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COMPARATIVE STUDY: PRINCIPLES OF ADMINISTRATIVE LAW WITH ANCIENT INDIAN PHILOSOPHY[1]

ABSTRACT

It is a known fact that Administrative law forms an integral part of Constitutional law. All the principles of administrative law found base in the constitutional law. Administrative law and Constitutional law are complementary to each other. Administrative law provides an equitable mechanism for the proper functioning of government bodies. Further on, administration forms an integral part of good governance and it is said that for proper development of country, proper functioning of administration is very important and administrative law ensures that proper functioning of administration. Here in this paper, I am focusing specifically upon what were the traditional administrative principles followed during monarchial era and what different modern principles emerged for governing the present administration and had done comparative study of the same supported by judicial precedents. At the end, I have concluded my paper by adding my thoughts regarding the title.

INTRODUCTION

"Administrative Law is the study of pathology of power, especially in a developing society."[2]

-Prof. Upendra Baxi

It is a well known and accepted fact that administration or executive had been one of the important segments in governance of the country. Out of the 3 pillars, executive holds the execution of laws made of Parliament (Law making body) all over the country or any part of country. But, since, we know that absolute power corrupts absolutely, hence to prevent the executive authority from misusing their powers, a regulation had been framed known as 'Administrative Law'. Principles of administrative law are followed by all the three organs of govt., namely, Legislature (in law making process), Executive (in execution of laws) and Judiciary (in maintenance of law and order and providing justice to aggrieved person). Administrative law is an important part of constitutional law. In other words, constitutional law

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[2] https://blog.ipleaders.in/

is the genesis and administrative law is its species. Administrative law regulates the complex relationships between administrative authorities and citizens. Principles of administrative law provide transparency in the functioning mechanism of executive.

The main objective of introduction of administrative law is to keep a check on administrative actions and providing with adequate remedies in case of any injury faced by individuals out of the arbitrary action of state. Administrative law does not take away the powers of executive authority but to escort them in concord with the Rule of Law'. With the advancement of society, its complexity enlarged thereupon, bringing new ultimatum to the administration, we could evaluate the same only by making a comparative study of the functioning and obligations of the administrative authorities existing in the primitive societies with that of contemporary era. A well strengthened administrative system could be traced back to Mauryans and Guptas period, followed by Mughals and East India Company (progenitor of contemporary administrative system).

Administrative law is the offshoot (branch) of public law (law dealing up with the relationship between public and state). It operates from the functioning of different govt. organs to their decision making process. Administrative Law is basically a judge made law. New principles have been introduced by courts seeking the welfare of society and accountability of executive authorities towards public. There have been certain finest examples of principles of administrative law, like Principles of Natural Justice, Rule of Law, Judicial Review, etc. for making administrative authority responsible for fulfilling the needs of people. Administrative law also concerns with delegated legislation. Meaning, thereby, that it even regulates the subordinate authority which has been delegated powers either by legislature or executive organ itself. Hence, we could say that administrative law gradually deals with good governance.

Administrative law has been featured as the magnificent legal development of 20th century. It had played an important role in changing the society from Laissez Faire (Police state) to the social welfare state. Thus, its growth could be ascribed to change of ideology as to roles and functions of state. The best example we can give here is of India. Before 1947, India used to be a laissez faire state where the dominating party used to do activities strengthening themselves and not much interested in the welfare of state. But if we see post- independence era, the main objective of constituent assembly (especially of Pandit Nehru) was to strive the welfare state which has been even enshrined in objectives of our constitution's Preamble.

MEANING OF ADMINISTRATIVE LAW

We have seen the general meaning of administrative law that it is a body of principles which regulates the administration of country. There is no universally accepted definition of administrative law as it has dynamic nature and enormously increasing administrative process, but different experts have defined it according to their ideologies and understanding.

