials, as a regulated system (item b-ii above), is used in most instances due to its objective and analytical nature. The other definitions are associated with subjective or disparaging connotations. Bureaucracy is thus conceived as a form of organization. Etzioni, as quoted in Michael P. Barber (1983:87), considered that organizations are characterized by the following:

- Division of labor, power, and communication responsibility deliberately planned to achieve certain goals,

- The presence of power centers, which control the concentrated effort of the organization and continuously review its performance and re-pattern its structure to increase efficiency,

- The classification of personnel,

Etzioni's view is based on Weber's classical view of bureaucracy, which will be discussed subsequently.

5. THE WEBERIAN MODEL OF BUREAUCRACY

Bureaucracy as an organizational model was first developed systematically by Max Weber, a distinguished German sociologist in the 19Th century. According to him, every organization can be defined as "a structure of activities (means) directed towards the achievement of certain objectives (ends)". Every organization develops a system of specialization (division of tasks) and a set of systematic rules and procedures to maximize efficiency.

Weber stressed that the bureaucratic form of organization is capable of attaining the highest degree of efficiency since the means used to achieve goals are rationally and objectively chosen towards the desired ends. In this sense, it is the most rational means of carrying out functions effectively in any organization, superior to every other form in precision, stability, discipline, and reliability. Weber tried to identified the various factors and conditions that have contributed to the growth of bureaucracy in modern times. Namely:

(a) The development of modern large-scale organizations and corporations has led to the development and considerable spread of bureaucracy. Whatever may be the evils of bureaucracy, it is indispensable for the running of complex administrative structures.

(b) The role of expanding technical knowledge, and the development of modern technology is another important factor responsible for the superiority of bureaucratic organizations. A considerable degree of bureaucratic specialization is required to attain high level of efficiency regardless of the economic system to be either capitalistic or socialistic.

(c) The capitalist system itself has been also considered as the main contributive factor. Weber repeatedly stressed the fact that the capitalist system has undeniably played a vital role in the development of modern bureaucracy. The proper functioning of the capitalist system necessitates a stable state and a well-organized administration, which is the bureaucracy.

Max Weber principally developed the organizational definition of bureaucracy and conceived of the concept in two aspects, namely:

(a) The social mechanism that maximizes efficiency in administration

(b) A form of social organization with specific characteristics. Social organization is described as "institutionalized strategies for the achievement of administrative objectives by the concrete efforts of many officials".

Weber specified the following structural and behavioral characteristics or conditions that an organization must possess before properly being called or distinguished as a bureaucracy:

(1) Division of labor: This involves a specified sphere of competence, which has been marked off as part of a systematic division of labor in the organization, and job placement is based qualifications and/or special training. The regular activities required for the purpose of the structure are distributed in fixed ways as official duties,

(2) Hierarchy: It is the feature of any bureaucratic form of organization. The organization of offices follows the principles of hierarchy, with a clear separation between superior and subordinate offices; i.e. each lower office is under the control and supervision of a higher one. Being a bureaucratic official constitutes a career, and there is a system of promotion and career advancement on the basis of seniority or merit, or both,

(3) Rules: Bureaucracy operates in accordance with a consistent system of abstract rules laid down regarding the performance of official jobs. There is consistency in the application of the rules to specific cases to avoid personal favoritism, arbitrariness, or nepotism that would otherwise hinder the function of an organization,

(4) Rationality: Weber's ideas on efficiency and rationality are closely related to his ideal (typical) model of bureaucracy. For Weber, bureaucracy is the most rational known means of achieving imperative control over human beings. For example, candidates are selected on the basis of technical qualifications, which will be tested, in the most rational cases, by examinations, or guaranteed by diplomas certifying technical competence, etc.

Personal whims of the leaders are no longer effective in such a system; there is a clear demarcation between personal and official affairs. Rationality is also reflected by the relatively easier means of calculability of results in the organization,

(5) Impersonality: the bureaucratic form has no place for personal whims, fancies, or irrational sentiments. Officials are subject to authority only with respect to their impersonal official obligations,

(6) Rule orientation: rationality and impersonality are mainly achieved through the formulation of rules and procedures that clearly define official spheres of authority and conduct, which the employees are supposed to maintain in discharging their duties. This is to mean that the official is subject to strict and systematic discipline and control in the conduct of his/her office,

(7) Neutrality: Bureaucracy is supposed to be apolitical and neutral in its orientation. It is also value-neutral committed only to the work it is meant to perform.

While the first three points are structural characteristics of bureaucracy, the rest four points are behavioral characteristics. Further elaborations of those points mentioned above as structural and behavioral characteristics of bureaucracy would help to understand their basic essences in the views of Weber.

Weber concluded that a fully developed bureaucracy has those advantages of speed, precision, non-ambiguity, continuity, discretion, unity, strict subordination, and reduction of friction and of material and personal costs. He considered that its specific nature develops more perfectly the more it is dehumanized, i.e. "the more completely it succeeds in eliminating from official business all purely personal, irrational, and emotional elements that escape calculation". The organization conceived by Weber is therefore designed to achieve rational orientation towards tasks, which are conducive to effective administration.

Max Weber has also talked about bureaucratic procedures as having the nature of dictating the course of action governed by a prescribed set of rules, in order to achieve uniformity. Such rules are abstract in order to guide the different courses of action necessary for the accomplishment of organizational objectives in diverse conditions. The rules become more detailed at the lower points in the organization's hierarchy. Weber stated that bureaucratic officials would approach the public "in a sprit of formalistic impersonality without hatred or passion, and hence without affection or enthusiasm". He considered this requirement as intended to assure equitable treatment of clients, and rational rather than emotionally dominated administration.

In spite of the seemingly, or apparently for that matter, logical presentations of Weber about the advantages of bureaucracy, there are critics along several lines or cases against it that stem from its supposed mechanistic nature, i.e. its regimentation (strict discipline and formalism) and predictability. The following are among the critics that turned against the advantages of bureaucracy:

(a) People in bureaucracy fulfill merely segmental roles over which they have no control

(b) In consequence, they have little or no opportunity to exercise individual judgment, with the result that employees feel separated from their work

(c) In order to be effective, bureaucratic personnel must behave consistently and follow regulations strictly. This automatically limits a bureaucrat's capacity to adapt to changing circumstances not envisaged by those who drew up the rules

(d) The general rules, which may make for overall efficiency could produce inefficiency and injustice in individual cases

(e) The impersonal treatment of clients envisaged by Weber is not always operable in practice as many researches disprove such principles of impartiality.

(f) Weber's view that bureaucrats should not become closely involved in personal relations with colleagues has undesirable practical effects

(g) The key limit on the efficiency of bureaucratic administration lies on the difficulty of coping with uncertainty and change, thus bureaucracy rests upon tasks being convertible into routine.

Chester Barnand has also criticized Weber for not recognizing the role of informal organizations and better human relations in increasing efficiency. Weber is also criticized for not paying adequate attention in his theory to human behavior, relations, morale and motivational factors. His theory has been called a "machine-theory" and a closed system model overemphasizing the formal rational aspects of bureaucracy while ignoring the whole range of socio-cultural environment and behavioral characteristics of large formal organizations.

Weber has failed also to analyze and compare the correspondence of behavior in organizations with organizational blueprints. In particular he failed to account for the fact that in the course of operations new elements arise in the structure that would effectively influence subsequent operations.

More other critics indicate that since bureaucracy is characterized by passion for routine in administration, the sacrifice of flexibility to rule or overemphasis on rules and regulations rather than on goals and objectives, delay in making decisions, lack of public relations and class consciousness on the part of bureaucrats, and refusal to embark upon experiments, it cannot be considered as the best means of achieving efficiency or as having no limitations.

The Weberian model of bureaucracy is a product of an alien or unfamiliar culture, which is fairly inadequate for imposition in the developing societies where rapid change is required to bring about socioeconomic transformation. Hence, the Weberian model of bureaucracy can best function in a stable environment with routine and repetitive tasks since its capacity in adaptation to change is limited.

The concept of bureaucracy has been also criticized by writers of the modern time like Riggs as being "the product of a specific historical and political milieu (setting)". To overcome these shortcomings of the bureaucratic model, Riggs developed his ecological model of public administration relevant to developing societies.

There are however many commentators who do not fully agree with such critics. Rather, the critics and the realities with regard to the relationship between bureaucracy and public administration, in particular that of the civil service made to draw the attention of scholars and practitioners. As many commentators in the field would agree, bureaucracy is condemned both for what it is and it is not. Bureaucracy, like any other system, has weaknesses and strengths as well as advantages and disadvantages. First of all, it is important not to confuse defects in bureaucracy with defects in public administration (public administration considered as "large-scale organization"). Defects in coordination and organization inherent in large-scale organization may apply whether the organization is bureaucratic or not. In addition, criticism of complexity of organization, the

subordination of individual, and the stifling (suppression) of initiatives must be accepted as applicable to most large-scale organizations and not merely as characteristic of bureaucracy.

Different arguments have been made also with regard to the application of the theory of bureaucracy to the civil service. As Barber (1983:90-91) pointed out, "the civil service has been accused of containing a bureaucratic, hierarchically organized, tightly knit elite. On the other hand, it has been stated that bureaucracy is a means of institutionalizing clear, universal and impartial procedures for administration, infinitely preferable to most of its historical alternatives". In practice, civil service systems of many countries accord with many of Weber's characteristics and principles of bureaucracy mentioned above.

In conclusion, the bureaucracy theory of organization has made useful contributions to the study of public administration in general in terms of developing the concept professionalism in administration by incorporating rationalist ethics and standards of conduct and business. Ideally, it is a major breakthrough from the earlier corrupt, closed, authoritarian, and unresponsive administrative systems. It is therefore a progressive and useful model of organization.

It is also necessary to bear in mind that Weber wanted to construct an "ideal type" model of bureaucracy, which obviously cannot be approximated to reality. Weber was rather sufficiently aware of the evils of "bureaucratization". He merely compared the prevailing administrative systems of his time and the earlier ones with the ideal model of bureaucracy he constructed. It is a reality that bureaucracy is still the best one in the history of administrative system and has no substitute until this time.

1.8. APPROACHES TO THE STUDY OF PUBLIC ADMINISTRATION

There have been different approaches to the study of public administration since 1887, since the subject was born as a separate academic discipline. A concise review of the different approaches are presented as follows:

1. HISTORICAL APPROCH - The historical approach is essentially based on the belief that knowledge of history is absolutely important for an in-depth study of the subject. For a proper

understanding of the subject, the study of public administration of the past particular periods is necessary to link-up with the present administrative system.

2. LEGAL APPROCH - Exponents of this approach would like to study public administration as part of law and concentrate on the formal legal structure and organization of public bodies. Its chief concern has been with power-its structure and functions. Its main sources are constitutions, codes of laws, office manuals of rules and regulations, and judicial decisions.
3. ISTITUTIONAL APPROACH - This approach tried to establish linkages between the study of public administration and government institutions. It approached the study of administration through the study of structure and functioning of separate institutions of the state such as the executive, legislature, departments, boards and commissions.
4. BEHAVIORAL APPROACH - This approach is mainly concerned with the scientific study of human behavior in diverse social environments. It started as a protest against the traditional, historical, normative and largely descriptive approaches in the social sciences. In public administration, behavioral study started in the 1930s with the "Human Relations Movement". For this approach "administrative behavior" is part of the behavioral sciences and the study of public administration should involve the study of individual and collective human behavior in administrative situations or settings.
5. SYSTEMS APPROACH - One of the most significant landmarks in the evolution of organization theory is the development of general systems concept for organizational analysis. The term "system" has been defined as a complex whole, a set of connected things or parts. According to this approach in organizational analysis, an organization can be considered as a social system to be studied in its totality. In other words, a system is a collection of interrelated parts, which receives inputs and produces certain results.
6. STRUCTURAL/FUNCTIONAL APPROACH - The two basic concepts to this approach are structure and function. All social structures exist to perform certain functions. While functions concern the consequences of patterns of action, structure refers to the patterns of actions and the resultant institutions of the systems themselves.
7. ECOLOGICAL APPROACH - Various scholars and administrators have often referred to the need to relate public administration to the environment in which it functions. The ecological perspective in the study of PA included such factors as people, institution, scientific technology, social technology, wishes and ideas, catastrophe and personality.

1.9. STAGES IN THE STUDY OF PUBLIC ADMINISTRATION

The evolution of public administration as an academic discipline falls mainly into the following six crucial stages.

Stage One - The first stage, which began with the publication of Woodrow Wilson's work, "The Study of Administration" in 1887, can be called "the era of politics-administration dichotomy". Wilson is considered as the founder of the academic discipline of public administration. Making a distinction between politics and administration, he argued that administration is concerned with the implementation of political policy decisions.

Another notable event of the period (first stage) was the publication of Goodnow's in title "politics and administration" in 1900, which supported the Wilsonian idea further by conceptually distinguishing the two functions. According to him, "politics has to do with policies or expressions of the state will" whereas "administration has to do with the execution of these policies".

Apart from this, the institutional locations of these two functions were differentiated; the location of politics were identified with the legislature and higher levels of the government where major policy decisions were taken, while the location of administration was identified with the executive branch of the government and the bureaucracy.

With an increasing recognition of the study of public administration in American universities, Leonard D White (1926) wrote a book known as "Introduction to the Study of Public Administration", which was recognized as the first textbook on the subject. This book, while advocating a politics-administration dichotomy, stressed the human side of administration, dealing comprehensively with administration in government.

Stage Two - The second stage of evolution is marked by the tendency to reinforce the idea of politics-administration dichotomy and to evolve a value-free "science of management". The central belief of this period was that there are certain "principles" of administration, which were

the task of scholars to discover and advocate. Important works of this period sharing the same approach were:

- "Principles of Public Administration" by Willoughby (1927),
- "Principles of Organization" by Mooney and Reiley,
- "Creative Experience" by Mary P Follett,
- "Industrial and General Management" by Fayol,
- "Papers on the Science of Public Administration" by Gulick and Urwick, eds (1937),

The main reason for the upsurge of interest of administration in this period was absence of enough skilled personnel to perform the rapid multiplication of government functions following the 1930s Great depression. Therefore, schools of public administration were established to quickly train as many people as possible in the techniques of administration.

The main difference between the protagonists of the politics-administration dichotomy of the first and second stages in the evolution of the discipline is that, while the former ones emphasized the legal and constitutional aspects, the new school of scientific management of the second period emphasized a purely scientific approach to the study of public administration, but retaining ideas of the first period.

With the help of scientific management methods, the leaders of public administration tried to discover certain principles of public administration, which could be of universal applicability. Gulick and Urwick (1937) coined the word BOSDCORB to promote some of these principles of administration. BOSDCORB stands for Planning, Organizing, Staffing, Directing, Coordinating, Reporting, and Budgeting. These maxims (principles of administration were said to be of universal applicability in all organizations.

Stage Three - The third stage began with a creation against the mechanical approach. The so-called "principles" of administration were challenged and dubbed as "naturalistic fallacies" and "proverbs". The third stage approach was based on experiments and organizational analysis. The experiments, which focused upon work groups, have brought a major shook on the foundations of the scientific management school of thought by clearly demonstrating the influence of social and psychological factors on the worker's output. This approach also drew attention to the effect of

informal organization in the formal setup, the phenomenon of leadership and influence, and impact of conflict and cooperation among groups in the organizational environment. Thus, the approach revealed the vital importance of human relations in organizations. Lastly, this approach criticizes the politics-administration dichotomous analogy of the first and second period thinkers. Politics and administration couldn't be separated; one couldn't be taken out of the other.

Stage Four - The fourth stage was usher by two significant publications in the 1940s; i.e. Simon's "Administrative Behavior" that associates itself to the behavioral field and Robert Dahl's "The Science of Administration: Three Problems". Simon's approach widened the scope of the subject by relating it to psychology, sociology, economics, and political science. He rejected both the classical "principles" of administration and the "politics-administration dichotomy" in administrative thought and practice. He argued that all administration revolves around rationality and decision-making. Simon identified two mutually supportive streams of thought;

- One was engaged in the development of a pure science of administration, which required a solid base in social psychology, and the other was concerned with the normative aspects of administration and prescription for public policy.
- The second approach would require a broad understanding of political science, economics, and sociology as well.

He favored the coexistence of both approaches, empirical and normative, for the development of the discipline of public administration. Likewise, Dahl's essay identified three important problems in the evolution of the science of public administration:

(i) The impossibility of excluding normative considerations from the problems of public administration. Values inevitably (permeate) filter through administration while science is value-free.

(ii) The inescapability of the fact that the study of administration must include a study of human behavior, which is open to all possible variables and uncertainties making it impossible to subject it to the rigors of scientific enquiry.

(iii) The tendency to pronounce universal principles based on few examples drawn from limited national and historical settings.

Thus, the principles of public administration were attacked. They were not scientific but normative, not universal but culture-bound. They were not grounded in evidence but based on misplaced corporate analogies and autocratic assumptions.

Stage Five - The fifth stage is concerned with the nature of post-war developments and transformations, taking place in both the theory and practice of public administration. The older approaches have not been totally abandoned in this period but modified considerably in the light of new developments. Firstly, administration came to be viewed increasingly as a unit in the process of continuous interactions between the people inside and outside the organization at any given period of time. Secondly, separate studies of public and private business administrations tended to merge into a single science of organization, whose theories and concepts were to be equally applicable to both private and public administration**.** Thirdly, the increasing use of the systems and the behavioral approaches encouraged the comparative study of administrative systems in diverse social settings and environments. New perspectives were seriously needed and the impetus for the study of comparative public administration and development administration (a relatively unknown field before WW II) became apparent.

In the transfer of administrative know-how to the developing countries, western administrative concepts were found to be inadequate. The result was questioning of the traditional framework of public administration and its universal applicability.

Stage Six - The final (six) stage of the evolution of public administration coincides with a general concern in the social sciences for public policy analysis. This approach was a post WW II war phenomenon, and was built upon two basic themes:

(i) The interpenetration of politics and administration at any levels; and

(ii) The programmatic character of all administration.

The interdisciplinary policy process and planning approach has become the most useful and relevant guide to practical administrators in developing and developed societies alike. The adoption of the policy approach has revealed that public administration, which faced the disturbance of crisis of identity since the 1940s is an interdisciplinary and applied field.

It came to be known as an integrating discipline- the meeting ground for all branches of knowledge. According to Rumki Basu (1994:17), the problem of crisis of identity has been resolved with the recognition and acceptance of the field as interdisciplinary and an applied subject. In the words of James Fesler public administration, is policy formulation and policy execution, public administration is bureaucracy, and public administration is public.

These premises directed attention in public administration towards political or policy-making processes and specific public programs. Since 1968, the evolving discipline of public administration has come to be enriched by the emergence of what has come to be known as the "New Public Administration".

1.10. FUNCTIONS OF PUBLIC ADMINISTRATION

The broad definition of public administration presented in Chapter One indicates that it involves several processes and performs major functions aimed at achieving organizational/governmental goals. Public administration as a dynamic and ongoing activity entails knowing the processes how to perform its broad functions in terms of Planning, Organizing, Staffing, Directing, and Controlling (POSDC) known as the "management process in public administration". In some literatures, we may find also Reporting and Budgeting, being included as separate functions of public administration. Since these functions or management processes of public administration are crucial to effective administration, the brief descriptions of each of these are presented below.

1. **THE PLANNING FUNCTION** - Planning is a management or administrative process or function that involves setting goals and deciding how best to achieve them. This function also includes considering what must be done to encourage necessary levels of change and innovation. Barber defines planning as "an activity that concerns with proposals for the future, with the evaluation of alternatives and with the methods by which these proposals may be achieved".

Planning is the primary (first) administrative or managerial function that sets the stage for other functions. It is a process of deciding exactly what one wants to accomplish and how to best go about it before action is required. When planning is done well, it creates a solid platform for further managerial efforts of other functions.

Planning is the dynamic process of making decisions today about future actions; and it is a selection or choice among alternatives as to: What missions or objectives be achieved, what actions should be taken, what organizational positions be assigned, how the end can be achieved, when to achieve it, who is to do it, Where to do it. It bridges the gap between where are we now and where we want to be. Planning is a continuous process so far as the organization is in operation. The more continuous the planning is, the higher its efficiency of the organization.

Planning is a means to an end. Planning is not an end by it self. It is a means to an end (meeting objectives). Planning is an instrument that pushes people towards the achievement of objectives.

Planning is preparing today for tomorrow; it is the activity that allows managers to determine what they want and how to get it: They set goals and decide how to reach them. Planning focuses on the future: what is to be accomplished and how. Answers six basic questions in regard to any intended activity:

- What (the goal or goals).
- When (the time frame in which it will be accomplished)
- Where (the place or places where the plans or planning will reach its conclusion).
- Who (which people will perform the tasks).
- How (the specific steps or methods to reach the goals).
- How much (resources necessary to reach the goals).

Planning is an essential activity for any organization that wants to survive by achieving its objectives. Otherwise the old management dictum (saying), "failing to plan is planning to fail" still holds true. Planning is indispensable to the administrative process as any decision and consequent activities carried out to achieve objectives of that decision will limit the range of choices available for the administrator in the future owing to the limited nature of resources. The basic requirement

in planning is that of coordination in order that contradiction of goals between various groups involved in the plan is avoided, which in turn is possible if there is an overriding goal to which all groups are working.

In order to be effective, planning must be concerned not only with materialistic ends but also with human behavior, which may inhibit the achievement of the goals. Therefore, any planning process must attempt to rationalize and take into account possible resistance from implementers and dynamics and unforeseen circumstances (uncertainties).

In general terms, planning may be carried out through specialized planning units (staff) or through units of government, which at the same time perform other functions. Planning staff is a small group of individuals who assist top-level managers in developing the various components of the planning process. However, whichever type of unit is utilized, it is necessary that planning should take place at a level where there is responsibility for the achievement of some overriding social policy, and thus there is a natural tendency for the level of integration of planning to exist in the administrative structure.

Planning is of different nature in terms of scope, time, and objective and by whom it is prepared. For example, indicative planning is prepared by central authorities that lay down the expected performance of the economy in the immediate and medium-term. The target gives all the other decision-making units a framework within which to make their own plan.

Planning involves selecting missions and objectives and the actions to achieve to them; it requires decision-making, that is, choosing from among alternative future courses of actions. Managers who develop plans but do not commit themselves to action are simply wasting time. The outcome of the planning function is a plan, a written document that specifies the courses of action a firm will take.

THE NATURE OF PLANNING

Discussing the following points can highlight the nature of planning; its contribution to purpose and its primacy.

(A) The contribution of planning to purpose and objectives

Every organization is established (exists) for the accomplishment of a purpose or objective. So, the purpose of any plan and its derivatives or supporting plans is to facilitate the accomplishment of organizational objectives.

(B) The primacy of planning

All the five managerial functions - planning, organizing, staffing, directing and controlling- are designed to support the accomplishment of organizational objectives. However, planning precedes the execution of all other managerial functions, because all other managerial functions must be planned if they are to be effective. This does not mean that planning is the most important of all other managerial functions, because to be important or useful all other functions have to accompany it.

Although in practice all the functions mesh (interlock) as a system of action, planning is unique in that it involves establishing the objectives necessary for all group effort. The entire gist (idea) of initiating, exercising, and activating the managerial functions of organizing, staffing, directing and controlling is to bring the objectives formulated during planning in to fruition.

In fact, the concept of especially control would be unthinkable with out planning because any attempt to control without plans is meaningless, since there is no way for people to tell whether they are going where they want to go (the result of the task of control) unless they first know whether where they want to go (part of task of planning). Plans thus furnish the standards of control. Since planning and controlling are so much inseparable, they are treated as the Siamese twins of management.

The pervasiveness /Universality/ of planning function

Planning is a function of all managers, although the character and breadth of planning varies with each manager’s authority and with the nature of policies and plans outlined by superiors. That is, all managers-from presidents to first-level supervisors- do plan. Even for personal life we plan. " It is difficult to call a person a manager if he or she doesn't plan " Koontz

The efficiency of plans

We measure the efficiency of a plan by its contribution to our purpose and objectives, offset by the costs and other factors required to formulate and operate it. A plan may enhance the attainment of objectives, but with unnecessarily high cost. Plans are efficient if they achieve their purpose at a reasonable cost, when cost is measured not only in terms of time or money or production but also in the degree of individual and group satisfaction. Plans can even make it impossible to achieve objectives if they make enough people in an organization dissatisfied or unhappy.

THE IMPORTANCE OF PLANNING

Planning, if properly worked out, offers a number of important advantages for the performance of organizations and for those who work in them.

(a) It provides purposeful and orderly activities: It is through planning we can establish our objectives.

(b) It points out the need for future change/ preparing for change: It is while planning that the manager should consider the potential areas, changes in the future; rather than merely reacting to it as it appears. When managers plan, they predict the future environment using different techniques of forecasting. When doing this if they get something wrong, they change their actions.

(c) It answers “what-if” questions: In planning managers develop several "what if" questions in order to reduce the risk of unpredictable future, so far as they plan for the future. By asking what if questions managers develop alternatives.

(d) It provides basis for controlling: Standards /controlling mechanisms/ are developed during planning. It specifies what is to be accomplished and provides a standard for measuring progress (performance).

(e) If forces managers see the organization as a system: While planning managers have to consider parts because the plan of one part (department) affects the operation of the whole organization so far as parts of an organization are interdependent.

(f) It provides the opportunity for obtaining the required resources as well as for a greater utilization of the available organizational resources: In planning we determine how much resource is necessary to reach the goals, where and how to get, and how to use these resources.

(g) It provides the base for teamwork/ coordinating efforts: Management exists because the work of individuals and groups in organizations must be coordinated, and planning is one important technique for achieving a coordinated effort. Since planning is the best way to coordinate actions among a variety of actors, all managers should develop plans that support the accomplishment of other managers' plans.

(h) Developing managers: The act of planning involves high level of intellectual activity. Those who plan must be able to deal with abstract and uncertain ideas and information. Planners must think systematically about the present and the future. Through planning, the future state of the organization can be improved if its managers take an active role in moving the organization toward that future. Planning then implies that managers should be proactive and make things happen rather than reactive and let things happen.

Through act of planning, managers not only develop their ability to think futuristically but, to the extent that their plans are effective, their motivation to plan is reinforced. Also, the act of planning sharpens manager's ability to think as they consider abstract ideas and possibilities for the future. Thus, both the result and the act of planning benefit both the organization and its managers.

2. THE ORGANIZING FUNCTION

Once a manger develops a workable plan, the next step is bringing resources together in the most effective manner to accomplish the plan. The manager should strive to match labor force to the right place (job), which is an important part of management functions of an organization. Planning, consequently, requires organizing the efforts of many people. It forces us to address several basic questions:

- What specific tasks are required to implement our plans?
- How many organizational positions are needed to perform all the required tasks?

- How should these positions be grouped?
- How many layers of management (Organizational levels) are needed to coordinate them?
- How many people should a manager supervise directly?

The answers to these and other questions enable us to create an organizational arrangement, a structure, for putting plans in to action.

Organizing: is the management process or function that focuses on allocating and arranging human and nonhuman (physical) resources so that plans can be carried out successfully and attained organizational objectives. It is the management function that establishes relationship between activity and authority. It is through the organizing function that administrators/managers determine which tasks to be done, how tasks can be best combined into specific jobs, and how jobs can be grouped into various units that make up the structure of the organization.

Organizing - refers to the coordination of resources; i.e. labor, managerial talent, material, machinery and money. It is an activity of establishing the total system of social and cultural relationship among peoples who are joined together to achieve some specific common objectives.

Organizing - is also the process of determining authority dispersion, determining the extent of power centralization or decentralization, or power sharing among organizational units, which in turn determines the span of management or control. In an organization, we have a number of levels, managerial positions.

Organizing: is essentially the division of functions among people. it is establishing the internal organizational structure. The division of functions and allocation of responsibilities could be both vertical and horizontal. The nature and style of the organizational structure; i.e. vertical and horizontal structure reveals the extent of the concentration of power in the organization, the former inclines to centralization of power while the later is more likely to share power and to make decisions together. The philosophy of hierarchy depends upon the nature of the organization. For instance, the military and business management might not follow the same line of organizational hierarchy. The military structure is very much centralized because of the seriousness of the decision matter, while in business organizations the hierarchy is not that much stiff and provides

managerial autonomy. The manager while organizing must identify those areas of management that needs high degree of autonomy and determine the span of control. Span of control refers to how many people should report to each manager. Determining the span of control in turn has to do with the supervisory effectiveness of managers.

THE ORGANIZING PROCESS

The organizing process has the following steps.

(j) Identification of objectives - This is to understand clearly the objectives of the organization, i.e., to reconsider the objectives established during planning and identify the specific objectives to be pursued.

(ii) Identification of the specific activities needed which help the organization achieve its objectives. Knowing the objectives clearly makes the identification of activities needed clear and simple. Here we ask what work activities are necessary to accomplish the identified organizational objectives. Creating a list of tasks to be accomplished begins if we identify clearly what objective in to be accomplished or met. This identification of specific activities needed is called division of labor.

(iii) Grouping of activities necessary to attain objectives

The series number of activities listed and/or identified must be grouped together. That is, this involves grouping together of activities in accordance with similarities (homogeneity) of the activities, interdependence, job characteristics or any other grouping criteria, and this result in departments and the process is called departmention. Grouping of similar activities is based on the concept of division of labor and specialization.

(iv) Assigning group of activities (work) and delegate the appropriate authority. Management has identified activities necessary to achieve objectives has classified and grouped these activities in to major operational areas. The activities now must be assigned to individuals who are simultaneously given the appropriate authority to accomplish task.

(v) Provision for coordination/Design a hierarchy of relationships.

This step requires the determination of both vertical and horizontal operating relationships of the organization as a whole. The vertical structuring of the organization results in a decision-making hierarchy showing who is in charge of each task, of each specialty area, and the organization as a whole. Levels of management are established from bottom to top in the organization. These levels create the chain of command, or hierarchy of decision-making levels, in the company.

The horizontal structuring has two important effects.

1. It defines the working relationships between operating departments

2. It makes the final decision on the span of control (the number of subordinates under the direction of each manager).

3. STAFFING

After the organizing function is completed (after jobs or positions are created within each organizational unit incorporated in the structure), staffing becomes the next task of managers. Staffing in broad sense is also known as personnel management or human resource management. It is the process of assigning prospective employees to fill up the vacant jobs or positions created at the preceding managerial function.

Staffing is the process of matching job demands with the people with required qualifications; i.e. knowledge, skill, ability, experience and the like. Staffing involves a number of activities and processes, such as:

- Recruitment (searching for candidates by using different means),
- Selection (choosing of eligible and fit candidates),
- Induction (orientating new employees about their jobs, colleagues, facilities, benefits, and the general working environment),
- Placement (arrangement to the proper job),
- Appraising (periodic evaluation of the performance of employees),
- Promotion (upgrading permanent employees to a higher rank in the grade levels of an organization),

- Record keeping, training, reward and reprimand, retirement and related activities,

Are the concerns of the staffing function mainly performed by the personnel or human resource department, division, or unit.

4. DIRECTING (LEADIING)

Directing or leading is the management or administrative function that involves influencing others to engage in the work behaviors necessary to reach organizational goals. It simply means guiding the efforts of human resources to ensure high level of task accomplishment. Leading or directing includes communicating with others, helping to outline a vision of what can be accomplished, providing direction, and motivating organization's members to put forth the substantial effort required from them.

Leading involves motivating or activating people towards achieving a harmonized common (organizational goal). It is a process of getting or winning the cooperation and willingness of people fulfill organizational objectives. Leading includes, among others, the following:

- Motivation: involves inspiring or stimulating employees by giving an opportunity to ensure high-level individual performance and thereby attain organizational objectives. There are different motivational factors, which could be implemented on the basis of identifying the real demands and interests of employees, such as material and financial rewards, providing training, introducing safety measures, creating conducive working atmosphere and relationships, recognition etc.
- Dealing with People: managers need to spear their time to handle the effect of group behavior as well as to capitalize the advantages of using the different talents of people they lead. Leading has also to do with maintaining teamwork.
- Communication: is an important, perhaps the determinant, factor for effective leadership. This refers to the level of consultation and interaction of managers with their subordinates, and the use of communication channels or networks that facilitate effective transmission of information and idea. For example, policies, orders, and regulations that are usually formulated by the top management should be properly addressed to organizational members. Leadership function is essentially influenced by the type of leaders an organization might have.

There are three basic types of leaders who exercise leadership roles differently:

- Authoritarian Leaders: they lead by using power, followers are alienated, performance is proportional to power
- Transactional Leaders: they lead by using rewards, followers are willing but calculative, use linkages between performance and goals as well as between performance and rewards
- Transformational Leaders: they lead by articulating and communicating realistic vision, intellectually paying attention to individual differences, make followers committed and loyal.

5. CONTROLLING

Controlling is the management function that is aimed at regulating organizational activities so that actual performance conforms to expected organizational standards and goals. Controlling simply means monitoring of task accomplishments and taking necessary measures. To do the necessary regulatory functions, administrators need to monitor ongoing activities, compare results with expected standards or progress toward goals, and take corrective action as needed.

Controlling involves follow up of employees' activities to get feedbacks about results by comparing performances with plans. Controlling shouldn't be associated only with its negative sense; i.e. subjugating or subduing subordinates by giving no or little discretionary power in their operation. It should rather be considered mainly in positive terms as having a purpose of helping people to be in conformance with plans, making an appropriate adjustment when performances deviate from expectations. Administration therefore involves:

- Looking ahead,
- Making good plans, and then
- Helping people to take actions needed today in order to best meet the challenges of the future. In this regard, " administrators are responsible to monitor the goals, look for problems, and help people who fall behind before they lose control of or cause organizational damage". In controlling, managers need to:
- Have standards or yardsticks, which are the measuring instruments through which performances and plans could be compared,

- Get outputs compared with inputs with reference to approved plans and identify the gaps and the causes of deviations,
- Correct deviations, if there is any, by properly addressing the identified problems,

In fact having standards and comparing outputs with plans might be a short-lived exercise or business. What is most difficult rather is identifying the problem to correct the prevailing deviation. As a matter of principle managers may use the following three types of control:

(a) Preliminary control: it is a pre-action control that takes place before the actual managerial activity started. It is an attempt to have a very realistic objective. To apply preliminary control there should first exist job description or specification that describes the nature and content of the work an employee is expected to perform and the means of handling it. Thus, a manager has to check whether the person holding the position has the necessary skill, ability, and interest before the actual work starts.

(b) Concurrent control: this type of control is undertaken while the business or an activity is in motion. In other words this is controlling an ongoing activity in the plan period without waiting for the end of the planning period.

(c) Feedback control: is a type of control of performance at the end of the planning period.

CHAPTER TWO

THE NATURE OF PUBIC LAW

Objectives

After completing this chapter, you should be able to:

- Explain the meaning, nature, characteristics and functions of law
- Differentiate classifications of law
- Discuss the nature, scope and major areas of public law such as administrative law and criminal law

2.1. DEFINITION OF LAW

- What is Law?
- Can you guess what essential points should be considered to define law?

Jurists have defined law differently from different point of views. It has been called Dhama in Hindu jurisprudence and "Hukum" in Islamic system. Romans called it *jus* and in Germany and France, it is called as *Recht* and *Droit* respectively [N.V. PARANJAPE; 2001: 133].

Defining the term 'law' is not an easy task because the term changes from time to time and different scholars define the term variously. Definition of the term may vary due to the different types of purposes sought to be achieved. According to Black's Law Dictionary [Garner; 2004: 900] law consists of rules of action or conduct. These rules are issued by an authority. In addition, these rules have binding force and are obeyed and followed by citizens. Sanction or other legal consequence may help the law to be abided by citizens.

From the pragmatic point of view, American jurist, Benjanin Nation Cordazo defines law as "a principle or rule of conduct so established as to justify a production with reasonable certainty that it will be enforced by the courts if its authority is challenged." [Steven; 2003: 8]. In general, law may be described in terms of legal order tacitly or formally accepted by the society and enforced.

A body of binding rules sufficient compliance of them is ensured by some mechanism accepted by community is called law [Paton; 1967].

2.2 BASIC FEATURES OF LAW

Analysing the features and nature common to all laws would help us to understand the concept of law. Among these features and natures, the ones considered as essential include generality, normativity and sanction.

I) Generality

Law is a general rule of human conduct. It does not specify the names of specific persons or behaviours. Hence, its generality is both in terms of the individuals governed and in terms of the social behaviour controlled.

The extent of its generality depends on-on whom the law is made to be applicable. Consider the following illustrations.

1. "Everyone has the right to life, liberty and the security of a person." [Art 3, UNDHR; 1948].

