



## ADMINISTRATIVE LAW AND ITS SCOPE

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*Abstract--* In the field of law, the most significant and outstanding development of the 20th century is the rapid growth of administrative law. The rapid growth of administrative Law in modern times is the direct result of the growth of administrative powers. The ruling gospel of the 19th century was Laissez faire which manifested itself in the theories of individualism, individual enterprise and self-help. The philosophy envisages minimum government control, maximum free enterprise and contractual freedom. The state was characterized as the law and order state and its role was conceived to be negative as its internal extended primarily to defending the country from external aggression, maintaining law and order within the country dispensing justice to its subjects and collecting a few taxes to finance these activities. Administrative law is a branch of public law which is concerned with the composition powers duties rights and liabilities of the various organ of Government which are engaged in public administration. There is a great divergence of opinion regarding the definition/conception of administrative law. The reason being that there has been tremendous increase in administrative process and it is impossible to attempt any precise definition of administrative law, which can cover the entire range of administrative process. This paper analyse the definitions of Administrative Law given by various jurists and also to mark out its nature and scope.

*Keywords: Administrative Law, Administrative Authorities, Power, Judicial Control*

### INTRODUCTION

Administrative law is part of the branch of law commonly referred to as public law, the law which regulates the relationship between the citizen and the state and which involves the exercise of state power. So, it is a part of the legal framework for public administration. Public administration is the day-to-day implementation of public policy and public programs in areas as diverse as immigration, social welfare, defence, and economic regulation—indeed in all areas of social and economic life in which public programs operate. It has become immensely important in developed societies with the transformation of police state to welfare state. Thus, it is the by-product of expanding socio-economic functions of the State and increased powers of the government. It is not codified law and rather has developed over time. It is mostly judge made law that provides the guidelines for public administration and ensuring public welfare. It includes the rule-making power of administrative bodies wherein higher legislative offices delegate their powers to ensure better administration and implementation of rules and regulations, quasi-judicial function of administrative agencies, legal liabilities of public authorities and ensures that the executive wing of the democracy treats the public fairly.

### ORIGIN AND DEVELOPMENT OF ADMINISTRATIVE LAW

In the ancient society the functions of the state were very few the prominent among them being protection from foreign invasion, levying of taxes and maintenance of internal peace & order. But in the modern society, the functions of the state are manifold, In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity which is free from direct or indirect interference by the state. Along with duties, and powers the state has to shoulder new responsibilities. The development of Administrative law is an unavoidable necessity of the modern times. It does not mean, however that there was no administrative law before 20th century. In fact administration itself is concomitant of organized Administration. In India itself, administrative law can be traced to the well-organized



administration under the Mauryas and Guptas, several centuries before the Christ, following through the administrative, system of Mughals to the administration under the East India Company, the precursor of the modern administrative system. Since prior to 1947, India was a police state, primarily interested in strengthening its own domination. Administrative machinery was mainly implemented with the object of civil service in view. This soon came to be recognized as the 'steel frame of Indian polity'.

#### DEFINITION OF ADMINISTRATIVE LAW

The definitions given by various jurist regarding Administrative Law are discussed below:

**Ivor Jennings** defined Administrative law in his book titled "*The law and the constitution, 1959*". According to him, "administrative law is the law relating to the administrative authorities".

**Jennings** has defined Administrative Law as "*the law relating to the administration. It determines the organization, powers and duties of administrative authorities.*"

This is the most widely accepted definition, but there are two difficulties in this definition.

(1) It is very wide definition, for the law which determines the power and functions of administrative authorities may also deal with the substantive aspects of such powers.

For example:- Legislation relating to public health services, houses, town and country planning etc.. But these are not included within the scope and ambit of administrative law, and

(2) It does not distinguish administrative law from constitution law.

According to **K. C. Davis**, "*Administrative law as the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action*".

According to **Wade** (Administrative Law, 1967) any attempt to define administrative law will create a number of difficulties. But if the powers and authorities of the state are classified as legislative, administrative and judicial, then administrative law might be said "*the law which concerns administrative authorities as opposed to the others*".

Though the definition given is wide enough as it includes the entire legal field except the legislature and the Judiciary. It also includes the law of local government. It is also said that it is not possible to divide completely and definitely the functions of legislative, executive and judiciary. But even it fails to distinguish administrative law from constitutional law. It is very difficult to say precisely where legislation ends and administrative begins. Though enacting a law is function of the legislature the administrative authorities, legislate under the powers delegated to them by the legislature and this delegated legislation is certainly a part of administrative law.