[3]Ivor Jennings in his famous book 'Law and the Constitution (1959)' defined Administrative law as law relating to administrative authorities. This had been broadly accepted definition, but this definition has two strains:

1. It had been categorized as very comprehensive definition as the law that regulates power and functions of executive authorities could also dispense with real facet of such powers. The best instance to explain this could be law related to health services, houses, town and country planning etc. But these aspects are not covered by Administrative law.
2. There is no distinguishing aspect between the administrative law and constitutional law.

K.C. Davis had provided us with the American approach towards administrative law. According to him, 'Law dealing with powers and procedures of administrative bodies and its agencies counting specially law dealing with judicial review of administrative measures.'[4]

According to F.J. Port- 'Administrative law comprises of such legal rules which have either been expressly mentioned (in statutes) or impliedly (in prerogatives), having their paramount objective to fulfill the requirement of public law.'[5]

Bernard Schawartz says- Administrative law is applicable on those administrative bodies which possess both delegated legislation and ad-judicatory powers.[6]

Professor Wade in his book 'Administrative Law (1967) says- 'Any effort to define administrative law will put on a no. of hurdles, but, if the state's authorities are categorized into 3 branches i.e. Legislative, Executive and Judiciary, then definitely the administrative law could be defined as law concerning with administrative agencies as opposed to others.'[7]

However, like Jennings, this definition also had certain shortfalls like it does not distinguish administrative law from constitutional law. This definition excludes legislature and judiciary as it is not possible to completely separate the functions of all the 3 organs of government. There is no demarcation that where the legislation ends and from where the administrative body starts.

[3] http://www.fimt-ggsipu.org/
[4] https://blog.ipleaders.in/
[5] https://www.legalserviceindia.com/
[6] Supra, Footnote no. 2
[7] Supra, Footnote no. 2

EVOLUTION OF ADMINISTRATIVE LAW-

IN USA AND UK

The concept of administrative law in England and USA was at primarily rejected. There was no acceptance of administrative law as a separate branch of law in both countries until 20th century. In England, Lord Donoughmore Committee (1929) recommended for subordinate legislation. Thus, with introduction of Crown Proceedings Act, 1947, scope of administrative law broadened, which abolished the principle that King can do no wrong and allowed proceedings against king like that of as against private person. In case of USA, a special committee (1933) was appointed to decide that how judiciary could exercise their control over administrative authorities. Later on, Administrative Procedure Act, 1946 was passed to determine judicial command over administrative activities.

IN INDIA

We all know that administrative law is not codified, but is basically an unwritten and judge made laws. In ancient Indian history, we could find traces of administrative law especially in the Mauryans and Gupta eras. Kings have 3 major functions to do, i.e., Maintenace of law and order, Protection from external aggression and levying taxes and duties. During these eras, we could find a well established administration. Kings and administrators rule the whole country based on the concept of DHARMA. They had the universal principle that none is above the Dharma and everybody has to follow the rules of Dharma. Emperors also rely on the basic Principle of Natural Justice and fair play. The concept of Dharma has wider perspectives than Rule of Law.

Mauryan and Gupta empires have well established centralized system and this system continues until the arrival of Britishers. With the establishment of East India Company, govt. powers were increased. Britishers passed many legislations dealing with public health, safety, morality, labours etc. Govt. started process of providing an administrative permit (license) with the Stage Carriage Act, 1861. Bombay Port Trust Act, 1879 established first public corporation. Further on, new Acts (Opium Act (1878) and Northern Indian Canal and Drainage Act (1873)) passed which granted for delegated legislation. Many statutes provides for settlement of disputes should be done by administrative tribunals. During 2nd World War, main powers were astronomically strengthened under Defence of India Act, 1939, having absolute powers over private property without any judicial control over them. Government's social and economic policies have immensely affected the private rights of an individual, which could not be solved

by already existing legislations. For this, there was a need to increase delegated legislation and tribunalization, thus, making administrative law a living subject and a separate branch of public law.

