



**TEERTHANKER  
MAHAVEER UNIVERSITY**  
Moradabad

Accredited with NAAC **A** Grade

*12-B Status from UGC*

# Administrative Law

By: Dal Chandra

Name of the Creator: Dal Chandra

Designation: Assistant Professor

Department: Law

# INTRODUCION

- Administrative Law deals with administration, it is as old as any organized administration.
- Administrative Law has been characterized as the most 'outstanding legal development of the twentieth century'
- However it does not mean that there was no administrative law in any country before the twentieth Century.
- In India itself Administrative Law can be traced to the well organized and centralized administration under the Mouryas dynasty and Guptas dynasty
- Several Countries following through the administrative system of the Mughals to the administration under the East India Company

# Some Administration in India

- Ram Rjya                      Ramcharitmanas
- Maurya's Dynasty-      Kautilya's Arthshashtra
- Gupta's Dynasty-      Chandra Gupta Vikramaditya (Vikram Vetal)
- Delhi Saltanat (1206-1526) - Alauddin Khilji, Mohhammad Bin Tuglaq
- Mughals Dynasty (1526-1707) -                      Akbar, Jahagir
- East India Co. (1707-1858)
- British Crown (1858-1947)
- Indian Democracy

## INTRODUCCION

- The rapid growth of administrative Law in Modern times is the directly result of the growth of administrative Power and functions.
- Mainly the growth of administrative law is to be attributes a change of philosophy as regards the role and function of the state.
- State and its role was, to defending the countries from external aggression, maintaining the law and order with in the country, dispensing to its subjects and collecting a few tax to finance these activities.
- Before 1947 India was Police State. The ruling foreign power was primarily interested in strengthening its own domination the administrative machinery was used mainly with that object in view and the civil service came to be designed as the steel frame.
- The state did not concern much with the welfare of the people.

## INTRODUCCION

- But under the impact of the philosophy of welfare state, the role and function of the government have undergone a radical change.
- Now the state is not merely a police state exercising sovereign functions, but as a progressive democratic state it seeks to ensure social security and social welfare for the common man
- On the one hand, slums, unhealthy and dangerous condition of work, child labour, poverty and exploitation of mass,
- but on the other hand concentration of wealth in a few hands, The state started to act in the interest of social justice, the role of the state as a vehicle of socio- economic regeneration and welfare of people.

## INTRODUCTION

- The philosophy of welfare state has been ingrained in the preamble of the constitution and the directive principle of the state policy.
- The constitution aims at establishing a sovereign, socialist, secular, democratic republic in India so as to secure all its citizen, social, economic and political justice.
- In *Paschim Banga Khet Mazdoor Samity v State Of West Bengal AIR 1996 SC 2426*. The Supreme court stated that “ the constitution envisages the establishment of a welfare state at the federal level as well as the state level. In a welfare state the primary duty of the government is to secure to the welfare of the people.

# INTRODUCTION

- The state today pervades every aspect of human life:
- It runs buses, railways, and postal services
- It undertakes planning of social and economic life of the community with a view to raise the living standards of the people and reduce concentration of wealth,
- It improves slum, plans urban and rural life, looks after health, moral and education of the people
- It generates electricity, works mines and operates key and important industries. It act as an active instrument of social economic policy
- The state plays major role in promoting socio economic welfare labour by regulating employer-employee relationship and by other means.

## INTRODUCTION

- Administration exercises to day not only the traditional functions of administration but other varied types of function as well
- The administration exercises legislative power and issues a plethora of rules, bylaws, and order of general nature. This is designated as delegated legislation in administrative law.
- The administration has enquired powers of adjudication over disputes between itself and private individuals and thus have emerged a plethora of administrative tribunals and pronouncing binding decisions like the courts.
- The administration has secured extensive power to grant, refuse or revoke licenses, impose sanctions and take action of varies kind in its discretion of subjective satisfaction
- It has been given vast powers inquiry inspection, investigation, search and seizure and supervision

# Definitions of Administrative Law

- *“Administrative law is the law relating to the administration. It determines the organization, powers and duties of administrative authorities.”*

***-Sir Ivor Jennings***

- *“Administrative Law is a branch of Public Law which is concern with the composition, power, duties, rights and liabilities of the varies organs of government which are engaged in administration”*

***-Wade and Philips***

- *“The Law relating to the control of governmental Power”*

***-H.W.R. Wade***

- *“Administrative Law is that branch of the law which seeks to ensure observance of the rule of law”*

***-Justice Bhagwati***

# According to Griffith and Street

- Administrative Law is concern with three question
- 1. What sort of powers does the Administration exercise?
- 2. What are the limits of those power
- 3. What are the ways in which the administration is kept with in those limits

.

