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Fundamentals of Administrative Law

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ABSTRACT

The significance of administrative law is that it not a codified law but Judge-made law. It is an important branch of Public law and the powers of the administrative authorities have been increasing. The main reason could be the rapid increase in the disputes between the individual and the State. It not only spells out the powers of the administrative authorities but also their liabilities. On one side there has been increase in number of legislations (Acts) enacted and on the other side, the volumes of delegated legislations are also increasing. We are witnessing the creation or evolution of special Tribunals and the faster disposal of cases through such tribunals have proven the significance of administrative law and its wider dimensions. With this backdrop, this paper tries to bring out the significance of understanding the fundamentals of administrative law.

'Administrative law is the most outstanding development of the 20th century'.
-Vanderbilt;

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1. INTRODUCTION

It is a law relating to public administration. We can say that there is no concrete or complete definition and no jurists as so far succeeded in giving a complete definition. While attempting to define, they have demonstrated many definitions: Some giving out wider versions and some with narrower views.

Definition:

A.V.Dicey: It is the portion of the law that outlines the obligations and rights that private citizens have to public officials.

This was criticized for the reason that he left out the aspects like rule-making power and quasi-judicial functions.

Iver Jennings: The law establishes the responsibilities and authority assigned to administrative institutions.

K.C.Davis: Law concerning the powers and procedures of the administrative agencies including the judicial review.

This was criticized for the reason that he left out the discretionary functions, Parliamentary control of delegated legislation.

Relation with Constitutional Law:

It is essential to discuss this because for some time it was considered very much as part of constitutional law. To quote few opinions;

Keith; said it is logically impossible to distinguish - as both were concerning the functions of the Government.

When ***Holland*** attempted to differentiate these two branches of public law, he observed that Constitutional Law is static aspects of the government and Administrative Law is the dynamic aspects of government. (Maitland disagrees his view).

Prof. Robson is of the view that constitutional law emphasize on individual rights and administrative law emphasizes on individual rights and public needs.

Though there are differences between the two, it runs together in some areas like:

Article: 32 & 226 - Writ Jurisdiction

Article: 136- Special Leave Jurisdiction

Article: 227 - Supervisory Jurisdiction of HC over Tribunals

Article: 300 - Suit against Government

Article: 311- Protection of Civil servants

Administrative law's functions include:

In order to prevent the discretionary power from becoming arbitrary, the primary purpose of administrative law is to regulate administration and maintain government within their bounds. Additionally, the individual is in the strongest defensive situation against the administration's overwhelming power and is impacted in many ways by the modern assault of administration in the guise of the public interest. Therefore, the crucial role of administrative law is to guarantee that government authority are used in accordance with the law, sound constitutional principles, and good rules of justice and reason rather than at the whim of police officers. It should also guarantee that the right remedies are provided when rights are violated. Now, it is important to understand how it expanded and what factors might have contributed to its expansion.

Reasons for growth of Administrative Law:

1. The first and foremost reason is the change in the government policy from the '*laissez-faire'* to '*welfare state'*.

Police States – a government that utilizes the police to restrict people's freedom and is only focused on upholding law and order. The socioeconomic aspects are not covered.

Laissez-faire State – 'leave us alone'. Minimum govt., control and maximum free enterprise. This professes non-intervention of government and state is seen as an obstacle to economic growth and development.

Security State - Based on the ideas of equal treatment and fair wealth distribution, what is known as the welfare state is a system of governance where the government safeguards and advances the social and economic well-being of its people. People are calling on the government to address their issues rather than only defining their rights. Increased state activity and resulted in the enactment of new legislation.

Neo-liberal State – These days, market-oriented reform measures including "eliminating price ceilings, liberalizing capital markets, eliminating trade barriers" and lessening the role of the state in the economy, particularly through privatization, are referred to as neo-liberalism.

2. The technicality and complexity of modern legislations, lack of expertise among legislators, pressure upon the parliamentary time – caused legislative delegations to expand.
3. Inadequacy in the judicial system / lack of expertise about administrative system led to the creation of many quasi-judicial bodies.
4. And the growth of the discretionary powers of the administrative authorities was mainly because of the unforeseeable contingencies in the society.
5. The increase in the trial and error method to experiment with the new principles in the government can also be stated as the reason of growth of administrative law.

2. THEORIES ON ADMINISTRATIVE LAW

The Red Light Theory: Harlow

1. More conservative and control oriented.
2. The governing heritage of the 19th century, when the industrial revolution took place, is most likely where this arose. It advocated the laissez –faire theory to minimize or stop the excessive intervention of the State.
3. Because, according to this concept, wider power is a danger to the rights and liberties of the citizens. And according to this concept,

"Best govt., is the one that governs the least" and that is why it controls things by Courts.

