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Administrative Law and Its Reforms

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Abstract:
Administrative law provides the organization, powers and procedures for the administration when it is performing its duties with respect to citizens. Administrative law is meant for the protection of the rights of the citizens against mighty administration.
This study is made to see that how administration is working with citizens in the state and how it is ensured that the administration is working fairly, reasonably, justly and effectively. In U.K, U.S.A and in Pakistan laws relating to the administrative work are brought forth with their objectivity to protect citizens from the unfair, unjust and unreasonable practices of the administrative bodies.
The focus of this study is that whether the administrative laws of U.K, U.S.A and Pakistan are meant to protect the rights of the citizens. Whether the administrative principles envisaged through enactments in these countries are providing sound foundation for the effective working of executive-cum-administration.
To analyze the above questions the research method, adopted is qualitative. The description of Administrative laws is made which are curing administrative problems which arose with the passage of time. Various statute books on the subject and case laws are studied and extraction is made for the curing of administrative problems.
The rule of law theory by A.V. Dicey explained in "The Law of The Constitution." provided the core footing for the working of administrative law. The Statutory Instruments Act 1946 provided procedure for delegated legislation. The Tribunals and Enquiries Act lays down that tribunal must act like normal adjudicatory courts. The U.S.A administrative conference is eagerly researching on this law and is suggesting reforms in the administrative law.
Today the functions of the administration must be open. There are also research councils for the improvement of the administrative law. The law of administration in Pakistan is evolving. The Local Government institutions are evolving in this country. Administrative law in any country must be participatory, rights based and accountable to the state.

1. Introduction

Administrative law is a complex law. It is hardly intelligible and difficult to define. The nature and scope of this law is very important in this modern age. To study any branch of law, it is necessary to delimitize its scope. Administrative law is complicated to define, however different writers have attempted to define it.

1.1. A.V. Dicey

The British jurist has said that there is no administrative law in England, in the sense that there does not exist a separate system of administrative law.

1.2. Lord Reid

Lord Reid also supported the Dicey's view about the non existence of administrative law in England. He said that we had no administrative law as until recently we did not need it. The above jurists did not recognize administrative law in England. But if administrative law is a law relating to administration then there is vast corpus of rules relating to administration in Britain.

1.3. Herman Finner Defined Administration

He defined administration as the governmental machine by which policy of government is implemented. Policy is idea of leadership and administration implement the policy of government.

1.4. Administrative Law Defined

It is body of rules recognized by the courts of the country and relates to and regulate the administration of government.

1.5. Dr. F. J Port

He wrote in his book "Administrative Law", the first book on the subject in which he stated,

Firstly, administrative law is a law which is based upon some legal rules which are provided by the statutes. Secondly, it is based upon (a) the judicial norms by which judicial actions may be brought by or against the administrative persons (b) it is the rules relating to the administrative bodies which can exercise certain judicial powers. Thirdly, it is the application of the administrative action.

1.6. John Austin

According to him the constitutional law determine what sovereign powers a person or class of persons have, while administrative law determine the ends and modes to which these sovereign powers are exercised.

1.7. Holland

The constitutional law deals with structure while administrative law deals with functions of the government.

1.8. Sir Ivor Jennings

Administrative law is the law relating to administration, it focuses upon organization, powers and duties of the administrative authorities.

1.9. H.W.R Wade

It is law relating to the control of governmental powers and secondly it is general principles which govern the exercise of powers and duties by the public authorities.

1.10. K.C. Davis

It is law concerning the powers and procedures of administrative agencies, including judicial review of administrative action.

From above definitions we see diversity in the views of different writers.

For some it is the law relating to the control of governmental power through judicial review. Others place greater emphasis upon those rules which can ensure the effective performance of the administration. Yet others see the principle objective of administrative law as ensuring government's accountability.

None of these are right or wrongs in explaining the law which is incomplete. To my mind all these writers are providing the principles by which the rights of the citizens can be protected. The administrative law should probe further into the society in which it is to be implemented. It must see what is democratic society in which we live and what is political theory of that society. Nevertheless we explain administrative law in a democratic society. We discuss all the principles of administrative law in the context of democratic society.

