
HOW THE ADMINISTRATIVE ACTION CAN BE REGULATED?

*AVANTIKA SIROHI

ABSTRACT

One should keep changing with time to attain growth, and it applies to both individuals and governing body. Since independence, things are evolving and we have gradually entered in the modern society. From three branches of government, now it's been 4 (not explicitly) that is administrative branch. The modern governance revolves around administrative action that evolved with rise of welfare state. The administrative authorities (executive) perform the tasks assigned to them by the supreme authorities (legislature) including public welfare, taxation etc, that is delegated legislation. The administrative actions are under control mechanisms to maintain rule of law. Judiciary plays an efficient role in seeking the fairness of administrative action and that it complies with law and is for benefit of public. As administrative law isn't codified, the checks and balances concept is the main mechanism for its regulation.

This article examines evolution of administrative law in India and how it is regulated. It stipulates the challenges and role of delegated legislation. Article also analyses the precedents that laid down the general principles for administrative law.

However, administration in modern governance is essential to prevent time delays and overburdened bodies. It seeks to provide expertise safeguards and its objective revolves around protection of rights of citizens and maintaining democracy in its truest sense.

Key words: delegated legislation, administrative action, democracy, rule of law.

Introduction

Administration law is a branch of public law. It's a growing-phenomena in the welfare of state. It is a higher law as based on principle of natural justice It stipulates the powers duties limitations functions of the concerned authorities or various organs of the government. It determines the remedies for the affected people due to administrative actions. The concept of administration law originated from the French administration legal system that is referred as

*BA LLB, Amity University Noida

Droit Administratif.

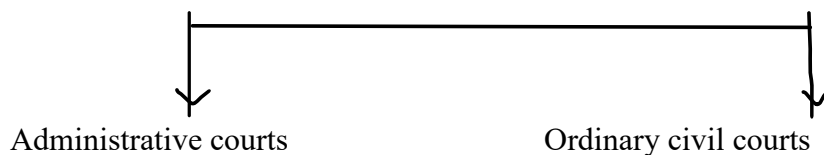
➤ Droit Administratif

These are the rules for the administration established in 20th century by efforts of Napoleon Bonaparte.

Principles of Droit Administratif which empowers administration-

- To act Suo moto (on its own)
- Must not violate the provisions of law
- Specialised administration jurisdiction

In France there was a dual system of courts to administer justice-



This dual system of courts ensures that disputes between government officials and individual goes to administration courts but any other kind of dispute went to ordinary civil court.

Therefore, France has adopted this system very early but United Kingdom opposed as AV Dicey raised objections. He stated that dual system of courts violates principles of rule of law.

Whether administration law prevails in India?

Yes, administration law exists in India but subject to certain limitations in order to not act beyond ultra vires. In India administration law can be seen in delegation or transfer of work to delegate by the executives. In India administration law works by governing the activities of administration agencies of government which includes-

- Legislation
- Executive
- Adjudication

Generally, administration functions can be classified into 3 categories-

1. Quasi legislative action or rule making
2. Quasi-judicial action or rule decision action
3. Purely administrative action or rule application action

Case: “AK Kraipak vs Union of India”¹(1969)

The Supreme Court held that in order to determine whether the action of the administrative authority is quasi-judicial or administrative in nature, one has to see to whom the power conferred and within which framework.

➤ Legal frameworks regulating administrative action: -

- Article 14

The article determines equality and seeks protection against arbitrariness. The administrative agencies must act reasoned and rational without any personal benefit.

- Article 21

This article stipulates right to life and personal liberty. It is regarded as the vital provision for administrative action to seek procedural fairness.

- Article 19

This article determines reasonable restrictions while enforcing administrative actions. It ensures protection from abuse of powers.

- Rule of law

This concept was brought by AV Dicey. It stipulates that government must act with compliance to law. With respect to administrative law, the authorities must act within legal boundaries and follow principles of natural justice.

- Separation of powers

It is not absolutely implicated in Indian constitution but a quasi-federal structure is followed which allows the power to be distributed to maintain check and balances of powers and imposes limitation on excessive delegation.

Therefore, these frameworks ensure fairness and a transparent and an accountable governance structure.

Definition by various scholars

- Ivor Jennings: He stated that administration law is a law relating to administration
- Wade: Administration law is a law relating to control of governmental powers

¹(A.K Kraipak & ors v Union of India, 1969)

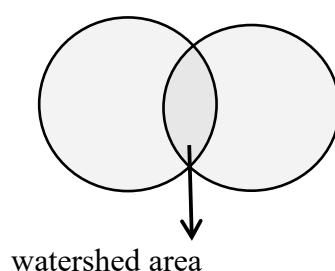
Thus, English and American writers do have diverging opinion regarding its independent nature.