According to the ILI the following two question must be added to have a complete idea of present day Administrative Law

4. What are the procedures followed by administrative authorities?

5. What are the remedies available to a person affected by administration

# Reason for the expansion of Administrative Law

1. Change in the concept of the government
2. Demand of the people
3. Evolution of Socialistic pattern of society
4. Inadequacy of Judicial System
5. Inadequacy of legislative process
6. Non technical character of Administrative process
7. Principles of Good Governance

# Sources of Administrative Law

1. Constitution
2. Statutes
3. Ordinance
4. Delegated legislation
5. Case laws
6. Reports of committees and Law Commission

# Nature and Scope of Administrative Law.

- The administrative Law can said to be a study of multifarious powers of administrative authorities and their control. The nature of power exercisable by the administrative authorities can be studied under the three heads.
- 1. Legislative or Rule making power of Administrative authorities.
- 2. Judicial or Adjudicative Power of Administrative authorities.
- 3. Purely Administrative Power of Administrative authorities.

- One of the advances in the real of administrative process made during these days is that apart from pure administrative function the executive perform legislative and judicial function as well

# Legislative or rule making power of the administrative authorities

- to the pressure upon parliamentary time and number of other reasons there is rapid growth of administrative legislation.
- A trend very much in vogue to day in all democratic countries is that a good deal of legislation takes place in government departments outside the house of legislature.
- This type of activity is known as 'delegated legislation'

- Generally what happens is that legislature enacts a law covering only general principles and policies relating to the subjects matter in question and confers rule making power on the government or some other administrative agency.

- This is so because the direct legislation of parliament is not complete. The executive is given power to supplement the laws made by the legislature. The result is that the technique of delegated legislation is so widely used in modern time as a process of government that there is no statute passed by legislature to day which does not delegate some power of legislation to the executive

# Judicial or Adjudicative Function of the Administrative authorities

- Not only administrative and legislative function the executive perform judicial function as well.
- In a socialistic society bulk of cases are not decided by the ordinary court. When a disputes arises between the administrative agency and a private person, it is settled by the administration this is called administrative adjudication.
- Administrative adjudication has come into adjudication as a result of the philosophy of the welfare state and consequential socialization of law.
- It is not possible for ordinary courts of law to deal with all issues of socio economic policies

- for example industrial relations between the workers and the management must be settled as soon as possible. It is not in the interest of the parties to the dispute but of the society at large.
- It is not possible for the ordinary court to decide these disputes expeditiously.

- Administrative Tribunals are, therefore, established to decide various quasi judicial issues in place of ordinary Courts of laws.
- Tribunal are recognized even by the constitution of India.
- Tribunal is an administrative body which exercise the power to adjudicate

# **Droit Administratif**

- **Droit Administratif is a branch of law which determines the organization, powers and duties of public administration**
- **Droit Administratif is a very old system. It was regularly put into practice by Napoleon in the 18<sup>th</sup> century. Napoleon favored freedom for the administration and also favored reforms.**
- **Dual judicature in France**
- **Civil and Administrative Court**
- **Under the French legal system known as droit administratif, there are two types of law and two sets of courts independent from each other.**
- **The administrative court administer the law as between subject and the state**

## Conseil d'Etat

- **Conseil d'Etat is the highest administrative court.**
- **The Conseil d'Etat is composed of eminent civil servants, deals with a variety of matters like claim of damages for wrongful acts of Government servants, income-tax, pensions, disputed elections,**
- **If there is any conflict between the ordinary courts and the administrative courts regarding jurisdiction the matter is decided by the Tribunal des conflits. There is special tribunal which consists of an equal number of ordinary and administrative judges. It is presided over by the minister of justice.**

# Rule of Law

- The term rule of Law means the principle of legality which refers to a government based on principles of law and not of man. In this sense the concept of the rule of law is opposed to arbitrary powers.
- Rule of law is one of the basic principles of the English constitution. The doctrine has been enshrined in the constitution of U.S.A. and in constitution of India as well
- The entire basis of Administrative law is the concept of rule of law.
- Sir Edward Coke English barrister judge and politician is said to be the originator of this great principle.
- In a battle against the king, he succeeded in maintaining that the king must be under the god and the Law. And thus vindicated the supremacy of law against the executive.

