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CONTEMPORARY ISSUES IN ADMINISTRATIVE LAW

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Abstract-

This research paper provide an in-depth analysis of administrative law in India, highlighting its significance, key principles, challenges, and potential areas for improvement. This research paper explored various aspects of administrative law, including the scope of judicial review, public accountability, administrative reforms, e-governance, environmental governance, and the protection of fundamental rights. It has shed light on the contemporary issues faced in Indian administrative law and offered suggestions to enhance its functioning and effectiveness. It is important to note that the suggestions provided in this research paper are not exhaustive, and further research, analysis, and stakeholder engagement are necessary to address the complex and evolving challenges in administrative law. Nonetheless, this research paper serves as a valuable resource for policymakers, legal professionals, scholars, and stakeholders interested in understanding and improving the condition of administrative law in India.

Key words- Administrative Law, Tribunals, Justice, Judicial Review, Public accountability

I. Introduction- Due to the development of the Society, the relationship between administration and the people had undergone a rapid change in today's world. In order to maintain a balance between the administration and the society, certain law is required to govern this relationship. In ancient times, the government's function was fairly straightforward. It was only allowed to be used for things like preserving domestic tranquillity and law, collecting and disbursing taxes, and defending against invasion from abroad. This does not imply that there was no administration in those days, Though, Indian history demonstrates the existence of a well-organized administrative legal system under the East India Company, Maurya, Gupta, and Mughal systems of government. Since the State and government play multiple roles and are responsible for maintaining state welfare, they cannot let any corner go unchecked. The State and the government have direct or indirect control over and influence over every activity. The duties, which are governed by administrative law, go

along with the powers and rights. The area of law known as administrative law is concerned with how the various governmental organs are organized in terms of their respective roles, responsibilities, and liabilities. Given that it reflects the laws under which administration is conducted, the development of administrative law is inevitable in the modern world. In the 19th century, the idea of laissez-faire made individualism, self-help, and self-employment manifest. It advanced the concepts of maximal free enterprise, minimal government control, and contractual freedom. The State's only responsibilities were to uphold the law, collect taxes, and protect the nation from foreign aggression. Human suffering resulted from this. Different people had different levels of bargaining power, and contractual freedom resulted in the exploitation of the society's weaker members. The poor got poorer while the wealthy gained all the power. It was then acknowledged that the state should have a significant impact on the welfare and uplift of the poor. In matters of individual enterprise and

social control, the state was favoured in this. Administrative law became necessary as "individual welfare" gave way to "social welfare."

II. Definition of Administrative Law

According to Davis- Administrative law is related to administration as commercial law is related to commerce or trade.

According to Austin, administrative law is the body of law that establishes the purposes and means for exercising sovereign authority. According to him, the sovereign power should only be used directly by the monarch or by political subordinates to whom it has been entrusted or delegated in part.

According to Jennings, "administrative law" is the law that deals with administration. It establishes the status, powers, and liabilities of administrative authorities."

III. Basic Principles of Administrative law

A. Droit Administratif-

It is a French system in which the powers are divided between the administration and the public. Droit Administratif, or administrative law in French, is a set of rules that governs how the government is organized, what powers and responsibilities it has, and how it interacts with its citizens.

B. Doctrine of Rule of Law-

Rule of law is the basic principle of English Constitution. This doctrine later accepted by US and Indian Constitution. Sir Edward Coke and Chief Justice James I was the originator of this doctrine.

Rule of Law attributes two meanings-

i. Supremacy of Law

According to this doctrine, no man can be arrested, punished or be fully made to suffer in body or goods but due process established by law. It opposed to arbitrary and autocratic governments which lays down that no functionary of the government should have wide arbitrary or discretionary powers to interfere with the liberty and freedom of the people.

ii. Equality before Law

According to this, all classes must be equally subject to the ordinary law of the land as

administered by ordinary courts of law. Except for a violation of the law established in the usual legal manner before the ordinary courts of the land, no person shall be subjected to bodily harm or be deprived of office or property.

