CHAPTER - 1

Introduction

1.1 Definitions and Meaning of Administrative Law

It is difficult to evolve precise definitions of Administrative Law which may satisfactorily and articulately demarcate its nature, scope and content. There are many formulations by writers on the subject, but none of them is held to be completely satisfactory, they are too broad or too narrow, either they include much more than what properly should be included within the scope of the subject, or else, they leave out some essential aspect of Administrative Law. Perhaps this might be the reason why F.J. Port, who published the first book bearing the title Administrative Law. He simply described the expression as follows:

Administrative Law thus is made up of all those legal rule- either formally expressed by statutes or implied in the prerogative - which have as their ultimate object the fulfillment of public law. It touches first the legislature, in that the formally expressed rules are usually laid down by that body; it touches secondly the judiciary in that: (a) there are rules (both statutory and prerogative) which govern the judicial actions that may be brought by or against administrative persons: and (b) administrative bodies are sometimes permitted to exercise judicial powers; thirdly it is, of course, essentially concerned with the practical application of the law.

From the analysis of these lines it is seemed that it is too difficult to draw one comprehensive definition which makes a complete coverage of the administrative law. But it shows that administrative law is and includes both statutes and precedents, it embodies general principles which can be applied to exercise of the powers and duties of authorities in order to ensure that the myriad of rules and discretionary powers available

---

3 Ibid.
to the executive conform to basic standards of legality and fairness. The ostensible purpose of these principles is to ensure that, as well as observance of the rule of law, there is accountability, transparency and effectiveness in the exercise of power in the public domain.\(^4\)

**1.1.1 English Approach**

**Sir Ivor Jennings** defines Administrative Law as follows-

> Administrative Law is a law relating to administration. It determines the organisation, powers and duties of administrative authorities.\(^5\)

This definition is authority oriented other than individual oriented and does not make any attempt to distinguish administrative law from constitutional law.\(^6\) Further, this definition is too wide, for the law which determines the powers of administrative authorities, may also deal with the substantive aspects of such powers. It may deal with matters such as public health, housing, town and country planning etc. These matters are, however, not included within the scope of administrative law.\(^7\) Jennings’ formulation is, however, in the sense that it has no reference to the manner of the exercise of powers and duties by the administrative authority, i.e., the procedure adopted by them in exercising the powers.

Jennings’ formulation also leaves many aspects of Administrative Law untouched, especially the control mechanism.\(^8\)

**A.V. Dicey**, in his book “Law of the Constitution” recognized the independent existence of Administrative Law and defines the expression as\(^9\).

---


\(^6\) The organisation, powers and duties of administrative agencies is the concern of Constitutional Law as well. Constitutional Law is defined as the rules which regulate the structure of the organs of the governments of a State and their relationship to each other and declares their principal functions. See Wade and Phillips, *Constitutional Law*, (1965) 1.

\(^7\) Supra note, 5.


that portion of a nation’s legal system which determines the legal status and liabilities of all state officials; defines the rights and liabilities of private individuals in their dealings with public officials and specifies the procedure by which those rights and liabilities are enforced.\textsuperscript{10}

Dicey’s definition is narrow and restricted in so far as it refers primarily to one aspect of Administrative Law, namely, the control of public officials and leaves out of considerations, many aspects of the law, e.g., it excludes many administrative authorities which, strictly speaking, are not officials of the states such as public corporations. It also does not refer to the procedures of administrative agencies, their various powers and functions or their control by parliament or in other ways.\textsuperscript{11}

Dicey appears to have formulated his definition with the French Droit Administratif in view. His formulation mainly concerns the judicial remedies against state officials and excludes the study of other aspects of Administrative Law.\textsuperscript{12}

According to Sir William Wade’s

Administrative Law as ‘the law relating to the control of governmental power’.\textsuperscript{13} It means the primary purpose of administrative law is ‘to keep the powers of government within their legal bounds, so as to protect the citizen against their abuse’. He further says:

Administration Law may be said to be body of general principles which governs the exercise of powers and duties by public authorities. This is only one facet of the mass of law to which public authorities are subject. All the detailed law about their composition and structure, through in a sense related to Administrative Law, lies beyond the scope of the subject\textsuperscript{14}.

\textsuperscript{10} Ibid.
\textsuperscript{12} Ibid.
\textsuperscript{13} HR Wade and CF Forsyth, Administrative Law, (2007) 4.
\textsuperscript{14} Id at 5.
The essence of Administrative Law Prof. Wade says, lies in judge made doctrines which apply right across the board and which therefore set legal standards of conduct for public authorities generally.

According to Griffith and Street, the main object of Administrative law is the operation and control of administrative authorities; it deals with the following three aspects:\(^{15}\):

1. What are the limits of those powers?
2. What sort of power does the administration exercise?
3. What are the ways in which the administration is kept within those limits?

Improvement to Griffith and Street’s Definition

According to the Indian Law Institute,\(^{16}\) the following two aspects must be added to have a complete idea of the present day administrative law:

1. What are the procedures followed by the administrative authorities?
2. What are the remedies available to a person affected by administration?

Definition by Jain and Jain

According to Jain and Jain,

Administrative law deals with the structure, powers and function of the organs of administration, the limits of their powers, the methods and procedures followed by them in exercising their powers and functions, the method by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation.\(^{17}\)

Administrative law, according to this definition, deals with four aspects:-

1. It deals with composition and the powers of administrative authorities.

---


\(^{16}\) *Cases and Materials on Administrative Law in India*, 1966, Vol. 1, Indian Law Institute, New Delhi,53.