DEVELOPMENT POST- INDEPENDENCE

Administrative law has been expanded from the laissez faire state to a welfare state. There has been increase in government functions since India got independence. The objective of our leaders was to convert nation into a welfare state. For this, govt. introduced Industrial Disputes Act, 1947 and Minimum Wages Act, 1948, which deals with social security measures which every employer (of industries, factories, etc.) have to follow. Even Indian constitution expressly provides for welfare state. For greater administration and better execution of laws at ground level, delegated legislation were taken from modern regimes and modified it according to the Indian needs.

Later on with changing times, several legislations were introduced like Essential Commodities Act (1955), Companies Act (1956), Maternity Benefits Act (1961), Equal Remuneration Act (1976), Factories Act (1948), Workmen Compensation Act (2010), etc. for securing objectives of welfare of state. In fact, judiciary had also focused on principles of welfare state. For example, in case of Joseph K. Vellukunnel vs. RBI[8], SC held that RBI is the sole body under Banking Companies Act, 1949 to determine the affairs of banking company were being conducted in a manner detrimental to depositor's interest or not. Court can only pass a winding up order on being prayed by RBI.

In another case of State of Gujarat vs. M. I. Haider Bux[9], SC held that under Land Acquisition Act, 1994, only govt. has the power to whether the land acquired for the purpose is public or not.

Thus, administrative law have developed since the independence and proven to be a crucial within developing country like India to maintain a relation between public and govt. This governs the power and conduct of administrative bodies so that the authority could not misuse their power. Administrative law have even applied judicial control over arbitrary administrative actions and given them the power to declare any Acts, statutes, ordinances or regulations as void or unconstitutional if it is exceeding the power of authorities itself.

NATURE AND SCOPE OF ADMINISTRATIVE LAW

[8] AIR 1962 SC 1371
[9] 1976 SCR 28

Administrative law has been made a separate branch of public law which deals initially with administrative authorities, prescribes its composition, function, duties and powers. The margins of administrative law spread only when administrative bodies exercise their powers or performing public duties. It is not a part of private law which deals with the relationship between individual citizens. But general rules and principles of administrative law deal with the bonding between citizen and state. Further on, it is one of the guiding principles in achieving welfare state and because India had adopted welfare state policy, there have been an increase in the state's functions. Administrative powers have been enlarged with an introduction of delegated legislation. Even administrative tribunals have been set up for resolving administrative disputes.

Administrative authorities have been given with discretionary powers but this does not mean they have absolute powers. The administrative authorities should exercise their powers within their respective limits otherwise arbitrary actions would be subject to judicial review. I could say that the exercise of substantial powers have been one of the good reasons for development of administrative law. There is need to respect the individual's liberty and provide proper space to state's action for social and economic growth of the country. Hence, basic principles of administrative law like Judicial Review, Separation of Powers, Check and Balance, etc. have been developed.

Most of the definitions and perspectives of administrative law have been confined to procedural aspect. The administrative law mainly based its scope to the procedure of granting powers to administrative bodies by legislature. Even in judicial aspects, it had been limited to decision making process and not merits of verdict given. Now the state had undertaken many of the tasks which were earlier confined to private bodies. Today administration had covered every province of legal system, like, it makes policies, provides guidance to legislature, executes law and make multifarious decisions.

Moreover, administrative law changes its approach according to the existing situations. Now the administrative bodies are not restricted to executing of law but had also able to legislate the law. It had now become the necessity to control the administration and make it a consistent body with sufficient capacity to adjudicate the administrative functions. It is the duty of administrative law to ensure that govt. performs its duty in accordance with law and their actions must comply with proper legal principles and should be fair to individual. Scope of administrative law is very important in the democratic governance whose objective is again socialistic pattern of society.

GENERAL PRINCIPLES OF ADMINISTRATIVE LAW: COMPARISON WITH INDIAN PHILOSOPHY

Administrative authorities are employed by the executive in either of two ways, i.e., it may act in exercise power of Central or state or may act under the subordinate legislation. Administrative bodies are governed with various principles as enshrined under administrative law. Generally, if we see, constitutional law focuses on authority capable of making laws and administrative law provides the agencies of govt. that have been authorized to act under these laws. The constitutional and administrative laws have a close relationship as they share common principles to govern the administration of the country. Infact, we could say that Constitution of India is one of the sources of administrative law.

