

Administrative Law

Administrative law is that branch of Public Law that deals with powers, functioning and responsibilities of various organs of the State.

Need for Administrative Law

The ambit of administration is wide and embraces following elements within its ambit:-

- ① it makes policies
- ② it executes, administers and adjudicates the law
- ③ It exercise legislative powers and issue rules, byelaws and orders of a general nature

Sources of Administrative Law

there are 4. Principles sources of administrative law in India.

① Constitution of India

= It is a Primary source of administrative law.

Article 318 of the constitution of India empowers the President (Union public service commission) and Governor (State Public Service Commission) to make regulations with respect to the no. of member or staffs of the commission and their conditions of service.

② Acts / Statutes

= Acts pass by the CB and SB for the maintenance of Peace and order, tax collection, economic and social growth.

empower the administrative organs to carry on various tasks necessary for it

3) Ordinances, Administrative directions, Notification, Circulars
= Ordinances are issued where there are unforeseen developments and the legislature is not in session and therefore cannot make laws.

4) Judicial Decisions

= Article 141 Provides that the law declared by the SC shall be binding on all courts within the territory of India

Rule of Law

- Rule of Law was developed by British jurist A.V. Dicey.

- He derived this term from French principle "La Principe de legalite"

- which means the principle of legality.

- It state that the govt. should be governed by Rule of Law

- Instead of Rule of "Order" or "Despotism"

- Any Dictator, monarch or one particular Person should not govern the functioning of any nation

- Each country should follow the legality of laws

- Three major Principles given by Dicey in his book "Rule of Law"
- 1) Supremacy of Law
 - 2) Equality before the Law
 - 3) The predominance of a legal spirit.

Case Law: State of Madhya Pradesh vs. Trajendra Prasad Singh
= constitutional validity of sec 3 of MP Public Security Act was challenged which gave the District Magistrate arbitrary power.

= the court declared it unconstitutional due to lack of sovereignty
= And it was emphasized that word "act" must be supported by legislative authority.

Case Law: Kesavananda Bharati vs. State of Kerala

= the most bitter case in Indian judicial history with respect to the evolution of Rule of Law in India

Kesavananda Bharati case

The Article 31C sustains several essential features of constitution and declares the fundamental rights, which are vital for the survival of democracy, the rule of law and integrity and unity of the republic.

Principles of Natural Justice.

Exam Total

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(1) Rule against bias (nemo iudex in causa sua)

= According to this rule no person should be made a judge in his own cause. The judge must not have any direct personal stake in the matter at hand and too, there must not be any real likelihood of bias.

Bias can be of the following 3 types:-

(i) Partiality = authority in the matter, however small, would vitiate the adjudication. Thus a person's interest, however insignificant, will disqualify a person from acting as a judge.

(ii) Personal bias = eg. bias on the basis of religion, caste, race, etc.

(iii) Subject matter Bias = eg. bias on the basis of the subject matter.

Case law: J. Mohanbhai and Co. vs. State of Orissa.

= In this case Orissa government formed an advertisement committee to recommend books of certain authors to be sent to govt. schools.

Committee consisted of authors whose books were recommended. The SC struck down the recommendation stating that one cannot be both a witness and part of recommending committee.

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Case law: Minister Development vs. State of Bihar.

= Revenue Ministry (revenue commission) mica mining license. The company owned had previously applied the ministry for extension and ministry alleged a defecting case against it. SC ruled that minister's action was quasi-judicial and biased due to personal rivalry.

= As a result, cancelling was invalid.

Case law: Manek Lal vs. Prem Chand.

= There was a case of professional misconduct against Mahabir Lal who was an advocate of Rajasthan HC. Bar Council tribunal was appointed to inquire alleged misconduct. Tribunal consisted of Chairman, who earlier represented the respondent and a lawyer. SC held even though chairman did not represent respondent yet he is disqualified on ground of possibility of bias.

(2) Rule of fair hearing (audi alteram partem)

= The second principle of natural justice is, a person cannot be condemned unheard.

If a person is to be heard before passing the order.

Case law: - Amaravati Cotton Mills vs. Tamil Nadu Electricity Board

= the court found that the show cause notice for electricity theft was too vague, lacking details like meter reading, time period, and the authority conducting the investigation.

- The court voided the notice and order issued as they violated the principle of natural justice by failing to provide adequate details.

Case Law: S.C. Grieva vs. United Commercial Bank (UCB)

= The petitioner (S.C. Grieva) was dismissed by the bank based on a committee report prepared by an enquiry officer.