# Meaning of Rule of Law

- Dicey developed this doctrine of law in his classic book "*The law and the constitution*" published in year 1885
- He attributed the following three meanings to the doctrine
  1. Supremacy of the law
  2. Equality before Law and
  3. Predominance of legal spirit

According to Wade " the rule of law requires that the government should be subject to the law, rather than the law subject to the government."

- The Doctrine of Rule of Law proved to be a powerful instrument in controlling the administrative authorities within their limits.
- They must act according to law and can not take any action as per their personal whims or caprice
- It is the duty of the court to see that these authorities must exercise their powers within the limits of law.

# Criticism of Dicey

Dicey has opposed the system of providing the discretionary power to the administration. In his opinion providing the discretionary power means creating the room for arbitrariness.

Now days it has been clear that providing the discretion to the administration is inevitable

Dicey has failed to distinguish discretionary powers from the arbitrary powers.

In modern times in all the countries including England, America and India, the discretionary powers are conferred on the Government

# Criticism of Dicey

The administrative law is much concerned with the control of the discretionary power of the administration

He criticized the system of droit administrative which is prevailing in France

This proportion of Dicey does not appear to be correct even in England. Several persons enjoy some privileges and immunities. For example, Judges enjoy immunities from suit in respect of their acts done in discharge of their official function.

# Basic Principles of the Rule of Law

- **Law is Supreme, above everything and every one. No one is above the law.**
- **All things should be done according to law and not according to personal whim**
- **No person should be made to suffer except for a distinct breach of law.**
- **Absence of arbitrary power being heart and sole of rule of law**
- **Equality before law and equal protection of law**
- **Discretion should be exercised within reasonable limits set by law**
- **Adequate safeguard against executive abuse of powers**
- **Independent and impartial Judiciary**
- **Fair and Justice procedure**
- **Speedy Trial.**

# Modern Concept of Rule of Law

- Law and order
- Fixed rule
- Due process of law or fairness
- Observance of principle of natural justice
- Elimination of discretionary power
- Preference for Judges and Ordinary courts
- Judicial Review of administrative actions

# Rule of Law and Indian Constitution

- In India the Constitution is supreme. The preamble of our Constitution clearly sets out the principle of rule of law. It is sometimes said that planning and welfare schemes essentially strike at rule of law because they affect the individual freedoms and liberty in many ways. But rule of law plays an effective role by emphasizing upon fair play and greater accountability of the administration. It lays greater emphasis upon the principles of natural justice and the rule of speaking order in administrative process in order to eliminate administrative arbitrariness.

# Doctrine of Separation of Powers

- The doctrine of Separation of Powers is of ancient origin.
- The history of The origin of the doctrine is traceable to Aristotle.
- In the 16th and 17th Centuries, French philosopher John Bodding and British Politician Locke respectively had expounded the doctrine of separation of powers.
- But it was Montesquieu, French jurist, who for the first time gave it a systematic and scientific formulation in his book 'Esprit des Lois' (The spirit of the laws).

# Meaning of separation of Powers

- It is generally accepted that there are three main categories of governmental functions – (i) the legislative, (ii) the Executive, and (iii) the Judicial.
- At the same time, there are three main organs of the Government in State i.e. legislature, executive and judiciary. According to the theory of separation of powers, these three powers and functions of the Government must, in a free democracy, always be kept separate and exercised by separate organs of the Government. Thus, the legislature cannot exercise executive or judicial power; the executive cannot exercise legislative or judicial power of the Government.

As the concept of Separation of Powers' explained by Wade and Philips, it means three different things:-

- i. That the same persons should not form part of more than one of the three organs of Government, e.g. the Ministers should not sit in Parliament;
- ii. That one organ of the Government should not control or interfere with the exercise of its function by another organ, e.g. the Judiciary should be independent of the Executive or that Ministers should not be responsible to Parliament; and
- iii. That one organ of the Government should not exercise the functions of another, e.g. the Ministers should not have legislative powers.

# SEPARATION OF POWERS & THE INDIAN CONSTITUTION

- Under the Indian Constitution, the executive powers are vested with the President and Governors for respective states. The President is, therefore, regarded as the Chief Executive of Indian Union who exercises his powers as per the constitutional mandate on the aid and advice of the council of ministers . The president is also empowered to promulgate ordinances in exercise o his extensive legislative powers which extend to all matters that are within the legislative competence of the Parliament. Such a power is co-extensive with the legislative power of the Parliament.

- Apart from ordinance making, he is also vested with powers to frame rules and regulations relating to the service matters. In the absence of Parliamentary enactments, these rules and regulations hold the field and regulate the entire course of public service under the Union and the States. Promulgation of emergency in emergent situations is yet another sphere of legislative power which the President is closed with. While exercising the power after the promulgation of emergency, he can make laws for a state after the dissolution of state legislature following the declaration of emergency in a particular state, on failure of the constitutional machinery.

