Principles of Administrative Law

CHAPTER 1

INTRODUCTION

General : The most significant and outstanding development of the twentieth century is the rapid growth of Administrative Law. It does not, however, mean that there was no Administrative Law before this century. Since many years, in one form or the other, it has been very much in existence. But in this century, the philosophy as to the role and function of the State has undergone a radical change. The Governmental functions have multiplied by leaps and bounds. Today, 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, regulates industrial relations, exercises control over the production, manufacture and distribution of essential commodities, starts many enterprises, tries to achieve equality for all and ensure equal pay for equal work. It improves slums, looks after the health and morals of people, provides education to children and takes all the steps which social justice demands. All these developments have widened the scope and ambit of Administrative Law.

According to the case of *Faridson Ltd.* v. *Pakistan* **P L D 1961 SC 357; DLR 1961 SC 223**, in Pakistan there is no procedure similar to that of French Administrative Law which, with variations, appears to be in operation over the whole of Europe with the exception of the U.K., or to a system of Administrative Court which prevails in the U.S.A. Under each of these systems, there is a *quasi*-judicial Tribunal provided to which a person injured by any action of a public servant performed in the exercise of public powers may have instant recourse, and these Tribunals are invested with powers to bring all the underlying processes into the light of day and apply necessary correction to the executive action by issuing appropriate directions to the executive authorities. In Pakistani Law, apart from departmental appeals on the executive side, the judicial remedy lies only in the prerogative writs, which the superior Courts are empowered to issue. The procedure, as these cases illustrate, is cumbersome and lengthy. **P L D 1961 SC 357; DLR 1961 SC 223.**

Definition of Administrative Law : It is indeed difficult to evolve a scientific, precise and satisfactory definition of Administrative Law. Many jurists have made attempts to define it, but none of the definitions has completely demarcated the nature, scope and content of Administrative Law. Either the definitions are too broad and include much more than necessary or they are too narrow and do not include all the necessary ingredients.

Ivor Jennings : Administrative Law is the law relating to the administration. It determines the organisation, powers and duties of the administrative authorities.

This is the most widely accepted definition. But according to Griffith and Street, there are two difficulties:

(*i*) It does not distinguish Administrative Law from Constitutional Law; and

(*ii*) It is a very wide definition, for the law which determines the powers and functions of administrative authorities may also deal with the substantive aspects of such powers, for example, legislations relating to public health services, houses, town and country planning, etc.; but these are not included within the scope and ambit of Administrative Law.

Again, it does not include the remedies available to an aggrieved person when his rights are adversely affected by the administration.

Dicey : Dicey defines Administrative Law as denoting that portion of the national 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.

Wade : According to Wade, Administrative Law is 'the law relating to the control of Governmental power. In his opinion, the primary object of Administrative Law is to keep powers of the Government within their legal bounds, so as to protect the citizens against their abuse.

Undoubtedly, this definition places considerable emphasis on the object of Administrative Law by touching the 'heart of the subject'. It does not, however, define the subject. It also does not deal with the powers and duties of administrative authorities nor with the procedure required to be followed by them.

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K.C. Davis : "Administrative Law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action.

Garner : According to Garner, the subject of Administrative Law includes the study of--

(*i*) the institutions and administrative processes;

(*ii*) the principal sources of Governmental legal powers,

(*iii*) the mechanisms by which citizens' grievances in respect of Governmental actions may be examined and, where appropriate redress be afforded;

(*iv*) the public corporations; and

(*v*) the administration of local Government and the general legal principles applying to local authorities.

Griffith and Street : According to Griffith and Street, the main object of Administrative Law is the operation and control of administrative authorities, it must deal with the following three aspects:

(*1*) What sort of power does the administration exercise?

(*2*) What are the limits of those powers?

(3) What are the ways in which the Administration is kept within those limits?

According to the Administrative Law Institute, the following two aspects must be added to have a complete idea of present-day Administrative Law:

(4) What are the procedures followed by the administrative authorities?

(5) What are the remedies available to a person affected by administration?

Jain and Jain : "Administrative Law deals with the structure, powers and functions of the organs of administration, the limits of their powers, the methods and procedures followed by them in exercising their powers and functions, the methods by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation."

Administrative Law, according to this definition, deals with four aspects. *Firstly*, it deals with composition and the powers of administrative authorities. *Secondly*, it fixes the limits of the powers of such administrative authorities. *Thirdly*, it prescribes the procedure to be followed by these authorities in exercising such powers. And *fourthly*, it controls these administrative authorities through judicial and other means.

Nature and Scope of Administrative Law : Administrative Law deals with powers and duties of administrative authorities, the manner in which the powers are exercised and the remedies which are available to the aggrieved persons, when those powers are abused by these authorities. Due to various reasons, the administrative process has come to stay and it has to be accepted as a necessary evil in all progressive societies, particularly in a welfare State, where many schemes for the progress of the society are prepared and administered by the Government.