   - This law is made to be applicable to every person on this world. Therefore, it is universal.

2. "Every person has the inviolable and inalienable right to life, the security of person and liberty." [Article 14 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- This constitutional provision is made to be applicable to every person in Ethiopia. so, the extent of its generality is national. This is less general than the first illustration.

3. "Every Ethiopian national, without any discrimination based on colour, race, nation, nationality, sex, status, has the following rights…

   (b) On attainment of 18 years of age, to vote in accordance with the law." [Article 38(1)(b) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia.].
   - This law is made to be applicable only to Ethiopian nationals who attain 18 years of age. Therefore, it is even less general than the second illustration.

4. "Whoever intentionally spreads or transmits a communicable human disease is punishable

with rigorous imprisonment not exceeding ten years." [Article 514 (1) of the 2004 Criminal Code of the Federal Democratic Republic of Ethiopia].

- This law is made to be applicable only on a person who commits the crime. Therefore, it is even less general than the third illustration.

5. "The term of office of the presidents shall be six years. No person shall be selected president for more than two terms" [Article 70(4) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- This law is made to be applicable only to a person who becomes a president in Ethiopia. Therefore, it is even less general than the fourth illustration.

Under all these illustrations, the subjects of laws are given in general terms. However, the extents of the generalities decrease from universality to an individual person. Generality of the subject of the law may serve two purposes. Firstly, it promotes uniformity and equality before the law because any person falling under the group governed by the law will be equally treated under the same law. Secondly, it gives relative permanence to the law. Since it does not specify the names of the persons governed, the same law governs any person that falls in the subject on whom the law is made to be applicable. There is no need to change the law when individuals leave the group. This is what can clearly be seen from the fifth illustration. Even if the former president's term of office has lapsed, the same law governs the present and future presidents without any need to change the law. The permanence of law is indicated as relative for there is no law made by person, which can be expected to be applicable eternally.

Generality of law, as indicated above, does not only refer to the subjects governed but also the human conduct, which is controlled. The human conduct in any law is given as a general statement on possible social behaviour. It does not refer to any named specific act like stealing, killing by shooting and killing by spearing. Just a law can govern millions of similar acts and that saves the legislator from making millions of laws for similar acts, which may make the law unnecessarily bulky.

II) Normativity - Law does not simply describe or explain the human conduct it is made to control. It is created with the intention to create some norms in the society. Law creates norms by allowing,

ordering or prohibiting the social behaviour. This shows the normative feature of the law. *Based on this feature, law can be classified as permissive, directive or prohibitive.*

A) Permissive Law

Permissive laws allow or permit their subjects to do the act they provide. They give right or option to their subjects whether to act or not to act. Most of the time such laws use phrases like:

- has/ have the right to., is/are permitted/allowed to, shall have the right, shall be entitled to, may, is/are free to

Illustrations:

1. "Every person is free to think and to express his idea." [Article 14 of The 1960 Civil Code of Ethiopia].

- The human conduct to think and to express ideas is permitted by this law. Therefore, it is a permissive law.

2. "Accused persons have the right to be informed with sufficient particulars of charge brought against them and to be given the charge in writing." [Article 20(2) of the 1995 Constitution of the Federal Democratic Republic of Ethiopia].

- "have the right to" in this law shows that the subject is given the right or permitted to get the charge in writing and to be informed its particulars. Therefore, it is permissive law.

B) Directive law

Directive law orders, directs or commands the subject to do the act provided in the law. It is not optional. Therefore, the subject has legal duty to do it whether s/he likes it or not, otherwise, there is an evil consequence that s/he incurs unless s/he does it as directed by the law. Directive law usually uses phrases like:

- must, shall, has/have the obligation, is/are obliged to, is/are ordered to , shall have the obligation/duty

Illustrations:

1. "The debtor shall personally carry out his obligations under the contract where this is essential to the creditor or has been expressly agreed." [Civ. C. Art. 1740(1)]. "Shall….

carryout" in this law shows that the contracting party, the debtor, is directed, ordered or commanded by the law as it is provided. Therefore, this law is directive law.

2. "Every worker shall have the following obligations to perform in person the work specified in the contract of employment." (emphasis added) [Article 13(1) of the 2003 Labour Code Proclamation No. 377/2003].

"Shall have the … obligations to" in this law shows that the worker is directed by the law as it is provided in the law. Therefore, it is directive law.

In general, directive laws are mandatory provisions of laws. They oblige the subject to act, as they require him/her to act.

C) Prohibitive law

Prohibitive law discourages the subject from doing the act required not to be done. If the subject does the act against the prohibition, an evil follows as the consequence of the violation. All criminal code provisions are prohibitive laws. Prohibitive laws usually use phrases like:

- must not;
- shall not; no one shall/should; no person shall/should; may not, is/are not permitted/allowed; is/are prohibited; is/are punishable; and is a crime.

Illustrations:

1. "Any unmarried person who marries another he knows to be tied by the bond of an existing marriage is punishable with simple imprisonment." [Article 650(2) of the 2004 Criminal Code of Ethiopia]

"is punishable" in this law, indicates that the law discourages such act. Therefore, it is prohibitive law.

2. "No one may enter the domicile of another against the will of such person, neither may a search be effected there in, except in the case provided by law."[Civ. C. Art 13].

"No one may" shows that any one is discouraged from acting as provided by the law and so it is a prohibitive law.

III) Sanction

Each and every member of a society is required to follow the law. Where there is violation the law sanction would follow. Sanction according to Black's Law Dictionary [Garner; 2004: 1368], is a penalty or coercive measure that results from failure to comply a law. The main purpose of sanction is to prompt a party (a wrong doer) to respond. In other words, sanction will make the wrong doer to think that s/he made a fault and s/he should correct it. Sanction may be criminal. Criminal sanction is a sanction attached to criminal liability [Garner; 2004: 1368]. If the fault committed is defined by criminal law, the person will be liable to a sanction provided under the criminal law

2.3 CLASSIFICATION OF LAWS

Classification is a shaping and developing of traditional systematic conceptions and traditional systematic categories in order to organize the body of legal precepts, so that they may be:

1. stated effectively with a minimum of repetition, over lapping and potential conflict;
2. administered effectively;
3. taught effectively and developed effectively for new situations.

We get three views as to the nature and end of classification. One is that the exhaustion. Another is that classification is a means of revealing natural law that it may be made to reveal the real order of interdependence in the things classified. A third is that it is simply a means of organizing knowledge and thus of making it more effective for some purpose. It is difficult to establish a sharp division between the different branches of the law.

A. PUBLIC AND PRIVATE LAW

Public law regulates the acts of persons who act in the general interest, in virtue of a direct or mediate delegation emanating from the sovereign. As Salmond propounded 'public law' is not the whole of the law that is applicable to the state in its relations with its subjects, but only those parts of it which are different from the private law concerning the subjects of the state and their relations to each other. Private law is thus the residue of the law after we subtract public law [Paton, 1967, Pp. 291-92].

Private law regulates the acts, which individuals do in their own names for their own individual interest. Public law is sub divided into constitutional and administrative law.

Constitutional law defines the organization of the state, its fundamental rules, mode of government, and the attributions of its political organs, their limits and their relations. Constitutional law deals with the ultimate questions of the distribution of legal power and of the functions of the organs of the State.

Administrative law regulates the operation of the executive power in all its degrees, beginning with cabinet ministers and descending to its most humble representatives. It also regulates such local, departmental and communal administrations. Very wide in its application administrative law comprises many matters, which impinge upon private law. This is because the administration often takes individuals under its tutelage. It is thus that the operation of mines, of waterfalls, and of railways is governed by provisions of administrative law. In addition, the creation and functioning of certain groups of persons, such as labour unions, associations, and mutual aid societies are governed by administrative law, even though private persons may be acting in their own private interest.

Criminal law, the infliction of punishment directly by the organs of the state, is also usually regarded as falling under the head of public law. Some would say that **civil procedure** should also be placed in this section, since these rules regulate the activities of courts, which are mere agencies of the State; but civil procedure is so linked with the enforcement of private rights that it is more convenient to regard it as belonging to both public and private law.

Private law governs in principle all the acts of individuals in their private capacity. However, in France and in most civilized states, it is at present divided into three sections. They are civil law, procedure, and commercial law.

B. INTERNATIONAL AND NATIONAL LAW

Law may be classified into international and local law.

A) International law – The law of nations of the 18th century was named as international law by Bentham in 1780. It consists of rules which regulate relations between State *inter se.* Oppenheim has defined international law as "the body of customary and conventional rules which are

considered legally binding by civilised States in their intercourse with each other." [Paranjape; 2001: 150-52]

Starke defines International law as "rules of conduct which states feel themselves bound to observe and therefore do commonly observe in their relations with each other and which includes also (a) the rules of law relating to functioning of international institutions and organisations, their relations with each other and their relations with States and individuals; and (b) certain rules of law relating to individuals so far as the rights and duties of such individuals are the concern of the international community." [Paranjape; 2001: 150-52]

Salmond, however, believes that international law is essentially a species of conventional law and has its source in international agreements. These international agreements may be of two kinds, namely – (1) express agreements as contained in treaties and conventions; and (2) implied agreements as found in customary practices of the States.

John Austin, Willouthby and Holland consider international law as positive morality and do not agree that it is law properly so-called. Austin defines law as a body of rules for human conduct set and enforced by a sovereign political authority. Since international law is not set or enforced by a political sovereign authority, it is not law. Also, there is no common superior over sovereign states. In the absence of any binding force, the validity of international law is solely dependent on the voluntary acceptance of the States and, therefore, it cannot be called as "law" in true sense of the term. [Paranjape; 2001: 150-52]

Dr. Holland subscribes to this view of John Austin. He observed, "the rules of international law are voluntary, though habitually observed by every state in its dealings with the rest, can be called "law" only by courtesy". According to him, international law is a vanishing point of jurisprudence since it lacks any arbiter of disputed questions save public opinion, beyond and above the disputant parties themselves.

Professor Dias suggests that there is no doubt that the respect which States pay to International Law is less than what individuals pay to municipal law, but still it is called "law" to inspire a sense of obligation among States to follow it. Therefore, it is a weak law. Although there is International Court of justice functioning at Hague, it does not have any universal compulsory jurisdiction for

settling legal disputes between States. Again, international law having not yet been codified, suffers from uncertainty. However, Dr. Oppenheim defends international law as "Law" and says, "a weak law nevertheless is still a law". [Paranjape; 2001: 150-52]

Salmond, however, agrees that Private law branch of International Law be regarded as law in strict sense of the word. In the ultimate analysis, it may be suggested that despite criticism against international law being treated as law proper, it has assumed great importance in modern world. A large part of this law is based on natural justice and principles of right reason which the States are expected to follow in their dealings with one another. Although this law does not have any binding force behind it but the positive morality, underlying it does inspire States to feel obliged to follow it

As one can observe from the above discussion, international law is classified into public international law and private international law. **Public international law** regulates the relation between states. For example the relations between Ethiopia and Sudan are governed by public international law. **Private international law,** on the other hand, governs the relations between individuals of different nationals. Different nationals involve in commercial and other civil transactions beyond their countries. Since the laws of different countries are not the same, the problem arises as to which law should be applied to the relations of different nationals. For example, let us assume that Ethiopian national and Chinese are married in Addis, and they live in Beijing. Let us further assume that a dispute arises between them with regard to the administration of their household. Whose law is to apply to solve their dispute: the Ethiopian or Chinese law? Private international law solves this problem. Private international law is known by different names.

B) National law- law that pertains to a particular nation (as opposed to international law) [Roger and Frank; 2002: 17]. It is a law of a nation, for example the law of the United States of America, France, or Ethiopia. Such law is applicable all over a country in question. It is also known as law of the land. It is in effect in a country and applicable to its members. The law may be statutory, i.e. enacted law, administrative or case law [Garner; 2004: 904].

Local Law - Local law is the law of a locality and not the general law of the whole country. They may be of two kinds – local customary law and local enacted law.

Local customary law has its roots in those immemorial customs, which prevail in a particular part of the State and therefore, have the force of law. The local enacted law, on the other hand, has its source in the local legislative authority of municipalities of other corporate bodies empowered to govern their spheres by by-laws, supplementary to general law.

C. SUBSTANTIVE AND PROCEDURAL LAW

Civil procedure is nothing but a detached part of the civil law governing the manner of asserting and defending rights before courts. Neither the Romans nor the Old French jurists segregated actions from the body of the law… [What is Law? P. 10]

According to Salmond, substantive law is that which defines a right while procedural law determined the remedies. Procedural law is also called 'law in action' as it governs the process of litigation. S ubstantive law is concerned with the administration of justice seeks to achieve while procedural law deals with the means by which those ends can be achieved. For example, law of contract, transfer of property, negotiable instruments, crimes etc are substantive laws whereas the laws of civil procedure or criminal procedure are procedural laws [Paranjape; 2001: 157]. The rules that are provided under procedural law are inseparable from the substantive law. For example, civil procedure law is inseparable from the civil; code that deals about contract, filiations, adoption, and the like

D. CIVIL AND CRIMINAL LAW

Civil law is that branch of law dealing with the definition and enforcement of all private or public rights, as opposed to criminal matters [Roger and Frank; 2002: 15].The law enforced by the State is called **civil law**. In Ethiopia, we have a civil law codified in 1960, which is known as Civil Code. The force of State is the sanction behind this law. Civil law is essentially territorial in nature as it applies within the territory of the State concerned. The term civil law is derived from the Roman word *jus civile.* Austin and Holland prefer to call civil law as 'positive law' because it is enforced by the sovereign political authority. However, Salmond justifies the term 'civil law' as the law of

the land. He argues that positive law is not necessarily confined to the law of the land. For example, international law is a kind of jus positivism but it is not a civil law.

On the other hand, **Penal law** unquestionably forms part of public law. The state alone, representing the nation, has the right to punish. Prosecutions and condemnations are carried out in its name. The application of penalties is a part of the administration of a state. Today we have a criminal law enacted in 2004 which is a revision of the 1957 Penal; Code of Ethiopia. The designation is changed to criminal law because penal law has negative connotation which carries penalty only.

As a conclusion, we have seen that law can be grouped in different categories. Classification of law is a systematic grouping of law to understand easily.

Law can be classified into public and private law. We have seen that public law is that regulates public interest. Constitutional law and administrative law are the two main subdivisions of public law. On the other hand, we have seen that private law is one that consists of rules that regulate relations between individuals. It is divided into substantive and procedural law. Further, we have seen that substantive law defines rights of persons. We have discussed that procedural law governs the process of litigation.

Furthermore, we have observed that law may be divided into international and local law. International law includes rules that govern the States and other international subjects like multinational corporations. Local law, as we have seen, encompasses rules that are applicable to a locality.

What is more, we have discussed that law may be classified into civil and criminal law. Civil law is that which is enforced by the state. It is also called as 'positive law' since it is enforced by a state as sovereign. Criminal law, called as penal law, on the other hand, is intended to keep the peace of the people and order of the State. We have seen that criminal law is one type of public law

2.4 Definition, Purpose, Scope and Sources of Administrative Law

A) Definition of Administrative Law

There is a great divergence of opinion regarding the definition of the administrative. The is because of the tremendous increase in the administrative process that it makes impossible to attempt any precise definition of administrative law which can cover the entire range of the administrative process. Hence one has to expect differences of scope and emphasis in defining administrative law. This is true not only due to the divergence of the administrative process within a given country, but also because of the divergence of the scope of the subject in the continental and Anglo – American legal systems.

However, two important facts should be taken into account in an attempt of understanding and defining administrative law. Firstly, administrative law is primarily concerned with the manner of exercising governmental power. The decision-making process is more important than the decision itself. Secondly, administrative law cannot fully be defined without due regard to the functional approach. This is to mean that the function (purpose) of administrative law should be the underlying element of any definition. The ultimate purpose of administrative law is controlling exercise of governmental power. The 'control aspect' impliedly shades some light on the other components of its definition. Bearing in mind these two factors, let us now try to analyze some definitions given by scholars and administrative lawyers.

Austin has defined administrative law, as the law which determines the ends and modes to which the sovereign power shall be exercised. In his view, the sovereign power shall be exercised either directly by the monarch or indirectly by the subordinate political superiors to whom portions of those powers are delegated or committed in trust.

Schwartz has defined administrative law as "the law applicable to those administrative agencies, which possess delegated legislation and adjudicative authority.' This definition is a narrower one. Among other things, it is silent as to the control mechanisms and those remedies available to parties affected by an administrative action.

Jennings has defined Administrative law as "the law relating to the administration. It determines the organization, powers and duties of administrative authorities. Massey criticizes this definition because it fails to differentiate administrative and constitutional law. It lays entire emphasis on the

organization, power and duties to the exclusion of the manner of their exercise. In other words, this definition does not give due regard to the administrative process, i.e. the manner of agency decision making, including the rules, procedures and principles it should comply with.

Dicey like Jennings with out differencing administrative law from constitutional law defines it in the following way. 'Firstly, it relates to that portion of a nation's legal systems which determines the legal status and liabilities of all state officials. Secondly, defines the rights and liabilities of private individuals in their dealings with public officials. Thirdly, specifies the procedures by which those rights and liabilities are enforced.'

This definition is mainly concerned with one aspect of administrative law, namely judicial control of public officials. It should be noted, that the administrative law, also governs legislative and institutional control mechanisms of power. Dicey's definition also limits itself to the study of state officials. However, in the modern administrative state, administrative law touches other types of quasi- administrative agencies like corporations, commissions, universities and sometimes, even private domestic organizations. Davis who represents the American approach defines administrative law as; "The law that concerns the powers and procedures of administrative agencies, specially the law governing judicial review of administrative action." The shortcoming of this definition according to, Massey is that it excludes rule - application or purely administrative power of administrative agencies. However, it should be remembered that purely administrative functions are not strictly within the domain of administrative law, just like rule making (legislative) and adjudicative (judicial) powers. Davis's definition is indicative of the approach towards administrative law, which lays great emphasis on detailed, and specific rule-making and adjudicative procedures and judicial review through the courts for any irregularity. He excludes control mechanisms through the lawmaker and institution like the ombudsman.

Massey gives a wider and working definition of administrative law in the following way.

" Administrative law is that branch of public law which deals with the organization and powers of administrative and quasi administrative agencies and prescribes the principles and rules by which an official action is reached and reviewed in relation to individual liberty and freedom"

From this and the previous definitions we may discern that the following are the concerns of administrative law.

It studies powers of administrative agencies. The nature and extent of such powers is relevant to determine whether any administrative action is ultravires or there is an abuse of power. It studies the rules, procedures and principles of exercising these powers. Parliament, when conferring legislative or adjudicative power on administrative agencies, usually prescribes specific rules governing manner of exercising such powers. In some cases, the procedure may be provided as a codified act applicable to all administrative agencies. It also studies rules and principles applicable to the manner of exercising governmental powers such as principles of fairness, reasonableness, rationality and the rules of natural justice.

It studies the controlling mechanism of power. Administrative agencies while exercising their powers may exceed the legal limit abuse their power or fail to comply with minimum procedural requirements. Administrative law studies control mechanisms like legislative & institutional control and control by the courts through judicial review.

B) Purpose of Administrative Law

There has never been any serious doubt that administrative law is primarily concerned with the control of power. With the increase in level of state involvement in many aspects of everyday life during the first 80 years of the twentieth century, the need for a coherent and effective body of rules to govern relations between individuals and the state became essential. The 20th century saw the rise of the "regulatory state" and a consequent growth in administrative agencies of various kinds engaged in the delivery of a wide variety of public programs under statutory authority. This means, in effect, the state nowadays controls and supervises the lives, conduct and business of individuals in so many ways. Hence controlling the manner of exercise of public power so as to ensure rule of law and respect for the right and liberty of individuals may be taken as the key purpose of administrative law.

According to Peer Leyland and Tery Woods (Peter Leyland and Terry Woods, Textbook on Administrative Law, 4th ed.) Administrative law embodies general principles applicable to the exercise of the powers and duties of authorities in order to ensure that the myriad and

discretionary powers available to the executive conform to basic standards of legality and fairness. The ostensible purpose of these principles is to ensure that there is accountability, transparency and effectiveness in exercising of power in the public domain, as well as the observance of rule of law.

Peer Leyland and Tery Woods have identified the following as the underlying purposes of administrative law.

- It has a control function, acting in a negative sense as a brake or check in respect of the unlawful exercise or abuse of governmental/ administrative power.
- It can have a command function by making public bodies perform their statutory duties, including the exercise of discretion under a statute.
- It embodies positive principles to facilitate good administrative practice; for example, in ensuring that the rules of natural justice or fairness are adhered to.
- It operates to provide accountability and transparency, including participation by interested individuals and parties in the process of government.
- It may provide a remedy for grievances at the hands of public authorities.

Similarly I.P. Massey **(I.P. Massey, Administrative Law, 5th ed.)** identifies the four basic bricks of the foundation of administrative law as:

- To check abuse of administrative power.
- To ensure to citizens an impartial determination of their disputes by officials so as to protect them from unauthorized encroachment of their rights and interests.
- To make those who exercise public power accountable to the people.

To realize these basic purposes, it is necessary to have a system of administrative law rooted in basic principles of rule of law and good administration. A comprehensive, advanced and effective system of administrative law is underpinned by the following three broad principles:

Administrative justice, which at its core, is a philosophy that in administrative decision-making the rights and interests of individuals should be properly safe guarded.

Executive accountability, which has the aim of ensuring that those who exercise the executive (and coercive) powers of the state can be called on to explain and justify the way in which they have gone about that task.

Good administration- Administrative decision and action should conform to universally accepted standards, such as rationality, fairness, consistency and transparency.

C) Sources of Administration Law

Administrative law principles and rules are to be found in many sources. The followings are the main sources of administrative law in Ethiopia.

The Constitution

The F.D.R.E constitution contains some provisions dealing with the manner and principle of government administration and accountability of public bodies and officials. It mainly provides broad principles as to the conduct and accountability of government, the principle of direct democratic participation by citizens and the rule of law. It also embodies the principle of separation of powers by allocating lawmaking power to the house of people's representatives, executive power cumulatively to the Prime Minister and Council of Ministers, and finally the power to interpret the laws to the judiciary. Art, 77(2) talks about the power of Council of Ministers to determine the internal organizational structure of ministries and other organs of government, and also Art 77(3) envisages the possibility of delegation of legislative power are also relevant provisions for the study of the administrative law, (see also Articles 9(1), 12, 19(4), 25, 26,37,40, 50(9), 54(6)(7) 55(7), (14)(15), (17),(18),58,66(2),72-77,82,83,93,101-103 of F.D.R.E constitution).

Legislation

Laws adopted by parliament, which may have the effect of creating an administrative agency, or specify specific procedure to be complied by the specific authority in exercising

its powers, can be considered a primary sources for the study of administrative law. The statute creating an agency known as enabling act or parent act, clearly determines the limit of power conferred on a certain agency. An administrative action exceeding such limit is an ultra virus, and in most countries the courts will be ready to intervene and invalidate such action. Moreover, parliament, when granting a certain power, is expected to formulate minimum procedure as to how that power can be exercised to ensure fairness in public administration. This can be done, on the one hand, by imposing a general procedural requirement in taking any administrative action mainly administrative rule making and administrative adjudication just like the American Administrative Procedure Act (APA). And on the other hand, parliament in every case may promulgate specific statutes applicable in different situations.

Delegated Legislation

Rules, directives and regulations issued by Council of Ministers and each administrative agencies are also the main focus of administrative law. Administrative law scholarship is concerned with delegated legislation to determine its constitutionality and legality or validity and ensure that it hasn't encroached the fundamental rights of citizens. One aspect of such guarantee is subjecting the regulation and directive to comply with some minimum procedural requirements like consultation (public participation) and publication (openness in government administration). Arbitrary exercise of power leads to arbitrary administrative action, which in turn, leads to violation of citizen's rights and liberty. Hence, the substance and procedure of delegated legislation is an important source of administrative law.

Judicial Opinion

Much, but not most, of the doctrine that envelops and controls administrative power is found in judicial analysis of other sources. However, much of administrative law will not be found solely in judicial opinions. Furthermore, the opinions themselves must be carefully pursued to avoid generalizations about controls on agency behavior that may not be appropriate, as the outcome of many cases may turn on particular statutory language that may not necessarily reflect the nature of disputes in other agencies.

The American experience as to judicial opinion influencing administrative law is characterized by lack of generalization and fluctuating impacts. These may be due to two reasons. First, cases coming before the courts through judicial review are insignificant compared to the magnitude of government bureaucracy and the administrative process. Second, even as between two apparently similar cases, there is a possibility for points of departure.

In Ethiopia, judicial opinion is far from being considered even as the least source of administrative law. Only cases less than 1% go to court through judicial reviews. The subject is not known by judges, lawyers, the legal profession and administrative officials, let alone by the poor and laypersons who are expected to seek judicial remedy for unlawful administrative acts and abuse of power by public officials. However given the fact that presently the rule of precedent is applicable, judicial opinion, it is hoped, may have a limited role as one of the sources of administrative law in Ethiopia.

C) Scope of Administrative Law

I- Public Law/Private Law Divide

The boundaries of administrative law extend only when administrative agencies and public officials exercise statutory or public powers, or when performing public duties. In both civil and common-law countries, these types of functions are sometimes called “public law functions” to distinguish them from “private law functions”. The former govern the relationship between the state and the individual, whereas the later governs the relationship between individual citizens and some forms of relationships with the state, like relationship based on government contract.

For example, if a citizen works in a state owned factory and is dismissed, he or she would sue as a “private law function”. However, if he is a civil servant, he or she would sue as a “public law function”. Similarly, if residents of the surrounding community were concerned about a decision to enlarge the state- owned factory because of environmental pollution, the legality of the decision could be reviewed by the courts as a “public law function.” It is also to be noted that a contract between an individual or business organization with a certain

administrative agency is a private law function governed by rules of contract applicable to any individual – individual relationship. However, if it is an administrative contract it is subject to different rules (see civ. code art 3136 ff).

The point here is that the rules and principles of administrative law are applicable in a relationship between citizens and the state; they do not extend to cases where the nature of the relationship is characterized by a private law function.

B) Substance vs. Procedure

Many of the definition and approaches to administrative law are limited to procedural aspects of the subject. The focus of administrative law is mainly on the manner and procedure of exercising power granted to administrative agencies by the legislature. Fox describes the trend and interaction between substance and procedure as:

'It is the unifying force of the administrative process – in dramatic contrast to the wide variety of substantive problems with which agencies deal- that has persuaded most administrative law professors to concentrate on agency procedure rather than agency substance. Hence, to a wider extent, the study of administrative law has been limited to analyzing the way matters move through an agency, rather than the wisdom of the matters themselves.'

With respect to judicial review, the basic question asked is not whether a particular decision is "right", or whether the judge, or a the Minister, or officials have come to a different decision. The questions are what is the legal limit of power or reasonable limit of discretion the law has conferred on the official? that power been exceeded, or otherwise unlawfully exercised? Therefore, administrative law is not concerned with the merits of the decision, but with the decision making process.

2.5 ADMINISTRATIVE AGENCIES: SUBJECTS OF ADMINISTRATIVE LAW

Administrative law involves a challenge to the exercise of power by the executive government. For this reason, it is necessary to look at the composition and powers of executive government, and at how they exercise their powers when they take action or make decisions. In practical terms executive government interferes in our lives and their actions affect our lives in many ways. When we venture on a certain business, we have to acquire a relevant permit and license before commencing our business. Even after we comply with such requirement, a government inspector sent by the relevant agency enters into our premise without court warrant and can conduct investigation. The food and other household provisions we buy are subject to regulations. In work areas the jobs we do, and the premises on which we work are subject to licensing approvals and permits. As we are paid, we are subject to requirements as to tax. This shows clearly that government intrudes into our lives in many ways.

Administrative agencies make individual decisions affecting citizens' lives and they set general policies affecting an entire economy and they are usually headed by officials who are neither elected nor directly accountable to the public.

2.5.1 Nature, Meaning, and Classification of Administrative Agencies

There is hardly any function of modern government that does not involve, in some way, an administrative agency. The 20th century has witnessed an unprecedented proliferation of agencies with varying size, structure, functions and powers charged with the task of day – to- day governing. Their existence and growth have been the typical characteristics of the modern administrative state (welfare state.)

Administrative agencies have become a major part of every system of government in the world. *"The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values today are affected by their decisions than by those of all the courts . . . They have become a veritable fourth branch of government."*

2.5.2 The Meaning of Administrative Agency

Defining an administrative agency is not an easy task. Agencies come in a huge array of sizes and shape. This is coupled with their wide ranging and complex functions and their power to legislate and adjudicate, in addition, to their normal executive powers, makes it challenging and difficult to precisely provide a precise and concise definition covering all these aspects of the administrative process.

Agencies may be defined as governmental entities, although they affect the rights and duties of persons are neither courts nor legislatures. For one thing it is true that agencies are not located within the legislative or judicial organ of the government. Although they are within the executive branch, most of them are not mainly accountable to the executive branch.

A government entity outside of the judiciary or the legislature does not necessarily qualify as an administrative agency. The American Administrative Procedure Act adopts this and defines agency as any U.S. governmental authority that does not include Congress, the courts, the government of the district of Columbia, the government of any territory or possession, courts martial, or military authority. In this definition, the reference to "authority" signifies a restriction on the scope of government entities that may be properly called as agency. Authority refers to a power to make a binding decision. Therefore, only entities with such power constitute an agency. In a similar fashion, Black's Law dictionary defines agency as a governmental body with the authority to implement and administer particular legislation.

Generally, it can be said that the authority or power of the entity is a common denominator for a precise definition of an agency.

A more detailed definition of an administrative agency is given in the New York Administrative Procedure Act, which reads:

"An agency is any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interest compact or international agreement, the division of the military and naval affairs to the extent it exercise its responsibility for military and naval

affairs, the division of state police, the identification and intelligence units of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board."

Determining whether a certain government entity constitutes an agency or not is greatly a matter of government policy so that the legislature may exclude some organs from the scope of an agency.

Generally speaking, we may identify two important elements in distinguishing whether a certain government entity is an administrative agency or not. Firstly, the nomenclature may be indicative of the status of an entity as an agency. Most agencies have names like department, authority, commission, bureau, board etc;…Secondly, the government entity should be empowered to legislate (through delegation), or adjudicate individual cases, in addition to its merely executive functions.

Due to the absence of an administrative procedure act in Ethiopia, there is no comprehensive definition of an administrative agency. There are some specific legislations that make a reference to "government agency", though failing to provide a satisfactory definition. For instance, the income tax proclamation and the civil servants proclamation similarly define a government agency as an entity fully or party funded by the federal government. Practically, the allocation of fund by the federal government is unimportant to determine whether a certain entity is an administrative agency or not. Hence, if there is any dispute as to status of a certain governmental entity, resort has to be made to its nomenclature, and mainly to the existence of legislative and /or adjudicative power of that entity.

The Draft Administrative Proclamation of the Imperial government (draft proclamation No 251/1967) and that of the draft prepared by the federal government define agency relatively in a similar way.

The 1967 draft administrative procedure act uses the term "administrative authority" instead of "administrative agency" and defines it as:

"Any ministry, public authority or other administration of the imperial Ethiopian government, including chartered municipalities, competent to render an administrative decision."

This definition combining nomenclature with power of the agency attempts to identify which government entity may be properly called an administrative authority. The reference to competency to render administrative decision indicates that the power of the agency to legislate through delegation is missing as criteria.

The draft does not categorically exclude some entities from the purview of an administrative authority. However, it excludes some administrative decisions such as those regarding selection or tenure of public servants, those based solely on inspection tests or election, decisions as to the conduct of military or foreign affairs functions, decisions of any judicial division by courts of law, and any decision establishing rules or regulations.

Still it could not be known with exact precision what entity falls within and outside the definition of an administrative agency. Lastly, the draft administrative procedure of the federal government defines administrative agency taking the ability to render an administrative decision as criteria.

The 1967 is draft, different from the current Amharic text only in the substitution of "the imperial government" by F.D.R.E government and "chartered municipalities" by Addis Ababa and Dire Dawa Administrations. one may wonder whether the latter draft is simply a translation of the former rather than an original one.

The following parameters should be used to determine whether a certain government entity is an agency or not.

- The nomenclature used to describe the entity is ministry, authority, agency, bureau, office, commission, board, etc., or any other similar terms.
- That it has legislative and/or adjudicative power granted by the legislature.
- That the head of the agency is appointed by the executive or by the house of people's representatives.

2.5.3 Classification of Administrative Agencies

Agencies are created with varying size, structure, functions and powers. Some of them may be established with broader powers; in charge of regulating a certain sector of the economy. This is

typically the case with ministries, which are headed by a high-level government minister. Ministries not only enforce a government program or policy, but they also supervise and overview other lower agencies that are accountable to them. Others are comparatively small in structure and are charged with a very specific task of implementing a certain portion of government policy or programme. With the exception of few, almost all agencies are under the direct control and supervision, in their day to today implementation of government task law, or policy assigned to them by the enabling act. The remaining very small agencies function independently outside the direct control of the executive branch and they are accountable to the legislature.

Agencies are classified or categorized based on such mode of accountability.

Accordingly, those agencies directly accountable to the executive branch are known as executive agencies, where those accountable to parliament are called independent agencies.

In Ethiopia, executive agencies are usually accountable to a certain ministry, or council of ministries, or the prime minister. Even though the enabling act may subject an agency to the control of another ministry, it has also to be noted that they are ultimately accountable to either the council of ministers, or to the prime minister. This is true because the F.D.R.E constitution grants the highest executive authority to the Prime Minister and the Council of Ministers. This fact can also be inferred from the cumulative reading of Articles 74(2) and 77(3) which similarly confer the power of ensuring the implementation of laws, regulations, directives and decisions of the house of people's representatives. Such powers mainly include the power to follow up and supervise the activities, functions and exercise of power of specific administrative agencies.

The executive impacts the work of agencies in so many ways. The Prime minister may freely appoint the head of an agency and dismiss him at any time even without valid reasons. However, the appointment of ministers and other commissioners is subject the approval of the house of people's representatives.

Independent agencies are accountable to parliament, i.e. to the house of people's representatives. The establishment of these agencies, even though they need the act of the house of people's representatives for their material and legal existence, there is predetermined by the constitution. This implies that their creation is not dependent on the will of the parliament. Normally, the

parliament retains exclusive right to bring a certain executive agency into existence, which includes the power to modify, increase, or decrease the power and function of that agency. By the same token it is up to the parliament to terminate that agency. However, this is not the case with independent agencies. The constitution clearly imposes a duty to establish independent agencies indicated in the constitution. There are some agencies falling under this category are listed below.

- The Federal Ombudsman
- The Human Right Commission
- The National Election Board
- The Auditor General
- The Population and Census Commission

With respect to these agencies parliament has the right to appoint heads. and remove them if there are valid reasons.

2.5.4 Formation of Administrative Agencies

Mode of Creating an Agency

In Ethiopia, whether it is at the Federal or state level, agencies are creatures of the legislature. They do not spring up on their own, and courts or the council of ministers cannot create them. The F.D.R.E. constitution expressly requires the establishment of some independent agencies. They do not have i.e. material and legal existence unless the house of people's representatives enacts a specific law for their establishment. Hence, agencies that are in function so far are those that a legislature has given them the authority to function. The authority may be exceptionally broad or incredibly narrow.

Hence, it may be said that agencies are created in two ways: one is through the constitution, and the second is through act of parliament. However, one important point that should be emphasized is that the independent agencies, which have a constitutional basis, still require an enabling act of the parliament for their legal existence. The only difference between the two modes of creating an agency is that when the constitution requires the establishment of some agencies the house of

people's representatives has a duty to promulgate the enabling act for that specific agency. When an agency is created only through the enabling act, in the absence of constitutional duty from the parliament, its existence is totally dependent on the will or option of the parliament.

Apart from the above two modes, there is no other means of creating an agency. Neither the prime minister, nor the council of ministers has the power to create an administrative agency.

2.5.5 Reasons for the Creation of Agencies

Agencies are created and assigned specific tasks by the legislature. They carry out the tasks making decisions of various sorts and supervising the procedure by which the decisions are carried out. There are many reasons why administrative agencies might be needed. Almost every governmental agency has been created because of a recognized problem in society, and from the belief that an agency may be able to help in solving the problems. The following are the main reasons for the creation of the administrative agencies.

A. Providing Specificity

The legislative branch of government cannot legislate in sufficient detail to cover all aspects of many problems. The house of the people's representatives cannot possibly legislate in minute detail and, as a consequence, it uses more and more general language in stating its regulatory aims and purposes. In many areas, the agency has to develop detailed rules and regulations to carry out the legislative policy.

