

# 1. DEFINITION, NATURE AND SCOPE, SOURCES AND REASONS FOR GROWTH OF ADMINISTRATIVE LAW

(MOST IMPORTANT)

## SYNOPSIS:

- A. Introduction**
- B. Definitions of Administrative Law**
- C. Ingredients of Administrative Law**
- D. Characteristics of Administrative Law**
- E. Nature and Scope of Administrative Law**
- F. Sources of Administrative Law**
- G. Reasons for the need and growth of Administrative Law (Value of Administrative Law)**
- H. Relationship between Constitutional Law and Administrative Law**

## A. INTRODUCTION:

Administrative law is the law governing the organisation, procedure, powers and duties of the Executive of the Constitution and not the Judiciary or Legislature.

During the last century, there has been enormous changes regarding the functions of Government. The main

function of the State was to maintain law and order within the State and to protect the State from external aggression.

But in modern times, the activities of the State have increased. One of the main functions is to administrate the country to progress it economically, socially and culturally in order to constitute a welfare state.

## B. DEFINITIONS OF ADMINISTRATIVE LAW:

It is difficult to evolve a satisfactory definition of Administrative Law. Many jurists have made attempts to define Administrative Law, but none have succeeded in giving a clear picture of what Administrative Law is.

1. In the 19<sup>th</sup> century, **Dicey** defined Administrative Law firstly as “that portion of a nation’s legal system which determines the legal status and liabilities of all State officials and secondly defines the rights and liabilities of private individuals in their dealings with public officials and thirdly specifies the procedure by which those rights and liabilities are enforced”.

But this definition does not cover certain aspects like study of Administrative authorities, Administrative processes and functions of Administrative authorities and their control. It only conveys judicial control of public officials.

2. **K.C. Davis** improved upon this definition, as “the law concerning the powers and procedures of administrative agencies”. It also includes the law governing judicial

review of administrative action. This definition emphasizes the procedure followed by Administrative agencies who exercise their powers, but not the substantive laws prepared by them. He says that an Administrative agency is a governmental authority.

But this definition does not include many non adjudicative administrative or quasi judicial authorities. It also stresses only judicial control of administrative functions and not parliamentary or administrative functions and parliamentary or administrative appeals or revisions.

3. **Prof. Hart** defines administrative authorities rather than their structure, thus the definitions by Wade and Hart do not deal with structure of administrative organisations.
4. **Prof. Wade** defines Administrative law as follows “Administrative Law is concerned with the operation and control of the powers of Administrative authorities, with emphasis on functions rather than structure”. According to this definition, Administrative Law deals with the exercise of governmental powers.
5. According to **Griffith** and **Street**, the main object of Administrative law is the operation and control of Administrative authorities.

The definition deals with the following aspects:

- i. The powers exercised by the Administration.
- ii. Limits of the administrative powers.

- iii. The ways in which administration is kept within limits.
  - iv. Procedures followed by administrative authorities.
  - v. Remedies available to a person affected by administration.
6. **Jain** and **Jain** defines Administrative Law taking into consideration the composition and powers of administrative authorities, limits of their powers, procedures to be followed by them and judicial and other means of control.
  7. The **Indian Institute of Law** defines Administrative law as the law dealing with the structure, powers and functions of organs of administration, the method or procedure followed by them in exercising their powers and functions, the method by which they are controlled and the remedies which are available to a person against whom his rights are violated by their action.
  8. **Garner** defines Administrative Law as rules recognised by Courts as law and which regulate the administration of Government.
  9. **Prof. Schwartz** defines administrative law as that branch of the law which controls the administrative operation of Government. It sets forth the powers exercised by administrative agencies. It lays down the principles governing the exercise of these powers. It provides the legal remedies to the aggrieved by the administrative action.

10. **Ivor Jennings** defines Administrative Law as “the law relating to the administration. It determines the organisation, powers and duties of administrative authorities”.

This definition is broad, and includes various matters like Administrative organisation, Law of Civil Service, etc.

But it does not include the enormous number of substantive laws produced by the agencies. It also does not mention procedures but leaves them to be implied by words like ‘organisation’, ‘powers’ and ‘duties’.

#### **C. INGREDIENTS OF ADMINISTRATIVE LAW:**

Administrative Law deals with –

- i. The structure, powers and functions of the organs of administration.
- ii. It deals with the limits of the powers of the Administrative authorities.
- iii. It also deals with the methods and procedures followed by them in exercising their powers and functions.
- iv. It also deals with 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.