TRADITIONAL INDIAN PHILOSOPHY OF ADMINISTRATIVE LAW-

Since our title is confined to Indian philosophy, we will stick to it. If we compare traditional and modern concept of administrative system, traditional was said to be more peculiar one. In Indian history, there is no expressed provision of administrative law as it exists in today's world. Earlier the only governing principle was concept of DHARMA which is broader than Rule of law of today's administrative law. The whole legal system is based on righteousness and duty. In earlier era, it was very important to follow the Dharma to lead one's life. Earlier, there was a fully established centralized administrative system which begun from the Mauryan and Gupta empire. The king was the leader of state and had appointed various officers for different departments who were accountable to king like prime minister, finance and account officer, judicial officer, religious experts, tax revenue officer etc.

The source of legal system was Shrutis,Smritis (Manusmriti- Code of conduct) and customs. During Vedic period, king's court was considered to be the highest of appeal in the state. It could even have original jurisdiction to hear the case if it is of great importance. The advisors of king were learned Brahmins, Ministers, Chief Justices, etc. One of the prescribed feature of earlier system was that justice (by court) was delivered by two or more judges rather than single judge.

Mauryan administration was divided into 3 categories- Central Administration (king governing at centre), Provincial Administration and Municipal Administration (city superintendent). Infact, the Gupta period was known as the golden age of administration as the system was not fully centralized as that in Mauryan period. It follows the de-centralization pattern. Here, village

headmen were given more importance. Further, Mughals also continued to follow this pattern of administration. Earlier, the duty of king was just to maintain law and order, protecting the state from external antagonism and collection of revenues in form of taxes, duties, etc. Later on, the advent of modern period with the establishment of Britishers, they enacted several legislations for regulating the whole administration.

GENERAL PRINCIPLES IN MODERN ADMINISTRATIVE LAW -

After independence, the activities of state were increased to convert the society into welfare state. To govern the activities of state and to keep a check over powers of government, administrative law was developed. General principles were developed through judicial precedents which are helpful in good governance. It builds a balance between person's liberties and state's actions. These principles also provide citizens with the remedial measures to sue the state's arbitrary action if it violates the rights of citizens.

RULE OF LAW

Rule of law has been introduced as one of the major component of administrative law principle (i.e Principle of Natural Justice). It describes the supremacy of law. Rule of Law in western world could be traced primarily at the time of Aristotle who said that king who governs by law is superior than king who governs using his discretionary power. The concept of Rule of Law is very old. It was first coined by Edward Coke (i.e. King comes under the law). The term has been coined from the French phrase- 'Le principe de Legality' which means government govern by principles of law. But officially the term was developed by famous English Jurist A.V. Dicey.

Mainly all human actions are governed by Rule of Law. It is dynamic in nature and is not expressly mentioned anywhere in Constitution. But we can see that Rule of law is implied under Preamble (justice and equality to all) and Art. 14 of COI, which provides that every person disregarding of his post is subject to the control of law. The govt. has discretion to carryout actions in the welfare of state but it should not contravene the supreme law of country i.e. Constitution. Rule of Law plays an efficacious role by stressing upon fair play and transparency of administration.

BASIC PRINCIPLES LAID DOWN BY RULE OF LAW

1. Law is the supreme authority and nobody is above the law.

2. Every actions of government should be in accordance to law.
3. Absence of arbitrary action of state.
4. Equality before law and equal protection of law to all.
5. Remedial measures against abuse of power by executive.
6. Fair-play and speedy justice.

In case of S. Jaisinghani vs. UOI & ors.[10], SC laid down essential components of ROL. The most important being the absence of tyranny rule. Every organ must act within their defined approaches. Administrative actions must justify and be in accordance to the existing principles of ROL.

In another case of SC Advocates on Record Association vs. UOI[11], SC restated that for practical application of ROL, it is necessary that authorities should be provided with discretionary powers with reasonable restrictions.

