



FACULTY OF JURIDICAL SCIENCES

Course : LLB , 5th Semester

Subject : Administrative Law

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ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortious liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Administrative Law, Universal Delhi
3. I. P. Massey: Administrative law

LECTURE 1



DEFINITION, NATURE AND SCOPE OF ADMINISTRATIVE LAW

Administrative law deals with law relating to administration. It is the basic foundation of administration. To Holland and Maitland administrative law is part of Constitutional law. The general Principles relating to the organization, powers and functions of "the organs of the State, namely Legislative, Executive and Judicial) and their relationship are, inter alia, dealt with, in the Constitution.

Administrative law determines the organization powers and functions of the Administrative authorities. (Wade & Philips). It includes the matters relating to civil services, public departments, -public corporations, local authorities and other statutory bodies exercising quasi-Judicial functions and the law governing Judicial review of administrative actions. Ject As Jennings rightly points out ,the subject matter of administrative law is "Public Administration".

Garner's definition is specific. Administrative law is

- i) A study of institutions and administrative process ,
- ii) The sources of governmental legal powers,
- iii) Provisions or methods to deal with persons, grievances & appropriate remedies,
- iv) The public corporations and
- v) Administration of local government & general principles applicable to local authorities.

1.2 : Nature & Scope :

Administrative law mainly deals with the powers & duties of administrative authorities, and the various remedies available to affected persons. Under welfare state, there is a tremendous increase in state activities in keeping with the technological & scientific developments. As Roland says "before the days of the Automobile, there was no need for policeman to direct traffic", because there was no traffic!

With the increase in State activities, grew the necessity to exercise powers: the administrative & executive powers were enlarged, delegated legislation also developed in the form of rules, regulations bye-laws, notifications etc. Administrative Tribunals started exercising Judicial functions to resolve disputes. The Administrative authorities are empowered with discretionary powers. If these are properly used, there will be the welfare state,.

If abused there will be totalitarian state (Lord Dennings). Hence, administrative law defines and demarcates these powers and also provides for remedies to the affected persons, when there is abuse.

This exercise of considerable power, is the main cause for growth of administrative law. The trend is to reconcile freedom & Justice of persons, with the necessities of implementing social & economic policies.

In this regard, liberty & personal freedoms are to be safeguarded within the frame work of the constitution of India.

In this context, Judicial review of administrative action, prevention of mis-use or abuse of power and provisions for suitable remedies form the basic principles of administrative law.

It is true to say with Bernard Schwartz, that "**the goal of administrative law is to ensure that**

the individual and the state are placed on a plane of equality before the Bar of Justice".

Ch. 1.3. Reasons for growth and, development:

Many reasons account for the sudden growth of administrative law. The main reasons are :-

- i) The age-old laissez faire, gave way to a positive policy under welfare state to perform many duties & functions by the state.
- ii) Legislative processes were rigid and could not be changed, *except* by amendment by the Legislature. Under delegated legislation executive started making rules, regulations, bye-laws etc, thus it gave flexibility.
- iii) As judicial system was extensive, slow, complex and over burdened the speedy methods of disposal of disputes got recognition as people found them to be quick, in-expensive and useful. This led to the constitution and working of a large number of Tribunals and quasi judicial bodies.
- iv) The evolving system of administrative law was more "functional" It was not theoretical or technical or legalistic and hence administrative authorities could solve complex problems.
- v) The administrative bodies or authorities started taking preventive measure in suitable circumstances, e.g. in licensing, fixing of minimum wages, rate fixing etc. Thus, it was better for Authorities to take measures to prevent adulteration of food, rather than allowing adulteration by the wrong-doer, to be sued later by the affected-persons.
- vi) Authorities took effective step to enforce the measures and suspend, or cancel licenses, or in suitable cases destroy articles i.e. narcotic drugs etc, of course following principles of natural Justice.

These were the main reasons that gave impetus to administrative law to grow fast, especially during the present century.

1.4. Historical sketch of the growth of Administrative Law:

i) England: According to Dicey "In England, we know nothing of administrative law and we wish to know nothing about it".

Though Dicey had much disregard, Maitland and others were of the view that administrative discretion and administrative justice had already made their way in to England.

Of course, Dicey changed his view, and, later admitted that

Parliament had conferred quasi-Judicial authority on administrative bodies and hence, there was administrative law-operating.

MCQs

1. “Administrative law is the law relating to the administration. It determines the organization, powers and duties of the administrative authorities”. This definition is provided by –

- a) K. C. Davis
- b) Garner
- c) Ivor Jennings
- d) Wade

2. Dicey developed his theory of ‘Rule of law’ in his classic work –

- a) The Law and the Constitution
- b) The Spirit of the Laws
- c) Constitutional Law
- d) The Law and the Spirit

3. Which is not a principle of Rule Of Law according to Dicey

- a) Equality before law
- b) Judge made constitution
- c) Separate courts
- d) Supremacy of law

4. The principle of Natural Justice is –

- a) Audi alteram partem
- b) Speaking Orders
- c) Nemo debet esse judex in propria causa
- d) All of the above

5. Following is the effect of Doctrine of Separation of Power

- a) Checks and balances between organs
- b) Judiciary must be independent from other two organs
- c) Prevent an abuse of enormous powers of the executive
- d) It is not easy to draw a demarcating line between one power and another with mathematical precision