

Chapter: 4

Administrative Law

Administrative law is that branch of law that deals with power, function and responsibilities of various organs of the state.

Need for Administrative Law

Mainly there are three organs of a state - legislative, executive and judiciary.

The legislature is responsible for making the laws, the executive is responsible with the implementation of law and judiciary is responsible for reviewing laws.

The ambit of administration is wide and embraces following elements-

1. It makes policies
2. It executes, administers and adjudicate the law
3. It exercises legislative power and issues rules, bye-laws and orders of general nature.

Sources of Administrative Law

Constitution of India - It is the primary source of administrative law. Article 73 of the constitution provides that the parliament has the power to make laws, similar power are provided to the states under article 62.

Acts / statutes - Acts passed by the Central & state Gov. for maintenance of peace and order, economic and social growth empowers the administrative organs to carry on various tasks necessary for it.

Ordinances, Administrative directions, notifications, Circulars - Ordinances are issued when there are unforeseen developments and the legislature is not in session to make laws. It allows the administration to take steps to deal with such developments.

Judicial decisions - Judiciary is the final arbiter in case of any dispute between various wings of government. It lay down the administrative laws which guide their future conduct.

Rule of Law -

Rule of law was developed by A.V Dicey. He derived this term from french principle 'La principle de legalite' which means principle of legality. It state that each country should follow legality of law, any dictator should not govern the functioning of any nation.

3 major principles given by dicey are

1. Supremacy of law - It means ordinary or regular laws shall remain supreme, regular laws are absolute and pre-dominant.

2. Equality before the law - He states that there should be equality between people, according to Dicey all classes must be equally subject to the ordinary law as administered by the ordinary law court.
3. The predominance of a legal spirit - Legal spirit refers to the judicial precedents upon any disputes raised by any individual. The judgement given in case will be the legal spirit of that particular case.

Rule of law in India the evolution of Rule of law in India can be traced to British concept -

Rule of law is embedded in constitution under multiple parts, important aspects are as under-

Preamble :- It holds the basic structure of constitution of India. It talks about justice, equality, liberty and dignity of all individuals.

Part III fundamental rights :- These are the rights and fundamental of the Constitution of India. It helps to keep a check on the actions of administrative authorities and legislature.

Part IV Directive Principles of State Policy (DPSP) :- There are the basic guidelines to be followed by all especially by the gov to ensure the smooth functioning of country.

Administrative Discretion

- > It means the freedom of an administrative authority to choose amongst various alternatives but with the reference to law & justice and not according to personal whims and fancies.
- > The exercise of ~~arbitrary~~ discretion should not be arbitrary, vague or fanciful but it should be legal.
- > It is nearly impossible for gov. to function without giving some discretion to its officials
- > But since such discretion is prone to be abused therefore it is necessary to have a system in place to ensure fair exercise of such discretion.

Judicial Review and other remedies -

In India the modes of judicial control of administrative action can be conveniently grouped into three heads-

(a) Constitutional - The constitution of India is supreme and all the states derive their existence from it. Constitution expressly provides for judicial review. If any act found in violation of the constitutional provisions the court has to declare it unconstitutional and therefore void.

Judicial review - Judicial review is the authority of courts to declare the acts

of the legislature and executive as void if they are found in violation of provisions of the constitution.

→ Judicial review is the power of the highest court. The court interferes when the uncontrolled and unguided discretion is vested in the executive or administrative authorities abuses their power.

→ Judicial review is concerned not with the decision but with the decision making process.

Concerns during Judicial Review

whether a decision making authority exceeding its power?

- Committed an error of law?
- Committed a breach of rule of natural justice?
- Reached a decision which no reasonable tribunal would have reached.
- or abused its powers?

Judicial review is exercised at 2 stages -

- ① **Judicial review at the stage of delegation of discretion** - The court exercise control over delegation of discretionary powers to the administration. if the law confers vague or wide discretionary power on any authority it may be declared ultra vires to Article 14 & 19 of Indian constitution.

Article 14 Right to equality does not provide everyone should be treated equally having no regards to their situation. If unequal's are treated equally it will violate the right to equality.

Article 19 guarantees the certain freedom to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed.

(2) **Judicial review at the stage of exercise of discretion** - Courts have developed various formulations to control the exercise of administrative discretion, they are -

- (i) Abuse of discretion
- (ii) Non-application of mind

(i) Abuse of discretion

① mala fides (bad or dishonest intention)

② Irrelevant consideration

③ Leaving out relevant consideration

④ Arbitrary orders

⑤ Improper purpose

⑥ Colourable exercise of power

⑦ Non-compliance with procedural requirements and principles of natural justice

⑧ Exceeding jurisdiction.