SEPARATION OF POWERS/ CHECK AND BALANCE

SOP is one of the essential features of decentralized government. In practice, we could trace this principle in ancient world in the era of Aristotle but term was first officially coined by Montesquieu, who was of view that Legislature and executive powers could not be vested in the same body. Hence, according to the SOP, powers are divided between all the three organs i.e. Legislature, Executive and Judiciary. Indian constitution framers had adopted the concept of SOP from American Constitution. SOP is followed by another important principle of Doctrine of Check and Balance. It is often said that absolute power corrupts absolutely. Hence, it is necessary to keep a check and balance on action of every organ of govt.COI enshrines under Art. 50 that executive is separated from judiciary. Every organ of govt. is interdependent on each other and keeps an eye on each other's work so that no organ could exceed its power.

There is no rigid separation of power rather it establishes a relationship between these administrative organs. For eg. Judiciary had the power to declare any law made by Parliament or executive action as invalid if it violates the basic structure of COI, President is impeached by Parliament, President or Governor can make ordinances when both house of Parliament/ legislature is not in power etc. If we compare it with ancient Indian legal system, we can say that starting from Mauryan rulers and continued in Mughal and British era till today, SOP had been in existence and the administration was divided at two levels- Central and Provincial and

[10] AIR 1967 SC 1427
[11] AIR 1994 SC 268

thus powers were accordingly attributed but a centralized control was in the hands of centre which could be seen even in today's practical society.

In case of State of Bihar vs. Bihar Distillery Ltd.[12], SC held that COI had recognized equal powers and duties among its three organs, thus judiciary had the obligation to look at the fundamental nature of legislative and executive action and latter two are also required to keep a positive check on former's decision, thus inheriting the scheme of check and balance.

PRINCIPLE OF NATURAL JUSTICE-

It is one of the foremost and grounded features of Criminal Justice System and administrative law on which it is based. In this theory, the adjudicatory bodies have to follow the natural law of justice which is a universal concept. PNJ had to be followed even if not mentioned under any procedural laws. The basic objective of this theory is that 'thousands of offenders should be freed but not even a single innocent should be punished'. It provides protection to both victims and offenders from arbitrary action. It is necessary to follow the PNJ to respect and maintain faith of people in Indian Judiciary. PNJ has 3 major components-

1. Rule against Biasedness- No one can be judge in his own cause. It prescribes that justice should not be pre- decided without knowing proper facts, evidences and complete trial. Judges (who is deciding the case) should not have any personal or pecuniary interest in the case and if he has so, he is restricted to hear the case.
2. Reasonable Decisions- Adjudicatory bodies should give proper and rational grounds behind their decisions so that no party should receive from any kind of injustice from the courts.
3. Audi Alterum Partem- Right to fair hearing should be given to both the parties before passing the judgment.

These three components lays down the purpose that justice should not be done it should deemed to have done. This principle had been continued for centuries and had been part of every legal system whether administered by an emperor or by a democratic govt. In Maneka Gandhi vs. UOI[13], SC held that legislation made or any action done should not impair the concept of fairness/ justness. PNJ are not codified but is merely a substantive justice and a universally accepted concept which is the divine justice and right of every litigant.

[12] AIR 1997 SC 1511
[13] 1978 AIR 597

In case of A.K. Kraipak vs. UOI[14], SC held that the motive of PNJ is to prevent the collapse of justice. This is not a codified procedure but implied mechanism to be followed. This is not replacing any law of land but just acting as a supplement to it.

JUDICIAL REVIEW

It is the part of basic structure of our COI. It is the power in the hands of judiciary to check that every action of legislature and executive is in accordance with COI or not. If the actions does not follow the norms prescribed by constitution or violating any provision of Fundamental Rights, it would be declared as unconstitutional and void. It sets limits on the tyrannical power of other two organs. Judicial review deals with the legality of action done and not the merits of particular action.