It is also true that courts could not handle all disputes and controversies that may arise. They simply do not have the time or the personnel to handle the multitude of cases. For instance, the labour relations board entertains and resolves so many number of collective labour disputes between employees and employers. Similarly, the tax appeal commission and the welfare (pension) appeal tribunal adjudicate and decide vast number of administrative litigations within their jurisdiction. The creation of such adjudicatory agencies (usually known as quasi- administrative agencies) is necessary, because of the fact that they have, specialized knowledge and expertise to deal effectively with the detailed, specific and technical matters, which are normally beyond the competency of judges of ordinary courts.

Administrative agencies often provide needed continuity and consistency in the formulation, application, and enforcement of rules and regulations governing business.

B. Providing Protection

Many government agencies exist to protect the public, especially from the business community. Business has often failed to regulate itself, and the lack of self- regulation has often been contrary to the public interest. For instance, the Environmental Protection Agency is created to regulate environmental pollution. In the absence of such agency, business could not voluntarily refrain from polluting the environment. The same can be said with respect to quality of private higher education and unjustified and unreasonable increase in the price of essential goods. The Ministry of Education and Ministry of Trade and Industry regulate respectively both of these cases to protect consumers and the public at large.

Most of the time, an agency protects the public from the negative impacts of business through regulation. agencies also regulate transportation, banking and insurance because of the disparity in bargaining power between the

C. Providing Services

Many agencies are created simply out of necessity. If we are to have roads, the Ethiopian Roads Authority is necessary. Welfare programs require government personnel to administer them. Social security programs necessitate that there should be a federal agency to determine eligibility and pay benefits. The Ethiopian Social Security Authority is established to process pension payment and to determine entitlement to such benefit Companies and consumers.

2.5.6 Structure and Organization

The structure and internal organization of an administrative agency may greatly vary depending on the government policy and the programme it is expected to accomplish. Some of them may have different departments enjoying a substantial portion of power given to the agency by the enabling act. Still there will be lower organs labeled usually as sections with the specific tasks of the day-to-day governing. Usually, the arrangement of the internal organization will take so many

factors into considerations, like budget implication. However, the main objective of the form of structure is aimed at ensuring efficiency and effectiveness in administration. Since this requires expertise, such task is left to the executive branch. In Ethiopia, the constitution specifically authorizes the council of ministers to determine the structure and organization of the administrative agencies.

Due to the limitation on parliament to deal with structure and organization of an agency, which is justified on the lack of expertise, the parliament does not interfere with the internal form of that agency. The enabling act simply provides in broader terms, the function, power, duty and rights of the agency. This being the case, it has to be noted that the enabling act greatly influences the form and scope of structure and organization that an agency assumes. The type and scope of government programme, the extent of its power and the nature of mission to be accomplished by the agency outlined in the enabling act are factors to be taken in to consideration before designing the appropriate structure and organization.

2.5.7 Purpose of Administrative Agencies

Administrative agencies are established by the legislator to perform specific tasks assigned to them by law. What they actually do is to enforce a specific law. They are usually charged with the day-to-day details of governing. The agencies carry out their tasks by making decisions of various sorts and supervising the procedures by which the decisions are carried out.

A) Regulation

One of the key reasons for regulating economic activities by the government is the inability of business to regulate itself. When the government decides to regulate a certain sector, it entrusts the task to the administrative agencies. Agencies offer several advantages over regulation through the legislature and courts in the management of complex and technical regulatory problems. Because they are specialized bodies, they can consider technical details more effectively than the legislature.

To control monopoly power

Agencies are often created to replace competition with regulation. In this case the agency may determine rate (e.g. transportation, or electricity). Sometimes the difference in bargaining power may be a ground for regulation, avoiding monopoly power of one party. Such instances include regulation of banking, insurance and labour relations.

To control excess profit

The agency regulates business to ensure that business is not collecting excess profit, which may endanger the laws of free market and also may pose a danger to consumers.

To compensate for externalities

"Externalities" occasionally referred to as "spillovers", that occur when the cost of producing something does not reflect the true cost to society for producing the goods. One example is manufacturing process that creates air pollution for which society pays the cleanup costs. A business organization, unless otherwise it becomes sure that there is also corresponding participation by other companies, will not install costly pollution control equipment. Doing so will drive up that company's costs which make it unable to compete with other companies in producing the same product without equipment and selling their products at a lower price. So, some entity i.e. a government agency must require all companies to make those investments (installing equipments) in order to spread the costs of pollution control over the entire industry.

To compensate for inadequate information

Compensating for inadequate information is a justification for a great deal of legislation for consumer protection. Purchasers of food, for instance, cannot analyze the nutritional content or the health hazards of various food products so that there has to be some organ that ensures these tests are fulfilled

To compensate for unequal bargaining of powers

Contracts between banks & customers, insurers & the insured, employees & employers are adhesive in their nature. Either the consumer has to take it or leave it. Hence, it becomes self-

evident to regulate and set minimum standards to minimize the effect of unequal bargaining of power.

B) Government exactions

In addition to regulation, administrative agencies may also engage in government exactions. Government exactions are the traditional powers and responsibilities of agencies. Such functions include collection of tax and military conscription.

C) Disbursement of money or other commodities

This purpose of administrative agencies is also the prominent one which characterizes the welfare state. In this regard, through the social security programme and other government systems of insurance or compensation, agencies disburse public money as payment of pensions for veterans or assistance for the aged, the disabled, the unemployed and generally the needy. The payments may be directly through cash or food rations.

D) Provision of goods and services

Nowadays, the government is in charge of building and maintaining roads, high ways and dams, the provision of police force and other protective services. Funding public education and the health service may also be mentioned as additional examples. More recent additions include mass transit communications, satellite systems, government research and development programmes, public hospitals and public housing.

2.6. Nature of Administrative Powers (Powers of Administrative Agencies)

- ✓ **Rulemaking (quasi-legislative) power of administrative agencies (delegated legislation)**

'Delegated legislation' is legislation made by a body or person to whom the parliament has delegated its power to legislate. It refers to a binding law issued by a body subordinate to the parliament. In Ethiopia, Delegated legislation refers to directives and regulations issued by administrative agencies and the council of ministers, respectively.

Since legislation should preferably be made by the parliament, and not delegated to non-parliamentary entities, delegated legislation is regarded, at best, a necessary evil that is only tolerated because of the growth in functions and requirements of a modern government.

2.6.1 The Nature and Definition of Delegated Legislation

The term legislation refers to the process of making or enacting and repealing a positive law in written form by a branch of government constituted to perform this process, which is the legislature. The legislature is in charge of making laws in the form of primary legislation. Any other legislation that is subordinate or auxiliary to primary legislation is known as delegated (or sometimes ancillary) legislation.

In short, delegated legislation means the exercise of legislative power by an agency that is subordinate to the legislature. This subordinate body acquires the power from the act of the legislature. Power is transferred from the principal lawmaker to the lower body, which may be the executive, cabinet, council of minister, or a specific administrative agency, by the mechanism of delegation.

Generally, delegation refers to the act of entrusting another authority or empowering another to act as an agent or representative. By the same token, delegation of legislative powers means the transfer of law-making authority by the legislature to the executive, or to an administrative agency. In line with the power granted to them by the legislature administrative, agencies can issue rules, regulations and directives, which have a legally binding effect.

Measured by volume, more legislation is produced by the executive government than by the legislature. The increase in quantity and quality of delegated legislation, if not supplanted by clear procedures and effective controlling mechanisms, may ultimately result in arbitrariness and abuse of power, which in turn leads to injustice and violation of liberty. That is why it is regarded by many as a “necessary evil.” delegation of legislative powers to administrative agencies is a compulsive necessity. Most of the legislations that govern the conduct of the individual come from administrative agencies, not from the legislature.

2.6.2 The Need for Delegated Legislation

Clearly parliament does not have time or resources to enact every single piece of legislation that is needed in the form of primary legislation. Parliament has to follow strict legislative procedures to make a single law. Hence, it will be far from being flexible without delegating some of its powers to the executive.

Taking into account the above general justification, the following factors may be mentioned as reasons for the need for delegated legislation.

A) Limitation on Parliamentary Time

"The annual session of the house shall begin on Monday of the final week of the Ethiopian month of Meskerem and end on the 30th day of the Ethiopian month of sene. The House may adjourn for one month of recess during its annual session"

It is said that even if today parliament sits all the 365 days in a year and all the 24 hours, it may not give the quantity and quality of law, that which is required for the proper functioning of a modern government. Therefore, it is clear and self-evident that the main reason for delegation of legislative power is to relieve the pressure on parliamentary time.

B) Technicality Subject of Matter

"For the purpose of fostering monetary stability and credit and exchange conditions conducive to the balanced growth of the economy of Ethiopia, the Bank may issue directives governing its own credit transactions with banks and other financial institutions, and credit transactions of banks, and other financial institutions.

***"*(Art 28(1) of Monetary and Banking Proclamation No.83/1994)**

II) *"The council of ministers may by regulations exempt any income recognized as such by this proclamation for economic, administrative or social reasons"*

(Art 13(e) of Income Tax Proclamation No.286/2002)

III) *"1. Regulations and directives may be issued for the complementary of this proclamation.*

"*2. The regulations shall, in particular, provide for the payment of fees in connection with applications for the grant of patents and utility model certificates and for the registration of industrial designs and matters related thereto."*

(Art 53 sub 1 and 2 of Inventions and Industrial Designs Proclamation No 123/1995)

Legislation has become highly technical because of the complexities of a modern government. Members of the parliament are not experts, and so they cannot comprehend the technicality of the subject matter of some economic and social issues. Technical matters, as distinct from policy issues, are not susceptible to discussion in parliament and therefore cannot be readily be included in legislation. Therefore, technicality of the subject matter stands as another justification for delegation. It is convenient for the legislature to confine itself to policy matters only and leave the technical law making sequence to the administrative agencies.

C) Flexibility

Ordinarily legislative process suffers from lack of viability and experimentation. A law passed by parliament has to be in force till the next session of parliament when it can be replaced Therefore, in situations which require adjustments frequently and experimentation, administrative rule making is the only answer.

The need for frequent adjustment or flexibility can be observed from the following provision.

"The Bank may, from time to time, prescribe by regulations the terms and conditions upon which persons departing from Ethiopia may carry with them foreign exchange or make remittance for services." **(Art 55 of Monetary and Banking Proclamation No.83/1994)**

In the above provision, the terms and conditions for carrying foreign exchange by persons departing from Ethiopia could be changed from time to time. Hence this flexibility could be attained through delegation of power to make these rules.

D) Emergency

During emergency, it may not be possible for the parliament to pass necessary legislation to cope up with the situations. Under such conditions, speedy and appropriate action is required to be taken. The parliament cannot act quickly because of the time that requires passing an act. Moreover, immediate knowledge and experience is only available with the administration. For this reason, wide legislative power must be conferred up on the executive to enable the government to take actions quickly.

2.6.3 Scope of Delegated Legislation

The new role of the welfare state can be fulfilled only through the use of greater power in the hands of the government, which is most suited to carry out the social and economic tasks. The task of enhancing the power of the government to enable it to deal with the problems of social and economic reconstruction can be effectively and efficiently accomplished through the technique of delegation of legislative power to it. Thus it can be clearly observed that pragmatic considerations have prevailed over theoretical objections.

Legislative delegation raises the issue of delegable and non-delegable legislative powers. There is no agreed formula with reference to which one can decide the permissible limits of delegation. However, as a rule, it can be said that the legislature cannot delegate its general legislative power and matters dealing with policy.

The legislature after formulating the fundamental laws, can delegate to administrative agencies the authority to fill in gaps which is an authority necessary to carry out their purposes. The matters which are appropriate for delegation are such matters as procedures for the implementation of the substantive provisions contained in the principal legislation. This indicates that only the subsidiary part of the legislation could be delegated to administrative agencies so as to enable them fill any available gaps;i.e. the legislative body ought to state an intelligible principle and that the executive branch would merely fill in the details. Subordinate legislation can cover only subject matters delegated expressly in the principal legislation.

As a summary, the following points may be noted.

- Delegation of some part of legislative powers has become a compulsive necessity due to the complexities of modern legislation.
- Essential legislative functions cannot be delegated by the legislature.
- After the legislature has exercised its essential legislative functions, it can delegate non-essentials, however, numerous and significant they may be.
- The delegated legislation must be consistent with the parent act and must not violate legislative policy and guidelines. Delegatee cannot have more legislative powers than that of the delegator.

Form and Classification of Administrative Rule Making delegated legislation may assume different forms. In our country there are mainly two types of delegated legislations regulation and directive.

Regulation- Pursuant to Art 771(13) of the F.D.R.E. constitution, the council of ministers has the power of issuing regulations in accordance with a power vested to it by the house of people's representatives. The power to issue regulations is found in the specific legislation.

Directive - These types of delegated legislations are issued by each administrative agency. Agencies issue these subordinate legislations to implement regulations and other primary legislations.

2.7. CRIMINAL LAW

The Place of Criminal Law in Criminal Science

The definition of a crime has always been regarded as a matter of great difficulty. Where the task of definition is difficult, it is advisable that a student should not address himself to it until he has acquired some considerable knowledge of the subject matter to be defined. Therefore, before making an attempt to understand the definition of crime, we shall endeavor to have some basic information relating to crime and criminal law.

Crime is an offence committed by an individual who is a basic unit of a society. Therefore, study of crime i.e. Criminal Science‖ is a social study.

The main aims of Criminal Science are:

- To discover the causes of criminality,
- To devise the most effective methods of reducing the amount of criminality,
- To perfect the machinery for dealing with criminals.

Based on these three objectives, three main branches of Criminal Science have developed. They are:

Criminology: It is the study of crime and criminal punishment as social phenomena. This branch of criminal science is concerned with causes of crimes and comprises of two different branches.

a) Criminal Biology: This investigates causes of criminality, which may be found in the mental or physical constitution of the delinquent himself such as hereditary tendencies and physical defects.

b) Criminal Sociology: This deals with enquiries into the effects of environment as a cause of criminality. This branch focuses on the objective factors like social, political and economic conditions leading to criminality, also termed as criminal anthropology.

Criminal Policy or Penology: This branch of Criminal Science is concerned with limiting harmful conduct in society. It makes use of the information provided by Criminology. Therefore, the subjects of Criminal policy for investigation are:

a) The appropriate measures of social organization for preventing harmful activities,

b) The treatment to be given to those who have caused harm, whether the offenders are to be given warnings, supervised probation, medical treatment, or more serious deprivations of life or liberty, such as imprisonment or capital punishment. This branch of study is also termed as _Penology' and deals with treatment, prevention and control of crimes.

Criminal Law: The Criminal Policies postulated by the above twin sister branches i.e. Criminology and Penology, are implemented through the instrumentality of _Criminal law '. In other words, criminal policies are implemented through the agency of criminal law. The criminal law decides the special sanctions appropriate in each case. These sanctions range from death penalty through various kinds of degrees of deprivation of liberty, down to such measures as medical treatment, supervision as in probation, fines and mere warnings (admonishment).

Branches of Criminal law: Criminal law in its wider sense consists of two branches.

a) Substantive Criminal Law, b) Adjective/Procedural Criminal law.

The Substantive Criminal law 'lays down the principles of criminal liability, defines offences and prescribes punishments for the same. The Ethiopian Criminal Code does this business. However, the substantive criminal law by its very nature cannot be self-operative. A person committing a crime is not automatically stigmatized and punished. At the same time, generally, a criminal would not be interested in confessing his guilt and receiving the punishment. It is for this reason that Procedural Criminal law 'has been designed to look after the process of the administration and enforcement of the substantive criminal law. In the absence of procedural criminal Law, the substantive criminal Law would be almost worthless. The scope of our study i.e. Criminal law 'falls under the branch of substantive criminal Law.

2.7.1 Nature and Scope of Criminal Law

Laws can be classified into different branches. For instance, Civil law spells out the duties that exist between persons or between citizens and their government, excluding the duty not to commit crimes, Contract law for example is a part of civil law. The whole body of tort law or the law relating to Extra Contractual Liability, which deals with the infringement by one person on the legally recognized right of another, is also an area of civil law. Criminal law has to do with crimes, which are different from other wrongful acts such as torts and breaches of contract. The distinct nature of Criminal Law can be understood by defining some of its unique features. According to

Edwin Sutherland, Criminal Law of a place can be defined as ―a body of special rules regulating human conduct promulgated by state and uniformly applicable to all classes to which it refers and is enforced by punishment.

It means the whole body of criminal law to be efficient must have four important elements, viz.,

- Politicality
- Specificity,
- Uniformity, and
- Penal sanction

Politicality implies that only the violations of rules made by the state are regarded as crimes. Specificity of criminal law connotes that it strictly defines the act to be treated as crime. In other words, the provisions of criminal law should be stated in specific terms. Uniformity of criminal law implies its uniform application to alike without any discrimination, thus imparting even-handed justice to all alike. Finally, it is through Penal sanctions‟ imposed under the criminal law that the members of society are deterred from committing crimes. It is, therefore, obvious that no law can be effective without adequate penal sanctions.

2.7.2. General Objectives of Criminal Law

The objectives of Criminal law are the protection of persons and property, the deterrence of criminal behavior, the punishment of criminal activity and rehabilitation of the criminal.

a. Protection of Persons and Property:

Safety and a sense of security are the most important things for the survival of any society. Safety of a society includes personal safety i.e. safety of life and liberty and safety of property. To ensure safety there is the necessity of maintaining peace and order. This is possible only by an effective penal system, which is strong enough to deal with the violators of the law and enable the people to live peacefully and without fear of injury to their lives and property. Thus, the prime objective of criminal law is protection of the public by maintenance of law and order.

b. Deterrence of Criminal Behavior:

A key to the hoped-for reduction in criminal behavior is that our criminal laws present a sufficient deterrent to antisocial behavior. A ―deterrent‖ is a danger, difficulty or other consideration that

stops or prevents a person from acting. The presumption inherent in criminal law is that if we make the punishment sufficiently harsh, persons who might do something criminal are prevented from doing so because they fear punishment. If enough people fear punishment, there will be considerable reduction in criminal activity.

c. Punishment of Criminal Activity:

Since we will most likely be unable to deter all criminal activity, our laws accept that a certain level of criminal activity will exist in society. Accordingly, we punish criminal activity for punishment 's sake. If a criminal take something without paying for it or injures other without a justification, the criminal law makes that individual pay for it through deprivation of liberty for a period of time.

d. Rehabilitation of the Criminal:

Once convicted, a criminal will begin to serve a sentence in a prison. But that is not where our criminal justice system ends. Our government has designed various programs to educate and train criminals in legitimate occupations during the period of incarceration.

2.7. 3. BASIC PRINCIPLES OF CRIMINAL LAW

A person accused of a crime is put under the peril of his life and liberty. Therefore, it becomes necessary that certain safeguards should be provided to the accused. These protections are almost common to all civilized legal systems of the world including that of ours. Most of these principles are enshrined in the Constitutions and International Conventions. The most important of such principles embodied in the Criminal law, specifically, are the following:

- The Principle of Legality
- The Principle of Equality
- The Principle of Individual Autonomy

The principle of legality requires that prosecutions and punishments for crimes should be strictly in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong doers should be punished strictly within the prescriptions of law. The principle of legality requires that prosecutions and punishments for

crimes should be strictly in accordance with a pre-existing legal provision. A person cannot be made criminally responsible for producing a harmful consequence if such harm is not declared as a prohibited one by legal classification. The principle also requires that wrong doers should be punished strictly within the prescriptions of law. There should not be any discrimination in the application of Criminal Laws.

1. The Principle of Legality

The principle of legality is that, there is no crime or punishment without a preexisting law that prohibits that crime". Thus, the conduct must be deemed a crime before the act is committed. The policy behind the principle of legality is that ―fair warning should be provided to a criminal so that he does not inadvertently commit a crime that he has no reason to believe is illegal. There is no deterrence value in having unwritten crimes because people do not know what actions to avoid. Also, it is not morally culpable to do an act that a person reasonably believes is not illegal. Lastly, it would be unconstitutional under the ex post facto clause to do so. The rule of lenity is a corollary to the principle of legality - it follows naturally from it. The rule of lenity requires that all ambiguities in statutory language be resolved in the defendant's favor. The policy reasons are the same as the rule of legality. Also, the rule of lenity encourages the legislature to write more clear statutes.

2. The Principle of Equality

"All men are equally the children of god and Equal in his sight despite their widely differing Temporal circumstances" Harris, „The Quest for Equality" (1960)

The principle of equality originated in the process of the development of Roman law. For many years, Romans and non-Romans within the empire were governed under different sets of laws. Roman citizens were governed by „jus civile" (Civil Law). The Romans developed a special set of laws called the „jus gentium" (law of the nations) to rule the peoples they conquered. They based these laws on principles of justice they believed would applying to all people i.e. worthy of universal application. Such principles are known as _natural laws '. Once the Romans started believing in the natural law concept, they recognized that _slaves 'had human rights that should be respected. Romans thus began to require that slaves be treated fairly and decently.

The belief in natural law also led to the idea that non-Romans within the empire should have the same rights as citizens. Thus, in A.D/212 the Romans granted Roman citizenship to most of the peoples they had conquered except slaves. The „jus civile" then became the law of the entire empire. However, the principles of natural law set down in the „jus gentium 'remained part of Roman law. These principles were important to future generations because they led to the belief in equal rights for all citizens. But hundreds of years passed before people fully developed the principles of equality that were outlined by Romans. Once the principles have been fully developed, they contributed to the building of democratic governments in USA, France and many other countries.

The Equality Principle: All men are born equal and must be treated equally. Clauses directed against arbitrary discrimination and aiming to ensure equal rights are contained in almost all modern constitutions. These constitutional guarantees of equality take a great number of forms but two of the formulations are most often used. They are: That there should be ―Equality before the law and That ―the equal protection of the laws should not be denied.

3. The Principle of Individual Autonomy

To criminalize a certain kind of conduct is to declare that it should not be done, to institute a threat of punishment in order to supply a pragmatic reason for not doing it, and to censure those who nevertheless do it. This use of state power calls for justification…justification by reference to democratic principles, and justification in terms of sufficient reasons for invoking this coercive and censuring machinery against the individual subjects.

The purpose of this part of the unit is to identify those interests that warrant the use of Criminal Law which sometimes gives the impression of interfering with an individual 's freedom to a certain extent. One of the fundamental concepts in the justification of criminal laws is the principle of individual autonomy----that everyone should be treated as responsible for his or her own behavior. This principle has factual and normative elements that must be explored.

CHAPTER THREE

OVERVIEW OF MAJOR AREAS OF PUBLIC ADMINISTRATION AND PUBLIC LAW

Objectives

After completing this unit, you will be able to:

- Describe the Public Personnel Administration, Civil Service and Merit Principle
- Explain the nature of Public Policy, types of Public Policy, Public Policy Making Process and related issues
- Discuss the technical areas of Public Personnel Administration such as Job Analysis, Job Description/ specification, Recruitment/selection, Job Evaluation and Compensation

3.1. PUBLIC PERSONNEL ADMINISTRATION

Public service is an ancient institution. During the earliest period, the activities of the public service affected certain sections of the society. This is because the functions of the government were simple and life itself was simple. The compulsory activities of the government were maintenance of law and order, collection of revenue and so on. Welfare activities were purely incidental or optionally undertaken. There was no complex system of public revenues and debts to puzzle financiers. Besides, populations were of manageable numbers; property was of simple sorts. The so-called administrators were few in number, selected entirely at the discretion of the monarch and their official status was no better than the personal servants of the king.

As the complexity of civilization increases, the activities of government expand. This occurs both in the field of services and in the regulation of private activities. The facts of such expansion and of the increasing complex and technical nature of administration determine to a large extent the size, organization and character of public service. At present, government performs multiple functions, much beyond the compulsory functions. It becomes by and large welfare concern and public oriented. Large-scale activity forces a hierarchical organization, and thus large-scale activity is a distinguishing mark of the modern state. So, state administration of the modern era takes the form of public bureaucracy, and administrators were recruited on the basis of public law, became more formal.

In general, public administration, which is the management of governmental affairs or issues at all levels or tiers, national, regional (state), and local, is a permanent force in the life of a nation. It is possible for a state to exist without a legislature or an independent judiciary but no state can exist without administration. Lack of sound administration may bring even the mightiest empire to pieces. In other words, no government

can hope to survive without a strong and effective administrative system, nor can an administrative system exist without the support of those it was established to serve.

The business of the modern state is carried out for the most part by its administrative agencies. The three basic and essential components for successful completion of developmental tasks are men, money and material. The human element is of paramount importance among other factors. This is because the human resource determines the quantity and quality of performance as well as outputs.
Results would be wonderful, if well-trained, intelligent, imaginative and devoted persons are put on the job even if they are made to work on poorly devised machinery. So, human resources are perhaps the most important and vital aspect of any organizations-private, government and non-governmental.

It appears that if we expect a good performance from the government machinery, we need to pay attention to the administration of personnel. The success of public service depends upon the competence, ethos/culture, enthusiasm and interest of employees working in it. Sound public personnel administration is the key to success of government in all areas, be it law and order, or development administration.

The typical administrative official is a professional who devotes most of his /her time and energy to his employment, and public administration in particular is normally a lifetime career/occupation/job. The difference between success in a profession and in a career is the existence of a definite organizational framework for the latter. In the professions, success may at least to some extent be measured by technical achievement. Professional reputation may be associated with outward rank, but this is not invariably the case and the two are by no means necessarily identical.

3.1.1 Definition and functions of public personnel administration

Public Personnel Administration like Administrative Theory, Financial Administration, Comparative Administration, Development Administration and Public Policy Science is an academic branch of Public Administration.

A personnel is a collective term for all of the employees of an organization. The word is of military origin the two basic components of a traditional army being material and personnel. It is also commonly used to refer to the personnel management function or the organizational unit responsible for administering personnel programs.

Public personnel literally mean the people who work for large organizations which are created by and meant for the common and ordinary people. These organizations-Departments, Boards, Corporations, etc are established by the money contributed by the common people and continue to exist to serve these people.

One can call these organizations by the name Government organizations and the people working in, and for, those as Government servants or Civil servants and the services they render as Civil services or public services. So, public personnel administration refers to the administration of civil service.

Some of the definitions of public personnel administration are the following:

- **O.Glenn Stahl** defined public personnel administration as "the totality of concern with the human resources of organization." This definition does not clearly indicate the role of the personnel officer.
- **Felix Nigro** defined public personnel administration as "the art of selecting new employees and making use of old ones in such a manner that the maximum quality and quantity of output and service are obtained from the working force." This is a bit more specific but like the above it does not indicate the role of personnel manager.
- **Dimock and Dimock** defined public personnel administration as "the staff function which advises and facilitates the work of the program manager in matters relating to the recruitment, deployment, motivation, and training of employees, so as to improve the morale and the effectiveness of the service." Moreover, they indicated that public personnel administration is the joint responsibility of line officials plus staff officials called personnel administrators.
- **Goel, S.L. and other** defined public personnel administration as "... branch of public administration which can help an organization in the management of personnel resources with the use of well thought out principles, practices and rationalized techniques in selecting, retaining, and developing personnel for the fulfillment of organizational objectives, systematically and scientifically." It is the art and science of planning, organizing, implementing and evaluating the personnel resources in any organization to ensure their best use for the achievement of the objectives, goals and targets of an organization.

From above definitions one can easily conclude that public personnel administration is a branch of public administration which is concerned with effective management of people at work in government organizations, institutions and departments.

Functions of public personnel administration

It is noted that the interaction of four dominant values - administrative efficiency; individual rights; political responsiveness and social equity - have shaped the development and application of the techniques of public personnel administration.

Different social values have led to different personnel systems in different countries. A system where political responsiveness and personal rule are prevalent tends to be characterized by political appointments. Where social equity is important, affirmative action and minority protection are introduced. Where the focus is on efficiency, the personnel system stresses disciplinary action against nonperforming employees and rewards for strong performance.

If an agency is adding employees, the value dimension of public personnel management will be especially evident in the conflict among competing definitions of merit.

- Proponents of political responsiveness will want the positions to be filled politically, outside of the civil service system.
- Managers will want greatest emphasis placed on setting high standards, so that applicants selected for the positions will be able to perform them with a minimum of orientation and training.
- Affirmative action advocates will prefer recruitment methods or selection criteria that allow greatest opportunity for minorities and women to be selected.
- Current employees will want recruitment for the new positions to be restricted to the present work force.

The relative priority of these values, in the context of the situation, will determine how the positions are classified (exempt or civil service), what qualifications are established for them, and how they are filled. So, public personnel administration is a turbulent field that involves the interaction of shifting values and core functions.

The core functions of public personnel administration are those which public agencies must perform in order to permit public employees to work competently under satisfying working conditions:

- To procure employees (recruitment, selection and promotion),
- To allocate work and rewards among them (Human resource planning, Job analysis, job evaluation and pay),
- To develop their skills (Performance appraisal, training and development, motivation and safety).
- To develop and maintain (sanction) the terms of the employment relationship (labor-management relations, discipline and grievances and employee rights).

3.2 TECHNICAL AREAS OF PUBLIC PERSONNEL ADMINISTRATION

3.2.1 Public Personnel Policies

Personnel policy is a statement of intention committing management to a general course of action. It constitutes guide to action. It furnishes the general standards or basis on which decisions are reached. Its genesis lies in an organization's values, philosophy, concepts and principles.

When management drafts a policy statement to cover some feature of its personnel program, that statement may often contain an expression of philosophy and principle as well. Although it is perfectly legitimate for an organization to include philosophy, principles, and policy in one policy expression, it is good to separate the expression of principle from the policy statement. The following is a statement of principle or objective in regard to the health and safety of company personnel:

It is the intention of the company to provide a safe plant and healthy working environment.

It can readily be seen that such a statement is quite general. A policy statement on the other hand is more specific. It commits management to a rather definite course of action, as shown in the following statement.

Our policy is to institute every practical method of engineering safety into our processes and equipment, to provide protective clothing where necessary, to train employees in safe operating procedures, and to vigorously enforce established safety rules.

Our policy is to provide a healthful plant by giving adequate attention to cleanliness, temperature, ventilation, light and sanitation.

A policy does not spell out the detailed procedures by which it is to be implemented. That is the role of a procedure. A procedure is really a method for carrying out a policy. A policy should be stated in terms broad enough for it to be applicable to varying situations. Lower-level managers who apply policy must be allowed some discretion in carrying out the policy.

Personnel policies may be interpreted as the well recognized intentions of the management with respect to human resources management in the organization. It would indicate the objectives or the established course

of action to which the top management wants all levels of management to establish their relationship with the employees of the organization.

Why definite personnel policies are required?

It is of utmost importance to have personnel policies in the organization for the uninterrupted execution of the tasks. There may be a few successful organizations where no policy exists. According to their views formulation of personnel policies is a waste of time and money. Besides, it is unnecessary restrictions on manager's freedom of action. However, such views are not acceptable in modern times. Policies are not restrictions on our freedom of action but they are guide to our actions towards the goals of the organization. They help getting the work done by the people effectively.

We can assess the importance of personnel policies in an organization on the following grounds.

i. **To achieve the objectives the organization:** Policies are guide to action towards the objectives of the organization. Therefore they must be known to and well understood by every concerned person in order to concentrate their efforts towards the objectives.
ii. **Uniformity in decisions:** Personnel policies furnish the general standard or basis on which decisions are taken. Decisions in an organization are taken by the various line authorities keeping in view the personnel policies and thus uniformity of action is maintained in similar cases. Moreover, if the person in authority is transferred and the other person takes charge of the office the decisions to be taken by the new authority shall be similar to those which are already be taken in similar circumstances by the former authorities in the light of predetermined policies of the organization. This brings simplicity and uniformity in action.
iii. **Delegation of authority possible**: Personnel policies help executives at various levels of decision centers to act with confidence without consulting the superiors every time. They give a manager liberty to choose the alternatives provided and to decide upon the action.
iv. **Better control.** As personnel policies specify relationship among organization, management, and workers, so each group works for the achievement of the large objectives of the organization without any policy conflicts. Thus it provides better control.
v. **Evaluating efficiency**: Policies serve as standards in execution of work. Efficiency of each group may be evaluated by its performance in the light of the policy. It may be assessed whether organization has achieved the desired results set in the policy. Policy may be amended or a new policy may be formulated in the light of the actual performance.
vi. **Confidence**: Policy provides the workers a security against exploitation. It creates confidence in employees. They may know where they stand in the organization.

vii. **Motivation of workers:** Policy makes employees aware of the objectives of the organization and guides the workers in achieving them. So they work enthusiastically and with loyalty to get those objectives.

viii. **Guide to management:** Policy provides guidance to management in relation to the personnel problems. They resolve how to get the work done by the people at work or how to behave them.

As personal policy is a total commitment of the organization for carrying out the work in a specified way so, they should be communicated to all concerned. Any amendment and change in policy should also be brought to the knowledge of all employees and executives so that they may have full knowledge of the intentions of the organization.

Formulation of personnel policy

Policies are not created in a vacuum. There are five principal sources for determining the content and meaning of policies. These are: Past practice in the organization; prevailing practice among other companies in the community and throughout the nation in the same industry; the attitudes and philosophy of the board of directors and top management; the attitudes and philosophy of middle and lower management, and the knowledge and experience gained from handling countless personnel problems on a day-to-day basis.

Objectives of personnel policies

The main objectives of personnel policies are to guide the management to develop the people at work. The effectiveness of personnel policies must be assessed in the light of their objectives for which they are formulated. The objectives of personnel policies are:

◆ **Maximum individual Development:** The main objective of personnel policy should be maximum individual development. Policy should be designed in such a way so that a healthy competition and effective cooperation among workers may be promoted and better results may be expected.

◆ **Maximum use of human resources:** The second objective of personnel policy is the best and maximum use of available human resources. Right man should be placed on the right job or the job should be assigned to a man who is most interested in that work and has sound of knowledge of working.

◆ **Good employee Relations:** Good employer-employee relations are the backbone of all personnel activities. The promotion of good industrial relations should be the main objective of the personnel policies.

◆ **Individual satisfaction:** Management should consider social values, customs and employees aspiration in formulating and developing personnel policies. The individual satisfaction is very much linked with the monetary and non-monetary facilities provided by the organization.

◆ **Other objectives:** The other objectives of personnel policies are:

- To protect interest of workers and recognize the trade union activities.
- To provide the opportunities for promotion within the organization
- To motivate the people at work and increase their morale.
- To provide security to job
- To promote and develop a sense of loyalty to the organization among the workers so that a sense of common interest may develop.
- To develop a sense of responsibility in civil servants.

Principles of personnel policy

The statement of personnel policies is the constitution of the organization. Personnel policies should be designed on the basis of the following principles.

◆ **Principle of common interest.** In designing personnel policies the principle of common interest must be given due recognition. The interest of the employer and the employees is the same, that is, economic success of the enterprise. Employees must have a change for a better standard of living, better security and opportunity for living a fuller and better life and in return employer must be able to get the maximum return possible.

◆ **Principle of Development:** Ample opportunities must be provided within the organization for the growth and development of employees' personality i.e. to improve their status, to earn more, to shoulder higher responsibility. Personnel policies should clearly outline the opportunities for development to those who are willing to contribute something to the prosperity of the organization and to sacrifice their time and efforts for undergoing training to improve themselves on the job.

◆ **Principle of Recognition of work and Accomplishment:** There must be a direct relationship between work and accomplishment. Any job must provide for sufficient wages and benefits that will enable an employee to buy his necessities. The employees also expect reasonable security on the job against accidents, sickness and old age. They wish to enjoy their leisure. The personnel policies should take into consideration the employees expectations.

◆ **Principle of Recognition of Trade unions:** Trade unions play an important role in the development of industrial relations; therefore, management must recognize their existence. The personnel policies must

incorporate the clause for harmonious settlement of the dispute with the trade unions through negotiations and collective bargaining.

◆ **Principle of participation in Management:** Employees' representatives must be given participation in decision-making bodies of the organization so that they can realize their responsibilities towards the management and workers. The success of any program or policy depends considerably upon its willing acceptance by the employees and if the decisions regarding personnel affairs are taken in the presence of workers' representatives, there will be better employees' satisfaction and morale. Such action will also minimize resistance to change.

◆ **Principle of change.** Change is the law of nature. Employees always resist change. Change may be a pleasant or unpleasant one. The employees should be prepared by the management well in advance to face the change as and when warranted. This may be done by promoting understanding at the different employee levels through bulletin boards, company magazines and newspapers, committee meetings, union-management meeting, broadcasting system and so forth. Management viewpoint in this regard should be reflected in personnel policies.