C. Doctrine of Separation of Powers-

The basic purpose of this doctrine of separation of Powers is to divide governance against itself by creating a distinct centre of power so that they could prevent each other from threatening tyranny. Separation of powers doctrine seeks to protect against the state's oppressive and arbitrary power. The rationale underlying the doctrine has been that if all power is concentrated in one and the same organ or person there would arise the danger that it may enact arbitrary laws, execute them in a dictatorial manner without any control by any other institution.

Doctrine of Separation of Powers in India-

The Indian Constitution has not accorded the doctrine of separation of Powers a Constitutional status. But there are some directive principles in Part-IV Part- V such as Article 51 states that the state shall take steps to separate judiciary from executive in the public services of the state. In India not only functional overlapping but also personal overlapping of the division of powers.

a. Judiciary-

The Judiciary have the power under Article 142 and Article 143 to void the laws made by the legislature if they violate the Indian Constitution or the basic structure of the Indian Constitution. This has been established by the Supreme Court in its various landmark judgements such as Keshavananda Bharti vs Union of India.

b. Executive-

The President is the supreme head of the executive and retains many powers not only in the executive capacity but in judicial as well as legislative. In Judiciary Capacity, the President appoints the Chief Justice of India and other Judges while in its legislative capacity, Article 123 grants the power to promulgate ordinances which have the same effect as of the laws made by the Legislature.

c. Legislature-

The legislature contains only the law making power but also the powers in the judicial and executive matters. The legislature can remove the President by impeachment under article 61 in case of breach of its privileges while the Chief Justice of India as well as other judges could also be removed from their position by the legislature.

IV. Administrative Law in India

The administrative law in India is exercised by delegating its some portion of powers to other organs for effective adjudicating matters in a fast and optimise manner. However, all these mechanism are a subject of Judicial review.

Delegated Legislation-

When the Legislature delegates some of its power to others organs to adjudicate the matters, are known as Delegated Legislation. These powers conferred to executive to make necessary steps to carry out their functions in their daily course of duty. In order to prevent the executive from taking arbitrary actions, certain safeguards are necessary hence all the steps taken but the executive in its delegated legislative capacity are safeguarded by various controls.

a. Judicial Control-

In India, the control on the administrative action is safeguarded by Judicial Review. The courts checked the constitutionality of the action of the administration by reviewing the action of the administration. The courts are empowered to void the administration action if it found to be violative of the Indian Constitution or the rule of law. In the case of State of Kerala vs Unnikrishnan, 2007 SSC, the court held that the judicial review cannot be barred by the act of the enabling law.

b. Legislative/Parliamentary Control-

The parliament delegates its some powers to executive for administrating some domain matters and hence it is the duty of the legislature/Parliament to check the workings of its agents. The parliament controls the action over the delegated matter. In India, the

legislature/Parliament control the delegated executive at two stages-

i. Initial Stage- in Initial Stage, it is decided by the legislature/ parliament on how much power to be conferred to such executive for that specified matter.

ii. Direct and Indirect Stage- It has two ways :

a. Direct Control- In this, the steps taken by the delegated administration will be "laying" to the legislature/parliament. Laying can be simple, affirmative or negative.

b. Indirect Control- In this, the control has been exercised by the legislature/parliament and by its committees. The steps are evaluated by these functionaries to safeguard the arbitrariness of the delegated legislation.

V. Lokpal and Lokayukt

Lokpal and Lokayukt are the watchdog of the functioning of whole administration which prevent from the arbitrary action of the administration. In the central level, the Lokpal is been appointed while at the state level, Lokayukt been appointed. The Lokpal and Lokayukt are governed by the Lokpal and Lokayukt Act 2013, which gave a strategic positioning as well as define its functions and powers.