English writers says that administration law and constitution law is same and it's not logically possible to differentiate between them Whereas American writers says that administration law is itself a separate law and should not be presumed to be part of constitutional law.

Nature of administration law

It's not a codified law. It works on basis of rules and principles of natural justice. It's a judge made law and ensures transparency and honest governance. It's not a branch of philosophy of law but of sociology of law which is not an end in itself but a means. Thus, it can be concluded that both administration and constitutional law are species of public law and deals with government and the individuals.

Administration law is subordinate to the constitutional law. The administration law and constitutional law do overlaps with each other at certain place which is known as watershed area.



In India watershed includes the whole control mechanism mentioned in constitutional for control of administration authority. It includes art 32, 226, 227, 311etc.It also includes administration agencies as mentioned under art 263, 280, 315, 324.

Thus, administrative authorities work behind the legislative bodies. They are subordinate to them.

➤ **Sources of administration law**

- Directions
- Rules
- Schemes
- Orders
- Bye laws

- Ordinances
- Acts and statutes
- Constitution of India
- Regulations
- Judicial decision

Thus, these all are delegated legislation.

Reason for growth of administration

In India, there are many reasons for growth of administration law since Mauryan and Gupta age and it includes-

- To achieve welfare state from a police state
- To meet needs of growing population as, legislative action is insufficient
- Its flexible and can be modified as per the requirement of state machinery
- To avoid technicalities
- Establishment of tribunals to provide remedies for addressing grievances
- To mitigate the burden over Judiciary
- Role of judicial review and judicial activism

Delegated legislation

It is also referred as subordinate legislation because powers of body or authority are limited by statute which conferred the powers and is valid only in so far as it keeps within those limits. which is made by anyone other than sovereign body. Delegated legislation is made by a body or person other than the sovereign or parliamentary by virtue of powers conferred by a statute.

Indian constitution empowers legislature to delegate its power to carry statutory duties. It's a discretionary power assigned to legislature. It helps in emphasizing executive power. Thus, it's an effective measure majorly utilized during emergencies for quicker actions.

Case: "Jyoti Prasad vs Union Territory of Delhi" (1961)²

This case was regarding the validity of sec 19 of slums area Act which the court held out as constitutional as the Act itself provides for discretion to delegate and upheld that delegation is a vital aspect to carry out state machinery.

² (Jyoti Pershad v Union Territory of Delhi, 1961)

Case: “Gwalior Rayon Mills co ltd vs Commissioner of Sales Tax, 1973”³

The 5 judges’ bench of Supreme Court observed the importance of delegation authority due to the bulk of laws made by the legislature. In order to attain stability and a room for experimentation and speedy disposal of cases.

Therefore, in order to prevent misuse of delegation authority and to achieve effective delegated system in India, control mechanisms are required so that concerned authorities can act within boundaries.

Case: re Delhi Laws Act, 1912⁴

This case regarded as the bible case. President appealed to Supreme Court for its advisory opinion upon delegated legislation constitutionality. Major question raised in this case that whether the supreme law-making body can delegate its legislative powers to the execute?

The 7 judges bench held out that modern governance requires flexibility and there is a need to delegate to meet the administrative necessities. Thus, majority held that such delegation doesn’t violates constitution

Supreme court held that this is a case of excessive delegated legislation, hence this is not allowed and thus declared void.

➤ General principles of delegated legislation:

- Primary responsibility to legislate is of legislature but it cannot create a parallel legislature nor destroy its own legislative power
- Legislature must perform functions of formulating policy and a binding rule of conduct
- Once the policy has been laid down the executive can be delegated ancillary and subordinate powers which are necessary for carrying out the policy.
- Policy may be inferred from the history preamble title scheme statement of object and reasons etc
- The delegated legislation must not be excessive

³ (Gwalior Rayon Mills co ltd vs Commissioner of Sales Tax, 1973)

⁴ Agarwal, C. (n.d.). In Re Delhi Laws Act Case: Landmark in concept of delegated legislation in India. *Manupatra*, 9.

- It must be consistent with the parent act

Control over delegated legislation

The power granted to the supreme body must be under limitation to prevent misuse or abused. The administrative authorities must not act in violation to law and must promote welfare of states. Any discrimination or arbitrary act will allow court to act to ensure justice and emphasize on rule of law.

Control mechanism of administrative action can be regulated in 3 forms-

1. Parliamentary control

It includes direct general control (private members bill, grants), direct special control and indirect control (scrutiny)

2. Procedural control

It includes drafting, anti-national publicity, consulting, post-natal publicity

3. Judicial control

It includes tribunals, judicial review, and issuing of writs. It works on basis of doctrine of ultra vires.

