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REVIEW ARTICLE

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Today We Are Living Not In the Shade but Under the Shadow of Administration

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INTRODUCTION

In a welfare state the executive branch of government exercise a dominating authority over the governmental functions. The ever expanding span of executive power drowse in the enlarged categories of quasi legislative and quasi-judicial functions. The adoption of development, making of welfare plans and commitment to the attainment of objectives of socio-economic revolution, policy and legislation for securing the application of the principles of public and legislation for securing the application of the principles of public welfare policy for people, like directive Principles of State Policy under part IV of Indian Constitution, have expanded the arena of governmental responsibilities and powers resulting into expanded functional scope of executive branch.

The need for expertise, purposive administrative processes and speedy procedures with which the administrative decisions, determination and orders must be made and put into effect made it necessary for the concernment of newer powers imposing responsibilities and confiding of a vast amount of administrative desertion e. g. the control and regulation of production, manufacture and distribution of farm produce, organization of means of public security, methods of social welfare and public good, services etc; have vested in wide discretionary power of Industrial licensing, price control, regulation of movement, distribution and consumption of essential commodities etc. The citizen has to come in contact with administrative authorities and agencies of any turn of his busy routine which may affect a citizen's Civil liberties. This makes a citizen compelled to seek redress against the irregular, negligent and discriminatory action as well non-action of the administering authorities and agencies. To seek redressal through courts under conventional judicial remedies in many of these matters is not advisable because of many more technicalities. Therefore, the need for making the ever increasing number of administrative authorities progressively responsible and the desirability for adequate administrative law and public law remedies easily and effectively made available to a citizen who ensures nondiscrimination between the citizen and authority concern cannot be ignored.

The necessity is the mother of invention so is the case with administrative law.

It is the task of administrative law to ensure that the governmental function are exercised according to law, on proper legal principles and according to the rules of reason and justice, that adequate control mechanism judicial and others exist to check into administrative abuses without unduly hampering the administration in discharge of its function efficiently.

Objectives of administrative law are to ensure legal control of the administrative power and to provide protection to the individual against abuse of such power.

"The powerful engines of authority must be prevented from running amok" (1)

Administrative law seeks to adjust to the relationship between public power and personal right. Therefore, to protect one's own civil liberties and to lent a helping hand to others ignorant of the remedy for violation of these rights, to enjoy the democratic rights properly and for being a law abiding citizen in welfare state study of administrative law is necessary. A proper and sufficient knowledge of administrative law is essential for being a good administrator, for a law teacher and above all for a watchful citizen because one must be aware of the fact that power corrupts and absolute power corrupts absolutely.

"It is an increasingly important subject of study for the legal practitioners, the academic lawyers, and for the public administrators" (2)

Growth of administrative Law – a study –

Administrative law is said to be the most outstanding development of 20th century. But administrative law existed even before 20th century. It was in existence in every country having some form of government. Administrative law is as ancient as the administration itself. In India administrative law could be traced in its organized and centralised form under the reign of Mauryas and guptas. In 20th century administrative law became more articulate and definite as a system in democratic countries. It has assumed a more

recognizable form in 20th century and developed as a separate branch of public law.

Administrative law as a separate branch of civil law developed in 20th century in a concrete form. The overriding reason behind this growth is the changing philosophy of state.

In 19th century ruling political gospel was laissez faire which manifested in the theories of individualism, individual enterprises and self-help. There was minimum of governmental control and maximum of free enterprises and contractual freedom. Management of Socio-economic life was not regarded as governmental responsibility the trend resulted in creation of a large section of harassed human being and a story of unending human misery. Uncontrolled contractual freedom led to exploitation of weaker section of people by the stronger in the Society. Increasing number of slums, unhealthy conditions of work was on the one hand and on the other hand was the concentration of wealth in few hands –these resulted into great dis-satisfaction in the society and it was a general feeling that state should take active interest for the betterment of poor, it should act in the interest of social justice. It should assume a positive role and as a result of these aspirations a social welfare state emerged.

20th Century has witnessed a phenomenal growth in the powers and functions of the state. A welfare state is not confined itself to its traditional functions. viz defence, administration of justice etc. but undertakes to provide social security and social welfare for the common man, it regulates industrial relations with a view to maintain industrial peace. Welfare concept of state led to state activism. It acts as an active instrument of socio-economic policy.

“The function of a modern state may broadly be placed into five categories viz, the state as protector, provider, entrepreneur, economic controller, and arbiter”(3)

The state, therefore, assumed a positive role to act in the interest of social justice which lays emphasis on the view the role of the state as a vehicle of socio-economic regeneration and welfare of the people(4).