## Differences between Constitutional & Administrative Law

Constitutional law and administrative law both are concerned with functions of government, both are a part of public law in the modern state and the sources of the both are the same.

The administrative law is an addition of the constitutional law. To the early English writers on administrative law there was no difference between administrative law and constitutional law.

Therefore, Keith observed: “It is logically impossible to distinguish administrative Law from constitutional law and all attempts to do so are artificial”.

# Differences between Constitutional & Administrative Law

according to Holland, “Constitutional law describes the various organs of the government at rest, while administrative law describes them in motion”

Therefore, according to this view, the structure of the legislature and executive comes within the purview of the constitutional law but their functioning comes within the sphere of administrative law.

According to Jennings - administrative law deals with the organization, functions, powers and duties of administrative authorities while constitutional law deals with the general principles relating to the organization and powers of the various organs of the state and their mutual relationship of these organs with the individuals. In other words,

**Delegated legislation: Legislative or rule making power of the administrative authorities**

- to the pressure upon parliamentary time and number of other reasons for rapid growth of administrative legislation**
- A trend very much in vogue today in all democratic countries is that a good deal of legislation takes place in government department out side the houses of legislature.**
- This type of activity is known as delegated legislation.**
- The technique of delegated legislation is so widely used in modern time as a process of government that there is no statute passed by the legislature to day which does not delegate some power of legislation to the executive.**

# Delegated Legislation

- **Generally what happens is that legislature enacts a law covering only general principles and policies relating to the subjects matter in question and confers rule making power on the government or some other administrative agency.**
- **This is so because the direct legislation of parliament is not complete. The executive is given power to supplement the laws made by the legislature. The result is that the technique of delegated legislation is so widely used in modern time as a process of government that there is no statute passed by legislature to day which does not delegate some power of legislation to the executive**

# Definition of Delegated legislation

- **When an instrument of legislative nature is made by executive authority in exercise of a power delegated or conferred by the legislature it is called subordinate legislation**
- **Delegated Legislation means the law made by the executive under the powers delegated to it by the legislature**
- **Delegated legislation refers to all law making which is generally expressed as rules, regulations, bye laws, orders, schemes, directions, circulars or notifications etc.**

# Factors Leading to the growth of Delegated Legislation

- **1. Pressure upon Parliamentary time**
- **2. Technicality**
- **3. Flexibility**
- **4. Experimentation**
- **5. Emergency**
- **6. Confidential matters**
- **7. Complexity of modern administration**

# *Conditional Legislation*

- In Conditional legislation, legislature makes the law. It is full and complete. No legislative function is delegated to the executive authorities. But the said Act is not brought into force and it is left to the executive to bring the Act into operation on fulfilment of certain conditions or contingencies and for that reason, the legislation is called Conditional Legislation or Contingent legislation.
- when the **legislation** is complete in itself and the **legislature** has itself made the law and the only function left to the **delegate** is to apply the law to an area or to determine the time and manner of carrying it into effect, it is conditional **legislation**

# *Conditional Legislation*

Conditional delegation take place where the legislature empowers the executive to:

- **1 )** Extend the operation of an existing law to a particular area or territory;
  - 2)** Determine the time of application of an Act to a given area;
  - 3)** Extend the duration of a temporary Act, subject to maximum period fixed by the legislature;
  - 4)** Determine the extent and limit within which it should be operative;
  - 5)** Introduce a special law if the contemplated situation has arisen in the opinion of the Government
- Conditional legislation has proved to be very useful in implementing the modern socio-economic welfare scheme. The legislature usually formulates the development scheme, and leave it to the administrative authority as to when and where to implement them. Thus it confers ample discretion to the government to implement various welfare legislations.

## *Difference Between Delegated Legislation and Conditional Legislation*

- When a legislature confers law making power up on some other body, the legislative power is said to be delegated and it is a case of delegated legislation. But when the legislature itself enacts the law and give to some other body only the power of determining when it should come into force or when it should be applied to a particular area or territory of the state, there is no delegation of legislative power. Instead, it would be a case of conditional delegation. Thus in delegated legislation, power of legislation are transferred or delegated which is not the case with conditional delegation.
- ” In *Conditional legislation*, the delegate’s power is that of determining when a legislative declared rule of conduct shall become effective, and the *Delegated legislation* involves delegation of rule- making power to administrative agent. That means the legislature after having laid down the broad principles of its policy in the legislation, can leave detail to be supplied by the administrative authority.”
- The above distinction was reiterated by the Patna High court in “**Raghunath Pandey Vs State of Bihar (1982) pat.1**”, wherein the Court observed that in a conditional legislation, the law is complete in itself and certain condition are laid down as to ‘how’ and ‘when’ the law would be applied by the delegate.