3.2.2 Job analysis, job description and specification

a. Job analysis

Job analysis is the process of recording information about the work performed by an employee. It is a process by which job, duties and responsibilities are defined and the information of various factors relating to jobs are collected and compiled to determine the work conditions, nature of work, qualities of person to be employed on job, position of the job, opportunities available and authorities and privileges to be given on the job, etc.

The main purpose of this analysis is to describe and define the distinctions among various jobs in the organization and their relationship. Thus, job analysis results in a job description - a written statement of the employee's duties and a qualifications standard, which specifies the minimum education and/or experience an employee needs to be able to perform the position's duties satisfactorily.

b. Job description

Job description is basically descriptive in nature and constitutes a record of existing and pertinent job facts. It is a pertinent picture of the organizational relationship, responsibilities and specific duties that constitute a given job or position. It defines a scope of responsibility and continuing work assignment that are

sufficiently different from those of other job to warrant a specific title. The job description document discloses what, how and why it is to be done.

In general, traditional job description specifies: the organizational unit to which this position is responsible; the general duties performed by the incumbent, and the minimum qualifications required for eligibility. It appears that any job description should have the following basic information.

1. **Proper job title**

It is desirable that the job title be short, specific and suggestive of the nature of the job. The desirable qualities of jobholder should also be clear from the title so that every job should be distinguished from one another.

2. **Job location**

It should also be given in the description where the job is to be performed i.e. in what department.

3. **Job summary**

The findings of the job analysis should be descriptively summarized so that all the necessary facts may be incorporated in paragraphs to make it convenient to identify the job. It would clear the nature of the job.

4. **Duties and Responsibilities**

The duties and responsibilities to be performed on the job with proper classification as primary, secondary and other duties should clearly be written in the job description. Time taken in performing the job and sub-jobs should also be mentioned. The duties and responsibilities, as far as possible should be arranged in chronological order.

5. **Nature of supervision**

The degree of supervision required on each job should also be mentioned. There are certain jobs like unskilled jobs that require close supervision while other jobs like skilled or supervisory or managerial job require less supervision or no supervision.

6. **Machines, tools and Materials**

The machines, tools, equipment and materials required in the performance of each job should also be included in job description. It will indicate the nature and complexity of the job and will help devising the training programmes.

7. **Relation to other jobs**

It intensifies the vertical relationship of promotion and horizontal relationship of work-flow and procedures.

8. **Working conditions**

The working conditions of the job - hazards and physical surroundings within the working area should be described. It will be helpful in job evaluation.

9. **Other Items**

It should be elastic enough so as to incorporate all necessary amendments from time to time to make it up to date. Thus, in the job description we usually include "Other duties as assigned". As a result the job description will be open to any additions.

c. Job Specification

In order to hire the personnel on a scientific basis, it is very necessary to determine in advance a standard of personnel with which applicants can be compared. This standard should establish the minimum acceptable qualities necessary for the effective performance of the job duties and responsibilities, i.e. in other words, qualitative aspect of manpower requirement should be considered in hiring the personnel. Through job analysis it is possible to identify qualitative requirements of the job.

Job specification may also be called "standard of personnel for the selection" It specifies the type of person required in terms of educational qualification, experience, aptitude, etc... on the job and further assists in the selection of appropriate personnel by outlining the particular working conditions to be encountered on the job.

A job specification should include:

A) Physical characteristics, such as height, weight, sight, physical structure, health, etc
B) Psychological characteristics as decision making ability, analytical view, mental ability, etc
C) Personal characteristics as behavior, mental ability, enthusiasm, leadership qualities, etc
D) Responsibility, i.e. the sense of responsibility in a person to be appointed on the job.
E) Qualification and experience, i.e. academic qualification, experience. training, etc

3.2.3 Recruitment

Recruitment is the most important process in the administrative system. If the recruitment policy is faulty and wrong, incompetent and inefficient people get into the system and do permanent damage to its functioning.

J.D Kingsley says that, “Public recruitment may be defined as that process through which suitable candidates are *induced* to compete for appointments to the public service”. Recruitment is designed to

provide an organization with an adequate number of viable candidates from which to make its selection decision.

In the words of **Dale Yoder**, the **key questions to** be answered in the matter of recruitment are:

- Where is this new or replacement manpower to be secured?
- How can it be located and identified?
- What are the most promising sources?
- What recruitment programs and devices can be most effective in providing satisfactory manpower?
- What policies are appropriate as guides in the recruitment program?

Recruitment is a common activity both in private and public administration. However, in public administration 'systemic factors' like the constitution and political outlook of the government determine personnel policy of organizations. Recruitment policy also carries the weight of the ideological orientation of the recruiting authority (party in power).

Objectives of recruitment

The main objective of recruitment is to generate adequate number of qualified applicants. Public agency recruitment has several major objectives corresponding to the opposing values.

- First, advocates of social equity view recruitment as the initial step in placing more employees from various affected groups in government jobs. They see it as an advertising or marketing device to increase the "pool" of available applicants.
- The existence of this pool can then be used to increase pressure on government agencies to hire more minorities, women, handicapped people, and so on.
- Second, advocates of administrative efficiency view recruitment as the process by which qua as large a pool of eligible applicants as possible. Hence, their objective is a managerial one, namely, achieving predictable or increased productivity while keeping recruitment costs low.
- Lastly, advocates of political responsiveness view recruitment of political executives as the means by which elected officials can gain and keep control over career bureaucrats in government agencies.

Essentials of a Good Recruitment System

The importance of a sound recruitment system was first recognized by China where recruitment on merit was introduced in the second century B.C. In the early 18th century, a civil service commission was functional as an agency to carry out merit based recruitments; precisely around 1770.

In the modern times, Prussia was the first to adopt this system. In India it was introduced in 1853, In Britain in 1857 and in USA merit system was introduced with the promulgation of Civil Service Act, 1883 (The Pendleton Act 1883).

◆ Recruitment policy must be positive. It must be planned to attract the best, most competent and qualified persons in government service.

◆ Recruitment policy must be democratic. It must be planned to provide opportunities to the maximum number of qualified and competent persons.

◆ Recruitment policy must be attractive. Attractive literature and publicity techniques must be used to attract the best talented persons to join the government service. This flow should continue.

◆ Recruitment policy must be impartial and non-political. These should be an independent agency for recruitment and there should no interference from the government or politicians in recruitment of civil servant.

◆ Recruitment must be based on the merit principle.

◆ Recruitment agency must adopt scientific and modern methods of testing merit. From time to time these methods must be reviewed and new up-to date methods adopted.

◆ Recruitment policy must have a healthy combination of direct and indirect recruitment systems.

Recruitment of political appointees

Positions in government organization are categorized into classified and exempt positions. Classified positions are filled through the civil service system and are thus career appointments; exempt positions are outside the civil service system, and are thus filled by political appointment.

At the federal level, the following positions are political appointments: all Cabinet Secretaries, Assistant Secretaries, and Under-Assistant Secretaries; all heads of commissions and independent agencies; all judges; most congressional employees. At the state level, political appointments comprise most judges, legislative employees, and heads of administrative agencies. At the local level, all department heads, the city clerk, and city manager serve at the pleasure of an elected council, commission, or mayor (depending on the particular structure of local government). That is, their positions are not classified, they are not appointed as the result of a competitive examination, and they serve at the pleasure of the elected officials who appointed them.

Political appointees view public employment from different perspectives than do career administrators.

◆ The political appointee owes primary loyalty upward - to the elected official who appointed him or her. Political appointees have been named to their posts because of political or psychological loyalty to the elected official.

◆ They usually are not familiar with the structure or functions of the government agency they run, although the appointment may have been based on a solid background of related experience in the private sector.

◆ Political appointees are likely to perceive career bureaucrats as politically unresponsive, in that their loyalties are to programs or policies that have been part of previous administrations. Hence, appointed officials may view civil service protections as "red tape" that keeps "unproductive civil servants" in their jobs. Naturally career bureaucrats see continuity in public policy as dependent upon them, and they can easily come to view political appointees as "unprofessional."

These differences in the perceptions and objectives of career bureaucrats and political appointees highlight one of the continuing tensions within public employment - the conflict between the values of managerial efficiency and political responsiveness.

Centralized recruitment techniques

Public agency recruitment techniques may be either centralized or decentralized. If the agency has several thousand employees, and if different departments recruit large numbers of clerical or technical employees for the same types of positions, centralized recruitment will frequently be used because it is more cost efficient.

If recruitment is centralized, the central personnel agency will be responsible for requesting from agency personnel managers periodic estimates of the number and type of new employees needed in the future (the next quarter or fiscal year). The staffing needs of all agencies are entered into a computer, after being classified by occupational code and salary level, and a summary listing of all projected new hiring needs is produced.

The central personnel agency will issue a job announcement, which formally notifies applicants that a vacancy exists. To meet affirmative action laws and regulations, each job announcement must include the following information: 1) Job title, classification, and salary range; 2) Duty location (geographic and organizational unit); 3) Description of job duties; 4) Minimum qualifications; 5) Starting date; 6) Application procedures; and 7) Closing date for receipt of applications.

The extent of recruitment efforts once a job vacancy is announced will depend upon several considerations: the geographic area of consideration, the length of time during which applications are accepted, and the necessity for targeted recruitment efforts.

Typically, professional and managerial positions have a larger geographic job market than do clerical or technical positions. While recruitment for the latter may be local, conducted either through newspaper advertisements or phone calls to the local office of the state employment service, recruitment for the former may be regional or national (involving recruiting agencies or advertisements in national professional newsletters).

Generally, job vacancies are "open" longer if the position is managerial than if it is clerical. This is because the creation of a larger geographic job market means that applicants take longer to learn about the vacancy and to submit their applications; and because agencies are generally able (and required) to predict managerial vacancies further in advance than clerical or technical ones.

If the agency underutilizes women or minorities, it will be interested in targeting recruitment efforts toward individuals from these groups. Community organizations, churches, shopping centers, minority news-papers, state employment services, and minority recruitment centers are all possible avenues for targeted recruitment.

Given the hesitancy of many minorities and women to apply for jobs in public agencies in which they have historically had little opportunity for employment, it is to be expected that recruitment would also occur over a longer period of time if it were targeted toward these individuals.

Decentralized recruitment techniques

Decentralized recruitment is most likely to occur in agencies that are relatively smaller, for which recruitment needs are limited, and in which each agency basically employs different types of workers. It is almost always used for professional, scientific, or administrative positions peculiar to a particular agency.

If recruitment is decentralized, individual public agencies will go through essentially the same steps as are required for centralized recruitment, except that dealings with the central personnel agency are omitted.

While individual agencies are likely to favor decentralized recruitment because it gives them more control over the process, it has the disadvantage of reducing the control that the chief executive has over expenditures or affirmative action compliance. In a centralized personnel system, for example, the chief

executive will be able to stop new hiring simply by forbidding the central personnel agency from recruiting any new applicants, and from sending the names of any applicants already on the register (list of eligibles) to individual agencies.

In a decentralized system where the chief executive has no direct control over the recruitment process, it is more likely that individual agency directors will insist on their right to recruit people to meet program needs, and to manage their own budgets more autonomously.

Some agencies utilize a combination of centralized and decentralized recruitment. For example, a central personnel agency may authorize individual agencies to recruit and test applicants independently, subject to audit by the central personnel agency once they have been hired. This compromise will provide for a greater degree of centralized control than is possible with a decentralized system, while at the same time providing agencies with timelier and more flexible recruitment than may be available from a central personnel agency.

3.2.4 Affirmative action

Affirmative action is a mediating variable that affects the way the agency recruits, hires, and promotes employees. It supports using public jobs to enforce public policy outcomes. Specifically, it favors achieving the value of social equity by recruiting, hiring, and promoting people from different societal groups, in proportion to their percentage of the population.

However, the objective of affirmative action is in conflict with other selection criteria and values, among them, seniority, administrative efficiency, and political responsiveness. For example:

◆ it challenges the traditional emphasis of collective bargaining on seniority as the basis for promotion or retention, particularly during periods of limited agency growth or cutback management.

◆ it challenges managers' predictable bias toward objective testing, education, and experience as indicators of applicant quality in questioning the job-relatedness of traditional selection criteria.

◆ by increasing the pressure on elected officials to fill appointive jobs with proportional representation of women and minorities, it indirectly attacks the "old boy" network that has traditionally been the mechanism by which top administrative positions have been filled.

Equal employment opportunity and affirmative action

Equal employment opportunity (EEO) law provides for equality of treatment while Affirmative Action law provides for preferential treatment of certain groups. Thus, EEO most closely reflects the value of individual rights, while affirmative action is intended to ensure another value - social equity.

By contrast, affirmative action not only prohibits discrimination, but *requires* employers, unions, and employment agencies to take positive steps to reduce under representation through the preparation and implementation of affirmative action plans (AAPs).

Given the different objectives of EEO and AA, it's easy to see how enforcement strategies might conflict. Take the use of quotas for minority hiring or promotion.

◆ Under AA, an affirmative action plan might establish a goal of hiring more minorities or women until their percentage of employees in the organization equalled their percentage of representation in the population.

◆ Under EEO, however, concern for the protection of each applicant's or employee's rights would prevent the establishment of a hiring quota ("three of the next 10 employees hired must be black," for example) - unless such a quota were established by a court order or a consent decree.

Also, under cutback management conditions, it has often proved difficult to achieve either goals (because of the importance of seniority as a promotion criterion) *or* quotas (because of freezes on hiring or promotions).

Affirmative action compliance: voluntary and involuntary

Once an EEO/AA law is passed by the legislature, it must be executed by the executive branch of government, and enforced by the judiciary. The 1972 Equal Employment Opportunity Act also requires that *state and local* governments develop their own affirmative action plans.

Typically, states have created an equal employment opportunity office within their personnel department or department of administration. This office assists and monitors state agencies in assessing utilization of minorities and women, developing affirmative action plans, and implementing specific programs necessary to achieve them. The EEOC has oversight responsibility for state affirmative action programs.

Most urban counties and larger cities also have an affirmative action compliance office attached to either their personnel department or department of administration. The role of this office, and compliance procedures relative to the EEOC, are the same as for state agencies.

Both states and sub state governments that receive grants or contract funds from the federal government are also responsible for complying with the guidelines of the Department of Labor, Office of Contract Compliance Programs.

Voluntary affirmative action compliance occurs when a public agency complies with affirmative action laws (and pursuant regulations issued by compliance agencies) through the preparation of an affirmative

action plan which (1) identifies underutilization, (2) establishes full utilization as a goal, (3) develops concrete plans for achieving full utilization, and (4) makes reasonable progress toward full utilization.

Involuntary affirmative action compliance occurs when a public agency alters its personnel practices as the result of investigation by a compliance agency resulting in a negotiated settlement, when the employer settles out of court with a compliance agency by means of a consent decree, or by court order. Involuntary compliance carries the threat of the ultimate financial penalty-loss of federal aid to the non complying public agency.

How to prepare an affirmative action plan

An affirmative action plan involves three stages: (1) conduct a utilization analysis, (2) establish affirmative action goals, and (3) develop programs for attaining them.

A utilization analysis is simply a comparison of the numbers and percentages of employees in an agency against their numbers and percentages in the local geographic area, and/or the "relevant labor market." The affirmative action office may collect this information through personnel records, taking a "head count," or a combination of these techniques.

Next, the personnel manager or affirmative action compliance officer should compare the agency's utilization of particular groups with their availability in the appropriate labor market. Availability is a difficult concept that includes the following candidates: those currently employed in the occupation, those qualified but currently employed in another occupation; those trained in the occupation; those experienced but currently employed, etc.

Availability is also influenced by the geographic boundaries of the appropriate labor market. For example, a local government recruiting for a maintenance worker may consider only a local labor pool, and therefore simply post a job vacancy announcement and advertise in the local paper.

The second stage in preparing an affirmative action plan is to set a goal. Usually this is expressed as the representation of all groups in proportion to their representation in the available labor market. In other words, proportional representation will be prepared. If the difference between the proportion of a particular group in the agency and in the labor market is great, you can conclude that discrimination has occurred and make proportional representation your goal.

If the difference between these proportions is slight, and if the agency employs less than 50 employees, you may wish to use an appropriate statistical technique to determine the likelihood that the group is actually being discriminated against. The appropriate statistic is the standard error of a proportion.

The third stage of an affirmative action plan is the development of a plan that describes how the agency intends to correct underutilization in specific program areas. Plans should specify the activity, time frame, responsible unit, and measurable objectives. Here are some examples:

Affirmative action and the public manager

In addition to its specific impact on the public personnel manager, affirmative action has a more general impact on all public managers and supervisors in that it affects the rules by which the procurement function is carried out. Consequently, it was relatively easy for agencies to overcome barriers to compliance. For example:

- Agencies unable to recruit sufficient minorities or women were advised to target recruitment efforts toward those community organizations, schools, or media oriented toward these groups.
- Agencies unable to find sufficient minorities or women, even after targeted recruitment efforts, were encouraged to consider lowering the job qualifications to increase the size of the applicant pool.
- Agencies unable to promote sufficient minorities to more responsible positions were advised to consider remedial training, revision of qualifications for the promotional position, or promotional quotas enforced by being incorporated into the organization's reward system for managers.

Values other than social equity can be expected to have much more influence over the procurement function than they otherwise might. Public managers tend to perceive affirmative action as increasingly onerous. Not only does it deprive them of flexibility and discretion in the procurement process, but also it is not likely to result in the selection of the best-qualified employees when knowledge, skill, and ability are the desired selection criteria.

Affirmative action and personnel management

Affirmative action is important to our understanding of public human resource management in three ways.

- It focuses upon the values and objectives of public employment by asking the question: "What should the general criteria be for allocating public jobs?"
- Affirmative action translates this value question into rules which the organization can then use to make individual decisions on recruitment, selection, and placement.
- Affirmative action is the response of individuals and groups inside the agency to the agency's application of decision rules, particularly with respect to the individual's perception of the equity and predictability of those rules.

Affirmative action will continue to have a profound impact on public administration because of its control over the procurement process and the increasing role of the judicial system in regulating employment decisions and ensuring procedural due process.

Affirmative action in the Ethiopian Civil Service

In Ethiopia, Federal Civil Servants Proclamation No 262/2002 has certain provisions of affirmative action especially in filling of vacant positions. According to the proclamation (Article 13/1-5), vacant posts will be filled in the following mechanism:

- There shall be no discrimination among job seekers or civil servants in filling vacancies because of their ethnic origin, sex, religion, political outlook or any other ground.
- A vacant position shall be filled only by a person who meets the qualification required for the position and scores higher than other candidates.
- Without prejudice to the statements above, preference shall be given to:
  - Female candidates; and
  - Members of nationalities comparatively less represented in the government office having equal or close scores to that of other candidates.
- Notwithstanding the above provisions, priorities of appointment shall be given to candidates with disabilities who meet the minimum passing score.
- Vacancies may be filled through recruitment, promotion or transfer on the basis of human resource planning.

3.4.5 Selection

Selection is the oldest function of public personnel administration. It is the process of choosing individuals who have relevant qualifications to fill jobs in an organization. It involves predicting which candidates will make the most appropriate contribution to the organization - now and in the future. Selection is the process of gathering information about applicants for a position and then using that information to choose the most appropriate applicant.

Objectives of selection

In as much as recruitment, selection is a procurement function, it could be expected that the same values and objectives would influence selection as relative to recruitment.

Elected legislators and chief executives often view the bureaucracy as unresponsive to their values, program priorities, or personal preferences. Therefore they seek to establish selection criteria that emphasize compatibility with the elected official's political philosophy and programmatic aims.

Career civil service executives usually seek to protect "their" agencies from political turmoil by endorsing selection criteria that emphasize technical qualifications and abilities (such as physical standards and test scores).

The dominant value influencing the public agency procurement process in recent years is social equity, because it represents the most current challenge to traditional procurement values. It can be assumed that affirmative action advocates would seek to modify selection criteria to favorably affect employment opportunities for particular groups, based on the justification that these groups had either been underutilized historically, or were deserving of preference because of their societal contributions.

Naturally they would seek to appease proponents of political responsiveness and administrative efficiency by conceding that prospective employees meet minimum criteria established in light of these values.

The frustration in trying to reconcile the values of political responsiveness and administrative efficiency has been a defining characteristic of public versus private personnel administration for some time. While utilization of public personnel systems to promote social equity in this country is not uncommon, in recent decades it has become the source of frustration, conflict, and hostility because it has centered on the issue of race in hard economic times.

The most effective way to deal with an equity claim is through the establishment of employment quotas. But this solution is rarely available, except as a court-ordered remedy for demonstrated discrimination. Hiring quotas based on non-merit factors conf1ict most directly with the value of administrative efficiency. Thus, a negotiated compromise must be reached between the values of social equity and efficiency. Language such as the following is usually included in an affirmative action plan: "With two job candidates of equal qualifications, preference will be given to the minority applicant."

Selection Methods

It will be useful to identify various steps and responsibilities in the staffing process: 1. Identify human resource needs; 2. Seek budgetary approval to create and/or fill the position; 3. Develop valid selection criteria; 4. Recruit; 5. Test or otherwise screen applicants; 6. Prepare list of qualified applicants; 7. Interview most highly qualified applicants and 8. Select most qualified applicant.

3.4.6 Job Evaluation

Job evaluation is a systematic determination of the value of each job in relation to other jobs in the organization. It is the process of analyzing the various jobs systematically to ascertain their relative worth in an organization. It enables us to have a job hierarchy. It is based on job descriptions and job specifications.

It should be noted that in a job evaluation program, the jobs are ranked and not the jobholders. Jobholders are rated through performance appraisal. Thus, job evaluation is the methods and practices of ordering/arranging/sorting/classifying jobs or positions with respect to their value or worth to the organization.

Common features/essentials of job evaluation techniques

1. Job evaluation is concerned with differences in the work itself, not in differences that are found between people.
2. Reference is made to the "content" of the job, i.e. what the work consists of, what is being done, what skills are deployed and the actions that are performed. This is normally discovered by job analysis.
3. There are predetermined criteria, or factors, against which each job measured. These may be descriptions of the whole job, or of its component parts. Such kind of factors should:
   A) Avoid excessive overlapping or duplication,
   B) Be definable and measurable,
   C) Be easily understood by employees and administrators,
   D) Not cause excessive installation or administration cost and
   E) Be selected with legal considerations in mind.
4. The practice of involving those who are to be subject to the job evaluation at an early stage helps to ensure both accuracy in job analysis and commitment to the job evaluation scheme.
5. The outcome of a job evaluation should be wage and salary scales covering the range of evaluated jobs.
6. All systems need regular review and updating, and have to be flexible enough to be of use for different kinds of work, so that new jobs can be accommodated.
7. All groups and grades of employees should be covered by the job evaluation
8. The results of job evaluation must be fair and rational and unbiased to the individuals being affected.

Steps in job evaluation

1. Gather information on the job being evaluated. The information is obtained from job analysis.

2. Determining factors that are to be used in determining the worth of different jobs to the organization like education, skill, initiative, responsibility, working conditions physical and mental effort, experienced, etc.

3. Determining the method of evaluation that will use the chosen factors for evaluating the relative worth of the different jobs.

4. Grading jobs according to their importance.

Methods of job evaluation

- **Analytical/quantitative:** Point-rating method and Factor-comparison method
- **Non-Analytical/qualitative:** Ranking method and Job grading method

3.4.7 Compensation

Compensation refers to all forms of pay or rewards going to employees and arising from their employment, and it has three main components:

◆ Direct financial payments (in the form of wages, salaries, incentives, commissions and bonuses),

◆ Indirect payments (in the form of financial benefits like employer – paid insurance and vacation It is an indirect reward such as health insurance, vacation pay, or retirement pensions, given to an employee or group of employees as a part of organizational membership.) and

◆ Non-monetary benefits/rewards: It includes challenging job responsibilities, recognition of merit, growth prospects, competent supervision, comfortable working conditions, job sharing and flexitime.

- **Major concepts related to compensation**

A) Wage

It is a payment earned by an employee in the form of direct compensation for what has been done. Wages are usually pays based on hourly /daily accomplishments of productions or services. It is for blue-collar workers. It usually paid for daily laborers who are engaged in physical works and whose products are measured.

B) Salary

Unlike wages, salaries are paid to administrative, managerial and professional employees, which are calculated on monthly or annually and not on product basis. These people are said to be white-collar workers.

C) Earnings

It represents all incomes earned by an employee: Basic Salary + Premium + Bonus + Over time. Any form of individual's monetary income through wages, salary, holiday pay, premium, overtime, bonus, etc.

D) Real earnings

Real earnings represent the purchasing of power of money. It is simply comparing the compensation of a person with its basic necessity. It is calculated by dividing total amount of earned money by the cost of living or price index.

E) Take home pay

It is the compensation that includes all premiums but excludes deductions in the form of income tax, security dedication, pension provision, etc. It is the money that employee has exclusive right over the money.

Fundamentals of Compensation

Arriving at a specific amount of Birr the employer will pay it is a complex process which reflects not only market conditions, but other factors as well - societal values, judgments concerning job evaluation criteria, and political realities.

Initially, of course, public employees' pay is based on market conditions, and therefore reflects what other employers pay for employees with similar qualifications. But salary is also heavily influenced by values as well as economics. The dominant value is political responsiveness in that pay rates are either established directly by a legislature, or indirectly through collective bargaining agreements subject to legislative ratification. This in itself can cause inequities.

At this point in time it is good to look at few prevailing arrangements. Methods of settling salaries:

- In some countries a statute of the legislature fixes the salaries.
- In some countries the legislature lays down the plan of a salary structure in broad outlines and leaves the details to the executive. This system prevails in the U.S.A.
- Sometimes the salaries are fixed by collective bargaining, usually in private firms and also public sector enterprises.
- In some cases the salaries are determined by local or wage board.
- Certain countries follow a mixed system.

Even though political responsiveness is the dominant value affecting compensation, the other three values affect it as well.

First, it requires not only that all groups be fully represented in the work force, but that they are equally

represented in different occupations (especially higher-paying professional and managerial jobs). Traditionally, minorities and women have been underutilized in these occupations, and have therefore earned lower average salaries than have white males. Thus, concern for the value of social equity demands that job evaluation and compensation look at job worth not solely in economic terms, but also in light of its implications for affirmative action compliance.

Second, the value of administrative efficiency dictates that public agency managers get the most value from scarce resources. Since pay and benefits constitute between 50 and 70 percent of total government expenditures, efficiency requires that pay and benefits be kept high enough to ensure an adequate supply of qualified applicants, but no higher than that level in order to conserve resources. Because budgets are prepared (and collective bargaining agreements renegotiated) annually, managers frequently find that their flexibility to adjust pay rates to fit their needs is more limited than it would be in private industry.

Third, the value of individual rights inf1uences compensation in that everyone wants to be paid "a fair day's pay for a fair day's work." Yet because individual standards of equity differ, some method must be found for equating employee contributions based on employee characteristics (such as seniority or performance) and job worth factors (such as the inherent difficulty or responsibility of the work). These equity issues are not only the subject of individual discussions between employees and managers; they are also resolved through internal grievance procedures and external affirmative action compliance mechanisms. The collective bargaining process also provides a means by which groups of employees may assert claims of increased job worth. Thus, salary reflects not only market conditions, but also political assumptions and societal values.

Objectives of compensation

Compensation in government agencies has diverse objectives.

Elected officials want clearly established salaries that make budget projections possible, without those salaries or benefits being "excessive" in comparison with private sector rates. They use the predictability of pay and benefit systems for several purposes related to external control. First, accurate estimation of proposed expenditures is required to keep them within receipts/revenues.

Second, the "costing" and evaluation of proposed collective bargaining agreements requires that the legislature, which has the responsibility of approving or disapproving negotiated contracts, have accurate estimates of the costs of proposed changes in pay and benefits.

Third, legislators and managers tend to compare public sector pay and benefits with those offered for similar work in the private sector. This enables them to determine the fairness of compensation as well as

the comparative advantages and disadvantages of "contracting out"- that is, purchasing the same services in the private sector rather than having them performed by government employees.

Agency managers want compensation and benefit systems that enable them to recruit and retain employees well enough to accomplish program objectives; that provide benefits that are predictable enough for ease in budget management, yet flexible enough to reward productive employees. Managers want predictability of rewards so that they can deal knowledgeably with legislators and chief executives concerning budgetary needs; they want *flexibility* so that they can reward productive employees to a greater extent than unproductive ones.

Employees want equity in comparison with other employees and in terms of the nature of the work. Employees are interested in the predictability of rewards, though for different reasons than managers.

◆ Employees want to be able to count on future paychecks or benefits so that they can make personal financial decisions, plan vacations, or look forward to retirement.

◆ Employees also want to be able to assess whether the rewards they receive are fair (in comparison with those of other employees). This means they want disclosure of salaries and benefits within the organization, and disclosure of the criteria used to determine job worth and employee performance.

◆ Lastly, employees want to maximize pay and benefits. Historically, at least, they have felt that the relatively lower pay of public sector jobs should be counterbalanced by greater job security and a more attractive benefits package (particularly health care and retirement).

The specific methods by which public employees' salaries are set differ by type of job. Public positions can be grouped into two *categories-classified* and *unclassified.* Wages or salaries for classified positions are usually established by a formal method of job evaluation, or by collective bargaining agreements. The bulk of positions fall into this categories

Salaries for unclassified positions - those not covered by civil service protections or collective bargaining agreements - are set by the much less formal process of political negotiation. In determining the salary of unclassified positions, all of the factors used to determine compensation are used - market conditions, social equity, individual performance, seniority, and the salaries of classified employees.

Criteria for designing a compensation system

To be useful, a compensation system must meet the needs of both employees and the organization. That is, it must provide equity, be easy to administer, and be flexible. Unfortunately, these characteristics seem to contradict one another in practice. Thus, it is the job of the public personnel manager to reconcile them.

The usual reasons given by the organization for inflexible reward systems are legal requirements for equity and budgetary requirements for predictability. For instance, equity demands that identical life insurance benefits be provided to all employees in the same type of work in the same agency; and predictability of resource allocation demands that the pay and benefits attached to a position be easily calculable.

Given the lack of flexibility in economic rewards, it is still the responsibility of the public personnel manager to encourage supervisors to recognize employee contributions through greater use of social and growth oriented rewards. While most employees consider financial rewards important, other types of rewards are just as much in demand, and are equally useful in improving performance.

Among some managers and supervisors, it has become popular to lament that the lack of flexibility in reward allocation "ties their hands" so that productive employees cannot be rewarded. While equity considerations make some uniform benefits necessary, sufficient discretionary benefits exist so that managers can vary extrinsic rewards to match employee productivity.

Factors affecting compensation decisions (Internal and external consideration)

The primary objectives of any basic wage and salary system are to establish a structure and system for the equitable payment of employees, depending on their job and their level of performance in their job. There are several policy issues that need to be addressed for establishing a fair and equitable compensation system.

Most basic wage and salary system establish pay ranges for certain jobs based on the relative worth of a job to the organizations and wage and salary survey.

Determining the relative worth of a job to the organization maintains fair and equitable pay structure internally by comparing jobs within the organization while wage and salary surveys ensures that the payment range is comparable to the payment systems in other similar establishments or occupations. An individual’s performance on the job should then determine where that individuals pay fall within the job’s range following figure shows how equitable wage structure can be maintained.

3.3 Civil Service Administration

3.3.1 Meaning and Significance of civil Service

The term civil service is borrowed from the British Administration of India in the mid 19th century and the term originally describes the selection of civil servants on the basis of merits. Despite there have been historical traces for the existence of some sort of a rudimentary civil service, for example in ancient china and Egypt, the concept of civil service as a career is comparatively a recent origin even in those developed countries. England had no permanent civil service until the middle of the 19th century and USA until the end of that century. The "Patronage System" and the "spoils system" that prevailed in England and the USA respectively have delayed the development of a merit-based public career system until those mentioned periods. According to Dr. Finer, the growth of the cardinal principles of modern civilization brought about the establishment and growth of a professional civil service. Some of those principles were the principles of specialization and division of labor, the democratic ideas of "career open to talents", etc.

The term civil service is defined in Anglo-American countries as a body of permanent, full time, public officials in a professional, non- political status, excluding the army forces, the judges, the parliament, and seasonal workers. These people are excluded because they are not permanent. Politicians are elected by the people but civil servants are elected on the basis of professionalism. These professional people serve permanently whatever political party comes into power. In any country whether developed or not, the reference for civil servant is the merit quality of the professionals and permanent tenure.

The term civil service is defined in Britain as ‘those servants of the Crown other than holders of political or judicial offices, who are employed in a civil capacity, and whose remuneration is paid wholly and directly out of monies voted by parliament.’ This definition reveals that the term excludes ‘persons in defense forces, persons holding political or judicial offices, and persons who work for government in voluntary capacity.’

Civil service implies 'non-combatant branches' of the administrative service of a state. In other words, the Civil Service is a “professional body of officials, permanent, paid and skilled.” It is thus a body of administrators that translates law into action.

The importance of Civil Service in the modern government is well known. The work of the government would never be done if there were only the secretaries of state and other heads of departments or the ministers to do it. These people cannot be expected to collect taxes, audit accounts; inspect factories, take censuses, delivering mail, and carrying messages. Such manifold tasks fall, rather, to the body of officials and employees known as the permanent civil service.

A civil servant is one whose main function is to administer the law of the land. This implies that the basic task of the civil servants is to transform politics into action. As a result, the civil service brings the National Government into its daily contacts with the rank and file in country. Besides, the higher echelons of the civil service assist their political superiors in policy-formulation through expertise advice, assistance, and information. Therefore, the tasks of the civil servants became comprehensive, directly impinging on the lives and welfare of citizens. Due to the increasing significance of the civil service in modern societies and the assumption of responsibility by the state for the performance of various socioeconomic functions, it has become necessary or imperative to recruit persons and thereby build competence for the civil service.

Peculiarities of Human Resources in government setting

Some of the natural differences between private and public sector in the management of personnel are:

- **Objectives**

Public organizations have multi-dimensional objectives: to promote economic development, social welfare and political stability whereas the private sector is there to accumulate wealth. It seems that the goals of government activities are non-economic and related with the social and political aspects of the citizen while the private sector aims to maximize profits. The driving force in private sector is efficiency whereas the intention of public sector is effectiveness.

In private sector, managers can hire new staff quickly if business cycle dictates they need more personnel. But in public organizations, it can take 1-2 years to create a new position and several months to fill an existing position that has become vacant. In many agencies, managers are only allowed to interview the top 3 applicants (who are selected by Office of Personnel Management-US).

In the private sector, anyone can be fired at any time; severance packages are a cost of doing business. Non-producers can be fired. On the contrary, in public sector, separation for poor performance requires extensive documentation over a long period of time.

- **Source of Resources**

The activities of the government are financed from funds that are collected through taxes, external aid and public loans. On the other hand, private companies are financed by private funds.

Public sector operates to ensure equity, justice, and fairness. That is why some public agencies work under loss; i.e. transportation, health, electricity, water and sewerage and so on. In other words, these services are provided on the basis of subsidy from the government.

In private enterprises, budgets are tight at bottom of business cycle, but decisions can be flexible and rational based on the circumstances at any given time. In government organizations budget process is long and very inflexible; difficult to reallocate resources or obtain additional funding.

- **Job security /Social/ economic security**

Job security in public sector is more stable and the goal of private is profit making, in that workers exist as long as the sector is rewarding. However, the security of jobs in public sector is at the expense of good remuneration and administrative dynamism. It is true that innovation, dynamism, flexibility, structural change, etc is highly observed in private sector where the destiny of employees is always at stake.

- **Bureaucracy**

Public sector is highly bureaucratic with lots of rules and regulation, delaying of decision-making, rigid rules, red tape. In public sector, there is accountability, equity and size that make it highly bureaucratic. On the other hand, the system of administration in the private sector is known for its flexibility and customer oriented.

While bureaucracies exist in most large organizations, corporate bureaucracies tend to be smaller and less tradition-bound than those in government. In government organizations, job security, stability, and sheer size of organizations tend to foster strong bureaucratic attitudes and resistance to change.

- **Impartiality**

Public servants are expected to discharge their duties and responsibilities under the principle of fairness, impartiality and with due regard to public missions. In other words, they should not be partial, favoring and discriminating

Therefore, public managers are expected to give free and frank service to the society without political consideration. In contrast the private sector provides goods and services by taking into account economic matters.

- **Risk**

In the public sectors, the trend is not to make mistakes than to make changes. As the result the life for bureaucrat is acceptance for precedence and the avoidance of risk. The reason for public servants not to be innovator is the fear of accountability.

One scholar said that as public servants, you can make 99 percent success, nobody notices. But when you make one mistake; you will be attacked from all corners.

It is indicated that it is difficult to manage people conscientiously and effectively in the public sector as the private sector.