This trend may be illustrated very forcefully by reference to the position in India. Before 1947, India was a police state. The ruling foreign power was primarily interested in strengthening its own domination; The administrative machinery was mainly with the object in view and the civil service came to be designed as the steel frame. The state did not concern itself much with the welfare of the people .But all these changed with the advent of independence. A conscious effort began to be made to transform the country into welfare state. The philosophy of welfare state has been expressly ingrained in the Indian constitution”(5)This could be illustrated by the Preamble to the constitution and different articles under part IV of the constitution (A. A. 38, 39, 41, 45).

Therefore, the growth of the Indian system of administrative law is only the recent post-Independence development. The modern system of administrative law had to await the establishment of the constitutional government of the one hand, and the expression of the government all functions, beyond the imperial concerns of the British Indian Government before Independence on the other hand. Before independence there was nothing but an uncontrolled administration and inefficient law therefore. The constitution of India inaugurated a new social order for socio-economic justice for the society. The administrative law, therefore, become an independent branch of study only recently. It was denied recognition for much too long.

In the United Kingdom: Last Century Dicey went as far as to say that there was no administrative law in U. K. Perhaps the sense inherent wes that there is no self-contained and the separate system of administrative law as found in France. (droit administratiff) Dicey who was profounder of Rule of Law theory form Legalistic point of view, erroneously believed theta administrative law apposes Rule of Law. After Dicey, Lord Hewart, another common law enthusiast too said that the English common Law recognized no droit administratiff. Of course Dicey in his later days modified his stand, which is evident by his work- Dicey Development of Administrative law in England (1915) 31 L. R. R, 148. In the years following the practice of delegation of minor legislative powers to Ministry and other subordinate authorities the practice of delegation of minor legislative powers to Ministries by Parliament grew also conferment of certain quasi-judicial functions started.

This trend made people apprehended about the possible harm o traditional concept to parliamentary supremacy and constitutional government and the risks of impairment of the liberty, rights and property of individual citizen. As a result of Lord Hewarts criticism Lord Chancellor appointed a committee to inquire into the matter. The committee on Minister’s Powers(appointed by Lord Sankey) reported in March 1932 – which attracted wide attention. Another committee (Frank committee) was appointed to investigate the relation between the individual and the authority. The reports of these two committees provided the basic frame work and essential features of a number of enactments which helped a lot for the growth of administrative law in U. K. The enactments were the Statutory Instrument Act 1946 and the Tribunals and Inquires Act 1958. The subject is still developing.

In United States of America - The opposition to the administrative law was mainly because of the doctrine of separation of power which is a fundamental idea of the American constitution. Other obstacles were also there like protection of due process clause and other constitutional provisions guaranteeing liberty and freedom. The studies of the administrative law problems have been carried on both officially and none

officially. The Attorney General Committee Report on Administrative Procedure submitted in the early Forty's made an important document. The long period of study and Strife led the passing of the Administrative Procedure Act 1946. It presents the essential Uniform Administrative Procedure in respect of discretionary and adjudicatory functions of administrative agencies. As in Britain and America no comprehensive study has yet been made in India to ascertain the extent, scope and character of the powers and procedure of the Executive and the administrative authorities in India. The Law Commission has expressed concern at the increasing power of the Executive accompanied by a tendency of putting administrative action out of the pale of judicial control. It examined the growing incidence of entrustment of legislative and adjudicatory functions to the administrative authorities and tribunals constituted by the Government. Different Commissions also were appointed to enquire into the concerning matters. One of such commission was administrative reforms Commission (appointed on 5. 1. 66 by President constituted by Sri MorarJi Desai as Chairman). The commission examined and inquired into the problem of redressal of grievances of private persons against acts of mal-administration, abuse of official discretion etc. the commission found the existing remedies insufficient and recommended for appointment of Ombudsman, the Lokpal, the uplokpal and the Lokayuktas. A few enactments are then as a part of Administrative law e.g. Commission of Inquiries Act 1956; Administrative Tribunals Act 1985.Therefore, it is found that then is no unified codified Administrative law in either of these three countries. Administrative law developed through the judicial pronouncements and by some common principles of justice.

Main reasons for growth of administrative law in 20th century may be pointed out as –

1. It is a direct result of the growth of administrative powers and functions.

2. The development can partly be attributed to the critical internal and international situation creating a sense of insecurity which compels the government to acquire vast powers to provide defence and internal security of the country e. g. Defence of India Act and the rules made there under N. S. A. MISA

3. The most important reason is the changing philosophy of state regarding its role and function.

What is Administrative Law **– Nature and Scope** – What is administrative law – is a question raised and was overloaded with diversity of opinions. For some it is the law relating to the control of government power, the main object of which is to protect individual rights. Others place greater emphasis upon rules which are designed to ensure that the administration effectively performs the tasks assigned to it. Yet other see the principal objective of administrative law as ensuring governmental accountability and fostering participation by interested parties in the decision making process. All these opinions are incomplete Administrative law has defied satisfactory definition.