#### **D. CHARACTERISTICS OF ADMINISTRATIVE LAW:**

1. Administrative law determines as to who are the administrative authorities.
2. It decides the composition, functions and powers of administrative authorities.
3. It prescribes the procedure to be followed by the administrative authorities.
4. It prescribes procedures and the limitation for the exercise of such powers.
5. It prescribes the ways by which administration can be controlled.
6. It prescribes the remedies available to a person affected by administration i.e., both constitutional remedies and other legal remedies.

#### **E. NATURE AND SCOPE OF ADMINISTRATIVE LAW:**

Administrative Law deals with the powers and manner of exercise of the powers of administrative authorities and also the remedies available to the aggrieved persons, if such powers are abused by them.

Thus, Administrative law has become an inevitable necessity for all progressive societies. The main object of administrative law is to keep the administrative authorities under check i.e., within their limits so that their discretionary powers are not abused by them.

## **F. SOURCES OF ADMINISTRATIVE LAW:**

The following are the important sources of the Administrative Law:

### **1. Constitutional Law:**

The Constitutional Law deals with the structure and functions of legislative, executive (administrative) and judicial authorities. In the executive side, it confers powers and functions on the administrative authorities.

It defines the composition, powers and functions of the administrative authorities. It also provides for the methods of control of the executive authorities. Thus, Constitutional Law is an important source of Administrative Law.

### **2. Statutes and Enactments:**

Both the Parliament at the Centre and the Legislatures in States have power to enact laws. These legislations are called Statutes, Enactments, etc., such legislations made by the Parliament/Legislature may contain provisions at the end of such legislations for delegating the rule making powers to administrative authorities. Thus, Statutes and enactments are the most important sources of administrative law.

For e.g., In England, Statutes like (i) Rule Publication Act, 1983 (ii) Statutory Instruments Acts, 1946 (iii) Tribunals and Enquiries Act, 1958 and (iv) Crown Proceedings Act, 1947 are important sources of Administrative law.

### **3. Ordinances promulgated by the President or the Governor:**

The Head of the administration at Centre is the President of India and in the State Governments, it is the Governors who are the Heads. They have ordinance making powers in times of urgent needs and emergency, when the Parliament/legislatures are not in session.

The ordinances so promulgated have the same force and effect as an Act of Parliament/Act of State Legislature which are sources for Administrative law.

### **4. Case Laws (Precedents):**

The decisions of the Judges of Supreme Court and High Courts are binding in nature to the lower Courts, law enacting authorities and also the administrative authorities. The judicial precedents have played important role in the development of the administrative law.

### **5. Reports of the Committees and Commissions:**

The reports of the Committees and Commissions established in various fields of administrative reforms are considered important sources of the Administrative Law. For e.g., in India, the Reports of Law Commissions and the Parliament's Committees on Subordinate Legislation have played important role in the development of the administrative law.

### **6. Delegated Legislations:**

Acts of Parliaments and State Legislatures delegate law making power to the executive and the law and rules enacted

by the executive authorities are called delegated legislations or subordinate legislations. These legislations are important sources for the need and growth of administrative law.

**G. REASONS FOR THE NEED AND GROWTH OF ADMINISTRATIVE LAW (VALUE OF ADMINISTRATIVE LAW):**

1. **Welfare State:** The main reason for the rapid growth of administrative law is the radical change in Government's Philosophy from 'Laissez faire (minimum control of Government for free business enterprises) to a welfare state' (duty of Government to take care of the welfare of the people).

Now a days, the State has become a Welfare State and has undertaken to perform varied functions and hence the growth of administration has created new complex of relations. So a new branch of law namely administrative law has become necessary to deal with these relations.

2. **Simple procedures:** The traditional Judiciary is conservative, rigid and technical. On the other hand, the procedures adopted by administrative Tribunals are simple and easy. They are not bound by the rules of the law of evidence and hence they decide complex problems in a practical and expeditious manner.
3. **Preventive measures:** Enforcement of preventive measures like suspension, revocation, etc., are generally done by the Administrative authorities, whereas they

are not available through Courts of Law and hence the need for administrative law.