- **History and politics**

The personnel management tools are shaped by historical and political development. The original purposes of civil service systems can be summarized as: a) protecting individual employees from politically motivated work orders and firings and b) minimizing frequent turnover of the government workforce as a result of electoral turnover of top officials. But the effort to protect employees from managers prevents effective management of people in government organizations.

- **Interest group politics**

A number of interest groups play central roles in shaping personnel policy and in pressuring managers for particular personnel decisions. For example, veterans' groups have secured employment advantages for those who have served in the armed forces. (Blacks, unions, women, and others)

- **Politically Appointed Managers**

In some agencies politically appointed managers may face difficulty in managing human resources that are career managers. First of all, employees suspect appointees of unfairness. Besides, their direction may be resisted unless their reputation/experience on the job can convince the workers otherwise. Moreover, politically appointed managers are not familiar with the formal civil service personnel system and do undesirable things which may increase the suspicion of workers. By the time they know the rules; they will leave the office (the average tenure of politically elected official ranges from 18 months to two years).

- **Management Development**

Government/public organizations are less active in developing general managers, particularly in developing their managers' skills in personnel management. It seems that there is an informal emphasis on political, policy development, and external activities related to program design and development.

3.3.2 The Merit Principle

Literary merit means quality, excellence, which deserves reward. In public personnel administration, merit is a principle, which involves entry to get service, higher payment, and promotion to higher grades by way of tests, and examination of fitness. In the broader sense, merit system, in modern government, means a system in which comparative achievement governs individuals' selection and progress in public employment. It is based on open competition (posts are made publicly) and any one can compete.

In contrast to the Spoils System, the merit system avoids all the above-said evils. Merit system implies a system in which the appointment and conditions of service of an employee are determined solely at his own intrinsic merit-which includes his educational and technical qualifications, personal capacities and physical fitness.

Under merit system, recruitment is made through open competitive examination held by a general personnel agency. No distinction is made among citizens on the basis of any party affiliation. Civil servants remain neutral in politics and promotions take place strictly on the basis of merit.

This system has, in fact, gained great popularity. In various democracies civil service rules have been framed to apply the merit system to the selection and recruitment of public services. The following conditions are generally laid down by the modem civil service regulations:

(a) Employees should neither be appointed nor removed on political considerations.

(b) Employees should not be forced to contribute money or services to party organization.

(c) An independent and impartial Civil Service Commission should be set up to exercise control over civil services regarding their recruitment, promotion and other disciplinary matters.

(d)The civil service positions be filled on the basis of written examinations or other tests.

(e) A special procedure may be adopted for protecting the employees against removal of political considerations.

Merit System Principles

The Civil Service Reform Act of 1978 put into law the nine basic merit principles that should govern all personnel practices in the federal government:

i. Recruitment from all segments of society, and selection and advance¬ment on the basis of ability, knowledge, and skills, under fair and open competition

ii. Fair and equitable treatment in all personnel management matters, with¬out regard to politics, race, color, religion, national origin, sex, marital sta¬tus, age, or handicapping condition, and with proper regard for individual privacy and constitutional rights

iii. Equal pay for work of equal value, considering both national and local rates paid by private employers, with incentives and recognition for excellent performance

iv. High standards of integrity, conduct, and concern for the public interest

v. Efficient and effective use of the federal workforce

vi. Retention of employees who perform well, correcting the performance of those whose work is inadequate, and separation of those who cannot or will not meet required standards

vii. Improved performance through effective education and training

viii. Protection of employees from arbitrary action, personal favoritism, or political coercion

ix. Protection of employees against reprisal for lawful disclosures of information

3.4 Public Policy

3.4.1 The Meaning of Public Policy

Public Policy is the chief instrument of a politically organized community. The entire process involving/concerning public policy needs to be distinguished primarily from two dominant angles. From the *input side,* the articulation of needs and interests, and the factors determining the 'choice' of activity have to be identified. From the *output side,* a distributive analysis has to be undertaken, in that the *impact* of the policy has to be assessed. This brings out two major dimensions to public policymaking.

In the first dimension, public policy is seen as an instrument of effective control over the environment, in that it harbours the potential to create "fundamental social transformation" or that could significantly influence the environment. The second dimension is that it "derives the normative values on which it is based from the environment." Public policy, thus, both acquires and imparts values from/to the environment. It is the chief means by which the input-throughput and output of government activity is performed.

Public policy has been defined differently, which is a reflection of its multi-faceted nature, yet all draw elements of public decisions, choices, positions and statements of intents. Policy can be broadly defined as a proposed course of action of an individual, a group, an institution or a government to realize a specific objective or purpose within a given environment. Policy formulation is one of the vital tasks of any government.

Marshall Dimnock defines it as "the consciously acknowledged rules of conduct that guide administrative decisions." Public policies are those, which are developed by governmental bodies and officials, though non-governmental actors and agencies may also exert direct or indirect pressure or influence in the policymaking process.

Some others define policy as "a projected program of goals, values, and practices". This definition implies a difference between specific government actions and an overall program of action toward

a given goal. However, the problem raised in insisting that government actions must have goals in order to be labeled that “policy” is what we can never be sure whether or not a particular action has a goal, or if it does, what that goal is. Some people may assume that if a government chooses to do something there must be a goal, objective or purpose. But, what we can really observe is what governments choose to do or not to do, rather than the goals of their choices. Realistically, the notion of public policy must include *all actions* of government, and not what governments or officials say they are going to do. We may wish that governments act in a “purposeful, goal-oriented” fashion, although we know that they do not in most instances (Dye, 1995:3).

Policy formulation is necessary prior to every action in every form of organization, private, or public. It is a prerequisite for all management at different levels. Policy lays down the framework within which organizational goals are set to be accomplished. The objectives of an organization, which are often vague and general, are concretized in the policy goals, which set the administrative wheels in motion.

According to Rumki Basu (1994:270), policy can be broadly defined as a "*proposed course of action of an individual, a group, an institution or government, to realize a specific objective or purpose within a given environment*". Policy is a set of interrelated decisions taken by a political actor or group of actors concerning the selection of goals and the means of achieving them within a specified situation.

Policy has been defined as "a matter of either the desire for change or the desire to protect something from change" (Barber, 1983:59). Barber further added, "Policymaking occurs in the determination of major objectives, in the selection of methods of achieving these objectives, and in the continuous adaptation of existing policies to the problems that face the government."

Public policy can be comprehensively defined as a "purposive and consistent course of action produces as a response to a perceived problem of constituency, formulated by a specific political process; adopted, implemented and enforced by a public agency."

Definitions of policy, specifically public policy, may vary in their scope and level depending on the perspectives of different writers. The following are examples of such definitions to the subject matter, as a concept or as a practice:

- Public policy is what the public administrators execute. **(Nicholas Henry)**

- Public policy is the consciously acknowledged rules of conduct that guide administrative action and decision **(Marshall Dimock)**
- Policymaking occurs in the determination of major objectives, in the selection of methods of achieving these and in the continuous adaptation of existing policies to the problems that face a government (**N. Johnson)**
- Public policy is a purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern. It is a purposive course of action followed by an actor or set of actors in dealing with a problem or matter of concern (**James Anderson, 1984**)
- Public policy is a very complex, dynamic process whose various components make different contributions to it. It decides major guidelines for action directed at the future. These guidelines (policies) formally aim at achieving what is in the public interest by the best possible means (**Yehezkel Dror, 1973**)
- Public policy is a conscious, goal-selecting process undertaken by actors in the decisionmaking system and it includes the identification of the means of achieving such goals (**O. Saasa)**

In general, public policy means Government policy. "Policy" designates the behaviour of some actor or set of actors (an official, government agency, legislature, etc) in a given area of activity (for example public transport, consumer protection, etc). "Policy" connotes **two meanings**:

(a) **Administrative policy** (Rules, Procedures, Decisions of doing things)

(b) **Substantive programmes** (the content of what is being done or implemented is examined)

Public policy is the latest sub-field of public Administration. It is a developing area, which consists of government's choices of actions that are intended to serve the public purposes. It is the bridge that connects the statements about the public purposes with the intended results for which administrators are responsible. Public policy gives or denies authority and direction to individuals, public officials, groups, societies, institutions, etc. to do or not to do something presumably with good intention of public interest.

3.4.2 Characteristics of Public Policy

The following points will make clear the implications of the concept of public policy:

1. *Public policy is goal oriented.* It is purposive or result oriented action, rather than random behaviour or chance happenings, to accomplish goals and produce results. Goal-orientedness

and attainment of result is the hallmark (characteristic) of public policy. Public policy is formulated and implemented in order to achieve objectives for the ultimate benefit of the masses in general.

Example:

- Goal: to increase farm income
- Policy: provides subsidizes and utilizes production controls
- Result: incomes of many farmers have increased

2. Public Policy is the outcome of the government's collective actions. Public policy refers to the action or decisional pattern taken by public administrators or government officials in a collective sense on a particular issue over a period rather than their separate discrete decisions on that matter in an *ad hoc* fashion.

Example: Industrial health and safety policy is based not only on Occupational Health and Safety Act, but also by a pattern of administrative and judicial decisions interpreting, elaborating and applying (or not applying) the Act to particular situations.

3. Policy is what governments actually decide or choose to do, and what subsequently happens, rather than what they intend to do or say they are going to do. It can take a variety of forms like law, ordinance, court decisions, executive orders, etc.

Example: If legislature enacts law for the payment of minimum wages by the employer and then nothing is done to enforce the law, it is not-regulation of wages.

4. Public policies emerge in response to policy demands on some public issue made by other actors such as private citizens, group representatives, other public officials upon government officials and agencies.

Examples:

- A municipal government do something about in order to solve traffic congestion
- National government to prohibit the stealing of pet dogs or cats for sale to medical and scientific research organizations

5. Public policy may be either positive or negative in form. Positively, it depicts the concern of government and involves some form of government actions regarding any issue or problem. Public policy in its positive form is based on law and is authoritative; it has a legal sanction behind it, which is potentially coercive in nature and is binding on all citizens. Negatively, it

may involve a decision by government officials not to take action on a matter on which governmental opinion, attitude, or action is asked for.

In practice, policy formulation overlaps with policy decision in the policymaking process. Policy formulation aims at getting a preferred policy alternative approved. Policy decision on the other hand involves action by some official person or body to approve, modify, or reject a preferred policy alternative. Policy decision when approving a preferred policy alternative takes such forms as the enactment of legislation or the issuance of an executive order. Therefore, what is typically involved in the policy decision stage is not selection from among a number of policy alternatives, but action on the preferred policy alternative.

Generally, two concepts involved in any policy need to be distinguished:

(a) Policy statements are formal expressions of public policy (legislative statutes, executive orders, administrative rules and regulations, court opinions, etc); and

(b) Policy outputs are actions actually taken in pursuance of policy decisions and statements (taxes collected, highways built, welfare benefits paid, traffic fines collected, foreign-aid projects undertaken; etc).

Policies could also have different connotations and could be understood in different perspectives, which may imply or include the following:

- ✓ As a label for a field of activity: For example, broad statements about a government's economic policy, industrial policy, or law and order policy,
- ✓ As an expression of general purpose or desired state of affairs: For example, to generate as many jobs as possible, to promote democratization through decentralization, to attack the roots of poverty,
- ✓ As specific proposals: For example, to limit agricultural landholdings to 10 hectares, to devalue the currency by 10 percent, to provide free primary education,
- ✓ As decisions of government: For example, policy decisions as announced in the national assembly or by president,
- ✓ As formal authorization: For example, acts of parliament or other statutory instruments or provision,
- ✓ As a program: For example, as a defined and relatively specific sphere of government activity such as land reform program or a women's health program,

- ✓ As output: For example, what is actually delivered such as the amount of land redistributed in a reform program and the number of tenants affected, taxes collected, roads built, foreign aid projects undertaken, welfare benefits paid,
- ✓ As outcome: For example, what is actually achieved such as the effect on farmer income and 'living standards, and of agricultural output of a land reform program,
- ✓ As theory or model: For example, if you do 'x' then 'y' will happen; if we increase incentives to manufacturers then, industrial output will grow; if more opportunities are provided in rural areas, then migration to cities will slow down,
- ✓ As process: As a long-term matter starting with issues and moving through objective-setting, decisionmaking, implementation and evaluation (labour, welfare, defense, traffic control etc),

3.4.3. Significance of and Rationales for the Study of Public Policy

The study of public policy is very important for the intimate and organic relationships between public policy and its context. Most governments of developing countries have been engaged in the momentous tasks of promoting national resurgence through socio-economic development following the end of the Second World War. They seek to improve the relevant policies, and the changing nature of public policies calls for the extensive study of these policies. Therefore, the studies of approaches, strategies, and concepts which will contribute towards this end are essential for many reasons.

Firstly, the study of the policy formulation processes may help to gain greater knowledge and understanding of the complexities of the interacting social, economic and political processes and their implications for society. Policy may be viewed either as a dependent or an independent variable. When it is viewed as a dependent variable, the question will be on identifying factors that would shape public policy. The attention in this case is placed on the political and environmental factors that help to determine the content of policy. For example, how do the distribution of power among pressure groups and governmental agencies affect the policy outcome? Or how do urbanization and national income help shape the content of policy? If public policy is viewed as an independent variable, the focuses shift to the impact of policy on the political system and the environment. Then, the questions arise as to what effect policy has on social welfare? How does it influence future policy choices or mobilize support for the political system?

Secondly, factual knowledge about the policymaking process and its outcomes is a prerequisite or prescribing on and dealing with societal problems normatively. Many political scientists believe that the study of public policy should be directed towards ensuring that governments adopt appropriate policies to attain certain desirable social goals. They reject the notion that policy analysts should strive to be value free contending that political science should not and cannot remain politically neutral or silent on vital contemporary social, economic or political problems. They want to improve the quality of public policy in ways they deem desirable, notwithstanding the fact that substantial disagreement may exist in society over what constitutes "desirable" or the "appropriate" goals of policy.

Today many scholars and professionals have shifted their focus to public policy- to the description and explanation about the process by which public policy is determined as well as the causes and consequences of government activities. This focus involves a description of the content of public policy; an analysis of the impact of social, economic, and political forces on the content of public policy; an enquiry into the effect of various institutional arrangements and political processes on public policy; an evaluation of the consequences of public policies on societies, both expected and unexpected consequences.

This shift of emphasis and focus of attention towards explaining and analyzing the causes, requirements and consequences of public policy certainly require relevant knowledge. As, on the other hand, there is an obvious gap between the ways policies are made and the required knowledge possessed by policymakers, it has become imperative in the fields of political science and public administration to study public policy. The question here is that, "why do we study public policy?" There are both academic and political reasons for studying public policy or engaging in policy analysis. Among a number of specific reasons for why we devote greater attention to the study of public policy, the following deserve worth mentioning:

(i) Scientific Reasoning/Understanding: First, public policy can be studied for *purely scientific reasons*: understanding the causes and consequences of policy decisions improves the knowledge of society. The study of public policy formulation processes may help to gain greater knowledge and understanding of the complexities of the interacting social, economic and political processes and their implications for society. Public policy can be viewed as a dependent variable, and we can ask what socio-economic conditions

and political system characteristics operate to shape the content of policy. In this case, then attention is placed on the political and environmental factors that help to determine the content of policy.

Alternatively, public policy can be viewed as an independent variable, and the focus shifts to the impact of policy on the political system and the environment. In this case, we can ask what impact public policy has on society and its political system. By asking such questions we can improve our understanding of the linkages among socio-economic forces, political processes, and public policy. An understanding of these linkages contributes to the breadth, significance, reliability, and theoretical development of social science.

(ii) Professional Reasons/ Problem solving**.** Public policy can also be studied for *professional reasons*: understanding the causes and consequences of public policy permits us to apply social science knowledge to the solution of practical problems. Factual knowledge about the policymaking process and its outcomes is a prerequisite for prescribing the ills of society or dealing with social problems normatively. If certain ends are desired, the question of what policies would best implement them is a factual question requiring scientific study. In other words, policy studies can produce professional advice, in terms of "if…then…" statements, about how to achieve desired goals. The study of public policy should be directed towards ensuring that governments adopt appropriate policies to attain certain desirable social goals. It is not to deny, however, that substantial disagreements may exist in society over what constitutes "*desirable*" or the "*appropriate*" goals of policy**.**

(iii) Political Reasons/ Policy Recommendations. Finally, public policy can be studied for *political purposes*: to ensure that the nation adopts the "right" policies to achieve the "right" goals. It is frequently argued that political science should not be silent or impotent in the face of great social and political crises, and that, political scientists have a moral obligation to advance specific public policies. An exclusive focus on institutions, processes, or behaviours is frequently looked on as "dry", "irrelevant", and "amoral" because it does not direct attention to the really important policy questions facing societies. Policy studies can be undertaken not only for scientific and professional purposes but also to inform political discussion, advance the level of political awareness, and improve the quality of public policy. Of course, these are very subjective purposes-citizens do not

always agree on what constitutes the “right” policies or the “right” goals-but it is assumed that knowledge is preferable to ignorance, even in politics.

3.4.4 The Sources of Public Policy

- Public policy takes several forms.
- Its most fundamental principles are expressed in national and state constitutions, which also govern the procedures by which policies are adopted.
- The most familiar policy form is **statutory law,** enacted by congress or parliament, state legislatures, and local boards and councils.
- Court decisions interpreting statues and constitutions also become policy and are binding on legislators and executives.
- Notwithstanding the differences among concepts discussed in Chapter one, the rules and orders issued by executive and administrative agencies are also policy, for they extend and apply the statutory law in greater detail.
- Budgets of all state governments are policies, for they set the levels and objectives of spending as well as the amounts and sources of revenue.
- Another key source of public policy is international relations. Some policies cross national boundaries, taking the form of treaties and less formal working agreements between and among governments. Such policies require negotiations with governments and such international agencies as the World Bank and the World Health Organization. For example, an international conference held in Montreal in 1987 to reduce the emissions of ozone-destroying gases into the atmosphere has produced an agreement that binds each industrialized nation to hold constant the production of five forms of chlorofluorocarbons at levels which were 1986, and to cut their production by 50 percent by 1999.
- To implement this requires a complex of new internal policies and incentives for the chemical industry. "New" ideas can come from governments other than the one deciding. Often a state or city adopts an idea that others have found successful. Innovations in low-income housing, corrections reform, and environmental regulation have spread among policymakers open to new solutions. European Countries, and recently Japan, have also been the source of policy ideas in health care, education, waste management, and housing, although policy transfer across national and cultural boundaries is not always feasible..

- Administrators play a crucial role in the making of public policy because of their specialized knowledge and their experience in implementing current policies.
- In general, the higher that administrators stand in the hierarchy of a government, the greater will be their influence over the substance of its policy.
- On the other hand, many high-level administrators lack expertise in their given policy area and may not remain in their posts long enough to sustain their influence. Every action of an agency potentially contributes to subsequent policies, and nearly all policymaking is, for that reason, remaking of existing policy. The ultimate success or failure of a policy is difficult to define, but such judgments constantly float through policy debates and inclines decisions in one direction or another. Many of those judgments flow from the agencies that would like to label their works as successful or as inadequate for reasons that they would like the legislators to remedy.
- The ethical values of a society can be considered as the sources of public policy. Ethical values, such as the obligation to preserve life, are quite compelling legislators. Legal and professional standards interpret and expand these values and lay specific obligations on responsible persons, particularly in government. Since ethical values are often stated in absolute terms, they highlight our inevitable shortcomings as well as stimulate improvement. Society's available resources are also can be the source of public policy. A country, which is rich enough to put a man on the moon, can initiate a policy for undertaking a more incredible scientific research since doing so is affordable regardless of the likelihood to succeed with it. No matter what its achievements are, an affluent technological society always feels obligated to set its goals beyond them.
- Though often drawn upon ethical values and availability of resources, citizens' demands could be another source of public policy. Those who see or experience the deficiencies most directly also advocate public policies that provide the most advantages for them. Many people may believe and want that the state can pay for all medical expenses as well as cover other safety needs. This may push the government to set policy in account of such public demands and its capacity to respond fully or in partial treatment.

3.4.5 POLICY CYCLES AND STAGES

In chapter three, the major policy cycles and the different stages that should occur in each cycle will be briefly overviewed, while each cycle will constitute separate chapter for deeper examinations and discussions of the policy processes.

Agenda-Setting, Defining Problems and Objectives

Stage one: Agenda-Setting

Three events mark the beginning of the cycle: agenda-setting, problem definition, and statement of public objectives. Agenda-setting, which is the starting point in the policymaking process, is an activity of listing of issues that warrant serious consideration for the making or remaking of policy. We can distinguish between two kinds of agendas; the popular agenda and the institutional agenda.

The popular agenda: is the list of problems and issues in which the general public is most interested. For example, opinion polls regularly report that unemployment or crime or danger of nuclear war may head at the top of the list of concerns in a given month. Issues rise and fall on this agenda because of many factors: media publicity, widespread public experiences, or the efforts of a president/head of state to publicize them, for example. Nearly always, they reflect something that government is already doing-well or badly. These issues can also vary regionally or locally; a depressed economy in one state/region or a high crime rate in the other may dominate the public agendas in those places.

Only a limited number of issues can hold the public's attention at any one time, and as a new one rises, an old one must fall whether or not it has been "solved." Both success and failure of the action can be the cause of its removal from the agenda.

Institutional agenda: in contrast, consists of those items that specific government bodies or leaders, such as congress or a city mayor, rank as high priorities for action. These concerns reflect the popular agendas but emphasize specific matters on which some agreement is possible. Thus, at a time when the public is worried about unemployment, congress agenda may include proposals, for example, to create new public service jobs or protect a country's industries from foreign competition. If an issue doesn't contain realistic potential for new action, it will not be taken very

seriously. Agendas of national, state/regional, and local governments frequently interlock with each other.

Ideologies, dominant personalities, and the waves of electoral politics are the key "filters" of agenda possibilities, since all such development must be perceived and selected by politicians. For example, President Reagan's election in 1980 significantly restructured not only the agenda of the executive branch, but also that of Congress toward tax cuts, increased military spending, and reduced government regulation of business.

Stage Two: Defining Problems

While they are setting the agenda, policymakers also must define the problem that confronts them. Essentially, a "problem definition" is determining the gap between the current and the preferred or ideal situation. "Every disparity between the actual and the desired situation is defined as a problem and is widely assumed to have a solution and one may demonstrably be better than any other alternative. According to Wildavsky (1979:3), "The solution is part of defining the problem....Creativity consists of finding a problem about which something can and ought to be done". Although any problem has objective dimensions, it still requires human judgment about its ethical values and options for action.

An individual policymaker may define a problem and try to convince others that his/her conception of the issue and proposed action is the best to provide solution. This analysis would reveal how policymakers' values and perceptions blend with the situations to generate governmental choices. Whichever definition is accepted inevitably shapes the policies devised to meet it.

Stage Three: Setting Objectives

Objective Setting is essentially choosing specific goals to be achieved by the policy to be formulated. A typical problem statement often points to some potential objectives for solution; each of which might be attractive to some person or group, and each might be attainable in some degree but not fully compatible with one another. Such statements are most effective when expressed in concrete terms: to reduce the incidence of death due to kidney disease by 50 percent in two years, for example. Yet, when there is a legislative struggle over which objectives shall dominate, the final statement that goes into the policy is usually vague enough to encompass all of the favored ones.

Objective can have many sources. The objectives selected directly guide the choice of alternative policies. All choices flow in continuous stream of decisions from the indefinite past to the uncertain future. They involve selecting one course of action from several options with the expectation that the selections will serve the policymakers' purposes. A problem arrives on the public agenda only if it has not been solved by individuals or private organizations, and controversy often rages over what the options, purposes, and expectations really exist.

Discerning, Assessing, and Choosing the Alternatives

Stage Four: Discerning the Alternatives

Discerning the alternatives is identifying potential courses of action that could achieve the designated objective/s. In searching for alternative courses of action, policymakers usually begin with the "short list" of ideas with which they are familiar. Generally, each of these ideas is suggested or mandated by the definition that policymakers have already given the problem or by the ideological stance they hold toward the general issue. Conservatives and liberals are often distinguished by the contrasting solutions that they habitually consider for unemployment or business regulation respectively, for example.

As Herbert Simon (1957) aptly noted, often, if time is short or political pressures dictate, policy-makers will "*satisfice*" with the information they have. Simon's word (*satisfice),* which is a composite of *satisfy* and *suffice,* indicates their ending the search before they analyze every possible alternative and deciding on the basis of what they know. But where the known solutions do not suffice for the politically significant persons, the search will continue. For example, the futile efforts to control the illegal drug trade currently are stimulating this kind of effort.

The search for alternatives has political boundaries like those of the previous stages. Since politicians are likely to have already defined the problem and set the objectives, they have also given thought to which alternatives are preferred, which can be mentioned, and which must be excluded. "Controlling the number and kinds of alternative considered is the essence of the political game" The debate among policymakers over transplants would have fallen into chaos if other legislators had demanded consideration of equal treatment for sufferers from AIDS, for example. Of course, the state must deal with that difficulty on its priority list, but without appearing to draw resources away from prenatal care and other high-priority services.

Government administrators frequently suggest policy alternatives in the fields of their experiences. This is particularly common for the top executives of federal and state/regional agencies who share a policy agenda with their president or governor. "Through feedback from the operation of programs...implementation can lead to innovation. If bureaucrats find a program is not going well in some particular instances, the recognition of that trend might be used (or feed into) as an input for a policy change" (Kingdom, 1984:34). Wherever a remaking of current policy is on the agenda, the influence of appreciating the problem itself is likely to be strong.

Stage Five: Assessing the Alternatives

Basically, an assessment of alternatives is forecasting the likely outcomes of each alternative, including benefits and costs; if policy "A" is chosen, its likely outcome "B" will (or will not) close the gap between the present situation and the goal that was set. Also implicit is the expectation that unwanted situation "C" will not result from policy "A". The data supporting that forecast may be extensive or sketchy, and so it may be presented with either confidence or hesitation. This assessment is done for each alternative on the table, and at the end, one ideally chooses that which offer the greatest possible margin of expected benefits (given the objectives already decided) over the costs or harms it would entail.

In the real world of politics, all of these judgments are complex and subjective. Even when there are "hard" data, they can be interpreted and valued differently by the participants. Judgmental criteria enter these deliberations.

Few criteria emphasized by Johnson (1992:163-64),that would be applied for assessing different alternatives can be briefly overviewed

Benefits as Criteria for Assessment: Policymakers must ask questions related to assessing the value of benefits. First, what benefits are anticipated from each alternative? For whom, when, how much are they valued or needed? And which are measurable in dollars or other numbers, and which are not? How do these benefits compare with those provided to other groups in other policies? Who would be denied benefits? Answers require calculation of the values of each set of benefits for each group of recipients. How the recipients respond to those possibilities clearly shapes that calculation.

Costs: The second criterion mirrors the benefits; costs incurred by each alternative. Again, policymakers must ask, what costs, for whom, what would it cost the government, who might be harmed as a result, what are the opportunity costs- that is, what other benefits could have been gained with the funds if this were not chosen? Costs, like benefits, cannot be fully measured in dollars; because pain, fear, and lost opportunities lack an agreed-upon calculus.

Feasibility: The third factor to consider is feasibility; how well the alternative is likely to work when assigned to a specific agency in its context. Among many questions one must ask are, "Is there any agency with the will, skills, and resources to carry out this policy? Can the policy meet legal and constitutional tests if someone were to file a lawsuit over it? Do the knowledge and technology exist to enable its implementation? Is enough money likely to be available to fund it adequately? If the government wants to put something forth, it has to answer to all these questions. A clear "no" to any one of them would doom that alternative.

Mutual Effects: Fourth, each policy relates in countless ways to other things that government and private organizations do, and their success and failure are intertwined. Assessment efforts should thus foresee these mutual effects. For example, what the state/region chooses to do on a particular issue will be affected by a federal government policy authorizing the state's action.

Political Acceptability: The fifth criterion is often the overriding one, which puts all of the alternatives in perspective: political acceptability. A policy is never made simply because it is "right" or "best." It emerges because it is judged right or best by legislators and executives who see that it fits the expectations that they and influential others hold of their jobs and of the government as a whole. This is not to say that they make inferior choices for that reason or that they are corrupt or irresponsible. Rather, because democracy is a process of shared decision-making, a choice cannot be distinct from the wills of those who join in making that decision. When there is much disagreement over an issue, the policy may be chosen only after long deliberation and could well be changed shortly afterward.

Stage Six: Choosing the Alternatives

Choosing alternatives would mean enacting into law a specific package of programs and means of implementing them. In this step, therefore, policymakers choose one alternative (or a combination) to become official policy and add the "tools" with which to implement it. Where there is clear

agreement on the law, the means of its administration can be equally clear. For example, in 1961 President John F. Kennedy and Congress set the specific goal that an American was to set foot on the moon by the end of the decade. But the typical policy is a composite of several objectives, embodying many compromises among partisans of opposing views.

Policy choice requires "*tools of implementation*", which are an integral part of the policy choice. Basically, a tool is a method or approach used by government to achieve a specific objective. Policymakers do not expect that their choice packages will completely "solve" the problem. No problem remains the same while it is being dealt with. If, by a conducive circumstance, the targeted problem is minimized by the program, new problems are likely to appear that require different actions. As more people live longer due to advances in medicine and sanitation, the number of victims of Alzheimer's disease and other maladies (difficulties) affecting the very old increases, which in turn calls for more research and long term care. In other instances, the "solutions" did not solve much and often created new problems. In either situation, no choice can be seen as permanent. Even when a long-term commitment is made, as with expensive facilities for urban transit, policymakers must expect to adjust to new realities in years to come.

3.3 Implementation, Monitoring and Evaluation

The final two stages of the policy process are the "home territory" of administrators, for which they are directly responsible. Their performances at these stages determine the actual success or failure of the policy and, to look ahead farther, will shape its probable revisions.

Stage Seven: Implementing the Policy

With the passage of a law or the selection of a policy by other means, the scene of action shifts to the agencies assigned to carry it out. Policy, before this point, is only an intention, a possibility; what it becomes in fact happens at this stage. Implementation is the process of realizing public policy, thereby achieving the public purposes for which the policy was made. Earlier scholars of public administration argued that implementation is primarily a "technical" task, clearly removed from the political controversies in which the policy was decided. In this view, there should be no uncertainty about how to implement a properly written law; the task was to devise procedures, marshal resources, and monitor activities to make sure there was no dishonesty or waste. A

hierarchical structure was to convey the instructions of the top executives down through the organization and thereafter monitor the results.

The implementation stage begins as a task is assigned to one or more agencies along with the authority to spend money, hire personnel, and obtain the other resources necessary. Next, those agencies make rules and procedures by which to operate. Nonetheless, there is always some degree of discretion permitted as to means, guidelines, and dates for action. These rules match the tools chosen to implement the policy.

Stage Eight: Monitoring and Evaluation

At this stage, the policy cycle can return to the beginning; agenda-setting and redefinition of the problem and goals. When administrators learn what happens as a result of implementing a policy and evaluate its success, they are moving from the end of one policy cycle to the beginning of a new one. The result of the evaluation process, be it failure or success, can reshape policy. Hence, evolution activity may restart the policy process (problem formulation) in order to continue, modify or terminate existing policy.

Evaluation of Public Policy is an attempt to assess the content and effects of a policy on those for whom it is intended. Often policy evaluation occurs throughout the policy process, not necessarily at its termination stage.

Policy output refers to the quantifiable actions of the government, which can be measured in concrete terms, for instances, construction of government offices, schools, public parks, highways, payment of welfares benefits, operation of hospitals and prisons. These activities can be measured in concrete terms but figures reveal very little about the real impact of the policy.

Policy outcome on the other hand is the qualitative impact of public policies on the lives of people. Knowing how much is spent on pupils in a school system on a per capita basis will reveal nothing consuming the effects schooling has on the cognitive abilities of students, let alone the social consequences of the educational system.

However, broadly policy evaluation requires knowledge of what is to be accomplished within a given policy (policy objectives), how to do it (strategy) and what has been accomplished towards attainment of the objectives (impact or outcomes). The most useful method of policy evaluation for policymakers and administrators is the systematic evaluation to determine the cause and effect

relationships and rigorously measure the impact of policy. It is, of course, often impossible to measure quantitatively the impact of public policies, especially social policies with any real precision. There are certain barriers that create problems for policy evaluation, which may include:

B. Uncertainty over policy goals,
C. Difficulty in the determination of causality,
D. Diffused policy impacts, and
E. Difficulties in data-acquisition

Uncertainty over policy goals: When the goals of a policy are unclear or diffused, policy evaluation becomes a difficult task. This situation is often a product of the policy adoption process. Since support of a majority coalition is often needed to secure adoption of a policy, it is often necessary to appeal to as wide as spectrum of persons and interests (often conflicting) as possible. Officials in different positions in the policy system such as legislators and administrators, or national and state officials, may define goals differently and act accordingly.

Difficulty in the determination of causality; Systematic evaluation requires that changes in real life conditions must demonstrably be caused by policy actions. But the mere fact that action "A" is taken and condition "B" is developed does not necessarily mean that a cause-and-effect relationship exists, for example, the relationship between crime prevention measures and occurrence of crime is not a simple cause-and-effect relationship. The determination of causality between actions, especially in complex social and economic matters, is a difficult task.

Diffused policy impacts: Policy actions may affect a wide spectrum of people both in the target and non-target categories and also may have many intended or unintended consequences. Welfare programs may affect not only the poor, but also others such as taxpayers, bureaucrats and lower income groups. The effects on those groups may be symbolic or material, tangible or intangible.

Difficulties in data-acquisition: A shortage of accurate and relevant facts and statistics may always hinder the work of a policy evaluator. Official resistances to provide all types of relevant data may also prove to be a hindrance. Policy evaluation means commenting on the merits and demerits of a policy. Agency and program officials, bureaucrats and others are naturally going to be concerned about the possible political consequences of evaluation. If the results do not come out in their

favor or show them in a wrong perspective, their careers may be in jeopardy. Consequently, government officials may discourage evaluation studies, refuse access to data, and show incomplete records, or create various other hurdles in the researcher's process of policy evaluation.

Within government, policy evaluation is carried on in a variety of ways and by a variety of actors. Sometimes it is a systematic activity, at other times rather haphazard or sporadic. In some instances policy evaluation has become institutional; in others it is informal and unstructured. A few agencies of official policy evaluation are the legislatures and their committees, the audit office, commissions of enquiry, the planning commission and departmental evaluation reports. Besides, there is much policy evolution carried on outside the government. The communication media, university scholars, private research institutions, pressure groups and public interest organizations make evaluation of policies that have effect on public officials to some extent. These also provide the larger public with information, publicize policy action or inaction, advocate enactment or withdrawal of policies and often effectively voice the demands of the weaker or underprivileged sections of the public.

The legislatives process: One of the declared functions of the legislatures in democratic countries is the security and evaluation of the application, administration, and execution of laws or policies. Policy evaluation is exercised through a number of techniques:

(a) Questions and debates,

(b) Various motions in parliaments like call attention, non-confidences,

(c) Committee hearings and investigations, and

(d) The budgetary process.

In the course of these activities, legislatures reach conclusions regarding the efficiency, effectiveness and impact of particular programs and policies-conclusions that can haves serious consequences for the policy process.

The audit process: The auditor's office as in India and the USA has broad statutory authority to audit the operation and finances activities of government agencies, evaluate their programs and report their findings to parliament.

Administrative agencies: All government departments prepare their internal evaluation reports which provide an opportunity to appraise the working of the programs and projects undertaken by the department.

Commissions: The Planning Commission, the Finance Commission, the Administrative Reform Commissions and various *ad hoc* commissions that are set up by the government also play an important role in public policy evaluation by presenting their detailed research reports on the consequences and impacts of particular government policies.

3.4.6 The Public Policymakers

Policymaking involves a large number of persons and institutions and authorities: chiefs, executives, legislators, judges, administrators, councilors, monarchs, political parties, interest groups, experts and professionals. In this section, therefore, an attempt is made to explain how groups and organizations bring influences to bear on those who are vested with the power of taking and enforcing decisions. Such decisionmakers comprise of those who occupy formal offices within the constitutional system of rules. As Sapru noted, politics and policymaking are activities in which people with different sets of values compete for those positions within the political system which assign their occupants the right to take decisions or impose decisions on others. There are activities as well in which non-official groups seek to influence the decision taken by occupants of formal offices.