He claimed that he was not allowed to cross examine the officer who prepared the report or witness or who provide evidence.

SC held that denial of opportunity to cross examine witness violated the principle of natural justice.

Case Law: Mangini Satpathy vs. P. L. Dani

= SC held that an accused person must be allowed access to legal representation during custodial interrogations.

- The police must wait for reasonable arrival of lawyer, and deny this right violates Article 22(1) of constitution of India and the principle of natural justice.

Case Law: Caroma Bank vs. Perera DBS

= Court being natural justice as minor protection for individual against arbitrary action by judiciary.

- This principle extends to administrative bodies, except for natural justice.

1) Statutory Exclusion

=) The principle of natural justice may be excluded by the statutory provision. Where the statute expressly provides for the observance of the principle of natural justice, the provision is treated as mandatory and also authority is bound by it.

2) Emergency

=) In exceptional cases of urgency or emergency where prompt and preventive action is required the principle of natural justice need not be observed.

- Thus the pre decisional hearing may be excluded where the prompt action is required to be taken in the interest of public interest and public safety.

Case law: Maneka Gandhi vs. Union of India

So held that Right to travel is a part of Personal Freedom. Govt. can take away someone's passport for public interest without violating by the person must be given a chance to explain adequately. The writ made it clear that writ courts as a power can be checked by the courts.

(3) Interim disciplinary action

The rule of natural justice are not attracted in the case of interim disciplinary action. Ex: the order of suspension of an employee pending an inquiry against him is not final but interim order and the applicability of the rules of natural justice is not attracted in the case of interim order.

Case law: On this case an order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pending of a criminal case against him for 'stabbing & shooting'.

The writ held that the order was interim and not final, it was preventable in nature. It was passed with the object to maintain peace in the campus. The rule of natural justice were not applicable in such case.

(4) Academic evaluation

Where a student is removed from an educational institution on the ground of unsatisfactory academic performance, the requirement of pre-decisional hearing is not required.

(5) Impracticability

Where the authority deals with a large no. of persons it is not practicable to give all of them opportunity of being heard (order) and therefore in such condition the writ does not issue on the substance or to rule of natural justice.

Case law: P. Radhakrishnan vs. Osmania University

In this case the entire M-1s A Entrance examination cancelled on the ground of mass copying. The court held that it was not possible to give all the examinees the opportunity of the examination.

Effect of failure of natural justice

A voidable order means that the order was legally valid at its inception, and it remains valid until it is set aside or quashed by the court, that is, it has legal effect up to the time it is quashed.

On the other hand, a void order is no order at all from the inception it is a nullity and void ab initio.

Case law - Marchbank vs. United.

SC held that an order to remove a policeman from the city was invalid because it didn't follow proper legal process.

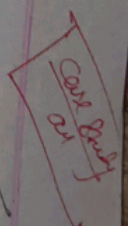
The order accepted his basic right to freedom and since he was not given a chance to be heard before the order was made, even ruled that order was valid - ab-initio.

Administrative Discretion

It is nearly impossible for govt. to function without giving some discretion. If officials considering the different situations and circumstances. But since by discretion is prone to be abused therefore it is necessary to have a system in place to ensure fair exercise of such discretion.

Administrative Discretion means the freedom of an administrative authority to choose from amongst various alternative but with regard to rules of reason and justice and not just according to personal whims.

The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.



Judicial Review

The biggest check over administrative action is the power of judicial review. Judicial review is the authority of court to declare void the acts of legislature and executive, if they are found in violation of provisions of the constitution.

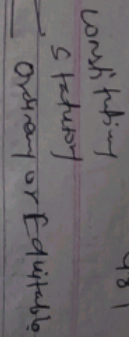
Judicial review is the power of the highest court of jurisdiction to invalidate on constitutional grounds, the acts of other govt. agency within that jurisdiction.

The judicial review is not an appeal from a decision but a review of the manner in which the decision has been made.

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Concerns about Judicial Review

- Whether a decision making authority exceeds its power.
- Whether an error of law is committed.
- Whether a breach of rules of natural justice has been committed.



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Continued

Stages of Judicial Review

Judicial Review is exercised at two stages.

