Administrative Law

Fundamental Principles of Administrative Law

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The fundamental principles of administrative law

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1. General Background

Administrative law may be broadly defined as the law which regulates the exercise of power conferred under the law upon governmental bodies. Governmental means all the public bodies invested with powers under the law and that includes police, local authorities, public corporations as well as the central government. Body may be defined as a public body, and as such, be subject to the principles of administrative law. Administrative law regulates the rights and duties of the government.

Challenges to the legality of the governmental decision may be made by a citizen. Here citizens not only refer to individuals but to individuals collectively, for example trade unions, pressure groups, etc. However, administrative law is not confined to regulating the relationship between the citizen and the state. It also serves to allow challenges by one arm of government to the legality of acts by another arm; in particular, challenges by local government to the legality of actions of central government or vice versa.[2]

In this way, administrative law can be perceived as a weapon in the hands of the power holders themselves to ensure that each centre of power acts within the legal limits of its authority.

"Although administrative law, by its very nature, is concerned with ensuring that public decision-makers act within the law and are, on this basis, accountable before the law, its development is due largely to a desire on the part of the courts to redress the balance of power and to safeguard the rights and interests of citizens. It is arguable that, as effective government accountability to Parliament has diminished, so the courts have stepped in to redress the balance of power. Administrative law is concerned also to ensure that an element of fairness operates in public decision-making and generally to ensure good administration. This is not only to the advantage of the individual citizen. It is to the advantage of government itself. If government is perceived as being accountable for its decisions, whether before an elected legislature and/or before an independent judicial system, the greater is the likelihood that the status quo will be maintained. Good government serves to perpetuate itself. Bad government serves to incite revolt."[3]

2. Principles of administrative law

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[2] DAVID STOTT & ALEXANDRA FELIX, THE PRINCIPLES OF ADMINISTRATIVE LAW 1 (1st ed. 1997).

[3] *Id.* at 2.

2.1 Judicial Review

Administrative law is generic term, it encompasses all aspects of legal regulations of governmental powers, and judicial review of the administrative actions refers to the jurisdiction of the courts to ensure that governmental decision makers act within law.

The exercise of legal power may often involve the exercise of discretion to choose between alternative courses of action or, indeed, whether or not to act at all. The essence of discretion is, however, that it is contained within legal limits. A power not contained within such limits would be arbitrary.[4] The principles of judicial review serve to set legal limits to the exercise of discretionary powers.

Judicial review is concerned with the legality of the decision made, not with the merits of the particular decision. Accordingly, the task of the judges is to ensure that the exercise of any power which has been delegated to ministers and administrative and adjudicatory bodies has been lawful according to the power given to that body by Act of Parliament.[5]

Under the following heads, administrative actions are subject to control by judicial review:

I. Illegality, where the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power which it does not possess
II. Irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision;
III. Procedural impropriety, where the decision making authority has failed in its duty to act fairly.[6]

2.2 Principle of legitimate expectation

It was, in fact, for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in an English case where alien students of 'Scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. They had no legitimate expectation of extension beyond the permitted time and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy may cancel legitimate expectation; just as they may create it.[7]

No order can be passed without hearing a person if it entails civil consequences. Where even though a person has no enforceable right yet he is affected or likely to be affected by the

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[4] DAVID, *supra* note 2, at 4.
[5] HILAIRE BARNETT, CONSTITUTIONAL AND ADMINISTRATIVE LAW 837 (4th ed.2002).
[6] CCSD vs. Minister for the Civil Service, (1984) 3 AII.ER 935.
[7] H.W.R WADE, ADMINISTRATIVE LAW522 (6th ed. 1978). also see Schimdt v Secretary of Home Affairs (Lord Dennings).

order passed by a public authority, the doctrine of legitimate expectation comes into play and the person may have a legitimate expectation of being treated in a certain way by an administrative authority.[8]

Legitimate expectation may arise if:

I. there is an expressed promise given by a public authority; or
II. because of the existence of a regular practice which the claimant can reasonably expect to continue;
III. Such an expectation must be reasonable.[9]

Legitimate expectation being less than a right operates in the field of public and not private law and to some extent such right ought to be protected not guaranteed.[10]

The doctrine of legitimate expectation arises only in the field of administrative decisions. If the plea of legitimate expectation relates to procedural fairness there is no possibility whatsoever of invoking the doctrine as against the legislation.