It was due to Dicey that this subject was given bad name in the Britain. We can say that Diceyan Rule of Law theory did not flourish this law in the Britain. He was very much influenced by the principle of sovereignty of parliament and hence he asserted that executive should be controlled by the parliament. He was also conscious about the protection of people against the malpractices of the administration. He thought that Droit Administratif was meant to protect government officials.

2. Contours of Administrative Law

The following are the subjects which are studied under the administrative law.

- The structure of administration
- What are powers and procedures which administration adopt.
- Limits of their powers.
- Fair use of powers.
- How administration can be kept within its bounds.
- Judicial Review.
- What are the ways to check the administration.

2.1. The Nature and Scope of Administrative law

Administrative law is general in nature and discusses administration, its legality and policy making. There are questions of procedural fairness, abuse of discretion and interpretation of legislation which are discussed under it. We discuss courses on labour relation, planning of land use, securities and human rights.

In order to have nature and scope of administrative law, we should know what it deals with.

- The structure, powers and functions of the organs of the administration.
- The limits of their powers.
- The methods and procedures followed by the organs of administration.
- The methods by which their powers are controlled.

The first principle deals with composition of administration, second rule describe the limits of the powers of administration, third it is mentioned that what procedure the administration will follow and finally the control of administration through judicial review.

The individual is in weak position against the strong administration. It is to save him from the malpractices of the administration. The focus is upon very nature of those elements which preserve the efficiency of the administration.

2.2. Scope of Administrative Law

The traditional theory of judicial review is not sufficient for the protection of the rights of the citizens. In this modern age the scope of administrative law should be participatory, rights based and accountable.

It is the legislature and courts which are to define the scope of administrative law. It is no doubt the function of legislature to enact the policies regarding the subjects but these policies must be participatory, rights based and on the principles of accountability.

3. Administrative Law Reforms in Britain

The Dicey's theory of rule of law provided mix dimensions to the administrative law in England. His theory of rule of law focused the following principles,

- Rule of law means complete dominance of regular law and exclude the arbitrary or wide discretionary authority of the government. He pushed that the arbitrary power led to hamper the legal freedom of citizens.
- He regarded that rule of law is meant the equality before the law and equal subjection of all classes of people to the ordinary law which is exercised by the ordinary law courts.

He criticized the Droit Administratif system in France where separate administrative tribunals decide cases between government and citizens. The Dicey's assertion of rule of law damaged the progress of administrative law in England. He ignored the true nature of French system and believed that it was introduced for the protection of officials of the government. Dicey was wrong in his belief.

Even the system of Boards was in vogue during the time of Dicey. This system was under the control of a Minister. This was clear indication of actual working of administrative law in England.

It was due to the cases of Board of Education v. Rice and the famous case of Local Government Board v. Arlidge. Dicey became conscious about the existence of administrative law in England. But he denied the model of French administrative law in England and said that so for the ordinary courts in England are following the principle of rule of law, there is no such separate system of administrative law in England.

With the passage of time the powers of administration increased in legislation and in decision making. It was pointed out that the administration was getting out of its bounds.

To check this trend in the administration, a committee on Minister's powers (Donoughmore Committee) was appointed in 1929. According to the Carr the question before the committee was that weather the Britain had gone off the Dicey's standard and what was the quickest way back.

The report of this committee pointed out three lacunas in the administrative law of England.

- The inadequate provisions were there for publication and control of subordinate legislation.
- The lacuna in the law caused by the inability of the subject to sue the Crown in tort.
- The extent to which the control and supervision of administrative decisions were passing out of the courts and were being entrusted by the parliament to specialist tribunals and enquiries.

In response to above given problems a Committee on Statutory Instruments was formed in 1946. The Statutory Instruments Act 1946 was passed to control problems of subordinate legislation. It described comprehensive procedure for making subordinate legislation.

Similarly Crown Proceedings Act 1947 was passed to provide for the civil proceedings against the Crown. The Donoughmore Committee was the first attempt to systematize the administrative law in England.

In 1954 Crichel Down affairwas occurred. There was a dispute of piece of land which was acquired for bombing range during Second World War. The original owner wanted it back after the war was over. This piece of land was given to the Ministry of Agriculture by the Air Ministry. It led to the resignation of the Agriculture Minister and the constitution of Franck's Committee.