(ii) Non-application of mind

① Acting under dictation (Commissioner of Police v. Gordhan Das Bhanji)

② Self restriction

③ Acting mechanically without due care.

(b) Statutory :- The method of statutory review can be divided into 2 parts -

Statutory appeals - There are some acts, which provide for an appeal from statutory tribunal to the H.C.

e.g U/s 53B of Competition Act 2002 if any person feels unhappy they can appeal to NCLAT. If someone feels aggrieved with decision or order made by NCLT they can file an appeal to SC within 60 days.

Reference to High Court or statement of case - There are several statutes, which provide for a statement or reference of case by an administrative tribunal to the H.C.

e.g U/s 2(CS6) of Income Tax Act, if assessee applies to tribunal to refer case to HC & if tribunal refuses assessee can apply to HC and HC can instruct tribunal to state the case and refer it to court.

(c) Ordinary or Equitable :- There are certain ordinary remedies, are available to persons against the administration. These remedies are also called equitable remedies and includes -

Injunction : It is a preventive remedy. one is restrained from continuing or commencing such wrongful act. An injunction can be issued to both administrative and quasi-judicial bodies.

Injunction is highly useful remedy to prevent a statutory body from doing an ultra vires act.

(a) **Prohibitory injunction:** It forbids the defendant to do a wrongful act, which would infringe the right of the plaintiff.

Prohibitory injunction may be -

i **Interlocutory or temporary injunction:** Temporary injunction are such as continue until a specified time or until the further order of the court. It is granted as an interim measure, it may be granted at any stage of suit and regulated by Civil Procedure Court.

ii **Perpetual injunction:** Perpetual injunction is granted at the conclusion of the proceedings it may be awarded for a fixed period or for a fixed period with leave to apply for extension.

(b) **Mandatory injunction:** The court may at its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts. It prohibits the defendant from continuing a wrongful act and also imposes duty on him to do a positive act.

Declaratory Action

Where wrong has been done to a person by an administrative act, declaratory judgement may be the appropriate remedy.

Action for damages-

If any injury caused to an individual by wrongful act of Gov. servant, the aggrieved person can file suit for recovery of damages.

Principles of Natural Justice

Natural justice is a concept of common law and represents procedural principles developed by judges. Principle of natural justice are derived from Article 14 and 21 of the constitution. The courts have always insisted that administrative agencies must follow fair procedure i.e principle of natural justice includes -

Rule against bias (nemo iudex in causa sua)

According to this no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious.

→ A Pecuniary interest will disqualify a person from acting as a Judge even the interest is of ₹ 1. (J. Mohapatra & Co. and others V. State of Orissa.)

→ There are many situations which may create a personal bias in judge's mindset. If the judge is in any way related to the other party, he will be disqualified to act as a judge.

→ Where the judge has a connection or he himself is connected with the subject matter in case, he will be disqualified to be a judge.

It can further be classified into-

- (a) Partiality or connection to the issue
- (b) Departmental bias
- (c) Prior utterances and pre-judgement of issue
- (d) Acting under dictation.

Rule of fair hearing (Audi alteram partem)

The rule states that no one should be condemned unheard. It requires that both the sides should be heard before passing the order.

(a) **Right to notice:** Hearing starts when the authority gives the notice to the affected person. Unless a person knows the case, he cannot defend himself. The proceeding started without giving notice would be invalid or violate the principle of natural justice. Notice must be clear & unambiguous.

(b) **Right to present case and evidence:** The party against whom proceedings are initiated shall be given a full opportunity to present his case or evidence.

(c) Right to rebut adverse evidence:

Cross examination is the detection of falsehood in the testimony of the witness. Every party has the right to represent their legal representative. In certain situations denial of right to legal representation amounts to violation of natural justice.

(d) Disclosure of evidence: Party must be given full opportunity to explain every material fact or their evidence.

(e) Speaking evidence: Speaking order is an order which speaks for itself or tells its own story, also known as reasoned order.

In *Nandini Satpathy v. P. L. Devi*, SC ruled that during custodial interrogation accused must be allowed to have their legal representative present. Police must wait for reasonable time for arrival of such a representative. Denying this right not only violates article 22 but also it is against principle of natural justice.