2.3 Principle of reasonableness

The concept of discretional decision making is one of the main issues of administrative law. The term discretion has been used to indicate administration's choice to achieve its goal without arbitrariness since it achieves its goals by involving all citizens. Wielding this power, it can make choices from a range of solutions, but bounded by the principle of reasonableness.[11]

This principle expresses the logical relationship that must exist between discretional decisions and the evaluation of all public and private interests involved in the circumstances of the case. Nonetheless, this evaluation on the one hand requires the maximization of the public interest (since the principle of reasonableness demands that every discretional decision must be related to a public interest), but on the other hand demands that competing private interests not be totally compromised.[12]

"Law is the perfection of reason".[13]

Typically, a decision of a public authority is judged unreasonable when the decision taken does not logically follow from the legally relevant factors that ought to have been taken into account by that authority.[14]

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[8] U.P Awas Evam Vikas Parishad v. Gyan Devi, (1995) 2 SCC 326.
[9] Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499 at 540.
[10] A. K. Srivastava, *Doctrine of Legitimate Expectation,*2 J.T.R.I Journal, 4 (1995).
[11] P.L.M. Lucatuorio, *Reasonableness in administrative discretion: A formal model,* The Journal Jurisprudence, 635 (2010).
[12] Lucatuorio, *supra* note 11, at 636.
[13] Hon. Le Baron B. Colt, *Law and Reasonableness*. 37 Am. L. Rev., 657 (1903),.

2.4 Principle of good governance

Good governance is about the processes for making and implementing decisions. It's not about making 'correct' decisions, but about the best possible process for making those decisions.

Good governance has eight major characteristics:[15]

I. Participatory
II. Consensus oriented
III. Accountability
IV. Effective and efficient
V. Equitable and inclusive
VI. Rule of law
VII. Transparent

2.5 Principle of natural justice

"Not only should justice be done, but it should be seen to be done"

It is not a written law but has been developed by courts in process of their judicial decisions.

It seems to be as old as the system of dispensation of justice itself. It has by now assumed the importance of being, so to say, "an essential inbuilt component" of the mechanism, through which decision making process passes, in the matters touching the rights and liberty of the people. It is no doubt, a procedural requirement but it ensures a strong safeguard against any Judicial or administrative; order or action, adversely affecting the substantive rights of the individuals.

'Natural Justice' is an expression of English common law. In one of the English decisions, reported in (1915) AC 120 (138) HL, Local Government Board v. Arlidge, Viscount Haldane observed, "...those whose duty it Is to decide must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must come to the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice."[16]

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[14] See Paul Craig's definition of a reasonableness review: "A judicial decision as to whether the weight and balance ascribed by the primary decision maker to considerations that have been or can be deemed relevant was reasonable". Craig, however, also admits that the very nature of reasonableness review remains contested; P. Craig, *The Nature of Reasonableness Review*, 1 Current Legal Problems, 1-2 (2013) .

[15] United Nationas Economic and Social Commission for Asia and the Pacific, *What is Good Governance*?, http://www.unescap.org/sites/default/files/good-governance.pdf.

[16] Justice Brijesh Kumar, *Principles of natural justice,* 3 J.T.R.I Journal, 1 (1995).

Aristotle, before the era of Christ, spoke of such principles calling it as universal law. Justinian, in the fifth and sixth centuries called it 'jura naturalia' i.e. natural law.[17]

The two most important principles of natural justice are:

I. No man shall be judge in his own case: This principle is to prevent one from being bias for reasons of pecuniary, personal or other interest. This principle is to ensure impartiality.
II. No man shall be condemned unheard: This principle is to ensure fair opportunity of answering the case against him.

Another principle that developed in course of time is that the order passed must be speaking orders: This is to ensure that the person against whom the order is passed knows what the reason behind the order is and also to prevent arbitrariness. This is to ensure that the aggrieved party when applies for appeal knows in what way the orders are bad or suffering from illegality.

In Maneka Gandhi's case, it has been held that withholding of reasons for impounding the passport of the petitioner was violating of the principles of natural justice.[18]

2.6 The principle of rule of law

"Where laws do not rule, there is no constitution."[19]

The notion of the rule of law can be traced back to at least the time of Aristotle who observed that given the choice between a king who ruled by discretion and a king who ruled by law, the later was clearly superior to the former.[20]

The essence of the rule of law is that of the sovereignty or supremacy of law over man and the government. The rule of law insists that every person- irrespective of rank and status in society- be subject to the law.

