



Administrative Law

Fundamental Principles

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Definition of Administrative Law

- **K.C.Davis** - law concerning powers & procedures of administrative agencies including the law governing judicial review of administrative action (American approach)
- **A.V.Dicey** – portion of national legal system determining legal status and liabilities of all state officials, defining rights and liabilities of private individuals in dealing with public officials & specifying procedure by which such rights & liabilities are enforced (British approach)
- **Ivor Jennings** – law relating to administration. It determines organization, powers and duties of administrative authorities (Modern British approach)

Administrative Law - most outstanding legal development of the 20th century



Comprehensive Definition of **Adm. Law**

Administrative law deals with-

- 1) structure, powers & functions of organs of administration
- 2) limits of their powers
- 3) methods & procedures followed by them in exercising their powers and functions; &
- 4) methods by which their powers are controlled including legal remedies available to person whose rights are infringed by their operation

(Jain & Jain)

Reasons for Growth of **Adm. Law**

- Growth of adm. powers & functions
- Shift from *laissez faire* system (19th century) to that of *social welfare state* (20th century)
- *State activism & Multiple roles played by state – service provider, active instrument of socio-economic policy, economic regulator, entrepreneur, & facilitator*

In India, administrative law is basically principle - based and judge made law drawn substantially from the constitutional law



Adm.Law -Contents

- Definition, nature & Scope of Adm.Law
- Classification of Adm.Functions
- Delegated Legislation
- Adm.Discretion
- Adm.Adjudication
- Rule of Law & Separation of Powers
- Principles of Natural Justice
- Judicial Control of Adm.action
- Judicial Review of Adm.action
- Accountability of Administration – in torts & contracts
- Ombudsman , Central vigilance Commission
 ,Administrative Tribunals & RTI



Classification of Adm.Functions

- Rule application function- Adm. function proper-Ministerial & Discretionary
- Quasi-legislative functions - Delegated Legislation
- Quasi-judicial functions - Adjudicatory Functions

Delegated Legislation

- **Delegated legislation/ secondary legislation /subordinate legislation** - law made by executive authority under powers given to them by primary/parent legislation in order to implement and administer the requirements of that primary legislation
- Law made by person / body other than legislature but with legislature's authority
- Quasi-legislative action of administration



Factors leading to Growth of Delegated Legislation

- Need for more law for socio-economic development of people (in Welfare State)
- Need of freeing legislature from burden of formulating details while legislating
- Technicality of legislation
- Complexity of legislation
- Emergency situations/crisis legislation
- Maintenance of confidentiality
- Time factor and flexibility
- Participation of citizens in law-making



Classification of Delegated Legislation

- Power of inclusion and exclusion
- Power to impose tax
- Conditional legislation
- Power to notify a law – application act
- Power to extend a law
- Power of modification of statutes (Removal of difficulty clause)
- **Forms** - Rules, Regulations, Orders, Bye-laws, Notifications, Schemes, Directives, Guidelines etc

Control of Delegated Legislation

- Need – “power corrupts, absolute power corrupts absolutely”
- Kinds of control - Legislative, Procedural & Judicial
- Legislative /Parliamentary Control –Principal’s duty to control agent-**Stages of Control** -stage of delegation ,laying of rules, **Kinds** -**Direct** or **Indirect**- Laying procedure- Committees on subordinate legislation
- L.S.Committee-15 members app.by speaker & R.S.Committee-15 members app.by Chairman of RS
delegatus non potest delegare = delegate cannot further sub-delegate

Control of Delegated Legislation

- **Judicial control of del.leg.** - Constitutionality of parent Act /sub. Legislation- grounds-Doctrine of ultra vires -substantive ultra vires -violation of fundamental rights – conflict with enabling/parent Act or the constitution
- **Procedural control** – drafting, consultation (eg. EIA), & publication
- **In re Delhi Laws Act** (AIR 1951 SC 332) – delegated leg. is valid but essential legislative functions cannot be delegated
- **Essential leg. Functions** – policy related functions. power to repeal a law or to modify a policy etc

Some Leading Cases on Del. Leg.

- Rajnarain Singh v. Chairman, Patna Admn. Committee (AIR 1954SC 569)
- provision of impugned Act empowering Patna Local admn. to select provision of the Bengal Municipality Act, 1884 and apply it to Patna area with such restriction & modification deemed fit by govt.
- **held-** power to pick out a section of one Act for application in another area amounts to delegating the power to change policy of the Act which is an essential legislative power, hence cannot be delegated

Some Leading Cases on Del. Leg.

- **Edward Mills v. State of Ajmer** (AIR 1955 SC 25) – power to vary the industries to which minimum wages law is applicable-delegated to adm. authority under the Min. Wages Act – valid
- **Hamdard Dawakhana v. UoI** (AIR 1960 SC 554) – discretion given to central govt. to include any other disease in the list of incurable diseases in respect of which advts. claiming magic remedies could be prohibited – S.3 of the Drug & Magic Remedies (Objectionable Advertisements) Act, 1954 – **struck down** on the ground of excessive delegation in view of absence policy for guidance to govt.