# Constitutionality of the Delegated Legislation

- **The question of constitutional validity of delegation of powers came for consideration before federal court in *Jatindra Nath Gupta v. Province of Bihar* AIR 1949 FC 175**
- **In this case the validity of section 1(3) of Bihar Maintenance of Public order Act.1949 was challenged on the ground that it empowered the provincial government to extend the life of the act for one year with such modification as it may deem fit. The federal court held that the power of extension with modification is not a valid delegation of legislative power because it is an essential legislative function. Which can not be delegated. In this way for the first time it was ruled that in India legislative Powers can not be delegated.**

# Constitutionality of the Delegated Legislation

## • Post Constitutional Period

As decision in *Jatindra Nath* case had created confusion the question of permissible limits of delegation of legislative power became important. Therefore in order to get the position of law clarified, the president of India sought the opinion of Supreme Court under article 143 of the constitution. The question of law which was referred to the Supreme Court was of great constitutional importance and was first of its kind the provision of three acts-

- (i) Section 7 of the Delhi Laws Act, 1912;
- (ii) Section 2 of the Ajmer- Mewar (Extension of Laws) Act, 1947; and
- (iii) Section 2 of the Part C States (Laws) Act, 1950; were in issue in *Delhi laws Act case* Re AIR 1951 SC

Part C states were direct administration of the central government

# Constitutionality of the Delegated Legislation

- **The central government was authorized by sec 2 of the Part C states (Laws) Act. 1950 to extend to any part C State such modification and restriction as it think fit, any enactment inforce in part A state and while doing so, it could repeal or amend any corresponding law which might be inforce in the part C states. Really it was a very sweeping kind of delegation.**
- **The supreme court was called upon determine the constitutionality of this provision. All the seven judges who participated in the reference gave seven separate judgements “exhibiting” a cleavage of judicial openion on the question of limits to which the legislature in india should be permitted to delegate legislative power.**

# Constitutionality of the Delegated Legislation

- **By a majority the specific provision in question was held valid subject to two limitations.**
- **(I) the executive can not be authorized to repeal a law in force and thus the provision which authorizes the central government to repeal a law already in force in the Part C State was bad ; and**
- **(II) by exercising the power of modification the legislative policy should not be changed, and thus before applying a law to the part C State the central government can not change the legislative policy.**

Principle laid down in the reference case

- **In Re Delhi Laws Act may be said to be “Siddhantwali” as regards constitutionality of delegated legislation. The importance of the case can not be under-estimated inasmuch as on the one hand it permitted delegation of the legislative power by the legislature to the executive while on the other hand it demarketed the extent of such permissible delegation of power by the legislature**

# Principle laid down in the reference case

- **In this case it was propounded:**
- **(a) Parliament can not abdicate or efface itself by creating a parallel legislative body.**
- **(b) power of delegation is ancillary to the power of legislation.**
- **(c) the limitation upon delegation of legislative power is that the legislature can not part with its essential legislative power that has been expressly vested in it by the constitution . Essential legislative power means laying down policy of law and enacting that policy into a binding rule of conduct.**
- **(d) power to repeal is legislative and it can not be delegated.**
- **The theme of In Re Delhi Laws Act case is that essential legislative function can not be delegated non essential can be delegated.**

# Judicial Control over the Delegated Legislation: Doctrine of Ultra Vires

- Judicial control over delegated legislation is exercised by applying two test
- 1. Substantive Ultra Vires
- 2. Procedural Ultra Vires
- Ultra Vires means beyond the powers
- When a delegated legislation goes beyond the scope and authority conferred on the delegate to enact it is known as **substantive ultra vires**
- When a delegated legislation is enacted without complying with the procedural requirements prescribe by Parent Act or by general Law it is known as procedural ultra vires

Judicial control over delegated legislation is exercised by applying the doctrine of ultra vires in a number of circumstances.

- **1. Where Parent Act is ultra vires the constitution**

- express constitutional limits

- Implied constitutional limits

- Constitutional rights

- **2. where delegated Legislation is ultra vires the constitution**

- Arbitrary power is ultra vires the constitution

- **3. where delegated legislation is ultra vires the parent act.**

- Delegated legislation is excess to the power conferred by parent act

- delegated legislation in conflict with the prescribed with the prescribed procedure of the parent act.