• Need for Lokpal and Lokayukt-

a. Lack of independency of central and state agencies such as CBI, CVC, Anti-corruption branch, etc.

b. Powerlessness of agencies Carry out inquiry about corruption, money-laundering, etc.

c. Lack of Transparency of the working of the central and state agencies

• Powers of Lokpal and Lokayukt-

1. To direct the CBI to carry out any inter-departmental enquires

2. Powers to CBI to make seizure and search operations related to any complaint

3. To give directions to any public administration to prevent certain documents for preliminary enquiry

4. To restrict any public servant from transfer or suspension in case of corruption

5. To confiscate any assets, receipts or benefits driven by means of corruption

VI. Administrative adjudication – Tribunals

The administrative body consists for adjudicating judicial functions are known as administrative Tribunals. These tribunals adjudicate the matters outside the ordinary courts. The main purpose of establishing these tribunals is for speedier adjudication of disputes and settlement of complaints. The administrative tribunals consists of Benches containing both judicial as well as non-judicial members. This does not mean that tribunals can be considered as substitute for Courts. However, tribunals are established by the central acts or by state acts which are ultimately governed by these acts. The main feature of these tribunals is that they are quasi-judicial in nature which means they can adopt their own procedure for adjudicating the matters. The following are important tribunals in India:

- Administrative Tribunal- established by Administrative Tribunal Act, 1985
- Industrial Tribunal- established by Industrial Dispute Act, 1947
- Railway Rates Tribunal- established by Railway Act, 1989
- Claim Tribunal- established by Motor Vehicle Act, 1939
- Income Tax Appellate Tribunal- established by Income Tax Act, 1961
- National Green Tribunal- established by National Green Tribunal Act, 2010
- Competition Appellate Tribunal- established by Competition Act, 2002

In a landmark case *L. Chandra Kumar vs Union of India*, the Supreme Court ruled out that the tribunals at first instance are the courts of their areas of law by which they are constituted but all the orders or decisions can be reviewed by an appeal before the High Court falling on that jurisdiction.

VII. Contemporary Issues in Administrative Law in India

Indian administrative law encompasses various contemporary issues that have significant implications for the functioning of the administrative machinery and the rights of citizens. Some of the key contemporary issues in Indian administrative law include:

1. **Judicial Review and Administrative Decision-Making:** The scope and extent of judicial review over administrative decisions is a constantly evolving issue. The courts play a vital role in ensuring that administrative actions are fair, reasonable, and in accordance with the principles of natural justice. The question of how much deference should be given to administrative decisions and the standard of review applied by the courts is an ongoing debate.
2. **Public Accountability and Transparency:** Ensuring transparency and accountability in administrative actions is crucial for maintaining public trust. Issues such as the Right to Information Act, whistleblower protection, and the need for robust mechanisms to hold public officials accountable for their actions have gained prominence in recent years.
3. **Administrative Reforms:** The need for administrative reforms to make the bureaucracy more efficient, transparent, and citizen-centric is a pressing issue. Reducing bureaucratic red tape, streamlining processes, and adopting technology-driven solutions for better service delivery are some of the areas that require attention.
4. **Administrative Tribunals:** The functioning and effectiveness of administrative tribunals in India have been a subject of debate. The need for specialized tribunals to deal with specific areas of administrative law, their independence, and ensuring access to justice are issues that need to be addressed.
5. **E-governance and Digitalization:** The rapid advancement of technology has transformed the administrative landscape. However, challenges such as data protection, cybersecurity, and ensuring digital access for all

sections of society need to be effectively addressed to harness the potential benefits of e-governance and digitalization.

6. **Public Service Delivery and Citizen's Rights:** Ensuring efficient and effective public service delivery is a key concern. Issues related to delays in service provision, corruption, and citizen's rights to timely and quality services are areas that require continuous focus and improvement.

7. **Environmental Governance:** Environmental concerns have become a critical area of administrative law. Issues such as environmental impact assessment, sustainable development, and balancing economic growth with environmental protection pose significant challenges for administrative decision-makers.

8. **Protection of Fundamental Rights:** Upholding and protecting fundamental rights guaranteed under the Constitution is a fundamental aspect of administrative law. Issues related to the right to privacy, freedom of speech and expression, and equality before the law require a delicate balance between the interests of the state and individual rights.