Disciplinary Proceedings

- **Departmental Enquiry**-meaning & need
- **Inquiry Officer**-Rank, Role, Eligibility, appointment etc
- **Other officers:** complainant, Delinquent officer, presenting officer, defense helper
- **Preliminary Enquiry:** preliminary hearing & regular hearing

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- Functions of Inquiry Officer during preliminary inquiry- ensure that charge sheet, **ws** of defense, copies of statements of witnesses, evidence in proof of delivery of charge sheet to charged employee & documents relied upon by presenting officer in support of charges etc are available-served on both the parties
 - Fix a date and venue for preliminary hearing- Arrange for inspection of records-release of defense helper if any
 - Subsistence allowance –inability to act as IO



Constitutional safeguards to Civil servants

- Art.310-Docrtine of Pleasure
- Art.311- Safeguards to Civil Servants- Reasonable opportunity
- Principles of natural justice
- Rule against Bias
- Rule of fair hearing
- Reasoned Decision-Speaking order

Principles of Natural Justice

- Rules not generally embodied & not fixed by any code
- Have been developed to secure justice and to prevent miscarriage of justice
- Based on the maxim - *Justice should not only be done but should manifestly be seen to be done*
- Encompass Rule against bias & Rule of fair hearing
- Applicable to administrative and quasi-judicial proceedings

Rule of Fair Hearing

- Based on the maxim – *Audi alteram partem* (no man shall be condemned unheard) – hear the other side
- Rule of fair hearing
- Ingredients – notice, right to disclosure of evidence, right to legal representation, right to produce evidence, opportunity to rebut and cross examine, one who decides must hear & reasoned decision, Post decisional hearing

Rule against Bias

- Originates from maxim- **Nemo debet esse judex in propria sua causa** (no man can be a judge in his own cause)
- **The rule disqualifies a person from deciding a dispute in which he has- pecuniary bias; personal bias; or bias relating to subject matter**
- **Includes pre-conceived notion bias**
- **Instances:** personal bias -**A.K.Kraipak v.UoI [AIR 1970 SC 150]**; pecuniary bias- **Dimes v. Grand Junction Canal & Co [1852,H. of Lords]**- the decision of LC in favour of the Canal company-quashed by H.of Lords since he was a shareholder in the co. See **Jeejeebhoy v.Asst.Collector of Thana [AIR 1965 SC 1096]** Js Gajendragadkar reconstituted the Bench for hearing a case on the ground that he was a member of the cooperative society for which the land in dispute was acquired.

Rule against Bias

- Bias relating to subject matter – **Gullapalli Nageswara Rao v. APSRTC 1959, SC** – scheme for nationalization of motor transport notified by State Govt.-quashed since the Secretary who initiated scheme and who heard objections was the same
- Bias – **No need of actual/real likelihood**
- **Even reasonable likelihood is a vitiating factor**



Exclusion of Natural Justice

- May be express or implied
- By statutory provisions – eg: urgent land acquisition
- By constitutional provisions – eg: second proviso to Art.311(2)
- In case of legislative acts
- Exclusion in public interest
- In case urgency/necessity
- In case of impracticability
- In case of confidentiality
- In case of academic adjudication etc

Effect of Breach of Natural Justice

- The action – void
- **See** A.R.Antulay v. R.S.Nayak (1998) 2 SCC 602
- In exceptional cases – **post decisional hearing** can be given (Maneka Gandhi v.Union of India 1978,SC)

Judicial Review of Adm. action

- **Judicial Review** – meaning & evolution (**Dr.Bonham's Case > Marbury v.Madison > Present position under constitutions**)
- **Grounds – Violation of Principles of natural justice & F.Rts etc**
- **Jurisdiction of SC under Art.32 &136**
- **Jurisdiction of HCs under Art.226 & 227**
- **Public Law Review – against whom? –by whom? (locus standi) – laches (delay)- Res judicata –speaking orders**

Dr. Bonham's Case

- ***Dr. Bonham's Case*, 8 Co. Rep. 114 (Court of Common Pleas [1610]), stands for the principle that legislation passed by the English Parliament is sub-ordinate to the common-law decisions made by trial and appellate court judges, and any statute that is contrary to "common right and reason" must be declared void**
- The decision in this case, which was written by SIR EDWARD COKE sitting as chief justice for the Court of Common Pleas in England, spawned the concept of **JUDICIAL REVIEW** under which courts of law, as the primary oracles of the **COMMON LAW** in the British and U.S. systems of justice, are authorized to invalidate laws enacted by the executive and legislative branches of government. The power of judicial review, which was first recognized by the U.S. Supreme Court in **MARBURY V. MADISON**, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60, is invoked by courts every day across the United States **but has since been rendered obsolete in England.**



Conclusion

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