# Legislative Control over the Delegated Legislation

- **As usual law making power is vested in the legislature. On this principle law making power should be exercised by the legislature. But if the legislature delegates legislative powers to the executive, it must also see that powers are properly exercised by the administration.**
- **Jain and Jain rightly observed: it is the function of the legislature to legislate, but if it seeks to give this power to the executive in some circumstances, it is the not only the right of the legislature but also its duty as principal to see how its agent (executive) carries out the agency entrusted to it.**

# Legislative Control over the Delegated Legislation

- **Since it is legislature which delegates legislative power to the administration, it is primarily for it to supervise and control the actual exercise of this power and ensure against the danger of its objectionable, abusive and unwarranted use by the administration**
- **Three prong control is exercised by the legislature over delegated legislation as follows.**
- **(a) Proceedings in parliament,**
- **(b) Laying on the table and**
- **(c) Scrutiny Committee.**

# **1. Proceedings in Parliament**

- A number of proceedings are involved in exercise of control over delegation of legislative power by the legislature-**
- (i) debate on delegating bill**
- (ii) asking question and giving notices**
- (iii) resolution on motion**
- (iv) demand for vote on grant**
- (v) direction by speaker**

## 2. Laying on the table

- **Laying serves two purpose, firstly it informs the legislature as to what rules have been framed by the administrative authority in exercise of law making power and secondly it provides an opportunity to the legislature to question or challenge the rules already made or proposed to be made.**

### 3. Scrutiny Committee

- **Significant control over delegated legislation is exercised by the legislature through its committees. Under the constitution of India also two scrutiny committee have been established:**
- **(I) The Lok Sabha committee on subordinate legislation and**
- **(II) The Rajya Sabha Committee on subordinate legislation**

# Constitution of the Lok Sabha committee on the subordinate legislation

- **The Lok Sabha committee on subordinate legislation consists of 15 members nominated by the speaker for one year.**
- **It represent all the political parties in the house in proportion to their respective strength.**
- **A minister can not be a member of the committee.**
- **The chairman of the committee is also nominated by the speaker from among the members of the committee.**
- **The chairman is usually a member of the opposition**

# Constitution of the Rajya Sabha committee

- **The Rajya Sabha committee also consists of 15 members who are nominated by the chairman of the rajya sabha.**
- **The chairman of the committee is also nominated by the chairman of the rajya sabha.**
- **A minister is not prohibited from becoming a member of the rajya sabha committee**

# Functions of the committees

- **These committees are required to scrutinize and report to the respective houses whether the powers to make regulation, rules, sub-rules, bye-laws, etc. conferred by the constitution or delegated by the Parliament are being properly exercised within such delegation.**
- **They act as watch-dog which bark and arouse their master from slumber when they find that an invasion on the premises has been taken place.**

# Conclusion

- **Parliamentary control over administrative rule making is admittedly weak.**
- **Wade says “one of the features of the twentieth century has been a shift of the constitutional center of gravity away from parliament and towards the executive.**
- **Mr. Lloyd George once said, “ I am speaking now after forty years of my experience. Parliament has really no control over the executive it is a pure fiction.**

# Administrative Adjudication and Tribunals

- **The term administrative adjudication has been used synonymously with administrative justice.**
- **In a socialistic society bulk of cases are not decided by the ordinary court .**
- **When a dispute arise between an administrative agency and a private person, it is settled by the administration this is called administrative adjudication.**
- **Administrative adjudication has come into existence as a result of the philosophy of welfare state and consequential socialization of law.**

Continue...

- **It is not in the interest of the parties to the disputes of the society but of the society at large**
- **It is not possible for the ordinary court to decide these disputes expeditiously.**
- **Administrative Tribunals are therefore established to decide various quasi judicial issues in place of ordinary courts of law.**
- **Tribunals are recognized by even by the constitution of India.**

# Reason for the growth of Administrative Tribunals

- The complexities of intensive form of government and synthetic structure of present society have given rise to new problems requiring new solutions.
- 1. Inadequacy of Judicial System
- 2. Merits of the System of Administrative Adjudication
- 3. Need for expertise
- 4. functional approach to socio-economic problems
- 5. Preventive measures
- 6. Functioning of Tribunal

# Differences between Court and Tribunals

- Associated Cement Companies Ltd. V. R.N. Sharma in this case the Supreme Court observed: the basic and fundamental feature which is common to both the courts and tribunals is that they discharge judicial functions and exercise judicial power.
- However it must be noted that an administrative tribunal is not a court. A tribunal has some of trappings of a court but not all. Therefore it follows that both must be distinguished.