The issue before the committee was the system of adjudication by the administration. So, the Tribunals and Enquiries Act 1958 came into force.

This Act made improvements, especially procedural in the working of administrative tribunals and inquiries. There were valuable reforms under this act and one was that the tribunal must be seen as the part of normal adjudicatory machinery of courts.

It was thought that all administrative problems could be solved through these enactments but they proved insufficient. The supervision of administration was settled in 1961 through "Whyatt Report". This report suggested the appointment of ombudsman in England. In 1967 the ombudsman system was started in England.

For the purpose of legal remedies a law commission was formed in 1969. On the report of law commission a remedy to the aggrieved person to apply for the judicial review in the High Court was introduced. There were the remedies in the shape of mandamus, certiorari, prohibition, declaration and injunctions which can be issued in favor of aggrieved person against the malpractices of the administration.

In 1980 the Report on Non Developmental Public Bodies was issued. The privatization and deregulation have increased the no of institutions. The size of Central Civil Service was reduced and policy measures were being taken through variety of executive agencies.

Further the rights of the citizens were secured through the enactments of Freedom of Information Act 1982 and The Privacy Act 1988. By the introduction of these laws the people became aware of their rights.

The Justice –All Souls Report discussed some important topics, such as duty to give reasons by the administrative tribunals. The operation of tribunals should be defined. Earlier there was no such provision as to how the agencies should operate.

The Human Rights Act 1998 provided the European Convention on human rights by which it is unlawful for the public authorities to infringe the convention rights of the citizens; the damages may be awarded to the aggrieved person.

Still there is requirement of the participation of general public in administrative affairs. It would mean participatory administrative law in England.

4. Administrative Law Reforms in USA

The doctrine of separation of powers is implied in USA constitution. Like rule of law this doctrine also damaged the administrative law in USA.

According to separation of powers theory executive, legislature and judiciary acts separately from each other. Though we see that some powers explicit for the legislature are also used by the executive, for example president's vetoes power. Similarly Senate uses the executive powers like confirmation of high posts and ratification of international treaties. This is however justified under the principle of checks and balances.

The strict separation of powers theory is also denied by the courts which conceded that legislative powers could be conferred on the executive and so delegated legislation flourished in USA.

With the passage of time adjudicatory powers were also conferred on the administration, For example creating tax courts. Thereafter the independent statutory commissions were made which performed all the three functions of the state. The principle of checks and balances prevent any misuse of such powers given to administration.

The Administrative Procedure Act 1946 which provide some internal separation of the functions of investigation and prosecution of adjudication within same agency. Similarly this act provided minimum procedures to be followed by the administration. This act provided fairness to citizens and efficiency in the government. The Administrative Procedures Act 1946 was amended through the Freedom of Information Act 1967.This act provided that orders, opinions and statements of policy should be published. Yet another amendment in this law provided that the administrative tribunals will hold open meetings for the public.

For the sake of better administration in USA they created Administrative Conference in USA. This body do research in administrative problems and suggest reforms in the administrative law.

5. Administrative Law Reforms in Pakistan

During the twentieth century almost all the countries witnessed a change from laissez-fair to regulation, welfare and to service oriented state. Therefore the promotion of administrative process has become necessary element of modern political state. As Prof. Massey said "Any good system of administration in its analysis has to be responsible and responsive to the people. After independence the need of responsive administration was felt for better standards of living. The British administrative system was designed for the internal law and order and for the collection of revenue. The independence of Pakistan demanded better administration.

In 1947 a committee for re-organization of governmental functionaries was made under Sir Victor Turner. It was about the size and existing deficiencies in various ministries. In 1952, Mr. K. S. Jefferies prepare a report on the development of organization and methods of work in the government.

In 1972, Mr. Zulfiqar A. Bhutto constituted a high-powered Administrative Reforms Committee. It was termed as Civil Service Reforms rather than administrative reforms.

In 1956 The Enquiry Commission Act was passed to probe into issues of mass interest. The constitution of 1973 was a complete document providing guarantee of fundamental rights, equality before the law, cheap and speedy justice, security of person and property, elimination of exploitation and some other good provisions for the better administration.