The concept had been borrowed from US constitution. It embarks the independence of Judiciary. COI impliedly provides the authority of judicial review to courts under Art. 13 of COI. It even provides power to separate the invalid part from the valid legislation if it can be done so (Doctrine of Severability) or even the SC can declare any part invalid and non active without repealing the whole legislation (Doctrine of Eclipse). Judiciary can even review judicial actions along with legislative and executive actions. Thus Judicial Review could be said as the curator of Rule of Law.

In Keshavananda Bharati vs. State of Kerala[15], SC held that Parliament could amend Constitution but subject to its basic structure which cannot be amended at all. Basic structure would be decided by SC time to time.

In case of Indira Nehru Gandhi vs. Raj Narain[16], SC declared 39th Amendment Act as unconstitutional and thus struck down as it restricts to challenge the election of Prime Minister in any court of law.

NEWLY DEVELOPED CONCEPT IN MODERN ADMINISTRATIVE LAW

DELEGATED LEGISLATION

This is also a new concept evolved to remove the over-burden from the legislative bodies. It is made under the expertise which could suit the local needs and it could cover up the gap which had not been created due to ignorance by Parliament while enacting the law. When the legislature transfers its power of formulating laws to other organs of government, it is said to

[14] (1969) 2 SCC 262
[15] (1973) 4 SCC 225
[16] AIR 1975 SC 865

delegate its authority and thus the laws formulated would be known as delegated legislation. Further on, when the organ to whom the authority is delegated if it further entrusts such authority to its agency, it is known as sub- delegation. The control of delegated legislation could be Procedural, Parliamentary or Judicial. The delegated authority should make laws in accordance to the principles laid down in parent Act and can even amended or annulled by Parliament if found inconsistent with the parent statute or any law to which it is subordinate.

CONCEPT OF OMBUDSMAN

This is a new concept evolved to keep a check on administrative actions of government. An ombudsman (an independent officer of Legislature) is appointed who oversees the administrative authorities and adjudicates any grievances against their mala fide actions. Here legislative have a control over administrative agencies. It has been constituted with the view to protect the citizens' interest. The officer appointed as ombudsman has powers to deal in civil affairs, judicial and executive fields and can instruct govt. to pay the compensation for the loss caused due to their action. In fact, in India Lokayuktas have been introduced under which Central Vigilance Commission is setup to enquire into corruption cases against administrative bodies. Further on, Administrative Reform Commission (1966) had recommended for the set up of an adjudicatory body (i.e. Lokpal at centre and Lokayuktas at state level) which specially deals with corruption and mal-administration of administrative agencies and so that people could achieve speedy justice at affordable rates.

CONCLUDING REMARKS

Administrative law had been evolved and developed over time to time. The citizens and administrative authorities share a unique relationship and to govern this relationship, administrative law had come into application. General principles of Administrative law has not been codified anywhere but have evolved through judicial precedents thus, known as judge-made principles. Although, we could find traces of well-established administrative system in ancient Indian philosophy but the new concepts were involved in the modern administrative law so as to match the present and changing needs and relations between the authorities and public. Infact, viewing the changing needs of society, new things were included in the administrative law like establishment of Ombudsman, introduction of delegated legislation, administrative courts and given it the constitutional validity so as to maintain the purpose of administrative law. The prime objective of administrative law was to exercise the administrative actions. Later

on, it developed and covers vast area of administration which includes multifarious activities of state organs. Earlier, we were under Monarchial system (where the all the administration was in hands of king) but today, we are working as a welfare state having largest democracy (where administration is in hands of government elected by people). Now the administrative authorities can perform legislative and judicial functions along with administration and administrative law is the regulating authority which is not seen in ancient Indian concept of administration. This admonishes new role for administration and also for expansion of administrative law.

Thus, I conclude by saying that administrative law have been emerged and given immense contribution in the proper working of administrative bodies and development of administration in whole. Administrative law shares a supplementary relation with Constitutional law as the principles of administrative law have been recognized by Constitutional law. The principles of administrative law have maintained the balance between individual liberty and development of state, thus, governing by ROL.

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