# Difference between court & tribunals (Continue...)

BASIS FOR COMPARISON	TRIBUNAL	COURT
Meaning	Tribunals can be described as minor courts, that adjudicates disputes arising in special cases.	Court refers to a part of legal system which are established to give their decisions on civil and criminal cases.
Decision	Awards	Judgement, decree, conviction or acquittal
Deals with	Specific cases	Variety of cases

# Continue..

<b>Headed by</b>	<b>Chairperson and other judicial members</b>	<b>Judge, panel of judges or magistrate</b>
<b>Code of Procedure</b>	No such code of procedure.	It has to follow the code of procedure strictly.
<b>BASIS FOR COMPARISON</b>	TRIBUNAL	COURT

# Definition of Administrative Tribunals

The word 'tribunal' takes its origin from the Latin term *tribunus* which means "a raised platform with the seat of judge, who elected by the plebs to protect their interests".<sup>9</sup>

- According to Oxford Dictionary, the tribunal means "Judgment Seat or "a Court of justice."<sup>10</sup>
- According to Oxford Companion of law "any person or body of persons having to judge, adjudicate on or determine claims or disputes...."<sup>11</sup>
- Tribunals can be called as "Judgment seat or court of justice or board or committee appointed to adjudicate on claims of a particular kind".
- Therefore, they are adjudicatory bodies (except ordinary courts of law) constituted by the State and entrusted with judicial and quasi-judicial functions as distinguished from administrative or executive functions

# NATURAL JUSTICE

- Natural justice is envisaged in administrative law for ensuring fair exercise of power by administrative agencies
- Nowadays the power of administrative authorities have considerably increased.
- Minimum fair procedure refers to natural justice
- Administrative law concerned with “how the work is done” than “what work is done”

# NATURAL JUSTICE

- Natural justice is best instrument to promote the interests of individual.
- Natural Justice is an ethico-legal concept which is based on natural feeling of human being.
- It is great principle of humanization which informs law and procedure with fairness and impartiality.
- Natural justice is an ideal element in administrative law. In this sense natural justice is known as natural law, universal law divine justice, universal justice or fair play in action

## PRINCIPLES OF NATURAL JUSTICE

- Natural justice represents higher procedural principles developed by judges which every administrative agency must follow in taking decision adversely affecting the rights of private individuals
- The principle of natural justice entails two principles:
  - (1). *Nemo iudex in causa sua*
  - no man shall be judge in his own cause or
  - the deciding authority must be impartial and without bias
  - Rule against bias

- (2).Audi alteram partem
- Hear the other side or
- both side must be heard, or
- no man should be condemned un heard or
- that there must be fairness on the part of deciding authority
- Rule of hearing or
- fair hearing

# THE FIRST PRINCIPLE OF NATURAL JUSTICE

- Nemo judex in causa sua or Rule against bias
- No man shall be judge in his own cause or
- The deciding authority must be impartial and without bias.
- Justice should not only be done but seen to be done
- Rule against bias is justified on the ground that impartiality is a characteristic of good administration.

# THE FIRST PRINCIPLE OF NATURAL JUSTICE

- This principle is applicable not only to judicial proceedings but also to quasi-judicial as well as administrative proceedings.
- It is minimum requirement of natural justice that the authority must consist of impartial person who are to act fairly and without prejudice and bias

# TYPE OF BIAS

- Bias appears in various forms which may affect the decision in variety of ways. the various types of bias are:
  - 1. Pecuniary Bias.
  - 1. Personal Bias.
  - 3. Subject Matter Bias.
  - 4. Departmental Bias. And
  - 5. Policy Bias.

# 1. Pecuniary Bias

- As regards pecuniary bias the least pecuniary interest in the subject matter of litigation will disqualify any person from acting as a judge
- According to Griffith and Street “ a pecuniary interest however slight will disqualify even though it is not proved that the decision is in any way affected.

# Bonhm Case:

- In Bonhm Case: Dr. Bonhm a doctor of Cambridge University was fined by the college of physicians for practicing in the city of London without the licence of the college. The statute under which college acted provided that the fines should go half to the king and half to the college.

## DIMES V. GRAND JUNCTION CANAL

Dimes v. Grand Junction Canal is regarded as the classical example of pecuniary bias. In this case a public company filed a suit against a land owner in matter largely involving the interest of the company. The Lord Chancellor who was a shareholder in the company decided the case and gave to the company the relief which was claimed. His decision was quashed by the house of lords because the pecuniary interest of the lord chancellor in the company.