Thus, administrative actions are majorly controlled by judiciary by issuing of writs under article 32 and 226.

➤ Grounds of judicial control

- Where parent act is unconstitutional.
- Where parent act delegates essential legislative function
- Where delegated legislation is inconsistent or arbitrary
- When the delegated legislation further delegates sub delegation (delegatus non potest delegate)
- Where it excludes judicial review
- Where delegated legislation operates retrospectively

Case: “Amender Singh vs state of Punjab 1979, 1978”⁵

Justice Krishna Aiyer expressed that parliamentary authority over designated enactment should be a living continuity as a protected need.

⁵(Amender Singh vs state of Punjab 1979, 1978)

Case: State of Punjab vs Gurdial Singh (1980, 1979)⁶

Supreme court stated that administrative discretion is void on grounds of malefice arbitrariness and abuse of power.

1. Writs

Art 226 and article 32 of Indian constitution empowers high court and supreme court respectively to issue writs.

I. Certiorari

It is derived from a Latin word refers to inform. It is exercised by the higher court to review or check on the records of lower courts in case of any legal error or breach of principles of natural justice. Therefore, when the concerned authorities fail to meet their respective duty in their vested jurisdiction.

It's mainly based on discretion.

II. Prohibition

It refers to stay of order. The superior court stops the inferior court from exceeding their jurisdiction or acting beyond ultra vires. Thus, writ allows to stop the unlawful or unconstitutional proceedings.

Its only issued against judicial or quasi-judicial authorities. It can be issued before the final order or judgement is passed.

III. Mandamus

It's a Latin term which means we command. It's issued by the superior courts when the concerned authority does not fulfil or fails to do its lawful duties. Its applicable only on public bodies.

IV. Habeas corpus

It's a Latin term means to have the body. It's used to raise objection on unlawful detention to ensure personal freedom.

If court finds out illegal detention, then immediate release orders are passed.

⁶ (State of Punjab vs Gurdial Singh (1980, 1979))

V. Quo warranto

It's a Latin term means by what authority. It prevents unlawfully holding of wrong positions.

2. Tribunals

These are the institutions established to perform “quasi-judicial functions”⁷ for faster adjudication as compared by law.

The dictionary meaning of word tribunal is seat of a judge but in administrative law it means adjudicatory bodies outside the sphere of ordinary court. In order to maintain independency of the administrative matters and to mitigate the pendency of cases, tribunals were formulated.

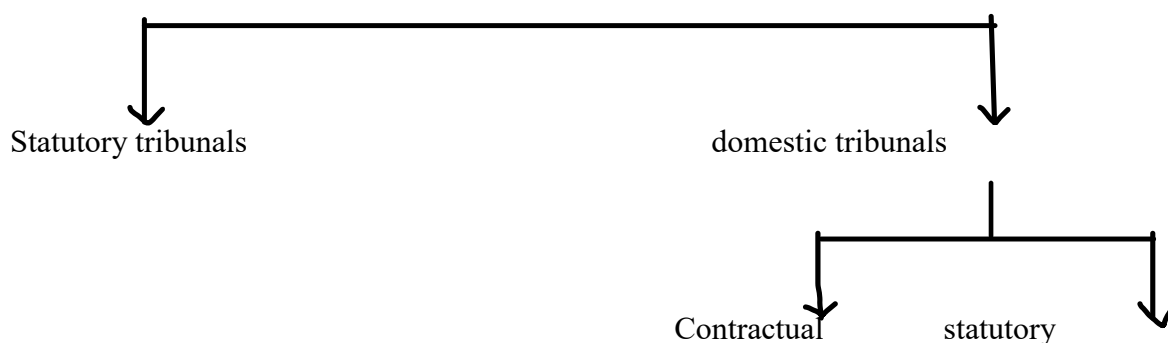
In 1976, by the recommendation of Swaran Singh Committee Articles 323A and 323B were inserted in the Constitution of India by the 42nd Amendment. Article 323A empowered Parliament to constitute administrative Tribunals at both central and state level. This article specifies the service matters like CAT, SAT etc and article 323B specifies certain other subjects like NGT, Income tax etc.

Case: (Madras bar Association vs Union of India (2020) , 2021)⁸

National tribunal commission should be set up to supervise appointment as well as functioning and administration tribunals.

In 2010 supreme court separated tribunals from executive interference.