This dimension examines the influence of those who are away from the centers of policymaking but who, in a particular situation, may perform one or more of the specialized roles which constitute influential behavior. Hence the policymakers can be simply categorized as official, who are directly involved in making decisions, and unofficial, who make significant influence on the content and nature of policy through indirect ways. We shall first identify who the official policymakers are and elaborating how they are involved in policymaking. Official policy-makers are those who are legally empowered to formulate public policy. These include legislatures, executives, administrators, and judges (Johnson, 1992; Sapru, 2004).

Legislature: The legislature formally performs the task of law making in a political system. This doesn't necessarily mean that the legislature has an independent decision-making power or actually frames the official policy since political parties, pressure groups, and so forth can influence it. But it can safely be concluded that the legislature is more important in policy formulation in democratic than in dictatorial systems, and within the democratic systems, it tends to have greater independency in policy formulation in presidential systems (USA) than in the parliamentary (British) systems.

Executive: Modern governments everywhere mainly depend upon executive leadership both in policy formulation and execution. In developing countries in particular, the executive has even more influence in policymaking than in developed countries because of the greater concentration of power in the hands of the government with less responsiveness to the legislature.

Administrative Agencies: although it has been an accepted doctrine in political science that administrators were merely implementers of policies determined by other organs of the government, such distinctions are now found to be fallacious as politics and administration are blended, and as administrators are highly involved in policy formulation in the modern world. The technical complexity of many policy matters, legislature's lack of time and information are among the major reasons for administrative agencies to have a formally recognized discretionary authority to formulate policies. Public officials are associated with policy formulation in three important ways:

(a) They have to supply facts, data and criticism about the workability of the policy to the legislature if the initiative for policymaking comes from them. In addition, since members of the parliament might have lack of administrative acumen (intelligence) or experience on technical or purely professional matters, they have to give due recognitions and rely on the suggestions of the officials,
(b) Since the administrations are supposed have constant contact with the general public and thereby to be in a better position to understand the difficulties that arise in the implementation of policies, the initiative for policy legislation or amendments originates very often from the administration.
(c) On account of lack of time and knowledge, the legislature passes skeleton acts and leaves the details to the administration.

The Courts: in countries where the courts have the power of judicial review, they have (as in the US) played an important role in policy formulation. They can affect the nature and content of public policy through exercising their judicial review and statutory interpretation power in cases brought before them. Determining the constitutionality of actions by legislative and executive branches of the government is basically the functions of the judiciary. The courts also specify the government's limits to actions and states what it must do to meet legal or constitutional obligations.

Besides the official policymakers, many unofficial bodies may participate in the policymaking process. These may include political parties, interest groups, and individual citizens. These unofficial bodies could participate in public policymaking in terms of expressing demands,

supplying official policymakers with much technical information about specific issues and possible consequences of a policy proposal, and presenting alternatives for policy actions.

Unofficial Participants: Besides the official policy-makers, many others may participate in the policymaking process, like interest groups, political parties and individual citizens. They may considerably influence policy formation without possessing legal authority to make binding policy decisions.

Pressure Groups: Interest or pressure groups play an important role in policymaking in most countries. The strength and legitimacy of groups differs from country to country, depending upon whether they are democratic are dictatorial, developed or developing. Pressure groups are found to be more numerous in the United States or Great Britain than they are in the Soviet Union or China. The main function of these groups is to express demand and present alternatives for policy action. They may also supply the official lawmakers with much technical information for and against a specific issue and possible consequences of a policy proposal. Given the plural character of a certain society, it is not surprising that pressure groups are many and varied in number, interests, size, organization and style of operation.

The primary concern of a pressure group is to influence policy in a particular policy matter Often there are several groups with conflicting desires on a particular policy issue, and policymakers are faced with the problem of having to choose between conflicting demands. Well-organized and active groups naturally have more influence than groups whose potential membership is poorly organized and inarticulate. Influence also depends on other factors like numerical strength, monetary and other resources cohesiveness, leadership skills, social status and attitudes of the policymakers on specific policy issues.

Political Parties: In modern societies generally, political parties perform the function of "interest aggregation", that is, they seek to convert the particular demands of interest groups into general policy alternatives. The number of parties affects the way in which parties "aggregate" interests. In predominantly bipartite systems such as the United States and Great Britain, the desire of the parties to gain widespread electoral support will forces both parties to includes in their policy proposals popular demands and avoid alienating the most important social gropes. In multipart systems, on the other hand, parties may do less aggregating and act as the representatives of fairly narrow sets of interests as appears to be the case in Finances.

The Individual Citizen: Since democratic governments are representative governments, it is often said that citizens are therefore, indirectly represented in all policymaking. In an abstract sense, this is true, but concretely, this aphorism means very little. Citizen participation in policymaking, even in democratic countries, is very negligible. Many people do not exercise their franchise or engage in party politics; they neither join pressure groups nor display any active interest in public affairs. Even while voting, voters are influenced comparatively little by policy considerations.

As Charles Lindblom summarizes the argument, "The most conspicuous difference between authoritarianism and democratic regimes is that democracies choose their top policymakers in genuine elections." Some political scientists speculate that voting in genuine elections may be an important method of citizen influence on policy not so much because it actually permits citizens to choose their officials and to some degree instruct these officials on policy, but because the existence of genuine elections puts a stamp of approval on citizen participation. Indirectly, therefore, the fact of elections enforces on proximate policymakers a rule that citizens" wishes count in policymaking.

However, it is a truism that no government, however dictatorial, can afford to go against the desires, wishes, customs or traditions of the people. Even dictators will undertake many popular measures to keep down unrest or discontent against the regime. One-party systems like the Soviet Union, also seem concerned to meet many citizen wants even as they exclude citizens from move direct participation in policy formation.

3.4.7 Models of Public Policy

Public Policy Models

Models constitute frameworks within which and through which we can explain problems and social processes. A model is a simplified representation of some aspect of the real world. A model may be:

- An actual physical representation (example: a model airplane or model tabletop building),
- A diagram (example: a road map), or
- A flow chart (example: how a bill becomes a law),

Simplify and clarify our thinking about politics and public policy, The models we use or refer to for studying public policy are theoretical and/or conceptual. Models have different uses; they try to:

(a) Identify important aspects of policy problems,

(b) Help us to communicate with each other by focusing on essential features of political life,

(c) Direct our efforts to understand public policy by suggesting what is important and what is unimportant, and

(d) Suggest explanations for public policy and predict its consequences.

A variety of models have been advanced by theorists and social scientists to help us understand public life vis-à-vis the impacts of political decisions or public policies. Special attention will be given to their basic assumptions on which they are based, to their domains of validity, and to their major limitations. We will, therefore, try to examine public policy from the perspectives of the following models:

Some of them are Institutional Model, Process Model, Group Model, Elite Model, Rational Model, Incremental Model, Game Theory Model, Public Choice Model, Systems Model and Satisfying Model

All of these are major conceptual models that can be found in the literatures of public administration and political science. Further, each offers a separate way of thinking about policy and even suggests some general causes and consequences of public policy. The models are not 'competitive' in the sense that any one of them could be judged the "best". In other words, no model should be considered as the "best" over the others. Each one provides a unique focus on public life, and each can help us to understand different things about public policy.

Although some policies appear at first glance to lend themselves to explanation by one particular model, policies are a combination of rational planning, instrumentalism, interest group activity, elite preferences, systemic forces, game planning, public choice, political processes and institutional influences. Hence, these models are employed separately or in combination to describe and explain specific policies. A brief description of each model is presented in the following manner.

a. The Institutional Model (Policy as Institutional Output)

Government institutions have long been the central focus of public administration and political science. Public policy is authoritatively determined, implemented and enforced by the political authorities and/or governmental institutions; namely parliament, president, courts, bureaucracies at central, state/provincial/regional levels, and also at local/municipal levels. Relationship between government institutions and public policies is too close. The relationship between public policy and government institutions is very close. Strictly speaking, a policy does not become a 'public policy' until it is adopted, implemented, and enforced by some government institution. Government institutions give public policy three distinctive characteristics:

(i) Government lends **legitimacy** to policies. Government policies are generally regarded as legal obligations that command the loyalty of the citizens. People may regard the policies of other groups and associations in society-like corporations, churches, professional organizations civic associations, and so forth-as important and even binding. But only government policies involve legal obligation.

(ii) Government policies involve **universality**. Only government policies extend to all people in a society; the policies of other groups or organizations reach only a part of the society.

(iii) Government monopolizes **coercion** in society (punishment and imprisonment to violators). Only government can legitimately imprison violators of its policies. The sanctions imposed by other groups or organizations in society are more limited.

It is precisely this ability of the government to command the loyalty of citizens, to enact policies governing the whole society, and to monopolize the legitimate use of force that encourage individuals and groups to work for enactment of their preferences into policy.

Traditionally, the institutional model did not devote much attention to the linkages between the structure of the government institutions and the content of public policy. Instead, institutional studies usually described specific government institutions-their structure, organization methods,

duties, and functions-without systematically inquiring about the impacts of institutional characteristics on policy outputs. According to Dye (1995:19), although constitutional and legal arrangements were described in detail, the linkages between institutional arrangements and policy relevance or policy impact remained largely unexamined.

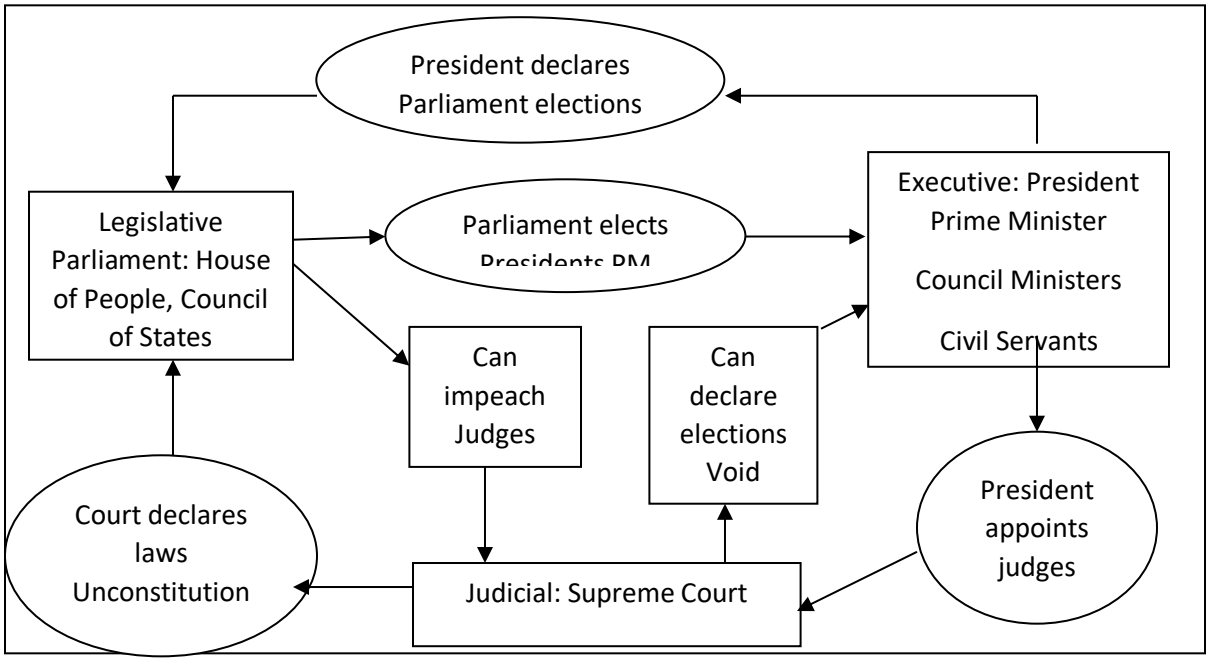
Despite the narrow focus of early institutional studies, the institutional model is not necessarily unproductive the one. Government institutions are really "structured patterns of behavior" of individuals and groups. By "structured", it means that these patterns of behavior tend to persist over time, which may affect the content of public policy. Institutions may be structured to facilitate certain policy outcomes and to obstruct other policy outcomes. In short the structure of government institutions may have important policy consequences.

In the modern understanding of the subject, institutional model need not be narrow or descriptive. As Sapru (2004:65) and Dye (1995:20-210 have remarked, the value of the institutional model to policy analysis lies on asking what relationships exist between institutional arrangements and the content of public policy, and on investigating these relationships in a comparative or systematic fashion. For example, how does the division of responsibilities among federal, state, and local governments affect the content of public policy? Such comparative questions, which can be dealt with systematically, involve institutional arrangements.

It is important to remember that the impact of institutional arrangements on public policy is an empirical question that deserves investigation. In many instances, enthusiastic reformers have asserted that a particular change in institutional structure would bring about change in public policy without investigating the true relationship between structure and policy. They have fallen into the trap of assuming that institutional changes will bring about policy changes. If we are cautious when making assessment on the impact of structure on policy, we may discover that both structure and policy are largely determined by social and/or economic forces and that tinkering or changing with institutional arrangements will have little independent impact on public policy if underlying forces remain constant.

With regard to the relationship between structure and policy, the institutional model suggests the existence of power separation and the constitutional mechanisms of check and balance among government institutions, or among the three branches of government (the legislative, the executive, and the judiciary) at a bigger scale. Figure 3.1 below tries to demonstrate such institutional arrangements.

Figure-3.1: The Institutional Model (Constitutional Checks and Balances)



The institutional model is generally concerned with explaining how social groups and governmental institutions bring influence to bear on those entitled to take and implement legally binding decisions. It assumes that the structure (arrangements) of institutions and their interactions, that can have a significant impact on public policy. Therefore, the model with its focus on the legal and structural aspects of institutions can be applied in policy analysis.

b. The Process Model (Policy as a pattern of Political Activities)

Political processes and behaviours have been a central focus of political science. Modern *behavioural political science* since World War II has studied the activities of voters, interest groups, legislators, presidents, bureaucrats, judges and other political actors. One of the main purposes has been to discover pattern of activities or "process". Recently, scholars in the field have grouped various activities according to their relationship with public policy.

In short, one can view the policy process as a series of political activities- problem identification, agenda setting, formulation, legitimating, implementation and evaluation. It has been argued that political scientists must limit their studies of public policy to the processes of activities and avoid analysis of the substances of policies. According to this argument, it is not the content of public policy that is to be studied, but rather the *process* by which public policy is developed, implemented, and changed (Dye, 1995:22). This argument may allow students to study how

decisions are made, and perhaps how they should be made. But, it does not permit them to comment on the substance of public policy- who gets what and why.

Despite the narrow focus of the process model, it is still useful in helping us to understand the various activities involved in policymaking. We want to keep in mind that policymaking involves agenda setting (capturing the attention of policymakers), formulating proposals (advising and selecting policy options), legitimating policy (developing political support), implementing policy (creating bureaucracies, spending money, enforcing laws), and evaluating policy (finding out whether policies work, whether they are popular).

c. The Group Theory Model (Policy as Group Equilibrium)

The Group Theory was propounded by F. Bentley (1980) in his work known as "The process of Government". Group theory begins with the proposition that interaction among groups is the central fact of politics. Individuals with common interest band together formally or informally to press their demands on government. Politics is really the struggle among groups to influence public policy; that public policy is the product of the group struggle. The theory of this model says that a society is divided into a number of organized interest groups.

According to group model theorists, public policy at any given time is the equilibrium reached in the group struggle. This equilibrium is determined by the relative influence of any interest groups. Changes in the relative influence of any interest group can be expected to result in changes in public policy; policy will move in the direction desired by the groups gaining influence. What may be called the public policy is the equilibrium reached in the group struggle at any given moment, and it represents a balance, which the contending factions or groups constantly strive to weigh in their favor. Many public policies do reflect the activities of groups.

The central concept of Group Theory is *access or opportunity* to express viewpoints to decision makers. Some groups will have more access than other and public policy reflects the interests of dominant group and influential group. Finally, this model further advocates that the "*check and balance"* that we see in any government system is the result of group struggle. The checking and balancing resulting from group competition also helps to maintain equilibrium in the system.

d. The Elite Model

Public policy may also be viewed as the preferences and values of governing elite. Although it is often asserted that public policy reflects the demands of the people, this may express the myth rather than the reality even in developed democracies such as in the USA. The Elite theory suggests

that the people are apathetic and ill-informed about public policy, that elites actually shape mass opinion on policy questions more than masses shape elite opinion.

Public officials and administrators merely carry out the policies decided by the elite. Policies flow downward from elites to masses; they do not arise from mass/public demands. Public Policy is thus the preference of the elites.

The major implications of the Elite Model (Theory) for public policy analysis are the following:

(i) First, elitism implies that public policy does not reflect the demands of the people so much as it does the interests and values of the elites. Therefore, changes and innovations in public policy come about as a result of the redefinitions by elites of their own values; change will be incremental rather than revolutionary. Public policies are frequently modified but seldom replaced. However, elitism does not mean that public policy will be always against mass welfare, but only that the responsibility for mass welfare rests on the shoulders of elites, not the masses.

(ii) Secondly, elitism views the masses as largely passive, apathetic, and ill-informed; mass sentiments are manipulated by elites rather than elites' values being influenced by the sentiments of masses; and for the most part, communication between the two flows downward.

(iii) Elitism also asserts that elites share in a consensus about fundamental norms underlying the social system that elites agree on the basic rules of the game as well as continuation of the social system itself. Of course elitism does not mean that elite members never disagree or never compete with each other for preeminence or superiority. But elitism implies that competition centers on a very narrow range of issues and those elites agree more often than they disagree on policy matters.

e. The Rational Model (Policy as a Maximum Social Gain)

A rational policy is one that achieves "maximum social gain"; i.e. gains to society that exceeds costs by the greatest amount. There are two important guidelines in the definition of maximum social choice:

(i) First, no policy should be adopted if its costs exceed the benefits derived from it,

(ii) Second, among a variety of available policy alternatives, decision makers should choose the policy that produces the greatest benefit over cost.

A policy is "*rational"* when the difference between the values it achieves and the values it sacrifices is positive and greater than any other policy alternative. Thomas Dye equates rationality with efficiency. He further says that the idea of rationalism involves the calculation of all social, political and economic values sacrificed or achieved by a public policy, not in narrow context that can be measured in dollars, birrs or cents, in which basic social values are sacrificed for monetary savings. The rationality principle emphasizes that policymaking is making a choice among policy alternatives on rational grounds, choosing the "one best option" (Dror, 1973). But, to be rational for policymakers is not easy; in order to be rational, it is desirable that there should be:

(i) Identification and determination of goals,

(ii) The ranking of goals in order of importance,

(iii) The identification of possible policy alternatives for achieving those goals, and

(iv) The cost-benefit analysis of policy.

This rationality assumes that the value preferences of society as a whole can be known and weighed. Rational policymaking also requires *information* about alternative policies, the *predictive capacity* to foresee accurately the consequences of alternative policies, and the *inelegance* to calculate correctly the ratio of costs to benefits. Finally, rational policymaking requires a *decisionmaking system* that facilitates rationality in policymaking. However, rational policymaking faces certain barriers/restrictions, which all may not in fact appear at one time.

Dye hypothesized several important obstacles to rational policy making that include:

(i) Large investments in existing programs and policies (Sunk cost), prevent policymakers from reconsidering alternatives foreclosed by past policies and decisions,

(ii) "Administrative Man" who "satisfices" with few alternatives, who "does not maximize" social benefits does not search for all possible options,

(iii) Policymakers are faced with "Bounded rationality" (Herbert Simon's concept) by limited knowledge, communication difficulties, emotions education, rules, and external pressure,

(iv) Situational opportunism including lying, stealing, cheating, are apparent cases,

(v) Rational model is ideal not realistic,

(vi) Organizational goals are not often clear,

(vii) Prioritization of goals is difficult,

(viii) Examination of all alternatives to the policy is not possible… always one more alternative remains to be considered,

(ix) Projection of the all possible consequences, good and bad, and their costs and benefits is impossible,

Generally, the assumptions and arguments of the rational model has been criticized as being impracticable for a number of reasons:

(i) It is practically impossible to collect all information and make a complete list of policy options,
(ii) The process involved in this approach is time consuming and expensive,
(iii) The assumptions that values can be ranked and classified is erroneous, since there are always differences among the legislatures, administrators and the public on the values that a nation should pursue,
(iv) The assumptions to consider everything before a new policy is decided is impossible since the consequences of adopting a new policy is in most cases unknown

f. The Incrementalism Model (Policy as Variations on the Past)

Although the rational comprehensive approach is theoretically good, what actually occurs in administrative decisions is quite different; i.e. the "*successive limited comparison*" technique or incremental step. Firstly, administrators operating under limited resources take up on a priority bases program of immediate relevance. Secondly, they do not outline a wide range of possibilities in selecting appropriate policies, but only a few "incremental" steps that appear to them feasible on the basis of their experiences.

Charles E Lindblom (1959) popularized the instrumentalist theory in his early contribution known as “the science of muddling through”. The *Incrementalism Model* views public policy as a continuation of past government activities with only incremental modifications.

According to Lindblom *et al* (1993), decisionmakers *do not* annually review the whole range of existing and proposed policies, identify the societal goals, research the benefits and costs of alternative policies, etc. On the contrary, constraints of time, information, cost, and politics prevent policymakers from identifying the full range of policy alternatives and their consequences.

Incremental theory is conservative in that existing programs, policies and expenditures are considered as a base, and attention is concentrated on new programs and policies and increases, decreases or modifications of current programs.

Policymakers generally accept the legitimacy of the established programs and tacitly agreed to continue previsions policies. Governments (policymaker) do this for many reasons, such as:

First, they do not have the time, money or information to investigate all the alternatives to existing policy. The cost of collecting all this information is too high.

Second, they accept the legitimacy of previous policies because of the uncertainty about the consequence of completely new or different policies.

Third, There may be heavy investments in the existing programs (Sacks costs), which do not allow any radical changes.

Fourth, Incrementalism is politically expedient. Political tension (Conflicts in major policy shifts; "all-or-nothing" "yes-or-no" policy decisions) involved in getting new programs or policies passed every year would be very great, past policies are continued into the future.

Two advantages of incrementalism are identified, namely:

(1) Decision-makers could proceed through a succession of small incremental changes, thereby have the advantage of avoiding serious alterations in case of mistakes in decision making,

(2) This method is truly reflective of the policymaking process by means of consensus and gradualism and contemplates possible changes in public policies,

Though it is widely accepted that *incrementalism* describes the reality of the policymaking process, it has its own disadvantages or weaknesses, among which:

(1) It can result in important policy options being overlooked,

(2) It discourages social innovation and is partisan in approach, which in reality means the interests of the most powerful get maximum attention by policy-makers,

(3) It cannot be applied to fundamental decisions such as declaration of war, hence cannot be considered as an approach without flaws or mistakes,

g. The Game Theory Model (Policy as a Rational Choice in Competitive Situations)

A conflict situation is called a "game". The game theory is the study of rational decisions in situations in which two or more "players"/participants have choices to make and the outcome depends on the choices made by each. The idea of a "game" is that decision makers are involved in choices that are interdependent. The theory is put into application on policymaking situations where there is no independently *best choice*, which one can make and where the best choice

depends on what others do. In the conflict situations all participants try to maximize their gains and minimize their losses.

Perhaps, the connotation of a "game" is unfortunate, suggesting that the game theory is not really appropriate for serious conflict situations. But, just the opposite is true; the game theory can be applied to decisions about war and peace, international diplomacy, coalitions in parliament to United Nations, the use of number weapons and other political situations. A key concept in game theory is strategy; the games considered are games of strategy. The rules of the game describe the choices, which are available to all the players. The game theorists employ the term "*minimax*" to refer to the rational strategy that either minimize the maximum loss or maximize the minimum gain for a player regardless of the opponent does (Dye, 1995:34).

The game theory is an abstract and deductive model of policymaking. It does not describe how people actually make decisions but rather how would go about making decisions in competitive situations. The game theory is a form of rationalism. The game theory is more an analytical tool than practical guide to policymaking by government officials. The conditions of game theory are seldom approximated in real life. Yet game theory provides an interesting way of thinking clearly about policy choices in conflict situations. Perhaps the real utility of policy analysis at the present time is in suggesting interesting questions and providing a vocabulary to deal with policymaking in conflict situations.

h. The Public Choice Theory Model (Policy as a Collective Decision making by Self-interested Individuals)

The public choice approach which gained increasing popularity in the 1970s and 1980s has its base in the rational choice. The public choice model is the economic study of non-market decision making, especially the application of economic analysis to public policymaking. This theory assumes that all political actors-voters, taxpayers, candidates, legislator, bureaucrats, interest groups, etc.-seek to maximize their personal benefits in politics as well as in the marketplace. In short, people pursue their self-interest in both politics and the marketplace, but even with selfish motives they can mutually benefit through collective decision making.

The public choice theory recognizes that government must perform certain functions that the marketplace is unable to handle. It must remedy certain "market failures". First, the government must provide *public goods* and *services* that the market cannot supply because their costs exceed

their value to any single buyer. Second, externalities are other recognized market failure and justification for government intervention. The most common examples of externalities are air and water pollutions; where discharges of air and water pollutants impose costs on others.

Public choice theory helps to explain why political parties and candidates generally fail to offer clear policy alternatives in election campaigns. Parties and candidates are not interested in advancing principles but rather in winning elections. In other words, they formulate their policy positions to win elections; they do not win election to formulate policy. Thus, each party and candidate seeks policy positions that will attract the greatest number of voters (Dye, 1995:36). The public choice model also contributes to our understanding the behavior of interest groups and their effects on public policy.

i. Systems Theory Model (Policy as a Systems Output)

Another way to conceive public policy is to think of it as a response of a political system to forces brought on it from the environment. Forces generated in the environment that affect the political system are viewed as *input.* The environment is any condition or circumstance defined as external to the boundaries of the political system. The political system, in turn is that group of interested structures and processes that functions authoritatively to allocate values for a society. Outputs of a political system are authoritative value allocations of the system, and these allocations constitute what is known as "*public policy*". The systems theory portrays public policy as an output of the political system.

The concept of "*system*" implies an identifiable set of institutions and activities in society that functions to transform demands into authoritative decisions requiring the support of the whole society (Basu, 1994). The concept of system also implies that elements of the system are interrelated, that the system can respond to forces in its environment, and that it will do so to preserve itself. Inputs are received into the political system in the form of both demands and support.

In sum, we can briefly describe key concepts employed in qualifying the systems model in the following manner:

- The *Political system* comprises of those identifiable and interrelated institutions and activities (i.e. governmental institutions and political processes) that make authoritative allocation of values (decisions) that are binding on society.

- The *environment* consists of all those phenomena (economic system, social system, biological setting) that are external to boundaries of the political system.
- *Inputs* consist of demands and supports.
- *Demands* are in turn claims of action made by individuals and groups to satisfy their interests.
- *Support* is rendered by them through accepting election results, payment of taxes, obeying laws, accepting government decisions.
- *Outputs* include laws, rules, and judicial decisions.
- *Feedback* means policy output may produce new demands, which lead to further outputs and so on in a never-ending flow of public policy. The systems theory draws heavily on David Easton's "The Political Systems." The political system is called the "Black Box."

3.4.8 Broad Typologies of Public Policy

Some social scientists and scholars have attempted to discuss the typologies of policy issues. These facilitate comparison between issues and policies. Lowi (1972:298-310), for example, has suggested a classification of policy issues in terms of their purposes or focuses. Policies can generally be categorized in the following major typologies:

(i) Substantive and procedural policies

(ii) Distributive, regulatory, self-regulatory and re-distributive policies

(iii) Material and symbolic policies

(iv) Public goods policies and private goods policies

(v) Liberal and conservative policies

Policies may also be categorized on the basis of:

(i) Issues (like: labour, welfare, civil rights, foreign affairs, etc.)

(ii) Institution (like: legislative policies, judicial policies, departmental policies,)

(iii) Time period (like: transitional, short-range, medium-range, long-range)

Categorization of public policy in terms of the latter three aspects presented above is better because they reflect basic contents and characteristics of policies than the case in the former one.

(i) Substantive and Procedural policies:

Substantive policies involve what government is going to do (e.g. construction of highways, payment of welfare benefits, prohibition of liquor, acquisition of bombers). Substantive policies directly distribute advantages and disadvantages, benefits and costs to people. Procedural

policies pertain to how something is going to be done; who is going to do (example, which agencies are responsible for the enforcement of a law enacted to ban or control illegal drug trafficking and consumption)?

(ii) Distributive, Regulatory, Self-regulatory and Re-distributive Policies

This typology differentiates policies on the basis of the nature of their impact on society and the relationships among those involved in policy formation. Distributive policies involve the distribution of services or benefits to particular segment of people; i.e. individuals., groups, corporations, communities (example, bank loans) or distribution of benefits to vast number of persons (example, tax concessions, free public school educations). These policies also use public funds to assist particular groups, communities and industries, (example, flood control, ports improvement, water supply, beach development).

Re-distributive policies involve shifting of the allocation of the existing resources, wealth, income, property, rights, and powers among broad classes of people (example, land reforms). Re-distributive policies are difficult to secure as they involve reallocation of money, rights, and power.

Regulatory policies involve imposition of restrictions or limitations on the behaviour of individuals or groups; they reduce the freedom to act of those who are regulated (example, business regulatory policies related to pollution control or regulation of transportation industries).

Self-regulatory policies are usually sought and supported by the regulated group as a means of protecting or promoting the interests of its members (example, licensing, legislations, health and medical are heavily influenced by the practitioners; agricultural policies influenced by farmers.)

(iii) Material and Symbolic policies:

This depends upon the type of benefits the policies allocate. A material policy provides tangible resources or substantive power to their beneficiaries (examples, Minimum Wages Act, Public Housing program, Income Support Payments to Farmers, etc). Symbolic policies have little material impact on people. They appeal to the cherished values of the people such as peace, patriotism, social justice (examples, Peace Pacts, Endangered Species Act, etc).

(iv)Policies involving Collective Goods or Private Goods

Collective goods (indivisible) are provided to one and all persons equally and similarly (examples, national defense, public safety, traffic control, mosquito abatement, clean air etc). Private goods (divisible) may be broken into units and charged on an individual user or beneficiary basis. Various social goods provided by government have some characteristics of private goods. Charges are

sometimes but not always levied on individual users (examples, garbage collection, postal service, medical care, museums, and national parks).

(v) Liberal and Conservative policies

Distinction between "Liberal" and "Conservative" policies is slippery and difficult to define. Such distinction was possible in the latter part of 19th and early part of 20th centuries, but now has passed into the graveyard of consensus. Their respective stand vis-à-vis Government can be seen in the following table.

Liberals	Conservatives
(1) To bring social change and greater equality	(1) Such charge should occur slowly and naturally
(2) Public policies to correct social injustices /shortcomings	(2) Existing social order satisfactory
(3) Economic regulatory programs	(3) Opposed economic regulations
(4) Supported welfare programs	(4) Opposed welfare programs

3.4.9 The Requirements for Successful Implementation

What must happen for a government program to be implemented effectively? We could liken the beginning of the implementation process to the assembly of a machine: as one author phrased it, "a Large machine ... to turn out rehabilitated psychotics or healthier old people or better-educated children or more effective airplanes or safer streets. This machine must sometimes be assembled from scratch. It can sometimes be created by overhauling and reconstituting an older, or preexisting, machine". Yet the implementation process must be more than a machine; like a living organism, it must respond to its environment and alter itself in ways that its assemblers may not be able to foresee. No two administrative situations are exactly alike, but we can identify some basic requirements.

(i) Policy Translation

First, the policy itself must provide a clear and consistent statement of its objectives and the means by which to achieve them. Laws are usually designed to attack several problems and achieve several objectives at the same time. Child welfare programs aim simultaneously at the child's physical protection and enhancing family stability and parental competence. These are not necessarily incompatible goals, but a program must be carefully designed to harmonize the two.

Policy Design: Difficulties can thus appear because of faults in the policy design. It may not convey to administrators a clear knowledge of what they are to do. There may be multiple or uncertain concepts of the problems and objectives a situation reflecting legislative conflict and compromise. Ambiguous statements are common in legislative policies for several political reasons. They enable advocates of conflicting goals to come to sufficient agreement to pass a bill; very specific language would arouse too much opposition. Such ambiguity also allows different constituencies to believe that they will receive something from the program. "Legislators can satisfy demands to 'do something about a problem by passing a vague statute with ambiguous meaning, then letting administrative agencies hash out the more conflicting details behind the scenes" (Stone, 1988: 124-125). This passes to the administrators the harder task of giving the policy its real meaning.

In addition, legislators may have framed the policy only for symbolic purposes and did not intend it to be fully implemented as stated. They could have sought only to signify government's concern for a problem, since they had no means of resolution or the funds to afford the solution. Or they may have wanted to endorse a politically popular ideal or please an important constituency. This is not necessarily deception by policymakers, though it can create unrealistic popular expectations. It also puts administrators in a no-win situation; If they do not take the policy seriously, they invite criticism for dereliction of duty; if they implement a means of resolving a problem, even their best efforts may not satisfy their critics.

(ii) Resource Sufficiency

Policy cannot be implemented with good intentions alone. Each implementation effort requires a unique set of facilities, skills, information, and technology. For any given level of desired goal achievement, a corresponding level of resources must be supplied. Homeless persons cannot be housed permanently without adequate low-cost dwellings, nor can air traffic move safely when sufficient airport space is lacking. How effective child protection programs will be depends in large part on the number of skilled inspectors and counselors assigned to the workload. Cleaning up a toxic waste dump requires state-of-the-art knowledge of the chemicals' effects and technology for rendering them harmless. And each in turn demands a given sum of money, the basic resource needed to procure nearly all of the other resources.

Resource selection is a challenge to both policymakers and administrators. The former must foresee what is required to meet their expectations when designing the program. Their natural

temptation is to set high expectations before confronting the hard realities of costs. Their budgets define that supply of available funds, and they must then make difficult tradeoffs in selecting what resources are indispensable for the program's success.

Initiating Funding: Administrators play a dual role in the funding process. First, they make the initial requests for funds that the lawmakers consider. These proposals are often carefully designed to win support from key member, supplying benefits to their states or districts, and fitting their program priorities. In this process, resource allocation becomes entangled at the very heart of political conflict and coalition building. Federal and state public works programs, with their benefits to specific political subdivisions, have long been allocated by such bargaining.

Allocating Resources: After enactment of the budget, administrators play the second role of preparing detailed plans for deploying their resources. There must be corresponding “budgets" for all other necessities likely to be in short supply: persons with needed talents, specialized information, building space, and even the time for thinking and conferring among the program managers.

(iii) Orchestration of Effort

We can embellish upon Bardach's (1977) machine model with yet another concept, that of administration being a concert by a large orchestra, which has three essential elements; i.e. agreement, effective communication, and coordination among members of the group or the orchestra. This is the *systems perspective*, which is a network of interdependent parts whose actions must support one another for the policy to succeed. We have already seen that nearly all public policies involve two or more government agencies, often at least one from each level-federal, state, and local—and frequently from private organizations as well.

Communication and Cooperation: The communication stream must reach to every agency to convey the whole sense of a policy and any procedures and regulations added along the way. Communication must be precise enough to explain how the new policy directives relate to what is already going on, what changes it will and will not require in administrators' conduct, and what new standards they are to follow. For those administrators who will have much discretion, it must also define their realm of freedom. The conflict over public transportation for the disabled is typical of this sort of intergovernmental action. The federal authorities make rules, but only the state and local mass transit agencies would implement them, and they claimed broad leeway to adapt the rules to their needs and resources.

Orchestration implies agreement. When administrators are well disposed to the policy and its procedures, they are more likely to carry it out conscientiously and cooperate with one another when joint action is required. This applies to whole agencies and departments, which can block policy in the absence of such dispositions. The typical public agency has many tasks to fulfill, and some inevitably take a higher priority than others. Those that best fit the dispositions of its leadership will get the most attention.

(iv) Political legal Support

The political and legal environment of administration shapes program outputs and results. This environment consists of influential persons and groups, inside and outside of government that can determine the degree of a program's success. This cluster varies with each policy area and may change over time.

Optimization From Government and the Private Sector: First, implementation of a policy can be obstructed or redirected by opposition or by influential forces within the government and the private sector. Though the law may have passed by majority vote or with narrow margin, the losing side typically transfers its opposition to the administrative arena and may well find allies there. On the other hand, the winners naturally seek to protect their gains and attract supports from among the new beneficiaries, and the result is a political contest. Groups that are well organized and gain access to officials at high levels are more likely to win such administrative battles.

Legal Challenges: Policy implementation can be further hindered or altered by legal challenges and adverse court decisions. These could be initiated by the opponents of an earlier legislative or administrative decision. The last resort for a person or group on the losing side of a conflict is a civil suit in which the complaint may range from improper procedures followed in the rule-making to unconstitutionality of the policy itself. The case is first tried in the lowest federal or state trial court, depending on which level of law the charge relates to. The loser of that verdict may appeal to a federal or state appeals court, which would uphold or reverse the first ruling.