# Manak Lal v. Dr. Prem Chand

- “It is obvious that pecuniary interest however small it may be in a subject matter of the proceedings would wholly disqualify a member from acting as a judge.”

## 2. Personal Bias

- Personal bias arises in a number of circumstances involving a certain relationship equation between the deciding authority and the parties
- Here a judge may be relative, friend or business associate of a party

## A.K. Kraipak v. Union of India

- In this case Naquishbund was candidate for selection to the Indian foreign service and was also a member of the selection board. Naquishbund did not sit on the selection board when his name was considered. Naquishbund was recommended by the board and he was selected by the public service commission. The candidates who were not selected challenged the selection of Naquishbund on the ground that the principle of natural justice were violated.

# A.K. Kraipak v. Union of India

- The supreme Court quashed the selection and observed “ it is against all canons of justice to make a man judge in own cause. It is true that he did not participate in delebration of committee when his name considered. But then the very fact that he was member of the selection committee must have its own impact on decision of the selection board.

## Second Principle of Natural Justice

“Audi alteram partem”

- Hear the other side or
- both side must be heard, or
- no man should be condemned un heard or
- that there must be fairness on the part of deciding authority
- Rule of hearing or
- fair hearing

# Second Principle of Natural Justice

- The universal rule of fair procedure in “audi alteram partem” - hear the other party.
- Thus hearing means natural justice or fairness
- If a dispute arise between two parties and both the parties are given the opportunities to present their case the decision would be fair.
- If one party is heard, the other party must have the right to be heard.

# King v. Chancellor university of Cambridge

- The first hearing of human history was given in the garden of Eden
- Even God himself did not pass sentence upon Adam, before he was called upon to make his defense
- ‘Adam’ says God “where art thou? Hast you not eaten of the tree whereof I commanded thee that thou shouldst not eat?”
- It is implied principle of rule of law that before deciding against the rights or interest of a person he must be given opportunity to present his case and oppose the decision.
- If this is not done natural justice is disregarded.

- It is the first principle of civilized jurisprudence and is accepted by Men and God
- Generally the maxim includes two ingredients:
  - 1. Notice and
  - 2. Hearing

# Notice

- Any order passed without giving notice is against the principle of natural justice and is void ab initio.
- Further it is necessary that the notice must be clear, specific, and unambiguous and charges should not be vague and uncertain

# Adequacy of Notice

- 1. Time, place and nature of hearing
- 2. Legal authority and jurisdiction under which hearing is to be held
- 3. Matters of fact and Law as regards charges

# Fair hearing

- 1. reception of evidence produced by the person
- 2. Disclosure of materials
- 3. Rebuttals of adverse evidence:
  - I. Cross examination
  - II. Legal representation

## REASONED DECISIONS

- **A reasoned decision means a decision which must contain reasons in support of it.**
- **The value of reasoned decision as a check upon the arbitrary use of administrative power is quit clear.**
- **A party has right to know not only the result of inquiry but also reason in support of the decision.**
- **The obligation to give a reasoned decision is a substantial check upon the abuse the power.**
- **Lord Denning rightly says the giving of reasons is one of the fundamentals of good administration.**

# Exclusion of Natural Justice

- **The requirement of natural justice may be excluded under certain exceptional circumstances.**
- **1. Impracticability**
- **2. Emergency.**
- **3. Public Interest.**
- **4. Academic Evolution.**
- **5. Interim disciplinary action.**
- **6. Statutory exclusion**

# impracticability

- Bihar school board examination v. subhash Chandra
- Radha Krishnan v. Osmania university

## • Emergency

- Where a dangerous building required to be demolish to save human lives
- Where a banking co. is required to be wound up to protect the interest of depositor.
- Where a passport required to be impounded in public interest
- A trade dangerous to society is to be prohibited.

# PUBLIC INTEREST

- MANEKA GANDHI V. UNION OF INDIA
- In the interest of public safety, public health, or public morality.
- a passport may be impounded in public interest without compliance with the principle of natural justice but as soon as the order impounding the passport has been made an opportunity of post decisional hearing remedial in aim should be given to the person concerned.
- **Academic Evolution**
- JNU V. B S Narwal
- Unsatisfactory academic performance
- University are best qualified to judge and courts perhaps are least qualified to judge.
- **Interim disciplinary action**

Abhay kumar v. k sri niwasan

## References

“Administrative Law” By J.J.R. Upadhyay

“Administrative Law” By U.P.D. Keshri