4. Courts have a stronger role to play – Regulating the government to safeguard people.
5. The assumption is that the aim of the administrative law is to control the state activities in order to protect the private rights.

'Power corrupts and absolute power corrupts absolutely'

The Green Light Theory: Rowling

1. More facilitative and utilitarian oriented (greatest happiness to the greatest number)
2. Allows the state intervention for a greater public good and feels that the Court intervention is an obstacle to efficiency.
3. It focuses more on public rights.
4. It minimizes the role of the Courts and wants to encourage efficiency in the governing process and policy making.

The Green Light Theory emphasizes that the state satisfies specific legislative priorities and decision-making, while the Red Light Theory concentrates on governmental actions to safeguard individuals. Both these, tries to define administrative law. And for good governance or the right path; pure forms of these theories may not be suitable but somewhere in between the two theories i,e., amber light theory.

Sources of Administrative Law:

1. ***Precedents*** – This can be said to be the main source or even as an exclusive source of Indian Administrative law. In India the existence and development of administrative law mainly depends upon the judicial pronouncements.
2. ***Constitution*** – The composition and authority of the administration and other administrative branches are covered by the Constitution.
3. ***Statutes*** – There is no specific / special law in India. But, the statutes which delegate the law-making power to the executive and those which creates the quasi-judicial bodies acts as a source for development of administrative law (judicial review of administrative action).

In England;

- Crown Proceedings Act, 1947
- Rule Publication Act, 1983
- Tribunals and Enquiries Act, 1958
- Statutory Instruments Act, 1946

In USA;

- The Administrative Procedure Act, 1946
- Federal Tort Claims Act,1946

4. ***Reports*** **–** Reports of the Committees and the commissions also perform a significant part.

India; The reports of the Rajya Sabha and Lok Sabha committees
Law Commission Reports

England; Report of the Select Committee on Statutory Instruments,
Report of the Committee on Ministers Powers, 1932
Frank's Committee Reports on Tribunals & Enquiries, 1957

It is pertinent to note that the contents of these reports were given due weightage by other commonwealth countries also in their quest for development of administrative law in their respective countries.

Droit Administratif

The origin of this system can be traced back to Napolean days in 1800. It is the set of regulations that governs how the public and government agencies interact. It regulates the relation between;

- Public servant & citizen
- Public servant and Government
- Public servant and public servant

The French legal structure of droit administratif produced the administrative law of today. Administrative courts called as ***Conseil d'Etat*** and ordinary civil courts ***Azzize. (mutually exclusive).*** This administrative court in France is the outcome of the rule of ***Louis XIV and Richliev*** – That governance was extremely concentrated – The executive branch was capricious – Civil courts had no authority over them.

Napolean from the demand from the public and his advisers established this system to bring about reforms in the administration of justice. He created this system to review all kinds of administration. The major goals were to give citizens redress against the overreach of the current administration and to restrain its arbitrary abilities. Though in the beginning it was created to remove the difficulties, in 1973 its jurisdiction was enlarged and its ***decision in all matters was final*** and there was ***no appeal***. There is no procedural code but it has developed its own rules of procedures and doctrines in matters relating to its adjudication.

Jurisdiction disputes:-

If there arises any dispute as to the jurisdiction between the ordinary courts and the administrative courts, then, it is decided by a separate court called ***Tribunal des Conflicts.*** Only the administrative court can rise such a jurisdiction conflict and not the ordinary courts. This court has a comparable proportion of judges from the Conseil d'Etat and regular civil courts. The Secretary of Justice presides over it, and its ruling is definitive.

Dicey's Criticism:

Because he thought that administrative courts were a component of administration and could not have a separate judiciary standing, he had a suspicious view of this system. He declared that there had been no rule of law in France and believed that administrative court systems were established solely to shield elected officials from the authority of regular courts. This is preferential treatment for government officials and occurs regarding the egalitarianism envisioned in the rule of law principle. These concerns were unfounded, and in his latter days, he himself acknowledged his misunderstanding and unfounded prejudice against conseil d'etat and droit administratif.

Separation of Power

Now, we are having the Parliamentary form of Govt., democracy, universal adult franchise but before these concepts came up it all started with the Monarchy. The control was with King/Queen. And everything was under their control and everything was done for their benefits. So, complete Monarchy was not a suitable system and an alternative approach was needed. That is how the concept of SOP arose.