The courts may have strengthened one side, and in so doing have affected the competing factions within the bureaucracy. When different state or federal courts render inconsistent decisions on an issue, this not only increases the administrators' uncertainty but invites further litigation and causes more delay.

Support from Program Clients: A third category of essential political support is that of the program's clients themselves. A policy for providing a service assumes that people want it strongly enough to comply with the conditions necessary to receive it. When a program imposes limits or

prohibitions on clients, their voluntary compliance is likewise crucial. Public programs presume widespread and willing cooperation, whether in collection of income taxes, observance of speed limits, and so on. Government is not in a position to monitor mass behaviour continuously. Compliance depends on five basic factors: *sufficient communication of the policy to the public*; *personal ability (physical or financial) to comply with it*; *agreement with the policy itself and its importance*; *acceptance of the actions necessary to comply*; *and the belief that the government has the authority to compel compliance on that matter*. Thus, it must create the conditions and incentives that secure this compliance, even from persons who would profit from non-compliance.

(v) A Supportive Socioeconomic Environment

A final category of requirements for policy success lies in the social and economic conditions not under the control of the policy or even of government in general. Lawmakers formulate a policy to fit an assumed context, the "ecology" of administration. They may simply project their present circumstances into the future or may draw upon well-researched forecasts of changed conditions. The policy is designed to change some aspect of that expected future, yet it depends on other crucial factor staying the same. A job-training program, for example, aims to prepare students for skills that are expected to be in demand, but an economic recession or a major plant closing in the community can frustrate that effort. The policy can thus fail solely because of a change in the environment that was not anticipated.

CHAPTER FOUR

4 PUBLIC RESOURCES ADMINISTRATION IN ETHIOPIA

4.1 Policies and Institutions of Public Personnel Administration in Ethiopia

a. The Inception and Development of the Ethiopian Civil Service

The early years of the twentieth century witnessed the inception of modern public administration and the emergence of civil servants in Ethiopia. As of this period, the civil service has been serving the different regimes in power. The regimes (especially of Emperor Haile Sellassie and the EPRDF) have introduced major reform measures in the civil service. In the following paragraphs, an attempt will be made to outline the inception, development and status of the civil service and the reform measures considered under the different regimes in power.

b. Emperor Menilk and the Inception of the Civil Service

The inception of modern public administration goes back to the creation of modern Ethiopia during the last days of the reign of Emperor Menilek (1889-1913). Prior to this period, the country was under traditional administration and the different Ethiopian monarchs had failed to build any kind of administrative framework through which they could exercise their absolute power.

One major cause was the absence of centralised political leadership due to the incessant power struggle between the regional lords, principalities and kingdoms and the drive to expand their territory (see also other reasons in Perham 1969, 73-75; Abir 1968). As indicated by Asmelash (1972) the situation was "... all the time a hindrance to the establishment of centralised administration with the systematic archives recording the administration of the empire." It was during the Menilek years that the country was first divided into smaller administrative units and that gradual modernisation took place. The period saw the beginnings of modern government and a modern army; the establishment of the railway; the first motor cars and other new institutions and technological innovations.

Addis Ababa was established as the capital of the government. Other measures were also taken by the Emperor to modernise Ethiopian public administration. One of the prominent measures was the creation of ministries. As Perham (1969, 89) indicated "The Emperor Menilek, keenly interested in the new world suddenly impinging upon his country and determined to modernise his administration upon European lines, began the creation of ministries". Perham states that in 1907-

8 the ministries of justice, war, the interior, commerce and foreign affairs, finance and agriculture, and public works were created and in 1911 a ministry for posts and telegraphs was added and foreign affairs became a separate ministry (1969, 89). The ministries were housed in buildings set up within the palace enclosure.

c. The Period of Haile Sellassie and the Civil Service

Emperor Haile Sellassie (Regent 1917-1930, Emperor 1930-1974) had the best claim of instituting modern public administration in Ethiopia, which was started by his predecessor. It was during his reign that the process of centralizing and modernizing the state reached a relatively advanced stage and the modernization of the state was promoted.

The Emperor, during his early days in power, created further ministries for Industry, Education and Fine Arts, Justice, Public Works and Communications, with departments for Mines and Slavery (Perham 1969, 89-90). Unlike during the period of Menilek, the ministries were housed outside the palace precincts. From 1930-1935 many important attempts at reform were taken and these included: new measures for training the army, the inauguration of a parliament, the development of education, judicial reform, the engagement of foreign advisors and measures taken for the abolition of slavery (Perham 1969).

Implementation of reforms was discontinued as a result of the Italian occupation of 1935 -1941. But after its end and the Emperor's return to power, many reforms were carried out and the whole ministerial system was completely reorganized and greatly extended.

The following are some of the administrative reforms (see also Perham 1969; Asmelash 1972):

• The Administrative Regulation Decree No. 1 of 1942. The decree ended the strong power and autonomy of the provincial governors. The decree instituted the appointment by the centre of governors-general, directors, governors, principal secretaries, meslänés, and police to each province. The governors-general and the officers were attached directly to Addis Ababa and received their salaries from the central treasury. The decree also brought about a deconcentrated form of administration, reflected by the fact that the governors-general were given power to exercise only general supervision over all officials appointed in their province by the ministries, and the officials were responsible only to their respective ministries.

• An Order to Define the Powers and Duties of the Ministries, No. 1 of 1943 and An Order to Amend the Ministers (Definition of Powers) Order, 1943, No.2 of 1943.

Through these two orders the Council of Ministers was created. Twelve ministers were listed, their powers and relations were defined, and the Office of the Prime Minister was established. The Office of the Prime Minster was made head of all ministries and was responsible for the good administration of all the work in the ministries, harmonising their duties and transmitting the Emperor's orders (Perham 1969, 89). The ministers, among other duties and responsibilities, were charged with the duty of preparing draft laws – except those reserved for the Emperor. They were also empowered to appoint their staff and prepare their budget estimates.

• The revised constitution of 1955. This constitution made a clear distinction between posts of confidence and career posts. In Article 66, it states that the Emperor has the right to select, appoint, and dismiss the Prime Minister and all other ministers and vice-ministers. The appointment, promotion, transfer, suspension, retirement, dismissal and discipline of all other government officials and employees was to be governed by regulations made by the Council of Ministers, to be approved and proclaimed by the Emperor.

• The establishment of the Imperial Institute of Public Administration in 1952. As Asmelash (1972) pointed out this was a significant development for the administration of the country. The institute was established as a joint venture of the Ethiopian Government and the technical assistance program of the United Nations. Its objectives included training of civil servants, consultation and research (Asmalsh 1972).

• The establishment of the Central Personnel Agency by Order no. 23 of 1961 and amended by Order no. 28 of 1962.

• The enactment of basic regulations governing the civil service through the Public Service Regulation no. 1, 1962 and the Public Service Position Classification and Scale regulation no. 1, 1972.

It was at this juncture that the definition of a civil servant was provided. Accordingly, it was defined to mean employees of ministries, chartered government agencies and other public authorities. The definition excluded members of the armed and police forces; judges; public servants or other employees above the rank of assistant minister or its equivalent; members of both

Houses of Parliament; employees who had been excluded from the coverage of the term 'public servant' by the public service commissioners with the approval of the Council of Ministers; temporary, seasonal and contractual employees (Getachew 1997).

The creation of the Central Personnel Agency was a landmark in the proper formation of the civil service administration. The agency's primary objective was to maintain an efficient, effective and permanent civil service based on a merit system. The following are some of the tasks of the agency and other related administrative measures taken during the period (Asmelash 1972; Atkilt 1998):

• The agency was entrusted with the responsibility of establishing a homogeneous public service governed by uniform rules and principles.

• Recruitment of both classified and unclassified public servants was to be within the agency's jurisdiction.

• All appointments up to the rank of Assistant Minister were to be the agency's responsibility.

• There was to be open competitive examination in the selection of government employees.

• The grading and the salary structure were to be based on the position classification system.

• Merit as a criterion for appointment was introduced, replacing the old method which was based on favouritism or ascription.

• A pension scheme for public servants was instituted.

As could be gathered from the above discussion, with the coming to power of Emperor Haile Sellassie, the foundation of the modern bureaucracy was laid down. During the period, especially in the 1960s, the importance of an efficient administrative system was recognised.

The civil service seemed to be accepted as the chief instrument available to governments for promoting economic and social development. Generally, it could be safely argued that the civil service contributed, in varying degrees, to the economic and social progress achieved at the time.

Nonetheless, there were problems. These were the absence of strong participation from the concerned organs especially in the preparation of the position classification, salary scale and job descriptions; and lack of skilled personnel to prepare a uniform and comprehensive policy.

Moreover, the absence of strict adherence to the civil service rules and regulations, and political interference in administrative affairs were seen as chronic problems of the time.

d. T**he Period of the Dergue and the Civil Service**

There was a revolutionary government in Ethiopia (1974-1991), popularly known as the Dergue. It was a highly centralised unitary government following a Soviet-inspired centralised economic planning and command economic system. During this period there were no fundamental reform measures promulgated to alter or modify the functioning and management of the civil service. Except for the introduction of a few reform measures, the civil service operated under the different orders and decrees issued during the reign of Haile Sellassie.

Among some of the civil service reform measures taken during the period of the Dergue, the expansion of the state apparatus and the restructuring of the cabinet could be mentioned. Some new ministries, commissions, agencies and authorities were created, others were merged or dissolved. Many were also renamed. A case in point is the Central Personnel Agency that was renamed the Public Service Commission. The Dergue also took some reform measures with regard to the salary scale of the civil service. The major ones were: the increase in the starting salary of the civil service from Br. 25 to Br. 50 (in 1975) and a shift in the ceiling from Br. 285 to Br. 636 for eligibility to periodic salary increment (in 1982).

During the period of the Dergue many problematic situations that crippled the civil servants were observed. Some of them were: the lack of trust, respect and confidence of the politicians as regards the career civil service personnel; absence of competitive merit-based recruitment and promotion practices at higher and middle level posts and, poor pay. These mal-practices in the civil service demoralised and demotivated a good number of them (Asmelash 1998, 24; Atkilt 1998, 75). Moreover, as indicated in a related work (Paulos 1997), there was another peculiar constraint of the time:

During the Dergue regime the government ruled by edict and decrees. There was a confusing pattern of political appointments. In most of the cases many of the higher, middle and even lower level posts in the different ministries and agencies were posts of confidence. There were two confusing structures - the political and the functional. All the decisions in the civil service institutions were made through the political structures by political cadres. There was virtually no

place for apolitical professionals. It can be argued that it was this situation which led to an increasing amount of corruption, serious operational problems, inefficiencies and other administrative problems.

e. Federal Civil Servants Proclamation (Proclamation No. 515/2007)

1) "Civil Servant" means a person employed permanently by federal government institution; provided, however, that it shall not include the following:

a) government officials with the rank of state minister, deputy director general and their equivalent and above;

b) members of the House of Peoples' Representatives and the House of the Federation;

c) federal judges and prosecutors;

d) members of the Armed Forces and the Federal Police including other employees

e) employees excluded from the coverage of this Proclamation by other appropriate laws.

governed by the regulations of the Armed forces and the Federal Police;

2) "Temporary Civil Servant" means a person who is employed in a government office for a job which is not permanent in nature or where circumstances so require to a permanent position; however, it shall not include, the following:

a) persons employed as daily laborer's who are paid on daily basis;

b) persons who are assigned for internship or training;

c) persons who enter into a contract with a government office as an independent contractor for

consideration;

d) persons who enter into a contract with a government office due to their special skills and ability on part-time basis for consideration.

" Government Institution" means any federal government office established as an autonomous entity by a proclamation or regulations and fully or partially financed by government budget; included in the list of government institutions to be drawn up by the Council of Ministers.

Obligations of civil servant

Any civil servant shall:

1) Be loyal to the public and the constitution

2) Devote his whole energy and ability to the service of the public

3) Discharge the functions specified in his job description and accomplish other tasks ordered legally

4) Observe laws, regulations and directives related to the civil services

5) Have a duty to perform government policy efficiently

Ethical conduct of civil servants

Major responsibilities of civil servants to government and society: It has been found that The Civil Servant has crucial role to ensure continuity and change in administration. The civil servants are dictated by the rules and procedures.

1. The prime responsibility of civil services executives to society is to serve the government it has elected. It denotes that civil services must offer same standard of free, frank, impartial and responsive advice, and the same level of professionalism in administration and delivery of services, policies, programs irrespective of political party in power.

2. Another accountability of civil services executive is to openly involve in all actions within the framework of ministerial actions to government and legislature.

3. Specifically, civil servants are responsible for public interest in maintaining the law and ensuring that proper procedures are followed.

4. Civil servants have close relations with society as they serve array of services. It entails that they must adopt ethical practices to deal with public.

5. Civil servants need to serve the society by ensuring that entitlement and services provided to it under law and government policies are delivered effectively, impartially, courteously and professionally.

6. Civil services officers also responsive to the need of people, treating its member with courtesy (politeness or good manners) and with sensitivity to their rights and aspirations.

4.2. ADMINISTRATIVE AGENCIES LAW OF ETHIOPIA

4.2.1 Administrative Agencies and Administrative Law

Administrative law involves a challenge to the exercise of power by the executive government. For this reason, it is necessary to look at the composition and powers of executive government, and at how they exercise their powers when they take action or make decisions. In practical terms executive government interferes in our lives and their actions affect our lives in many ways. When we venture on a certain business, we have to acquire a relevant permit and license before commencing our business. Even after we comply with such requirement, a government inspector sent by the relevant agency enters into our premise without court warrant and can conduct investigation. The food and other household provisions we buy are subject to regulations. In work areas the jobs we do, and the premises on which we work are subject to licensing approvals and permits. As we are paid, we are subject to requirements as to tax. This shows clearly that government intrudes into our lives in many ways.

Administrative agencies make individual decisions affecting citizens' lives and they set general policies affecting an entire economy and they are usually headed by officials who are neither elected nor directly accountable to the public.

Under this unit we will have a deeper look at the purpose, scope and nature of power of the administrative agencies. The growth of the administrative law to large extent may be identified with the proliferation of administrative agencies, not only in number but also in power and function. Hence, the study of the administrative law is greatly interrelated with the study of the agencies, which shape the administrative process.

4.2.2 Nature, Meaning, and Classification of Administrative Agencies

Nature of agencies

There is hardly any function of modern government that does not involve, in some way, an administrative agency. The 20th century has witnessed an unprecedented proliferation of agencies with varying size, structure, functions and powers charged with the task of day – to- day governing.

Their existence and growth have been the typical characteristics of the modern administrative state (welfare state.)

Administrative agencies have become a major part of every system of government in the world. "The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values today are affected by their decisions than by those of all the courts . . . They have become a veritable fourth branch of government."

4.2.3 The Meaning of Administrative Agency

Defining an administrative agency is not an easy task. Agencies come in a huge array of sizes and shape. This is coupled with their wide ranging and complex functions and their power to legislate and adjudicate, in addition, to their normal executive powers, makes it challenging and difficult to precisely provide a precise and concise definition covering all these aspects of the administrative process.

Agencies may be defined as governmental entities, although they affect the rights and duties of persons are neither courts nor legislatures. For one thing it is true that agencies are not located within the legislative or judicial organ of the government. Although they are within the executive branch, most of them are not mainly accountable to the executive branch.

A government entity outside of the judiciary or the legislature does not necessarily qualify as an administrative agency. The American Administrative Procedure Act adopts this and defines agency as any U.S. governmental authority that does not include Congress, the courts, the government of the district of Columbia, the government of any territory or possession, courts martial, or military authority. In this definition, the reference to "authority" signifies a restriction on the scope of government entities that may be properly called as agency. Authority refers to a power to make a binding decision. Therefore, only entities with such power constitute an agency. In a similar fashion, Black's Law dictionary defines agency as a governmental body with the authority to implement and administer particular legislation.

Generally, it can be said that the authority or power of the entity is a common denominator for a precise definition of an agency.

A more detailed definition of an administrative agency is given in the New York Administrative Procedure Act, which reads:

"An agency is any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interest compact or international agreement, the division of the military and naval affairs to the extent it exercise its responsibility for military and naval affairs, the division of state police, the identification and intelligence units of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board."

Determining whether a certain government entity constitutes an agency or not is greatly a matter of government policy so that the legislature may exclude some organs from the scope of an agency.

Generally speaking, we may identify two important elements in distinguishing whether a certain government entity is an administrative agency or not. Firstly, the nomenclature may be indicative of the status of an entity as an agency. Most agencies have names like department, authority, commission, bureau, board etc;…Secondly, the government entity should be empowered to legislate (through delegation), or adjudicate individual cases, in addition to its merely executive functions.

Due to the absence of an administrative procedure act in Ethiopia, there is no comprehensive definition of an administrative agency. There are some specific legislations that make a reference to "government agency", though failing to provide a satisfactory definition. For instance, the income tax proclamation and the civil servants proclamation similarly define a government agency as an entity fully or party funded by the federal government. Practically, the allocation of fund by the federal government is unimportant to determine whether a certain entity is an administrative agency or not. Hence, if there is any dispute as to status of a certain governmental entity, resort has to be made to its nomenclature, and mainly to the existence of legislative and /or adjudicative power of that entity.

The Draft Administrative Proclamation of the Imperial government (draft proclamation No 251/1967) and that of the draft prepared by the federal government define agency relatively in a similar way.

The 1967 draft administrative procedure act uses the term "administrative authority" instead of "administrative agency" and defines it as:

"Any ministry, public authority or other administration of the imperial Ethiopian government, including chartered municipalities, competent to render an administrative decision."

This definition combining nomenclature with power of the agency attempts to identify which government entity may be properly called an administrative authority. The reference to competency to render administrative decision indicates that the power of the agency to legislate through delegation is missing as criteria.

The draft does not categorically exclude some entities from the purview of an administrative authority. However, it excludes some administrative decisions such as those regarding selection or tenure of public servants, those based solely on inspection tests or election, decisions as to the conduct of military or foreign affairs functions, decisions of any judicial division by courts of law, and any decision establishing rules or regulations.

Still it could not be known with exact precision what entity falls within and outside the definition of an administrative agency. Lastly, the draft administrative procedure of the federal government defines administrative agency taking the ability to render an administrative decision as criteria.

The 1967 is draft, different from the current Amharic text only in the substitution of "the imperial government" by F.D.R.E government and "chartered municipalities" by Addis Ababa and Dire Dawa Administrations. one may wonder whether the latter draft is simply a translation of the former rather than an original one.

The following parameters should be used to determine whether a certain government entity is an agency or not.

4 The nomenclature used to describe the entity is ministry, authority, agency, bureau, office, commission, board, etc., or any other similar terms.
5 That it has legislative and/or adjudicative power granted by the legislature.

6 That the head of the agency is appointed by the executive or by the house of people's representatives.

4.2.4 Classification of Administrative Agencies

Agencies are created with varying size, structure, functions and powers. Some of them may be established with broader powers; in charge of regulating a certain sector of the economy. This is typically the case with ministries, which are headed by a high-level government minister. Ministries not only enforce a government program or policy, but they also supervise and overview other lower agencies that are accountable to them. Others are comparatively small in structure and are charged with a very specific task of implementing a certain portion of government policy or programme. With the exception of few, almost all agencies are under the direct control and supervision, in their day to today implementation of government task law, or policy assigned to them by the enabling act. The remaining very small agencies function independently outside the direct control of the executive branch and they are accountable to the legislature. Agencies are classified or categorized based on such mode of accountability.

Accordingly, those agencies directly accountable to the executive branch are known as executive agencies, where those accountable to parliament are called independent agencies.

In Ethiopia, executive agencies are usually accountable to a certain ministry, or council of ministries, or the prime minister. Even though the enabling act may subject an agency to the control of another ministry, it has also to be noted that they are ultimately accountable to either the council of ministers, or to the prime minister. This is true because the F.D.R.E constitution grants the highest executive authority to the Prime Minister and the Council of Ministers. This fact can also be inferred from the cumulative reading of Articles 74(2) and 77(3) which similarly confer the power of ensuring the implementation of laws, regulations, directives and decisions of the house of people's representatives. Such powers mainly include the power to follow up and supervise the activities, functions and exercise of power of specific administrative agencies.

The executive impacts the work of agencies in so many ways. The Prime minister may freely appoint the head of an agency, and dismiss him at any time even without valid reasons. However, the appointment of ministers and other commissioners is subject the approval of the house of people's representatives.

Independent agencies are accountable to parliament, i.e. to the house of people's representatives. The establishment of these agencies, even though they need the act of the house of people's representatives for their material and legal existence, there is predetermined by the constitution. This implies that their creation is not dependent on the will of the parliament. Normally, the parliament retains exclusive right to bring a certain executive agency into existence, which includes the power to modify, increase, or decrease the power and function of that agency. By the same token it is up to the parliament to terminate that agency. However, this is not the case with independent agencies. The constitution clearly imposes a duty to establish independent agencies indicated in the constitution. There are some agencies falling under this category are listed below.

- The Federal Ombudsman
- The Human Right Commission
- The National Election Board
- The Auditor General
- The Population and Census Commission

With respect to these agencies parliament has the right to appoint heads. and remove them if there are valid reasons.

4.2.5 Formation of Administrative Agencies

Mode of Creating an Agency

In Ethiopia, whether it is at the Federal or state level, agencies are creatures of the legislature. They do not spring up on their own, and courts or the council of ministers cannot create them. The F.D.R.E. constitution expressly requires the establishment of some independent agencies. They do not have i.e. material and legal existence unless the house of people's representatives enacts a specific law for their establishment. Hence, agencies that are in function so far are those that a legislature has given them the authority to function. The authority may be exceptionally broad or incredibly narrow.

Hence, it may be said that agencies are created in two ways: one is through the constitution, and the second is through act of parliament. However, one important point that should be emphasized is that the independent agencies, which have a constitutional basis, still require an enabling act of

the parliament for their legal existence. The only difference between the two modes of creating an agency is that when the constitution requires the establishment of some agencies the house of people's representatives has a duty to promulgate the enabling act for that specific agency. When an agency is created only through the enabling act, in the absence of constitutional duty from the parliament, its existence is totally dependent on the will or option of the parliament.

Apart from the above two modes, there is no other means of creating an agency. Neither the prime minister, nor the council of ministers has the power to create an administrative agency.

4.2.6 Reasons for the Creation of Agencies

Agencies are created and assigned specific tasks by the legislature. They carry out the tasks making decisions of various sorts and supervising the procedure by which the decisions are carried out. There are many reasons why administrative agencies might be needed. Almost every governmental agency has been created because of a recognized problem in society, and from the belief that an agency may be able to help in solving the problems. The following are the main reasons for the creation of the administrative agencies.

A. Providing Specificity

The legislative branch of government cannot legislate in sufficient detail to cover all aspects of many problems. The house of the people's representatives cannot possibly legislate in minute detail and, as a consequence, it uses more and more general language in stating its regulatory aims and purposes. In many areas, the agency has to develop detailed rules and regulations to carry out the legislative policy.

It is also true that courts could not handle all disputes and controversies that may arise. They simply do not have the time or the personnel to handle the multitude of cases. For instance, the labour relations board entertains and resolves so many number of collective labour disputes between employees and employers. Similarly, the tax appeal commission and the welfare (pension) appeal tribunal adjudicate and decide vast number of administrative litigations within their jurisdiction. The creation of such adjudicatory agencies (usually known as quasi- administrative agencies) is necessary, because of the fact that they have, specialized knowledge and expertise to deal effectively with the detailed, specific and technical matters, which are normally beyond the competency of judges of ordinary courts.

Administrative agencies often provide needed continuity and consistency in the formulation, application, and enforcement of rules and regulations governing business.

B. Providing Protection

Many government agencies exist to protect the public, especially from the business community. Business has often failed to regulate itself, and the lack of self- regulation has often been contrary to the public interest. For instance, the Environmental Protection Agency is created to regulate environmental pollution. In the absence of such agency, business could not voluntarily refrain from polluting the environment. The same can be said with respect to quality of private higher education and unjustified and unreasonable increase in the price of essential goods. The Ministry of Education and Ministry of Trade and Industry, regulate respectively both of these cases to protect consumers and the public at large.

Most of the time, an agency protects the public from the negative impacts of business through regulation. agencies also regulate transportation, banking and insurance because of the disparity in bargaining power between the

C. Providing Services

Many agencies are created simply out of necessity. If we are to have roads, the Ethiopian Roads Authority is necessary. Welfare programs require government personnel to administer them. Social security programs necessitate that there should be a federal agency to determine eligibility and pay benefits.

Purpose of Administrative Agencies

Administrative agencies are established by the legislator to perform specific tasks assigned to them by law. What they actually do is to enforce a specific law. They are usually charged with the day-to-day details of governing. The agencies carry out their tasks by making decisions of various sorts and supervising the procedures by which the decisions are carried out.

A) Regulation

One of the key reasons for regulating economic activities by the government is the inability of business to regulate itself. When the government decides to regulate a certain sector, it entrusts the task to the administrative agencies. Agencies offer several advantages over regulation through the

legislature and courts in the management of complex and technical regulatory problems. Because they are specialized bodies, they can consider technical details more effectively than the legislature.

To control monopoly power - Agencies are often created to replace competition with regulation. In this case the agency may determine rate (e.g. transportation, or electricity). Sometimes the difference in bargaining power may be a ground for regulation, avoiding monopoly power of one party. Such instances include regulation of banking, insurance and labor relations.

To control excess profit

The agency regulates business to ensure that business is not collecting excess profit, which may endanger the laws of free market and also may pose a danger to consumers.

To compensate for externalities

"Externalities" occasionally referred to as "spillovers", that occur when the cost of producing something does not reflect the true cost to society for producing the goods. One example is manufacturing process that creates air pollution for which society pays the cleanup costs. A business organization, unless otherwise it becomes sure that there is also corresponding participation by other companies, will not install costly pollution control equipment. Doing so will drive up that company's costs which make it unable to compete with other companies in producing the same product without equipment and selling their products at a lower price. So, some entity i.e. a government agency must require all companies to make those investments (installing equipment's) in order to spread the costs of pollution control over the entire industry.

To compensate for inadequate information

Compensating for inadequate information is a justification for a great deal of legislation for consumer protection. Purchasers of food, for instance, cannot analyze the nutritional content or the health hazards of various food products so that there has to be some organ that ensures these tests are fulfilled

To compensate for unequal bargaining of powers

Contracts between banks & customers, insurers & the insured, employees & employers are adhesive in their nature. Either the consumer has to take it or leave it. Hence, it becomes self-

evident to regulate and set minimum standards to minimize the effect of unequal bargaining of power.

B) Government exactions

In addition to regulation, administrative agencies may also engage in government exactions. Government exactions are the traditional powers and responsibilities of agencies. Such functions include collection of tax and military conscription.

C) Disbursement of money or other commodities

This purpose of administrative agencies is also the prominent one which characterizes the welfare state. In this regard, through the social security programme and other government systems of insurance or compensation, agencies disburse public money as payment of pensions for veterans or assistance for the aged, the disabled, the unemployed and generally the needy. The payments may be directly through cash or food rations.

D) Provision of goods and services

Nowadays, the government is in charge of building and maintaining roads, high ways and dams, the provision of police force and other protective services. Funding public education and the health service may also be mentioned as additional examples. More recent additions include mass transit communications, satellite systems, government research and development programmes, public hospitals and public housing.

JUDICIAL POWER OF ADMINISTRATIVE AGENCIES

Administrative agencies may exercise one or all of the three powers of government. This section shall discuss the meaning and nature of agency adjudication, the forms of agency adjudication, the merits and demerits of agency adjudication; the nature, composition, power and tenure of administrative tribunals in a comparative perspective.

The Meaning and Nature of Administrative Adjudication

What are the peculiar features of an agency's adjudicatory powers vis-à-vis its executive and legislative counter parts? A clear-cut answer cannot be provided to this question. However, it is possible to put some objective tests as a benchmark to differentiate the adjudicatory powers of administrative agencies from their executive and legislative powers. The first of such often -cited test is related to the conclusiveness of the agency's decision. This is to mean that the agency's decision in this regard must have a binding effect on the parties in dispute without any need for confirmation by any other organ. Thus, the decisions that administrative agencies render in their judicial capacities are conclusive in the sense that such decisions are binding on the parties in dispute without awaiting for further confirmation for any other authority, or without checking whether such decisions subject to review collaterally.

The second test for identifying whether a certain agency's function is judicial or not relates to the availability of some sort of procedural attributes. While exercising their adjudicatory powers, administrative agencies normally follow preset procedures. The procedure adopted for this purpose may be formal, which is more or less similar to the ordinary court procedures, or informal, which is a simplified procedure that provides only the minimal procedural safeguards to the persons subject to the decision. The action could be initiated by private individuals against an administrative agency or vice versa, or by an administrative agency against another administrative agency. The administrative forum to which such action is brought for determination is expected to entertain the parties' opinions, arguments and evidences as the case may be. This is to mean that the decision making process is not arbitrary; rather it is guided by procedures adopted in advance.

The third important test for identifying whether or not an administrative agency passes a decision in its judicial capacity is related to the presence or absence of interpretation and application of legal rules. Obviously, interpretation of laws, application of laws to resolve specific factual

disputes and declaration of laws are the core functions of the judiciary whether it is a regular court or an administrative body.

Thus, in short, judicial act may be differentiated from the rest of other administrative functions in that if the decision has conclusive effect, binding nature, have force of law without confirmation by another body, solve questions of law or fact, and then the function is treated as judicial.

The United States of America's Federal Administrative Procedure Act of 1946 defines the term "adjudication" as every final agency action resulting in an order other than rule-making. More precise definition is provided under the 1961 Revised Model State Act of the United States of America. Under this act, adjudication is equated with the determination of contested cases. The term contested cases further defined as " a proceeding including but not restricted to ratemaking and licensing, in which the legal rights, duties or privileges of party are required by the law to be determined by an agency after an opportunity for hearing." As per the definition provided under the Model Act, an administrative act of ratemaking (price fixing) is included within the spectrum of adjudication.

Ohio defines adjudication as "the determination by the highest or ultimate authority of any agency of the rights, duties, privileges, benefits, or legal relationships of a specified person." Similarly, the Pennsylvania statute defines adjudication as "any final order, decree, decision, determination, or ruling by an agency affecting personal or property rights, privileges, immunities or obligations of any or all of the parties to the proceeding."

The Federal Democratic Republic of Ethiopia also prepared a draft Federal Administrative Procedure Proclamation in 2001. The Federal Administrative Procedure Proclamation does not mention the term adjudication at all Instead, the term "Administrative Decision" is used as synonymous term for similar purpose in the draft document. An "Administrative Decision" as defined in Article 2 Sub-Article 2 of this draft states that administrative procedure is to "any decision, order or award of an agency having as its object or effect the imposition of a sanction or the grant or refusal of relief, including a decision relating to doing or refusing to do any other act or thing of an administrative nature, or failure to take a decision…." This draft attaches some exceptions restricting the scope of this definition. The following administrative acts are excluded from the spectrum of the formal definition of administrative decision:

- Decisions as to the selection or tenure of a public servant;
- Decisions based on inspections, tests or elections;
- Decisions as to the conduct of military or foreign affairs or security of police functions;
- Decisions of any of the courts established by law made in exercise of the judicial power as referred to in Article 79 of the Constitution of the Federal Democratic Republic of Ethiopia;
- Decisions establishing rules and regulations;
- Decisions made by the Council of People's Representatives and the Federation Council; and
- Decisions made by the President of the Federal Democratic Republic of Ethiopia.

Forms of Administrative Adjudication

One of the striking features of adjudication is the existence of predetermined procedures that guide the decision-making process. The decision may be preceded by full-blown formal hearings that are similar to court trials or an informal process, which is just like a summary proceeding where the participation of the parties is very minimal. Normally, adjudication process begins either with a complaint filed against a private person, a business, or even another agency. The party charged in the complaint is the defendant (called the respondent). The respondent has the right to file an answer to the complaint. In principle, respondents are entitled to a hearing before the agency adjudicating the case. However, the depth of the hearing may vary from circumstance to circumstance.

Informal Adjudication

The vast majority of administrative adjudications involve informal actions. The informality of the process of administrative adjudication is among the justifications behind the delegation of judicial power to administrative agencies. The informal mode of adjudication, although it may vary from country to country and from case to case in terms of content, tries to provide the minimal statutory safeguards for the protection of fundamental rights of individuals.

Where the rules of natural justice apply in their entirety, a fair hearing will be expected to consist of the following elements:

a) Adequate notice must be given to the person affected;

b) The person affected must be informed of the full case against him or her;

c) Adequate time must be allowed for that person to prepare his or her own case;

d) The affected person must be allowed the opportunity to put forward his or her own case;

e) The decision maker may be required to give reasons for his or her decision;

f) The affected person may be able to cross-examine witnesses;

g) The affected person may be entitled to legal representation.

But it has to be noted that the concept of fair hearing may not imply the same thing in all circumstances. The requirements listed from (a) to (d) are made mandatory- the minimum requirements of fair decision, whereas those listed from (e) to (g), are discretionary in the sense that their application may be required having regard to the nature of each particular type of case. But it has to be noted that the concept of fair hearing may not imply the same thing in all circumstances. The requirements listed from (a) to (d) are made mandatory- the minimum requirements of fair decision, whereas those listed from (e) to (g), are discretionary in the sense that their application may be required having regard to the nature of each particular type of case.

To put it in nutshell, informal adjudication does not involve full-blown trial type hearing. Unless otherwise statutes or case laws (in common law practice) dictate the agency to follow a full-fledged formal hearing process, agencies are usually at liberty to adopt their own decision-making procedures having regard to the minimum requirements of due process of law or natural justice or fairness as such terms may be differently known in different jurisdictions. The more the process of administrative adjudication is highly formalized, the less would be the resultant advantages sought from the delegation of adjudicatory powers to administrative agencies. The more administrative adjudication process is made highly informal, the more would be the possibility for administrative arbitrariness and the threats posed on the rights of individuals.

Formal Adjudication

Formal adjudication involves an almost full-blown trial type hearing. Having regard to the magnitude of the individual interest at stake, the enabling legislation (parent act) or other statutes may dictate the concerned administrative agencies to hold a formal hearing before passing decisions. Formal adjudication, among other things, may provide the following procedural safeguard to the respondent:

- Notification of charges;
- Notification of hearing;
- Representation by an attorney;
- An impartial tribunal/administrative law judge;
- Presentation of evidence;
- Cross examination of the witness of the agency;
- A decision based on the regulation.

In a formal adjudication, the respondent has the right to confront an agency witnesses. Hence, oral hearing must be always there.

To date, Ethiopia has not come up with an instrument that provides uniform standards or guidelines that regulate administrative agencies' adjudication process. Both at the federal and the regional levels, there is no uniform legislative guidance that dictates administrative agencies concerning the procedural steps they must go through while adjudicating cases. So, if there are any, such procedures have to be searched in each of the pieces of enabling legislations that create the respective agencies. At the federal level, a fruitless attempt was made in 2001 to adopt a federal administrative procedure proclamation that was intended to regulate the process of rulemaking and adjudication by federal administrative agencies. But for unknown reason, it has remained as a draft for almost a decade. Federal administrative agencies can refer to this draft document like any other an unbinding legal literature at their discretion; the draft document cannot dictate such agencies decisions for it is not yet adopted in the form of law.

However, this does not necessarily imply that administrative adjudication in Ethiopia is completely arbitrary. You can see some procedural requirements dispersed here and there in the enabling legislations that create and empower particular agencies. Even where the procedural safeguards provided in such particular legislations are found, inadequate to protect the fundamental constitutional rights of individuals, recourse has to be made to the principles of due process of law enshrined under the FDRE Constitution.

Meaning and Nature of Tribunals

The Federal Administrative Procedure Act of America use the term Administrative Law Judges to connote those persons who adjudicate administrative disputes. Whereas the French uses "Conseil

d'Etat", "Cours Administrative d'Appel" and "Tribunaux Administratifs" to refer to their three-tier hierarchy administrative courts that adjudicate administrative disputes. Other authorities also use the term "tribunal" with or without the designation "administrative" to denote the same thing.

Despite the differences in the terminologies used and their organizational set-up from country to country, tribunals or administrative tribunals or administrative courts, as the case may be, refer to the forums where justiciable disputes that involve government agencies, in one or another form, are being adjudicated by a panel of impartial decision makers. So, instead of trying to define this fluid concept of tribunal, it seems convenient to state what tribunals usually do and how they proceed.