After 1973 constitution there were three new developments happened in the administrative structure of Pakistan, they were

- Administrative Tribunals,

- Separation of judiciary from the executive and
- Ombudsman's Office.

General Pervez Musharaf also introduced two good things in the administration of Pakistan namely,NAB and Devolution of power plan. So the new developments in the administrative structure of Pakistan were as following,

- Separation of powers
- Ombudsman's Office
- NAB
- Devolution of powers plan

5.1. Separation of Powers

This doctrine was presented by Jhon Locke that executive and legislative powers should be separated (1690). But it was French Philosopher Baron De Montesquieu's Spirit of the Laws (1748) that explicitly linked the separation of executive, judicial and legislative powers as indispensable condition for the liberty and rule of law.

Chief Justice Abdul Rashid of federal court of Pakistan stressed that the independence of judiciary can only be secured if there is complete separation of judiciary from the executive. In 1956 constitution of Pakistan it was one of the directive principles of state policy that the state shall separate judiciary from the executive as soon as possible.

Under 1973 constitution of Pakistan it was assured that judiciary will be separated from the executive within three years. But it was extended to five years by the constitution (4thAmendment Act 1976). It was extended further upto 14 years in 1985 by the constitutional amendment through the President order no 14 of 1985.

The supreme court of Pakistan declared from August 14, 1978 to March 2, 1985 all the executive officers including Commissioners, Deputy Commissioners and Magistrates as functioning unconstitutionally. So the Article 175(3) was practically enforced in 1996 and the judiciary was separated from the executive.

5.2. Ombudsman's Office

The modern society is a bureaucratic society. For the redressal of common man's grievances the governments have introduced various methods to correct the bureaucratic conduct. The establishment of Ombudsman institution is also one method to control it.

The word "Ombudsman" is a Norwegian word that stands for an administrative man who is the king's representative. In Britain it is called parliamentary commissioner. In India this institution was established under section 3(1) of the Lokpal Act1989 and is working in the name of Lokpal.

Islam presented the idea of Ihtesab and the seat of Muhtasib was created in the Islamic state of Madina. The Holy Prophet set up the court of "Mazalim" to hear the complaints regarding infringement of the rights of the citizens by the public servants.

The present system of accountability through ombudsman's office is a beautiful blend of Islamic Ihtesab concept and the accountability institutions in Scandinavian countries.

The office of Wafaqi Muhtasib was established in June 1983 through President Order no 1 of 1983, The Wafaqi Muhtasib (Ombudsman Order, 1983). The purpose of this office was to diagnose, investigate, redress and rectify the injustice done to a person through maladministration.

5.3. National Accountability Bureau

The public demand for the accountability gained momentum in the last two decades in our country. The corruption was spread in a manner that it destroyed the very fabric of our society.

Ehtesab Commission and Ehtesab Bureau were established in 1996 and 1997 respectively. But these institutions could not produce good results.In November 1999 the Chief Executive General Pervez Musharaf constituted National Accountability Bureau through NAB Ordinance 1999.

5.4. Devolution of Powers plan

The system of local government by the early muslims was also retained by the Mughals(1526-1857). The Municipal Act 1850 provided Municipal Committees during British era. To provide authority and responsibility to the people at all levels the Basic Democracies Order 1959 was passed.

General Musharaf introduced Local Government Ordinance 2001 and provinces were to create local government institutions in respective provinces under the constitution. It was to introduce full-fledge District Governments with legislative and financial powers.

The authorities must realize that the local government system is a good initiative as it brings the government closer to the people.

6. Conclusion

The modern welfare state entrust many more functions to the administrative organ of the state. The functioning of the administration must be effective and it should respond to the needs of the citizens. Administrative law ensures publication of delegated legislation, reason based decision making and effective implementation of laws and policy. The provisions of open meetings of administrative tribunals and awarding of damages if the rights of the citizens are infringed. The remedy of judicial review protects the citizens from the mighty fiat of administration.

The law of administration is suggested to be rights based and the accountability must be above board. The developing countries like Pakistan face the problems of corruption in the administration. However the independent courts are the guarantee of the protection of citizens from the malpractices of administrative bodies.

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