These contemporary issues highlight the dynamic nature of Indian administrative law and the need for continuous evaluation and adaptation to address the evolving challenges in the administrative sphere.

VIII. Suggestions

To improve the condition of administrative law in India, the following suggestions can be considered:

1. **Strengthen Judicial Review:** Establish clear guidelines and standards for judicial review of administrative actions to ensure consistency and predictability. This can help in striking the right balance between judicial scrutiny and administrative discretion.

2. **Enhanced Transparency and Accountability:** Promote transparency in administrative decision-making by implementing robust mechanisms for public access to information and proactive disclosure of administrative processes. Develop stronger whistleblower protection laws to encourage

individuals to expose corruption and malpractices.

3. **Administrative Reforms:** Undertake comprehensive administrative reforms to streamline bureaucratic processes, reduce red tape, and enhance efficiency. This can be achieved through the digitization of administrative procedures, simplification of rules and regulations, and promotion of e-governance initiatives.

4. **Strengthen Administrative Tribunals:** Enhance the effectiveness and independence of administrative tribunals by ensuring their proper composition, adequate resources, and speedy disposal of cases. Establish a mechanism for periodic review and evaluation of tribunal performance.

5. **Capacity Building and Training:** Invest in capacity building and training programs for administrators and public officials to enhance their understanding of administrative law principles, including procedural fairness, natural justice, and ethical conduct. Encourage continuous professional development to keep administrators updated with evolving legal and technological advancements.

6. **Emphasize Citizen-Centric Approach:** Shift administrative culture towards a citizen-centric approach by prioritizing prompt and efficient service delivery. Implement grievance redressal mechanisms that are accessible, transparent, and effective, allowing citizens to seek recourse for administrative grievances.

7. **Environmental Governance:** Strengthen environmental governance by enacting comprehensive legislation, developing robust monitoring and enforcement mechanisms, and promoting public participation in decision-making processes. Encourage sustainable development practices and incorporate environmental considerations into administrative decision-making.

8. **Review and Update Administrative Laws:** Regularly review and update existing administrative laws to ensure they are aligned with contemporary challenges and evolving societal needs. Consider periodic assessments

of the effectiveness and impact of administrative laws and make necessary amendments to address any shortcomings.

9. Collaboration and Cooperation: Foster collaboration between various stakeholders, including the judiciary, executive, legislature, civil society organizations, and academia, to develop and implement comprehensive reforms in administrative law. Seek inputs and feedback from experts and stakeholders during the policy-making process.

10. Public Awareness and Education: Conduct awareness campaigns and educational programs to enhance public understanding of administrative law principles, citizens' rights, and avenues for seeking redress. Promote legal literacy and empower citizens to effectively engage with administrative processes.

11. Implementing these suggestions can contribute to improving the condition of administrative law in India and ensuring a more accountable, transparent, and efficient administrative system that upholds the rule of law and protects citizens' rights.

IX. Conclusion

Administrative law plays a crucial role in regulating the actions of the executive branch and ensuring accountability, fairness, and the protection of citizens' rights. It is evident that there is a need for continuous evaluation, reform, and adaptation of administrative law in India to address the evolving challenges in the administrative sphere. Strengthening judicial review, promoting transparency and accountability, undertaking administrative reforms, and embracing a citizen-centric approach are some of the key measures that can contribute to improving the condition of administrative law. Furthermore, capacity building, collaboration among stakeholders, and public awareness are essential for realizing the potential of administrative law and ensuring its effective implementation. By implementing the suggested measures and incorporating the principles of fairness, efficiency, and adherence to the rule of law, India can create a robust

administrative system that upholds democratic values, protects citizens' rights, and fosters good governance. By continuously evaluating and refining administrative law principles and practices, India can strive towards an administrative system that effectively balances the powers of the state, protects citizens' rights, and promotes transparency, accountability, and good governance. Ultimately, a well-functioning administrative law framework contributes to a just and equitable society, fostering public trust in the government and ensuring the efficient delivery of public services.

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