Because of increase in the State activities, the executive exercises very wide powers. Apart from *pure* administrative and executive functions, by way of delegated legislation it exercises legislative functions and makes a plethora of rules, regulations, bye-laws, notifications, etc., substantially affecting the rights of the public at large. Similarly, the administrative authorities also exercise judicial powers for adjudication of disputes by establishing a number of administrative Tribunals. Provisions have been made in various statutes taking away jurisdiction of competent Courts and virtually conferring blanket powers on these Tribunals. Over and above *quasi*-legislative and *quasi*-judicial powers, administrative authorities also possess wide discretionary powers. Under various preventive detention laws, they can detain and put behind bars citizens and subjects even without regular trial by depriving them of their freedom and liberty. It also cannot be disputed that there is tendency of abuse and misuse of power on the part of the officers. Taking into account these wide powers of the executive, Lord Denning rightly observed, "Properly exercised the new powers of the executive laid to the Welfare State: but abused they lead to the Totalitarian State."

So far as Pakistan is concerned, there is a written Constitution. The philosophy of a welfare state has been specifically embodied therein. Over

and above law and order, the state undertakes a number of other commercial activities also. It runs railways and buses, carries trade and business, grants, refuses and revokes licences, imposes punishments, detains citizens on subjective satisfaction, manufactures bread and butter, etc.

In these circumstances, a study of Administrative Law is of great importance. In spite of written Constitution, fundamental rights and doctrine of judicial review, individual liberty and personal freedom is interfered with by the executive according to the sweet will of the officers. There are a number of preventive detention laws. Judicial review has also been considerably curtailed in view of its limitations, such as in the field of subjective satisfaction. Provisions have also been made in many statutes and even in the Constitution taking away jurisdiction of competent Courts including High Courts. Thus, the last of our defences, the judiciary is being rendered less effective. It is, therefore, of utmost importance to check the executive and Government from abusing and misusing the powers conferred on it and to provide remedies to affected and aggrieved persons. According to Schwartz, there is basic inequality between the private party and the Government agency and the goal of Administrative Law is to ensure that the individual and the State are placed on a plane of equality before the bar of justice.

Reasons for growth of Administrative Law : Following factors are responsible for the rapid growth and development of Administrative Law:

(1) There is a radical change in the philosophy as to the role played by the State. The negative policy of maintaining 'law and order' and '*laissez faire*' is given up. The State has not confined its scope to the traditional and minimum functions of defence and administration of justice, but has adopted a positive policy and as a welfare State has undertaken to perform varied functions.

(2) The judicial system proved inadequate to decide and settle all the disputes. It was slow, costly, inexpert, complex and formalistic. It was already over-burdened, and it was not possible to expect speedy disposal of even very important matters, *e.g.*, disputes between employers and employees, lock-out, strikes. These burning problems could not be solved merely by literally interpreting the provisions of any statute, but required consideration of various other factors and it could not be done by the ordinary Courts of law. Therefore, Industrial Tribunals and Labour Courts were established, which possessed the techniques and expertise to handle these complex problems.

(3) The legislative process was also inadequate. It had no time and technique to deal with all the details. It was impossible for it to lay down detailed rules and procedures, and even when detailed provisions were made by the legislature, they were found to be defective and inadequate, *e.g.*, rate fixing. And therefore, it was felt necessary to delegate some powers to the administrative authorities.

(4) There is scope for experimentation in administrative process. Here, unlike legislation, it is not necessary to continue a rule until commencement of the next session of the legislature. Here a rule can be made, tried for sometime and if it is found defective, it can be altered or modified within a short period. Thus, legislation is rigid in character while the administrative process is flexible.

(5) The administrative authorities can avoid technicalities. Administrative Law represents functional rather than a theoretical and legalistic approach. The traditional judiciary is conservative, rigid and technical. It is not possible for the Courts to decide the cases without formality and technicality. The Administrative Tribunals are not bound by the rules of evidence and procedure and they can take a practical view of the matter to decide complex problems.

(6) Administrative authorities can take preventive measures, *e.g.*, licensing, rate fixing, etc. Unlike regular Courts of law, they have not to wait for parties to come before them with disputes. In many cases, these preventive actions may prove to be more effective and useful than punishing a person after he has committed a breach of any provision of law. As Freeman says, "Inspection and grading of meat answers the consumer's need more adequately than does a right to sue the seller after the consumer is injured.

(7) Administrative authorities can take effective steps for enforcement of the aforesaid preventive measures, *e.g.*, suspension, revocation and cancellation of licences, destruction of contaminated articles, etc., which are not generally available through regular Courts of law.