Exception to natural justice -

① Statutory exclusion

② Emergency

③ Interim disciplinary measure

④ Academic evaluation

⑤ Impracticability (*P. Radhakrishna v. Orissa University*)

Voidable order: It is initially legally valid but can be set aside or quashed by court upon challenge.

So it remains in effect until overturned by the court.

→ A void order is invalid from its inception it is null and void and it has no legal effect.

In case of Nawab Khan v. Gujrat SC ruled that order infringing constitutionally guaranteed right without affording the affected party a hearing are void from the beginning disobeying such an order cannot lead to criminal conviction. This underscores importance of procedural fairness in administrative actions affecting fundamental rights.

→ When authority fails to observe natural justice in making an order, order can be generally considered as void or voidable.

Liability of the Government, Public Corporation

The liability of government can either be contractual or tortious.

liability of state or gov. in contract -

The contract with state or gov. will be valid and binding only if, following condⁿ are followed -

1. The contract must be made in the name of the President or the Governor.
2. Contract must be executed on behalf of President or the Governor will be valid only when it is in writing.
3. Person duly authorised by the president or governor must execute the contract.

Quasi-Contractual Liability -

where any person lawfully does anything for another person or delivers anything to him & such other person enjoys the benefit thereof, the latter is bound to make compensation to the former.

Even the gov. will be liable to pay compensation for the work actually done or services rendered by state.

Suit against state in torts ~

A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the remedy for which is damages. Its essential requirement is breach of duty towards people in general.

When the responsibility of the act of one person falls on another person it is called as vicarious liability.

Sometime the state is held vicariously liable for the tort committed by its servants in exercise of duty.

Case law: State of Rajasthan v. Veerjyawati

Liability of the Public servant

- Liability of state must be distinguished from the liability of individual officer of state
- If gov. officers have acted outside their scope or acted illegally, they are liable personally
- But an officer discharge his duty without bias or malafide ~~etc~~ could not be held personally liable.

Statutory Corporation - Refers to such organization which are incorporated under the special act of parliament / state legislative assembly.

Now a days government is also liable for sovereign cases decided in -

- 1) Rudal shah v. state of Bihar
- 2) Ramakonda, Reddy v. State
- 3) Saheli a women resource centre v. Commissioner of delhi police.

(Public Corporation) Principle benefit of statutory corporation -

- > Public corporation enjoy freedom from direct gov. regulation and control allowing them high degree of operational and financial flexibility.
- > Public corporations are not government department or organ but they are still subject to public scrutiny and accountability.

- > Employees of public corporation are not considered government employee and are not protected by Article 311 of constitution.
- > Public corporation are included under the definition of state under article 12 of constitution and fundamental rights can be enforced against them.
- > Unlike contracts with the government, contract with public corporation do not need to comply with requirement of Article 209 of constitution.
- > Public corporation can be held liable for damages caused by their officers or servants.
- > Local authorities like municipality have also been held liable for tort committed by their servant.

Case laws

- > *State of Madhya Pradesh & others v. Thakur Bharat Singh* SC declared section 3 of Madhya Pradesh Public Security Act 1959 unconstitutional due to its wide discretionary power vested in district magistrate without adequate safeguards.
- > *In Airport Authority of India v. Centre for Aviation Policy Safety & Research* SC stated that judicial interference in the decision of tender making authority under article 226 of constitution is not appropriate unless these decisions are arbitrary or made in

bad faith.

- > In *hindi construction and engineering co Ltd v. their workmen* SC held that tribunal can interfere if punishment is unreasonably severe or disproportionate to offence committed.
- > In *doctor Ram manohar v. state of delhi* SC said its ok for district magistrate to order someone to leave an area temporarily if it is to keep peace.
- > In *HR banthis v. Union of india* SC declared licensing provision under gold control Act 1961 invalid because administrator was given uncontrolled and unguided power to grant or renew license for dealer in gold ornaments based on vague criteria.
- > In case of *mineral development Ltd v. state of Bihar* cancellation of petitioner company's license by minister was deemed invalid due to personal rivalry between the co-owner and the minister which tainted the decision making process.
- > In *Anna malai cotton mills v. the chairman Tamil Nadu electricity board* court emphasised necessity of providing detailed & specific showcause notice in cases of alleged electricity theft. court ruled that both the vague showcause notice and order lacking reasoning violated the principle of natural justice & were therefore deemed invalid.