4. **Discretionary powers:** The administrative processes can combine functions with rules i.e., there is both law making and administrative powers with the executives and hence they can apply discretionary powers to take quick decisions and render quick remedies.
5. **Weaknesses of judicial system:** The judicial system is inadequate and causing delay and heavy expenses. It is already overburdened and unable to dispose of important civil and criminal cases speedily. E.g., disputes regarding lock out, strikes, etc, could not be quickly settled by ordinary Courts of Law. So, Industrial and Labour Courts with experts to deal with complex problems have been established.
6. **Importance to policies:** An administrator can give importance to policies rather than being a rigid arbitrator. For e.g., in Workman Compensation Act, Labour relations etc., he can take sympathetic and lenient views.
7. **Lack of time to Legislatures:** The legislature has no time to deal with all details in legislations. It is hence necessary to delegate some of its powers to administrative authorities to fill up the details and frame sub rules, bye laws, orders, etc.
8. **Suo motu executive actions:** A Court of law can not suo moto (self initiative actions) take actions but has to wait for parties to come with disputes whereas administrative

authorities can take preventive measures like licensing, rate fixing, etc. Preventing a person from committing a breach of law is more effective than punishing the person after committing the breach.

9. **Trial and error method:** The administrative authorities can adopt trial and error method, and experiment new principles. Rules can be altered or modified within a short period. Legislations on the other hand are rigid and no new experiments can be done.
10. **Effective enforcement measures:** The Administrative authorities can take effective and immediate enforcement measures, which are not possible through Courts.
11. **Quick disposal of disciplinary matters:** Administrative law enables the disciplinary authority to conduct enquiries against the misconducts of sub ordinate employees and after applying principles of natural justice, the charges of misconduct are proved or disproved and action of dismissal, termination, reinstatement, etc., are taken.
12. **Control of corruption:** Institutions like Ombudsman, Lokayukta and Central Vigilance Commission, etc., control the powers of administrative authorities by preventing corrupt activities and punishing the corrupt officials.

#### **H. RELATIONSHIP BETWEEN CONSTITUTIONAL LAW AND ADMINISTRATIVE LAW:**

In the earlier days, administrative law was studied as part of Constitutional law. With the increase of functions of

the Government, the need for separate study of Administrative Law was felt necessary.

Constitutional Law deals with the three wings of the Constitution namely Executive, Judiciary and Legislature. It deals with their organisation, functions, powers, etc. In addition, it confers fundamental rights on all citizens.

Thus, the scope of Constitutional law is very wide. It also prescribes guidelines to the Administrator for efficient administration as per Directive Principles of State Policy. It gives elaborate provisions about judicial system also. It also deals with powers and functions of Member of Legislative Assembly, Member of Parliament, President, Prime Minister, Chief Minister, Governor and others.

On the other hand, Administrative Law is narrow in scope. It deals with the Executive alone. It deals with the powers, functions and the organisation of administrative authorities. It gives constitutional and other statutory remedies to the affected parties by way of writs, damages, injunction, etc., thus establishing judicial control over administrative actions.

Constitutional Law and Administrative Law overlap each other and defy clear distinction. A critic observes Administrative Law as a specialised branch of Constitutional Law.

**Philips** observes that Constitutional Law is concerned with the organisation and functions of the Government at rest while Administrative Law is concerned with the organisation and functions in motion.

**Maitland** observes Constitutional Law deals with structure and broader rules regulating executive, whereas the administrative law deals with the minute details of the functions of the executive.

A **Critic** observes 'Constitutional Law' deals with the structure and rules of Government which regulate its function, while Administrative Law deals with the details of such functions. Thus the difference between Constitutional law and Administrative law is one of convenience rather than of logic.

In conflicts between Constitutional law and Administrative law, Constitutional law will prevail. So, the administrative actions must be in conformity with the Constitution. The rules enacted by administrative authorities must not violate the Parent Legislation and the Constitution.

**UNIVERSITY QUESTIONS FOR REVIEW:**

1. (a) Explain the nature of Administrative Law.  
(b) What are the important causes which led to the development of Administrative Law? Explain.
2. Define "Administrative Law". What are the reasons that led to the development and growth of Administrative law?
3. "Administrative Law has been characterised as the most outstanding legal development of the 20th century". Comment with reference to India and state reasons for such a development?

4. Discuss the various factors responsible for the rapid growth and development of administrative Law in India.
5. Define Administrative Law Explain its nature and scope in detail.
6. The study of Administrative law is not an end in itself but a means to an end. Explain with reference to scope of administrative law.
7. The rapid growth of administrative law has become the foundation for carrying out administration in a democratic set up. Explain.
8. Administrative law is the study of pathology of the Governmental Powers. Explain.
9. Explain the nature and scope of Administrative law. Distinguish it from Constitutional law.
10. Discuss the scope of administrative law and bring out the difference between administrative law and Constitutional law.
11. What are the reasons for the growth of administrative law? How separation of powers doctrine has influenced it?