Although it is always a good precept to beware of fashions in legal thinking, there is substantial support for the view that the foundation of modern administrative law is the rule of law. Mark Elliott has suggested that it is now "the driving forces behind- and the normative basis of - modern administrative law".[21]

In more recent times, it is Albert Dicey who is credited with providing the logical foundation upon which the modern notion of the rule of law is based. He laid out his three

[17] Kumar, *supra* note 16, at 2.
[18] *Id.* at 4.
[19] ARISTOTLE, THE POLITICS, Bk iv, para 1292 a 31.
[20] *Dicey's views on the rule of law and the supremacy of parliament*, (April 17, 2015), http://everything2.com/title/Dicey%2527s+views+on+the+rule+of+law+and+the+supremacy+of+parliament.
[21] MARK ELIOT, THE CONSTITUTIONAL FOUNDATIONS OF JUDICIAL REVIEW 104 (2001).

principles of the rule of law in his 1885 book 'An Introduction to the Study of the Law of the Constitution':

I. everyone is equal before the law
II. no one can be punished unless they are in clear breach of the law
III. there is no set of laws which are above the courts

There shall be no arguments regarding the first two principles but the third one might bring opinions. As in a written constitution, the constitution is always above all, even above the courts.

Rights may not be infringed except in accordance with law, determined by the ordinary courts of the land.[22]

The rule of law also demands that the law itself fulfils minimum standards. It is this concept which is concerned in the context of judicial review where the 'rule of law' assumes meanings encompassing principles of accountability, equality, and the absence of arbitrariness and the presence of fairness in decision-making.[23]

Yet another meaning given to the rule of law is that laws should be prospective, open, clear and stable.[24]

2.7 The principle of accountability

The principle of accountability requires that there must be in place forums in which decision makers may be called to account to justify their actions. Such accountability may be political or legal. A minister should be accountable to Parliament at the political level to justify, for example, that decisions taken are in the best interests of the nation. The principles of judicial review enable the courts to call decision-makers to account for the legal propriety of their decision-making.[25]

The principle of accountability helps in making a clear distinction between direction and arbitrariness. An arbitrary power is one which is open-ended, not subject to identifiable limits and, therefore, not capable of being controlled by the courts. Such a power was evident in R v Secretary of State for Social Services ex parte Stitt (1990).[26] Whereas, discretion is that it is limited and, therefore, its exercise is subject to control, i.e., ensuring that the discretion is exercised within the legal parameters set for its exercise.

2.8 Classification of power

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[22] A.V DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 195-196 (10TH ed. London, 1961) .
[23] STOTT, *supra* note 2, at 22.
[24] Joseph Raz, *The Rule of Law and its Virtue,* 93 LOR, 195 (1977).
[25] STOTT, *supre* note 2, at 24.
[26] *Id.* at 25.

The separation of powers is a useful doctrine in order to measure any undue shift of power toward the executive. It is importance to recognize the scope and extent of a government's executive or administrative powers, and its judicial powers.

It is a doctrine which is fundamental to the organization of a state – and to the concept of constitutionalism – in so far as it prescribes the appropriate allocation of powers, and the limits of those powers, to differing institutions. The concept has played a major role in the formation of constitutions. The extent to which powers can be, and should be, separate and distinct, was a central feature in formulating, for example, both the American and French revolutionary constitutions.[27]

In any state, three essential bodies exist: the executive, the legislature and the judiciary. It is the relationship between these bodies which must be evaluated against the backcloth of the principle. The essence of the doctrine is that there should be, ideally, a clear distinction in function between the legislature, executive and judiciary, so that none should have excessive power and that there should exist a system of checks and balances between the institutions

The separation of powers doctrine does not insist that there should be three institutions of government each operating in isolation from each other. It is essential that there should be sufficient interplay between the three bodies. Rather than a pure separation of powers, the concept insists that the primary functions of the state should be allocated clearly and that there should be checks to ensure that no institution encroaches significantly upon the function of the other.[28]

[27] BARNETT, *supre* note 5, at 105.
[28] *Id.* at 107.