A first approximation to definition of administrative law is to say that it is the law relating to the control of governmental power. It is also the concern of administrative law to see that public authorities can be compelled to perform their duties if they make default. Administrative law is that body of law which concerns the function of administrative and the relations of administrative authorities with the individual as well as the other authorities of the state. It does not however deals with the organization of these administrative authorities and their internal problems. It is a branch of 'public law'.

Freud puts the content of administrative law in the Encyclopedia of Social Sciences in the following words:-

"The main problems of administrative law relate to the nature and operation of official powers (Permits and orders, ministerial and discretionary), scope and legitimacy of underlying conditions, the formal and procedural conditions for the exercise of powers, official and communal liability the specific remedies for the judicial control of administrative action (legal, equitable and statutory), jurisdictional limitations on powers and question of administrative finality" .

The American approach to administrative law is denoted by the definition of K.C. Davis: He said "administrative law is the law concerning the powers and procedure of administrative agencies, including especially the law governing judicial review of administrative action" This definition does not depict the whole picture of administrative law, it does not include the enormous mass of substantive law produced by the agencies. According to Prof. Davis- public administration is also excluded from the preview of administrative law. Some points of criticism could be levelled on this definition:-

(a) This definition does not include the consideration of purely discretionary functions which is the main area of work of the authorities. Control of discretionary power is an important area of administrative law which is not included in Davis definition.

(b) This definition has emphasized upon the judicial control of administrative action, but other control mechanism e.g. Parliamentary control of delegated legislation, control through administrative appeals, control through ombudsman type institution are quite important for the study of administrative law.

English approach to administrative law could be appreciated by going through some definitions given by renounced English Jurists Dicey has defined administrative law as denoting that portion of a nation's legal system which determines the legal status and liabilities of all state officials, which defines the rights and liabilities of private individuals in their dealings with public officials, and which specifies the procedure by which those rights and liabilities are enforced.

This definition is narrow and restrictive. It does not include public corporations because they are not the officials of the state. Dicey formulated his definition having French droit administrative in view. Sir Ivor Jenning's definition depicts the modern British approach to administrative law. He said-

"Administrative law is law relating to administration. It determines the organization, power and duties of administrative authorities".

This is the most commonly accepted view. It we compare the views of Davis with Jennings. We find Jennings falls short to Davis. Davis lays emphasis' on procedure followed by administrative agencies in exercise of their power. Jennings does not mention procedure but only emphasis upon "organization, power and duties".

Importance of administrative procedure in administrative law cannot be undermined. Administrative procedure has to be democratic in a democratic set-up. A fair procedure minimizes abuse of power. American approach lays more emphasis upon procedural safeguards.

Lately British approach adopted this line as is evident by Frank Committees suggestions to introduce more procedural safeguards in the working of whole administrative system. Therefore, study of administrative procedure is of vital importance in the study of modern English administrative law.

Some criticisms by prof. Griffith and Bot Street have been levelled against sir Jennings definition- viz

(a) Jennings definition does not attempt to distinguish constitutional law from administrative law. As the constitutional law has great deal to say about organization of administrative authorities. It is not the area of administrative law.

(b) Purely internal administration and management of administrative agencies should be excluded from the purview of administrative law.

It is well said, therefore that administrative law defics definition. A proper and satisfactory formulation to define scope, content and ambit of adminstrative law appears to be as:- Administrative law deals with-

(a) The structure, power and functions of the organs of administration;

(b) The limits of their power;

(c) The methods and procedure followed by them in exercising the powers and functions;

(d) The methods by which their powers are controlled (Judicial and extra judicial control);

(e) The legal remedies available to a person against administration when the individual's rights are infringed by their operation.

Therefore, it could be said that administrative law is the body of law which concerns the function of administration and the relations of the administrative authorities with the individuals as well as the other authorities of the state.

1) Wade, Administrative law (1977) dt. P. 5.

2) Faulkes Administrative law, 6th ed, at. p.5

3) Friedman, The state and the Rule of law in a Mixed Economy 3 (1971)

4) See, robson, Justice and Administrative Law, 33(1951)

5) M. P. Jain and S. N. Jain, Principles of administrative Law, 3(1993)

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