According to **Jain and Jain**, "*Administrative law deals with the structure, powers and function of the organs of administration, the limits of their powers, the methods and procedures followed by them in exercising their powers and functions, the method by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation*".

Administrative law, according to this definition, deals with four aspects:-

1. It deals with composition and the powers of administrative authorities.
2. It fixed the limits of the powers of such authorities.
3. It prescribes the procedures to be followed by these authorities in exercising such powers and,



4. It controls these administrative authorities through judicial and other means.

According to **Griffith and Street**, (Principles of administrative law, 1963), the main object of Administrative law is the operation and control of administrative authorities, it must deal with the following three aspects:-

1. What are the limits of those powers?
2. What sort of power does the administration exercise?
3. What are the ways in which the administrative is kept within those limits?

According to the Indian Law Institute, the following two aspects must be added to have a complete idea of the present - day administrative law:-

1. What are the procedures followed by the administrative authorities?
2. What are the remedies available to a person affected by administration?

According to **Garner**, administrative law may be described as "*Those rules which are recognised by the court as law and which relates to and regulate the administration of government.*"

**Austin** defined the Administrative Law as determining the ends and modes to and in which the sovereign powers shall be exercised. They shall be exercised:

- 1) directly by the monarch or sovereign member or
- 2) directly by the subordinate political superiors to whom portions of those are delegated or

**Holland** gave *Administrative Law as one of his six divisions of public law*, the first was constitutional law as dealing with structure the second Administrative Law as being concerned with function.

**Bernard Schwartz** in his *An introduction to American Administrative Law 1985* defines *administration law as the law applicable to those administrative agencies which possess powers of delegated legislation and or ad judicatory authority.*

**Wade and Philips** defines it as *the law relating to the organization and service performed by the various administrative agencies of government. It deals with the powers of all such bodies and determines their rights and duties.*

**Bernard Schwartz** has defined Administrative Law as "*the law applicable to those administrative agencies which possess of delegated legislation and ad judicatory authority.*"

**Dicey in 19th** century defines it as:

**Firstly**, portion of a nation's legal system which determines the legal statuses and liabilities of all State officials.

**Secondly**, defines the rights and liabilities of private individuals in their dealings with public officials.

**Thirdly**, specifies the procedure by which those rights and liabilities are enforced.

This definition is also not inclusive. It does not cover several aspects of administrative law, e.g. it excludes the study of several administrative authorities such as public corporations which are not included within the expression "State officials," it excludes the study of various powers and functions of administrative authorities and their control. His definition is mainly concerned with one aspect of administrative law, namely, judicial control of public officials.

In the view of **Friedman**, Administrative Law includes the following.

- The legislative powers of the administration both at common law and under a vast mass of statutes.
- The administrative powers of the administration.



- Judicial and quasi-judicial powers of the administration, all of them statutory.
- The legal liability of public authorities.
- The powers of the ordinary courts to supervise the administrative authorities.

If we analyse the various definitions given by various jurists we will analyse that it is very difficult to evolve a scientific precise and satisfactory definition of administrative law. None of the jurist definition has completely demarcated the nature, scope and contents of Administrative Law. Either the definitions are too broad and include much more than what is necessary or they are too narrow and do not include all the necessary contents. Thus we can say that Administrative is that branch of public law which deals with the organisation, power and duties of administrative and quasi administrative authorities. It also includes the procedure to be followed by authorities in exercising their power, limitation on the powers, how powers are enforced on the public and also the remedies for the public when their rights are encroached. It defines the relation between the public and the government and protects from arbitrary actions which are unfair without any reasonable reason to the public.

### NATURE AND SCOPE OF ADMINISTRATIVE LAW

Administrative law is the law governing the Executive, to regulate its functioning and protect the common citizenry from any abuse of power exercised by the Executive or any of its instrumentalities. It is a new branch of law which has evolved with time and shall continue to evolve as per the changing needs of the society. The aim of administrative law is not to take away the discretionary powers of the Executive but to bring them in consonance with the 'Rule of law'. The scope of administrative law can be summed up by analysing the definition given by various jurists regarding administrative law. Thus, its scope is:

- It deals with establishment, organization and powers of various administrative bodies
- Judicial and quasi-judicial powers of administrative authorities i.e. court and tribunal to deal with problems and remedies.
- The Rule-making power of the authorities i.e. Delegated Legislation
- The control mechanism over the authorities exercising delegated authority.
- It also makes available all the relevant remedies to the persons whose rights are infringed by the operations of these organs during the course of Administration. The remedies available are Writs, Injunction etc.
- Procedural guarantees such as the application of principles of Natural Justice
- Legal liability of government servant
- Public corporations

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