When we talk about Separation of Power, there were three main exponents to this theory;

1. **Aristotle** – who was the originator
2. **Locke** - who developed the theory
3. **Montesquieu** – who propounded the theory and was considered to the founder of this theory. He formulated this theory in his famous book ***"The spirit of Laws"*** (1748).

According to him this theory means:

1. The government must be divided into three different organs namely Legislative, Executive and Judiciary.
2. The Legislative, Executive and Judiciary should be distributed and placed among distinct or separate body of persons.
3. One organ of the govt., should not exercise the functions of the other two organs.
4. One organ of the govt., should not interfere, control or review the functions of the other organs of the govt.

The primary goal of this power distribution among the several organs is to reduce the degree of arbitrary government operations and prevent the consolidation of power in one body.

American Position:

United States is a standing example for the doctrine of Separation of Power, as American Constitution has given high recognition to this doctrine and has fully adopted in its theoretical sense; that is very much visible through its articles:

Article 1 – Legislative power - Congress
Article 2 – Executive power - President
Article 3 – Judicial power – Court system

But, due to the development in the administrative law, the rigidity in the doctrine was relaxed and there were some deviations. It is said that the Supreme Court of U.S.A has made more amendments to the American Constitution than the Congress.

England Position:

Though the three powers of the govt., are vested in the three different organs, it is only theoretical separation and in practice one organ shares and controls the functions of the other organs. Ex: House of Lords exercises both legislative as well as judicial functions.

France Position: French jurists claim that their legal system has accepted the theory of SOP in the strict and true sense.

Indian Position: There is no express mention except Article 50 that speaks about the separation of judiciary from the executive. Under the Indian Constitution the govt's powers are divided into Legislative, Executive and Judiciary.

Legislative power - Parliament
Executive power - President
Judicial power – Court system

In ***Indira Nehru Gandhi vs. Raj Narain*** (AIR 1975 SC 2299) **CJ.Ray** observed that in the Indian Constitution there is SOP in a broad sense and not in a strict sense like in Australian Constitution or US.

Defects:

Friedmann pointed out that strict sense of doctrine of separation is not only a theoretical absurdity but also a practical absurdity.

Justice Frankfurter cautioned that in the modern social welfare state, the govt may have to deal with a variety of complex socio-economic problems and it is not possible to stick to this doctrine.

Whatever be the Govt., they just cannot run the show with their own whims and fancies and have to follow the principles of law.

3. RULE OF LAW

This term *'rule of law'* was derived from French phrase ***'Les principles de legalite'*** - this refers to a govt., based on the principles of law and not of men. This term was coined by a Chief Justice of England- ***Sir Edward Cooke*** and developed by Sir ***A.V.Dicey*** – in his classical book – "The Law and the Constitution", 1885.

The Three focus principles are:

1. Supremacy of Law – Law is supreme and everything is governed by law.
2. Equality before Law – Everyone equal before law
3. Predominance of legal spirit

Supremacy of Law:

Dicey, while explaining this rule claimed that the Englishmen are ruled by law & law alone. He added that although the executive had optional power and authority in many other nations, this was not the case in England. Anywhere discretion exists, there is potential for arbitrary behavior, which could jeopardize citizens' freedom. He did not differentiate between unconstitutional authority and discretionary function. The only thing that violates the rule of law is arbitrary power, not discretion. The contemporary Constitution does not apply the rule of law if discretion is in conflict with it. Therefore, administrative law offers the ***checks and balances*** to ensure that discretion is used appropriately.

Equality before Law:

This is the second principle of Rule of Law that enunciates the democratic principle of equal subjection of all persons. Everyone is equal before the eyes of law and no one is above / below (Art.14). And this does not mean that law must the same for everyone irrespective of their functions/ services. Dicey's insistence was that a govt., officer must be under the same liability for the acts done within legal justification as a private individual. He harshly criticized the French legal structure of ***droit administratif*** when elucidating this idea. (He thought that the administrative courts were designed to protect the govt., officials from liability for their acts.)

Predominance of legal spirit –

This is the third principle of Rule of Law. The Constitution enumerates the rights of the citizens and the Courts help us to achieve those rights. In India, the Rule of Law principle is well enshrined; the Govt has to follow the Constitution which is the Supreme Law.

Kesavanatha Bharathi Vs. State of Kerela AIR 1973; Rule of law is part of basic structure of Indian Constitution.

4. CONCLUSION

To sum up, administrative law has its own significance and understanding the fundamentals is very much crucial to know the principles and ideologies behind the development of the era of administrative authorities and how their powers and functions widened and they started becoming effective enforcement authorities for matters connected to administrative issues and disputes. This has indeed made the wing to have developed into efficient tribunals that address these disputes and thus makes the access of justice viable.

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