Tribunals are classified under 2 major categories: -



⁷ PRSIndia. (2005, september). Retrieved from <https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india>

⁸ (Madras bar Association vs Union of India (2020) , 2021)

Key aspects of tribunals: -

- They do not work as the traditional courts completely but are similar in terms of proceedings.
- They get its jurisdiction from statute.
- They do not involve much formalities and technicalities as compared to the courts
- They provide faster cheaper and binding decisions.
- They work on principles of natural justice and in case of any unlawful act or failure judicial review can be made by supreme court and high court.
- Writs like certiorari and prohibition can be filed against the order or judgement passed by the tribunals.

Therefore, tribunals grew due to increase workload of state and strict legal standards. All courts are tribunals but not all tribunals are courts. Its dynamically flourishing in India holding certain flaws and strengths

3. Judicial review

Under article 13 of Indian constitution judicial review is part of basic structure doctrine.

Case: L Chandra Kumar vs Union of India (1997)⁹

The 7 judges bench upheld that Judicial review is a basic structure doctrine.

In case of Keshavananda Bharti case, for the first time this concept came into scenario.

It's the vital concept to maintain authenticity of constitution and to safeguard the rights of citizens. The Judicial review is power authorised to the court to review actions of the different organs of the government. If any action of legislative and executive government found to be unconstitutional or in violation of any provision of law will be deemed as invalid. In short judiciary can look into questions whether the action taken is legal or not.

Administrative measures must not be more drastic that is necessary for attaining desired result. if an action taken by an authority is disproportionate then the administrative action can be reviewed by the court.

There are various grounds where judicial review can't be used: -

- Foreign policy

⁹L.Chandra Kumar v Union of India (Supreme court march 18, 1997).

- Sovereign relations

Duties of court while reviewing administration discretion:

- whether a decision-making authority exceed its power
- whether it has committed any error of law
- whether it has committed a breach of principles of natural service
- whether the decision was reasonable
- whether there has been abuse of its powers

therefore, the role of judiciary is to strike balance between administrative discretion (Here discretion must be honestly, properly, reasonably) to decide matters as per government policy and objective need of fairness of procedure.

Judicial review of administrative action works on principle of rule of law. Thus, it allows the government to work responsibly, unarbitrary, and effectively.

4. Doctrine of ultra vires

It means beyond powers. It originated from common law courts England. This doctrine refers to the public authority or administrative body should act within scope of lawful powers. Impliedly it suggests that such authority does not act either substantively or procedurally outside the scope of its lawful powers.

This doctrine conveys that administrative body must act strictly within its boundaries as defined by law which creates it. Any action taken without legal authority or violation of mandatory procedure is invalid.

When administrative legislation is ultra vires of enabling act the challenge to this constitutionality can be sustained if it is in conflict with the enabling act. Admin rule making can be declared invalid if it is in direct conflict with provisions of enabling act.

Case: Ram Prasad vs State of UP¹⁰

Sec 49 of UP panchayat raj Act provided that every case is triable in panchayat Adalat by bench constituted under an Act. Further rule 87 is framed by stating that there should be 3-member bench, the court held that the rule is invalid because there should be 5-member bench which has to be constituted.

¹⁰Ram Prasad v State of U.P (Supreme Court march 20, 1957).

Recommendations

Administration of power is essential and without an eye over its regulation can threat to democracy. An effective and flexible administration can be achieved: -

- Judiciary should play a vital role to keep check or reviewing
- Digital Surveillance in ethical aspect
- Maintaining independent nature of tribunals
- Make ensure that procedure is transparent and accountable
- Natural justice principle should not be compromised
- For making interpretation accessible, the administrative law should be codified, it would add more reliability and credibility.

Conclusion

Administrative action is residuary action which is neither legislative nor judicial. It is that branch of constitutional law which deals with powers and duties of administrative authority. The procedure followed by them in exercising powers and discharging and lastly the remedies available to an aggrieved person whose rights have been affected by such person.

Thus, it can be concluded that in the present times the administration has become an important part of government as well as citizens life.

References

- Cases
A.K Kraipak & ors v Union of India (Supreme Court april 29, 1969).
Amender Singh vs state of Punjab 1979 (Supreme Court September 19, 1978).
Gwalior Rayon Mills co ltd vs Commissioner of Sales Tax (Supreme Court december 21, 1973).
Jyoti Pershad v The Administrator For (Supreme Court April 21, 1961).
L.Chandra Kumar v Union of India (Supreme court march 18, 1997).
Madras bar Association vs Union of India (2020) (Supreme Court july 14, 2021).
Ram Prasad v State of U.P (Supreme Court march 20, 1957).
State of Punjab vs Gurdial Singh (1980) (Supreme Court october 25, 1979).
- Journal
Agarwal, C. (n.d.). In Re Delhi Laws Act Case: Landmark in concept of delegated legislation in India. *Manupatra* , 9.
- Website
PRSIndia. (2005, september). Retrieved from <https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india>