- 1) At the stage of delegation of discretion
- 2) At the stage of exercise of administrative discretion

1) Judicial review at the stage of delegation of discretion

It refers to the law powers to scrutinize given (delegated) by the legislature to the executive or administrative bodies before that discretion is given exercised

Legislators often pass broad laws and delegate the authority to interpret or implement through administrative bodies or officials

Administrative discretion and Article 14

Administrative discretion and Article 14 interrelate at the crucial balance between executive flexibility and constitutional equality

Administrative Discretion and Article 14

Administrative Discretion and Article 14 are the twin pillars of the state. Discretion at the point where the executive's discretionary powers may affect an individual's freedom

Case law

State of West Bengal vs. Anwar Ali - In this case, it was held that in so far as the Act empowers the Govt. to make laws or class of officers, they by special context it violated Article 14 or the constitution.

The court further held the Act invalid as it laid down "no franchise or measure for the grouping either of persons or the cases or of offences" goes to distinguish them from other outside the purview of the Act. **jud with explanation exam**

2) Judicial review at the stage of exercise of discretion

- i) materiality
- ii) relevant consideration
- iii) arbitrary order
- iv) Thrippa case
- v) colorable exercise of powers
- vi) compliance with procedural requirements and fulfillment of natural justice
- vii) Exercising discretion

Non application of mind.

- (i) Acting under dictation.
- (ii) Self-satisfaction
- (iii) Acting mechanically w/out without due care.

Statutory

Statutory Appeals: there are some acts which provide for an appeal from Statutory tribunal to the HC or SC on point of law.

Under Competition Act 2002 a party can appeal to SC upon NCLAT orders within 60 days or receiving the order.

Refer to HC or Tribunal if there are several Statutes, which provide for a reference or statement of law by an administrative tribunal to HC.

Under Sec 252 of Income tax Act 1962 appeals to Supreme Court or Tribunal & appeals to those then appeal can be made to HC and HC can refer Tribunal to refer case to Tribunal.

Code law

SN Ram monar vs State of Delhi SC upheld validity of East Punjab Safety Act which imposed strict magistrates to extend a few hours more 1/2 hr extra time were provided to public order.

Goods in transit found: also constitutional on search. Law was temporary and designed to maintain public order.

(i) The person being exempted had right to be informed in the season for extension.

(ii) Excluded authority can use fire for preventive measures.

(iii) Arbitral Authority of India vs. Centre for Marking Police Safety and Research involving tender decision by administrative authorities.

The court clarified that setting terms and conditions for tender fall under the policy domain of tendering authority and cannot be reviewed by court when the award is arbitrary, discriminatory or in bad faith.

In short, court should avoid interfering with the

(This chapter major expansion from module)

Decision taken there is misuse of power or managerial intervention.

3) S. Pratap Singh vs. The State of Punjab

On this case SC stated that Judiciary should not substitute its judgment for Govt. Decision, especially regarding disciplinary action if authority has beyond its power or with improper motive, judicial intervention is required.

4) Find construction and Engineering Co. Ltd vs. The workmen

The SC ruled that Termination should a question of equity or security of employment. If punishment is harsh that is reasonable employees would propose it could be considered unfair labor practice and judicial review is justified.

Ordinary or Equitable

These remedies are also called equitable remedies and include:

1) Injunction

(a) Prohibitory injunction

(b) Mandatory injunction

(i) Temporary injunction
(ii) Perpetual injunction

(ii) Damages

(iii) Award of damages

Sri Hari vs. Deputy Commissioner of Police SC supported a law that allowed police to remove someone from an area if they thought person might committed a criminal crime, court said it justified because person had right to be heard and appeal.

Do you consider that there is no antithesis b/w effective govt and controlling the exercise of administrative power - it is task of administrative law to ensure the govt. functions are exercised according to law and legal principles and rules of reason and justice. The goal of administrative law is to redress to individual against the action by administrative body. There is no antithesis b/w effective govt. and controlling the exercise of administrative power.

Administrative law is by product of ever increasing functions of the Govt. Now states have no longer policies limited to maintaining internal order and external threats. Examine = Administrative law developed as govt. to com more responsibilities beyond traditional roles like maintaining order and security. As state became a welfare state, it began handling issues like healthcare, education, population and inequality. These tasks required large administrative structures. which lead to creation of Administrative law.

These areas of law govern how govt. and its agencies make decisions and exercise powers. It ensures that govt. actions are fair, transparent, and legal, protecting citizens from arbitrary decisions.

Administrative law also provide basis for people to challenge govt. actions in court if they are unfair and unlawful. Administrative law also provide basis for people to challenge govt. actions in court if they are unfair and unlawful.