Tribunals are bodies established outside the structure of ordinary courts to adjudicate disputes that involve the government as a party on matters pertaining to governmental functions. The dispute could be between two or more government agencies, or between government agencies or between one or more individual parties. Hence, the typical tribunal, like an ordinary court, finds facts and decides the case by applying legal rules laid down by statute or legislation. In many respects, the tasks performed by tribunals are similar to that of performed by regular courts. As the jurisdiction of these tribunals are restricted to adjudicating disputed cases involving administrative agencies as parties in their governmental functions based on the principles, rules and standards set under administrative law, it seems appropriate to call them with the designation "administrative tribunals" instead of simply "tribunals."

Of course, the term tribunal seems broader in meaning and scope than the term administrative tribunal as the former may embrace bodies formally instituted outside the structure of the ordinary courts to adjudicate disputes of private characters as contrasted to disputes that involve the agencies of the government. The Labor Relations Board that resolves collective labor disputes between employers and employees may be taken as a good example of these tribunals.

The adjective "administrative" as used in the above critics does not necessarily imply that the tribunal is created by the administration or that the tribunal resolves non-justiciable administrative disputes or that the tribunal is an appendix to the government agencies with no relative autonomy. It is simply to mean that the term administrative tribunal is a tribunal with all its attributes, but its jurisdiction is limited to resolving disputes of governmental nature as distinguished from disputes of private character.

As suggested by Garner and Jones (Administrative Law), tribunals have the following five hallmarks:

- Independence from administration;
- Capacity to reach a binding decision;
- Decision taken by a panel of members (as opposed to a single judge);
- A simpler procedure than that of a court; and
- A permanent existence.

Jurisdictional Issues

On the basis of the nature and scope of their jurisdiction, administrative tribunals can be classified into two. These are tribunals having general jurisdiction (general tribunals) and tribunals having special jurisdiction (special tribunals). The French model is a typical example of the tribunals having general jurisdiction on administrative matters. In France, there is a clear dichotomy between administrative law and private (ordinary) law, on the one hand, and between the machineries applying these laws, that is, administrative courts and civil courts also known as regular courts or ordinary courts on the other hand. Administrative courts adjudicate cases falling within the domain of the administrative law.

Most of the common law jurisdictions do not have the French type system of administrative law and tribunals; but tribunals of special jurisdiction proliferated here and there in response to particular circumstances. The same thing seems true in Ethiopia, where there is neither full-fledged corpus of administrative law, nor structured system of administrative court. Of course, this does not mean that Ethiopia has no administrative law and administrative tribunals.

The Advantages and Disadvantages of Administrative Adjudication

The arguments asserted in favor of delegating adjudicatory power to administrative agencies can be summarized as follows

- Expediency: administrative agencies are better than ordinary courts in disposing cases timely.
- Administrative adjudication is cheaper than court adjudication
- Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.

- The process of adjudication in administrative agencies is flexible and informal compared to the rigid, stringent and much elaborated ordinary court procedures.
- Another justification which is not included in the above suggestion, that is related to the special expertise knowledge administrative tribunals manifest as compared to ordinary court judges. Administrative tribunals are filled by a panel of persons vested with special skill and expertise related to the complicated dispute they adjudicate. Whereas ordinary court judges are generalists in law and lack such expertise knowledge on the needs of the administration in this technologically advanced world.

In short, due to the informal adjudication process, liberal standards of evidence in administrative adjudication and the special expertise administrative tribunals demonstrate the possibility of getting quality justice timely and cheaply is very high. However, administrative/tribunal adjudication is not free of critics. Of the prominent critics.

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- Administrative adjudication is cheaper than court adjudication
- Administrative adjudication is more convenient and accessible to individuals compared to ordinary courts.
- The process of adjudication in administrative agencies is flexible and informal compared to the rigid, stringent and much elaborated ordinary court procedures.

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Inquiries

In this complex technological and democratic world, in addition to tribunals that investigate facts and apply laws to resolve specific administrative disputes, the formation of inquires that conduct fact and/or legal findings and provide recommendation to ministers or other agency heads to take policy considered action based on the findings of facts is becoming a paramount importance.

Inquiries are concerned with fact-finding directed towards making recommendations on questions of policy. The statutory inquiry is the standard device for giving a fair hearing to objectors before the final decision is made on some question of government policy affecting citizens' rights or interests.

In a nutshell, inquires, unlike tribunals, cannot pass binding decisions but, as their name indicates they inquire or search for facts by conducting preliminary fair hearing on objections raised against proposed administrative actions. Based on the results of the fact finding, the inquiry recommends the concerned minister or agency to take or not to take a certain course of action, although the latter may not be bound by the recommendation involving policy considerations.

Inquiries in Ethiopia

Having defined inquires as impartial fact-finding devices that are established by law to assist decision makers, it deems now quite important to appreciate some of the statutory inquires operating in Ethiopia. Some inquiries are event derived that have temporary existence that remain valid until accomplishing the specific fact-finding assignment given to them by law. Examples of such inquiries are the Inquiry Commission established under proclamation No.398/2004 to investigate the conflict occurred in Gambela Regional State on December 13,2003, and the inquiry commission established to investigate the proportionality of the measures taken by the Ethiopian security forces to control the post-election crisis happened in 2005. These inquiries were established by proclamation with specific mandate of fact-finding limited to space and time. Such type of inquires usually dissolve immediately after accomplishing their mandate in accordance with the terms of references.

There are also inquires that have permanent in nature. Inquires falling under this category, although they are usually with specific mandate, have permanent institutional existence. The following are prominent example of such inquires:

- The Council of constitutional inquiry established by proclamation no. 250/2001;
- The Human Rights Commission and the Institution of Ombudsman;
- Anti-corruption commissions established at federal and regional levels.

4.3 The Ethiopian Criminal Code of 2005

4.3.1 The Development of Criminal Law of Ethiopia (Historical Background)

The history of Ethiopian Criminal law reveals the following important legislations incorporating the Criminal law of the country before the enactment of the existing Criminal Code of FDRE, 2005.

A. The Fewuse Menfessawi,

B. The Fetha Negest,

C. The Ethiopian Penal Code, 1930.

D. The Penal Code of the Empire of Ethiopia, 1957

E. The 1974 Revolution and Criminal Law

F. Special Penal Code of 1981

A. The Fewuse Menfessawi (The Canonical Penance) - The first attempt to compile the law was made by the emperor zar'a Ya'equob (r.1434- 1468). Desiring to govern his realm by a written law rather than by amorphous customary law and oral tradition, the emperor ordered distinguished Ethiopian Orthodox Church Scholars to compile an authoritative written law. The compilation had 62 articles mainly on criminal matters. Since this was far less than comprehensive, it was not able to resolve many of the legal problems that arose during that period.

B. The Fetha Negest (The Law of the Kings)

The failure of the Fewuse Menfessawi led to the next codification by the same Emperor Za'ra Ya'eqob . The Fetha Negest is a very interesting legal compilation.

As highlighted by Graven (year), Fetha Negest included the following important criminal law principles : those concerning ―intention‖ and ―negligence, relating to the proportion between the fault and sanction, the individualization of punishment, the forgiveness and redemption of offenders, and the sharing of guilt case of fighting etc. These solutions in case of fighting etc. are most current, familiar and understandable situations for the people.

The Fetha Negest was formally incorporated into the Ethiopian legal system in 1908 by Emperor Menelik II. It can be said that in most cases, the Fetha Negest has attempted to incorporate the most suitable legal principles, which could be conceived in the epoch of its emergence. However, it suffered from the following drawbacks:

3 It lacked the systematization and other characteristics of modern codes,

4 Neither the specific‘is differentiated from the general‘ nor the exception‘ from the rule‘,

5 Aggravating and extenuating circumstances were not clearly provided for,

In general, the arrangement of the provisions is so haphazard that it is hard to locate the most relevant provision ,and The Fetha Negest was accessible and understandable only to those who continuously studied it i.e. the clergy. The criminal provisions of the Fetha Negest were applied in Ethiopia until they were replaced by the Penal Code.

C. The Ethiopian Penal Code of 1930

The Penal Code of 1930 reflects the norms and values of the old absolutist monarchy of the generation of Emperor Menelik II and Emperor Zewditu (i.e. the era between 1889 and 1930). It was also drawn up in a less systematic and clear manner and did not follow the rules of a modern codification process.

The main attributes of the Code were as follows: The crimes and respective punishments were defined in exact fashion, and The penalties were considerably softened and improved by setting the fines in proportion to the then economic and monetary situations of Ethiopia.

The Code under its Special Part protected the three great classic categories of interests. These were: 1. The state and Community, 2. Persons, and 3. Property.

The Penal Code of 1930 was in force until it was repealed and replaced by the 1957 Penal Code of Ethiopia.

D. The Ethiopian Penal Code, 1957

Criminal laws do indeed reflect the conditions generally prevailing in the country where they apply. Therefore, they necessarily change. If substantial changes occur in the society, substantial modifications also become necessary in the legal and other rules. The old codified laws used in Ethiopia, approximately between 1450 and 1931, did not follow the rules of modern codification process and thus eventually proved unsatisfactory. When the necessity was felt for transformation of legal system in the second half of the 20 century, the modern codification process was initiated.

The task of drafting a new comprehensive penal code was entrusted to Jean Graven, a Swiss jurist who at that time had been the Dean of Faculty of Law and President of the Court of Cassation in Geneva , Switzerland.

E. The 1974 Revolution and Criminal Law

Following the 1974 revolution, a "revolutionary" system of neighborhood justice emerged. It was difficult to distinguish between criminal acts and political offenses according to the definitions adopted in post-1974 revisions of the Penal Code. In November 1974, a proclamation which introduced Martial Law, was introduced. The martial law set up a system of military tribunals empowered to impose the death penalty or long prison terms for several political offenses. The Proclamation applied the law retroactively to the old regime's officials. The revolutionary government these officials responsibility for famine deaths, corruption, and maladministration. Special three-member military tribunals sat in Addis Ababa and in each of the country's fourteen administrative regions.

In July 1976, the government amended the Penal Code of 1957 to institute the death penalty for "anti-revolutionary activities" and ―economic crimes‖. Investigation of political crimes came under the overall direction of the Revolutionary Operations Coordinating Committee in each awraja. In political cases, the courts waived search warrants required by the Criminal Procedure Code. The government transferred jurisdiction from the military tribunals to kebele and peasant association tribunals. Political trials constituted the main business of these tribunals until 1978.

Generally, the 1976 revision of the Penal Code empowered association tribunals to deal with criminal offenses. The revision limited the jurisdiction of association tribunals to their urban neighborhood or rural area. Elected magistrates, without formal legal training, conducted criminal trials. Procedures, precedents, and punishments varied widely from tribunal to tribunal, depending on the imperatives of the association involved. Peasant association tribunals accepted appeals at the Wereda (district) level. Appellate decisions were final. But decisions disputed between associations could be brought before peasant association courts at the Awraja level. In cities, Kebele tribunals were similarly organized in a three-tier system. Change of venue was arranged if a defendant committed an offense in another jurisdiction.

The judicial system was designed to be flexible. Magistrates could decide not to hear a case if the defendant pleaded guilty to minor charges and made a public apology. Nonetheless, torture was sometimes used to compel suspects and witnesses to testify. Penalties imposed at the local association level included fines of up to 300 birr. The tribunals could determine the amount of

compensation to be paid to victims. The tribunals could impose imprisonment for up to three months and hard labor for up to fifteen days.

Association tribunals at the Awraja or Wereda level handled serious criminal cases. These tribunals were qualified to hand down higher sentences. Tribunal decisions were implemented through an association's public safety committee and were enforced by the local People's Protection Brigade. Without effective review of their actions, tribunals were known to order indefinite jailing.

The 1976 Special Penal Code, which was further elaborated in 1981, created new categories of so-called economic crimes. The list included hoarding, overcharging, and interfering with the distribution of consumer commodities. More serious offenses involved: engaging in sabotage at the work place or of agricultural production, conspiring to confuse work force members, and destroying vehicles and public property. Security sections of the Revolutionary Operations Coordinating Committee investigated economic crimes at the Awraja level and enforced land reform provisions through the peasant associations. These committees were empowered to charge suspects and held them for trial before local tribunals. Penalties could entail confiscation of property, a long prison term, or a death sentence.

F. Special Penal Code of 1981

In 1981, the Revised Special Penal Code replaced the Special Penal Code. This amended Code included offenses against the government and the head of state, such as crimes against the state's independence and territorial integrity, armed uprising, and commission of "counterrevolutionary" acts. The 1981 amendment also included breach of trust by public officials and economic offenses, grain hoarding, illegal currency transactions, and corruption; and abuse of authority, including "improper or brutal" treatment of a prisoner, unlawful detention of a prisoner, and creating or failing to control famine. The Amended Special Penal Code also abolished the Special Military Courts. The Code created new Special Courts to try offenses under the Amended Special Penal Code. Special Courts consisted of three civilian judges and applied the existing Criminal and Civil Procedure Codes. Defendants had the right to legal representation and to appeal to a Special Appeal Court.

4.3.2 The Criminal Code of the Federal Democratic Republic of Ethiopia, 2005 Proclamation No. 414/ 2004

The 1957 Penal Code of Ethiopia was on 9th May of 2005, and a new Criminal Code was brought into enforcement. The factors that necessitated the revision of the Penal Law of Ethiopia are as follows:

1. To Incorporate the Modern Legal Concepts: During, nearly half a century? Since the 1957 Penal Code came into enforcement, several radical political, economic and social changes have taken place in Ethiopia. Among the factors that brought the changes, recognition of modern legal concepts by the Constitution and the international agreements ratified by Ethiopia were the major. The important phenomena that have been recognized in the Country in the recent past are:

- The equality between religions, nations, nationalities and peoples,
- The democratic rights and freedoms of citizens and residents,
- The Human rights,
- The rights of social groups like women and Children.

2. To Fill in the Lacunae: The 1957 Penal Code fails to properly address some of the criminal behavior arising out of advances in technology, the complexities of modern life as well as sufferings caused by reason of harmful traditional practices. Some such areas are:

- The High Jacking of aircraft,
- Money laundering,
- Crimes related to corruption and drugs,
- Grave injuries and sufferings caused to women and children by reason of harmful traditional practices.

It is true that the Constitution guarantees respect for the cultures of peoples, surely it does not intend to support those practices which are scientifically proved to be harmful. It is the responsibility of the legislature, by adopting progressive legislations, to educate and guide the public to discontinue such harmful traditional practices.

3. To Adopt a Comprehensive Criminal Code: It is desirable to adopt a comprehensive Criminal Code by putting together various Criminal provisions in the Negarit Gazeta in a disintegrated manner. Similarly, since the parallel application of the regular Penal Code, 1957 and the Revised Special Penal Code of the Provisional Military Administration Council 1982 (Proclamation No. 214/1982), in respect of similar matters disregards equality among citizens. The Comprehensive Criminal Code, 2005 is intended to put an end to such practice.

4. Punishments for Certain Offences Increased: Based on public opinion taken during discussions on the draft Criminal Code, punishments in respect of crimes like rape and aggravated theft have been increased.

5. Matters Concerning the Determination of Sentence Revised: Since it is essential to facilitate the method by which the courts can pass similar punishments on similar cases, some major changes have been made in the provisions of the Code. Provisions of the Penal Code that used to make sentencing complicated and difficult have been amended. Provisions have been inserted which enables the courts to pass the appropriate penalty for each case by carefully examining from the lightest to the severe most punishment. A provision (Art. 88/4) has been introduced requiring the Federal Supreme Court to issue sentencing manual to ensure and control the correctness and uniformity of sentencing.

6. Purpose of Criminal Law and Objectives of Punishment Redefined: Another important point in respect of the determination of sentence is that, the purpose of Criminal Law is to preserve the peace and security by preventing the commission of crimes and a major means of preventing the commission of crime is punishment. Punishment can deter wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in respect to certain crimes the main objective is to prevent wrongdoers temporarily or permanently from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term. In certain instances, convicts can be released on probation without enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place which the Criminal Law has allocated for their rehabilitation.

It is hoped that the new Code will ensure respect for order, peace and security of the state and its peoples as well as respect for the rights and freedoms of its citizens and inhabitants. The Code is also expected to accelerate the economic progress of the State, strengthen a steady order of free market and above all contribute towards the promotion of a fair judicial system in the country.

4.3.3 Scheme of the Criminal Code of FDRE, 2005

The Criminal Code of 2005 has incorporated the Ethiopian Criminal law systematically, coherently and comprehensively. The Code is organized into three main parts.

I. General Part

Part I of the Criminal Code is entitled ―General Principles of Criminal Liability‖, Part II Special Part and Part III is Petty Code. The General Part has two Books, namely:

Book. I. Arts. 1-86 ―Crimes and the Criminal‖. It lays down the general principles relating to ―Criminal law and its Scope‖(Art. 1-22), ―The Crime and its Commission‖ (Art. 23-47), and the ―Conditions of Liability to Punishment‖ (Art. 48-86).The General Part of the Criminal Code is the most technical part of the Code and the basic tool in the interpretation of any provision that embodies a specific crime.

Book. II (Arts. 87-237) is titled ―The Criminal punishment and its Application‖. This book deals with calculation of sentences, kinds of punishment, ordinary punishments applicable to adults, special measures applicable to adults, penalties applicable to young persons and also rules regarding determination, suspension, discontinuance and extinction of penalty.

II. The Special Part

The – Special Part of the code embodies Specific Crimes which are organized under different titles systematically. This part of the Code includes four books. Each Book is sub – divided into Titles, chapters, sections, paragraphs and finally Articles. The Books of part II of the Code are follows.

Book III (Arts.238-374) incorporates ‗Crimes against the State or National or International Interests‘. Book IV (Arts.375-537) deals with ‗Crimes against Public Interest or the Community ‘, Book V (Arts. 538-661) embodies Crimes against Individuals and the Family‘, and Crimes against Property‘ are found in Book VI (Arts. 662-733) of the Code.

Part III of the Criminal Code incorporates - The Code of Petty Offences. This part of the Code also has two subdivisions, a General Part and a Special Part. The General Part embodies the rules governing liability to punishments and the Special Part deals with ―Petty Offences‖ under specific heads.

The Criminal Code of FDRE, 2005, overall, consists of three parts, eight books, twenty-eight Titles which include 865 Articles arranged in seventy-two Chapters.

Relation between General and Special Parts of the Code

The General Part of the Criminal Code sets out the general principles of liability which are common to all serious crimes. This part explains what is meant by a criminal intention, negligence, imprisonment, probation and the like. The Special Part describes the various acts which are deemed to be criminal and lays down the penalties applicable to them. It defines the essential elements of each crime such as murder, theft, robbery etc, and prescribes appropriate punishments for each of such crimes. However, the said penalties cannot be ordered unless the conditions prescribed by the General Part with respect to liability to punishment are fulfilled. In other words, the Special Part does not operate by itself but must be considered together with the General Part. This means, a person who behaves in a manner contrary to provisions of the Special Part is not automatically punishable. He shall be punishable only where his conduct is found guilty in accordance with the general principles of criminal liability laid down in the General Part of the Code.

Furthermore, even after the liability to punishment is established, mechanical imposition of sentence is not what is expected of a Judge, simply by referring to the punishment mentioned in the pertinent article of the Special Part. Those who administer justice are in fact dealing with criminals rather than crimes with human being rather than with cases. They are expected to individualize their decisions. To this end, they must bear in mind the provisions of the General Part; since these provisions, more than those of Special Part, will enable them to arrive at a decision truly reflecting the circumstances of each individual case.

For example, Art.665 of the Special Part prescribes 5 years imprisonment for an crime of Theft. It does not mean that whoever commits theft should be sentenced for 5 years imprisonment. Therefore, in order to decide whether, in a particular case, imprisonment should be ordered for 5

years or for six months, or less than that, the Court must of necessity, has to make reference to the General Part. Moreover, as any action taken under the law must serve the purposes of law, those who administer justice will have to satisfy themselves that their decisions are really capable of achieving these purposes as defined in the General Part. In other words ―punishments have to be tailor-made‖ for each and every criminal having regard to his personal circumstances and other relevant matters in order to bring him back to the society as a law-abiding citizen.

4.3.4 General Principles of Criminal Liability

The Crime and Its Commission

Crime is generally a breach of legal obligation or rule. If the breach of legal rule or the wrong has criminal consequences attached to it, it will be a criminal offence. An offence or a crime is, therefore, a wrong to a society involving a breach of a legal rule which has criminal consequences attached to it. (i.e. prosecution by the state in the criminal courts)

The Essential Elements of Crime

The maxim actus non facit reum nisi mens sit rea' makes it clear that, "no man may be found guilty of crime and therefore legally punishable unless in addition to having brought about a harm which the law forbids, he had at the same time a legally reprehensible state of mind".

This principle recognized that there are two essential elements of crime:

- ✓ Physical element (actus rues)
- ✓ Mental element (mens rea)

The legal and material elements can be jointly referred to as the actus reus i.e. the physical element of crime and the moral element refers to the mens rea i.e. the mental element of crime.

Ingredients of A Crime

These are ; The legal element, the material and the moral element

The Legal and Material Ingredients of Crime: (Actus reus) as the physical element of crime may be studied under two heads:

Meaning of actus reus

Actus reus means, the result forbidden by law brought about by human conduct. A harm brought about by evil conduct manifests the evil mind behind it. Until then the guilty mind remains hidden in man‘s thought and it is impossible to detect the evil intentions of a man. Moreover, simply having an evil intention does not make a man punishable unless it ends in a harmful result. Therefore, according to Prof Kenny, actus reus is such a result of human conduct as the law seeks to prevent. The act done or omitted must be an act forbidden or commanded by some law in force. Thus, actus reus in terms of Art 23 includes the following:

- ✓ Whether the offender‘s act or omission has caused:

- the event, for example, death, hurt etc. or

- A state of affairs, for example, disturbance to public peace or morals etc This forms the material element of crime.

- ✓ Whether bringing about such a result or state of affairs is prohibited by law. This is the legal element of crime.

The Legal Element of Crime

This ingredient of the crime refers to the infringement of any law, which is a criminal nature. This, in other words, means that a law must exist and this law must be violated so as to hold a person criminally liable. In most cases it is clearly said that a particular act is a crime or an offence and that there should be a law against it; but an act is not a crime for the mere reason it is wrong.

In the absence of prohibition by the law, no act is a crime even if it may seem wrong it to the individual conscience. That is why Article 2 of the Criminal Code of Ethiopia provides that no act or failure to act may be regarded as an offence unless the law so prescribes. Therefore, a person who performs an act which is not penalized by any law, such as prostitution or intoxication commits no offence.

In addition to this, the law which prohibits the crime should be in force, not only when the act is committed, but when it is punished. If the law ceases to operate due to repeal before judgment is delivered, the accused cannot be punished for its infringement even though it was in operation

when he or she did the act forbidden by law and when he or she was convicted except in cases where the defendant benefits.

The Ethiopian Criminal Code also incorporates these essential elements in Art. 23, sub Articles (1) & (2) in the following way:

(1) A crime is an act which is prohibited and made punishable by law. In this Code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law.

(2) A crime is only completed when all its ―legal, material and moral ingredients are present.

The provision distinctly states the requirement of three elements of a crime:

- The legal element,
- The material element and
- The moral element

The Material Element

Material Element is also called the criminal act or actus reus which normally is a prerequisite for criminal liability. It refers to the existence of some sort of conduct on the part of the perpetrator in order to make him/her liable criminally. It may be defined as a physical or muscular movement towards a given object which may also include willful restraint from doing a given act. It is considered to be a requirement to constitute criminal liability as it is undesirable to punish one merely for his/her thoughts.

Accordingly, the material element of a crime may be classified as commission, omission, and commission by omission.

The material element (Actus reus) may consist of:

1. Deed of commission, or 2. Result of omission.

In the words of Art 23/ 1, A crime is an act which is prohibited and made punishable by law. An act can be defined as ―a willed muscular (bodily) movement. If a criminal shoot at and kills a person, his ―act‖ does not include the event but only involves the willed act of pointing the gun and pulling the trigger. The resultant deed is the ―consequence of the act, but not the act itself. The phrase ―material ingredients‖ means facts surrounding the act, such as, the type of weapon

used, place and time of commission of the offence, range of shooting, the part of the body of the victim hit by the bullet, etc. The same act of shooting under different material circumstances, for example, warfare, execution of death penalty etc., may render the act lawful.

The second paragraph of the same provision clearly puts it in terms of acts (commission) and omissions: "In this Code, an act consists of the commission of what is prohibited or the omission of what is prescribed by law".

This means, a crime should consist of either of the following:

- Commission of an act prohibited by law, or
- Omission of what is prescribed by law

- **Deed of Commission**

The word 'actus 'connotes a deed i.e. a material result of human conduct. When criminal policy regards as sufficiently harmful, it prohibits such a deed and seeks to prevent its occurrence by imposing a penalty for its commission. Thus, 'actus reus' is constituted by the ‗event' or the result' and not by the activity or conduct which produced the event. For example, 'A' kills 'B' by stabbing him with a knife. The voluntary movements of 'A's hand holding the knife is the activity which produced the result i.e. the death of 'B'. The same voluntary activity might sometimes become necessary to produce some useful results like where a surgeon needs to cut open the body of a patient for performing a life saving surgery. Thus, the voluntary movements of the human beings cannot be prohibited but producing certain harmful results by such activity is prohibited. This means, in the above example, the voluntary movement of the hand with a knife is not the one that is prohibited but causing the death of a human being is. However, every harmful event produced by human conduct is not actus reus, but only such event which is forbidden by the law is an actus reus forming the basis for criminal liability.

- **Result of Omission**

The word 'omission 'is generally used in the sense of intentional non-doing. It is only under certain circumstances, an 'omission 'to act becomes criminal. In fact the law imposes responsibility for omissions reluctantly. Omission‖ with reference to the performance of a duty involves the idea of conscious or willful omission. The expression omission does not connote any obligation. Omission is a colorless word which merely refers to the not doing of something. Under the criminal law,

only failures to perform legal duties can amount to criminal omissions. Legal duties to act might arise out of relationships or contracts or might be imposed by statutes. Failures to perform moral duties cannot constitute the actus reus.

The Moral Ingredients‘ of Crime (mens rea)

This has got something to do with the guilty state of mind of a person which is associated with the principle “Nulla poena, sine culpa” which means there is no punishment without guilt. This implies that a person cannot be held criminally liable for those acts he/she commits without there being any fault what so ever on his or her part unless there exists some sort of blameworthiness. The very principle of this element is provided under Article 57 of the Criminal Code which reads as follows:

“No one can be punished for an offence unless he has been found guilty there of under the law. A person is guilty if, being responsible for his acts; he committed an offence either intentionally or by negligence.

No one can be convicted under Criminal Law for an act penalized by the law if it was performed or occurred without there being any guilt on his part, and was caused by force major, or occurred by accident. Nothing in this Article shall be a bar to Civil Proceedings.

According to this Article, that lays the general principle of guilt or fault a responsible person can be convicted and be punished for his or her acts in so far as he or she commits the offence based on guilty state of mind. Guilt, therefore, is an essential factor in determining whether a crime has been committed. The perpetrator should be held criminally liable and be punished if he or she acts in a blameworthy manner.

4.3.5 Degree in the Commission of Crime

Though several crimes occur on the spur of a moment, the path of crime is not necessarily a short one. Many acts may be done from the moment when the ‘intention’ is formed in the mind of the criminal till the moment when it materializes. Therefore, the question is what ‘stage’ should have been reached in the execution of a criminal design so that a person may be regarded as criminal? Arts. 26-30 lay down the principles relating to the liability of offenders in various stages of commission of the crime.

Different Stages in The Commission of Crime

The material element of the crime may result in a completed or incomplete offence. Completed offences that mostly are related with causation will be dealt with after dealing with all incomplete but different degrees of offences. This is the case when Assefa shot at Beyene and killed him. Incomplete offences are taken to be incomplete degrees of the material element of a crime as it would be difficult to say that one could not be criminally liable unless he or she carries out an unlawful activity to its end. There are degrees in certain cases at the time of the commission of an offence in which the law intervenes by reason of their gravity or the danger they entail. No doubt that many acts may be done from the day when a criminal intent comes into being until the day it materializes. The burning issue, therefore, is what degree should be reached in the carrying out of the criminal design in order to regard a person as having fulfilled the material element of the crime. What is the boarder line to consider a certain situation as material element of the crime and what is not? These and other issues will be discussed here under. These include Intention, preparatory acts, attempt, renunciation, active repentance, impossible offence and special cases of attempt.

- **Preparation**

Criminal law punishes ―overt acts‖ and not mere intentions. A criminal intent, no matter how immoral it may be, is beyond the grip of criminal law until it is manifested by external conduct. The requirements of Art. 23 imply that a mere criminal intention does not in itself constitute a crime and is not punishable. If the distinction between morality and criminal law is to be preserved and if justice is to mean anything at all, the courts must be prohibited from, interfering so long as a person has not embarked upon a particular course of conduct. This prohibition exists in Art. 23 of the Criminal Code, which lays down that a crime, is not completed unless all its legal, material and moral ingredients are present. Therefore, the Criminal Code does not apply unless a person crosses the line of demarcation between the mental and the material phases. A criminal crosses this line firstly by preparing the commission of a crime within the meaning of Art. 26.

Various phases normally precede acts. The phases of desire, decision and initial planning (in the thoughts of the criminal) are mental that do not involve exterior acts. From the moment these phases develop into ―external conduct‖ that aims at the commission of a crime, the phase of preparatory act is said to have begun. However, not every preparatory act is punishable. For example, a person who has planned to rob a store may buy a pistol, survey the most ―appropriate‖

time of action and arrange various facilities. Such preparations apparently involve external conduct. Yet, it is difficult and unfair to punish such acts because we cannot be certain about a person's criminal intent unless the prospective criminal himself tells us. This uncertainty is inevitable because preparatory acts are ―remote‖ from the ultimate harm and unequivocal design and the determination to carry it out.

Most Criminal Laws including Ethiopian Criminal Code do not in principle punish preparatory acts. Preparatory Acts are defined under Art. 26 of the Penal Code of Ethiopia as those acts which are merely designed to prepare or make possible an offence, by procuring the means or creating the conditions for its commission.

- **Legal Effects of Preparatory Acts**

Article 26 of Criminal Code reads: "Acts which are committed to prepare or make possible a crime, particularly by procuring the means or creating the conditions for its commission are not usually punishable, however, such acts are punishable where

a) In themselves they constitute a crime defined by law; or b) They are expressly constituted a special crime by law by owing to their gravity or the general danger they entail".

Punishing preparatory acts is therefore an exception than a rule under Ethiopian criminal law. Nevertheless, the Criminal Code has a mechanism of precaution against preparatory acts where a person behaves or is likely to behave in a manner which threatens peace or security of the public or citizen (Art. 141). In such cases dangerous articles are seized (Art. 140) and the person who poses a threat is required to enter into recognizance. The remedy of such precautionary measures is available for unpunishable preparatory acts. But this is not always so because preparatory acts are punishable under the circumstances stated in Article 26.

There are two situations where preparatory acts are punishable.

1. Where the Preparatory Acts Constitute a Crime in Themselves (Art 26/a):

A person who buys a gun as a preparatory step towards homicide is punished for the completed ―petty offence‖ of retaining a gun without license (Arts. 808, 809) even though he is not punishable for his preparatory act; the act of keeping a gun without a license itself is a petty offence.

2. Where the Preparatory Acts Constitute a ―Special Crime by Owing to Their Gravity (Art 26/b):

Certain preparatory acts are expressly constituted a special crime by law owing to their gravity or the general danger they necessarily bring upon the society. For example, material preparation of offences against the state (Art. 256, 257), preparing a mutiny or seditious movement (Art. 300) and preparing machinery and means of counterfeiting currency (Art. 371) are expressly stated to constitute special crimes.

Preparation is punishable only when it has reached such an advanced stage and is close to an attempt that there is no doubt as to the purpose of the arrangements made and as to the willingness of the person who made them, to carry them further if he is given the chance of doing so.

- **Attempt**

Attempt is the second degree in the material element of the crime. It is a substantial but unsuccessful effort to commit a particular offence. It is a willful effort but without success. The effort must be unsuccessful because a person cannot be prosecuted for both an attempt and completed crimes as the attempt can be considered to have been merged with the completed offence, thereby abrogating itself. This is the case when Asfaw shot at Belay with the view of killing him but failed to achieve the target. In a nutshell, attempt includes three most important requirements to exist that include: intent, overt act, and failure to achieve the result.

Attempt obviously implies more than preparation. However, the difference between the two is not always apparent since there is in both cases a movement towards the commission of a crime.

Overt Act: This goes with the known principle of Penal Law that it does not punish mere thoughts, as a breach of the law can‘t occur in the absence of a given behavior. A person, therefore, can be held liable criminally if he/she manifests his/her intent by some open deed tending to the execution of his/her intent. There is of course an act or movement towards the commission of an offence in both attempt and preparation. Attempt requires an act more than preparation. As prosecuting attempt is one of the several ways in which the Penal Law can reach conduct merely tending toward the doing of some harm otherwise proscribed by law, there must at least be commencement of an act. In other words the stage of acts towards the commission of the offence shall reach at a point of no return. That is, the act shall be a step towards the commission of the crime or it has to be in part execution of the intent, or a direct movement towards the commission of the offence, or the

commencement of the execution. There is, however, a problem of drawing a line between preparation and attempt. Accordingly, some tests have been utilized by the common law courts. These include: the proximity approach, the probable distance approach and the equivocally approach.

- **Intent**

An act to constitute an attempted offence shall be preceded by purely internal mental process, which begins with the thought of executing an offence and ends with the decision to commit it, but which does not manifest itself by any overt act. The convictions of attempt rests upon the doctrine that ―Voluntas reputabitur pro facto- the intention is to be taken for the deed. Hence, whatever a person does towards the commission of an attempted offence, he must do it intentionally. i.e. Art. 58(1) of the Penal Code shall be met. Attempt, therefore, requires a purposeful behavior. A person can be said to have attempted an offence when he purposefully acts to accomplish what he has originally intended to commit. In connection to this, it has been said that the intent in the mind covers the thing in full; the act covers it only in part. Accordingly, negligent attempt is inconceivable as the person in such case does not desire the consequences. One thing must be mentioned here that a person can be liable for attempted offence when such offence is punishable upon intentional state of mind. For example, if Abebe negligently causes bodily harm upon Kebede, he cannot be said to have attempted to kill him.

Kinds of Attempt

Basing on the reason for the failure to achieve the intended result attempts can be classified into three categories:

A - Incomplete Attempt

If the accused chooses not to do or is prevented from doing the last act of the crime, the attempt is said to be incomplete.

B - Complete Attempt

An attempt is said to be complete when the wrongdoer has performed everything on his/her part, which is considered to be necessary without, however, result having occurred. In other words the perpetrator has done all that he/she intended to bring about the result, but the desired result has not

followed. The reasons for the failure to achieve the result may be of two types: one, it may happen that the offender did everything that was necessary to bring about the result but the achievement has not occurred due to situations beyond his/her control. This point has the idea that the attempter would in all probability have achieved in causing the desired result had it not been for the existence of unexpected events. This category of attempt includes impossible offence. Attempt could also felt to achieve the result due to the active involvement of the perpetrator him/herself. This is known as active repentance. Where the accused has done the last act, which he expects to carry out, and which he thinks causes the harm intended, the attempt is said to be complete. Complete attempts may take the forms of voluntary undoing or involuntary failure to achieve the result.

C - Impossible Attempt

Certain attempts are incapable of achieving the desired result. Such attempts involve situations where a criminal attempt ―to commit a crime by means or against an object of such a nature that the commission of the crime was absolutely impossible‖. Article 29 covers the cases of absolute impossibility and not relative impossibility where the circumstances in which the criminal acted are unable to cause the criminal's intended harm due to the means used or because of the object against which the act is committed. Failure to achieve result because of an unloaded gun is an absolute impossibility due to the means used. Poisoning a person with an insufficiently fatal poison is a case of relative impossibility due to insufficient means. If a doctor attempts abortion over a woman who is not pregnant, there is absolute impossibility due to the missing object. In case however, the attempted abortion fails because the woman is conditioned to a particular drug, the doctors attempt is said to be relatively incapable of achieving result due to the nature of the object over whom it is practiced.

Such a distinction between absolute and relative impossibility is significant because free mitigation (Art. 180) may be allowed under cases of absolute impossibility. Furthermore, no punishment shall be imposed if a person ―from superstition or owing to the simplicity of his mind acted by using means of processes in themselves innocuous which could in no case have a harmful effect.‖ Such a consideration of objective harm rather than subjective criminal intention is apparently inconsistent with the overall subjective inspiration of the Criminal Code. Yet, it is indeed difficult to interpret Article 29 otherwise.