2. It fixed the limits of the powers of such authorities.
3. It prescribes the procedures to be followed by these authorities in exercising such powers and,
4. It controls these administrative authorities through judicial and other means.\(^1^8\)

From these definitions it is clear that English writer did not lay so much emphasis on procedures of administrative agencies though the current thinking, there, is that procedures have great significance in Administrative Law and therefore more attention is being devoted, there, to the study of Administrative Procedures.\(^1^9\) Secondly, there is greater emphasis upon the study of various modes of judicial control of administrative action in the present administrative law, but since the dimensions of such action have expanded during past few decades it has been realized that judicial control alone could not provide adequate satisfaction to the people. Hence the search for extra-judicial modes of control also became the important task of administrative law.\(^2^0\)

1.1.2 American Approach

The American approach to Administrative law is depicted in its formulation by the leading scholar **Kenneth Culp Davis**. According to him Administrative Law\(^2^1\) is the law concerning the powers and procedures of administrative Agencies, including the law governing judicial review of Administrative actions.

An Administrative agency, according to him, is a governmental authority, other than a Court and other than a legislative body, which affects the right of private parties even through adjudication or rule-making. Davis further holds: \(^2^2\)

Apart from judicial review, the manner in which public officers handle business unrelated to adjudication or rule making is not a part

---

19 Report, Committee on Administrative Tribunals and Inquiries, 1955 (Franks Committee) reported in 1957.
of Administrative Law; this means that much of what political scientists call “public administration” is excluded. This definition suffers from certain imperfections.23

Firstly, Davis excludes control mechanism, the control exercised by the legislature, higher administrative authorities, the mass media representing public opinion and the vast area of administrative action, which is neither quasi-legislative nor quasi-judicative.

Secondly, Davis’ formulation of Administrative Law does not include the consideration of purely discretionary functions, falling within the category of administrative function. In modern times, discretionary administrative functions have vast scope and range and the control mechanism of these functions constitutes an important subject for the study in Administrative Law.

Schwartz defines Administrative Law24 as-

that branch of the law which controls the administrative operations of government. It sets forth the powers which may be exercised by administrative agencies, lays down the principles governing the exercise of those powers and provides legal remedies to those aggrieved by administrative action.

This formulation emphasizes on-

1. the powers vested in administrative agencies.
2. the requirements imposed by law upon the exercise of those powers, and
3. remedies against unlawful administrative action.

Administrative Law, Schwartz says, is limited to powers and remedies and answers the following questions25:

23 Supra note 11 at p.5.
25 Id at 2.
1. What powers may be vested in administrative agencies?
2. What are the limits of those powers?
3. What are the ways in which agencies are kept within those limits?

Schwartz explain that in America, administrative Law is not regarded as the law relating to public administration, the way commercial law is the law relating to commerce or land law, the law relating to land. According to him, administrative law relates more to procedure and remedies than to substantive law and it is the law controlling administrative agencies, not the law produced by law. He explained that the focus in America today, is on the administrative process itself, upon the procedures which administrative agencies must follow in exercising their powers.26

It may, thus, be noticed that the basic difference between ‘the American view’ and the ‘the English approach’ to the Administrative Law is that while the former emphasizes on procedure used by administrative agencies in exercising their powers, the later does not mention procedure directly and specifically and is left to be implied from such broad words as “organisation, powers and duties”.27

From these two approaches, it is clear that administrative law is the law concerning the operation and control of administrative power. It sets out the jurisdiction to be exercised by the administrative authorities, lays down the principles governing the exercise of such jurisdiction and provides remedies to the person aggrieved by administrative action. It means that administrative law is not confined to regulating the relationship between the citizens and the state, but also serve to allow challenges by one arm of government to the legality of acts by another arm, in particular, challenges by local government to the legality of actions of central government or vice versa. As such, administrative law may be perceived as a weapon in the hands of the power holders

26 Supra note 11 at 7.
27 Id at 6.
themselves to ensure that each centre of power acts within the legal limits of its authority.\(^{28}\)

### 1.2 Functions and Characteristics of Administrative Law

The main functions and characteristics of administrative law flow from the above broad definitions which are as follows\(^{29}\):

1. **It has a control function**, acting in a negative sense as a brake or check in respect of the unlawful exercise or abuse of administrative law.
2. **It can have a command function** by making public bodies perform their statutory duties, including the exercise of discretion under a statute.
3. **It embodies positive principles** to facilitate good administrative practice. For example, in ensuring that the rules of natural justice or fairness are adhered to.
4. **It operates to provide** for accountability and transparency, including participation by interested individuals and parties in the process of government.
5. **It may provide a remedy** for grievances occasioned at the hands of public authorities.

### 1.3 Theories of Administrative Law: Red and Green light Perspectives

The role of law in the modern state is evidently, then, a complex one. To understand it, it will be helpful to recognize how current legal thought and practice can be seen to crystallize around two contrasting models, labeled by Harlow and Rawlings\(^{30}\) 'red light' and 'green light' perspectives; the former more conservative and control orientated, the latter more liberal and socialist in orientation and facilitative in nature. Each has developed in tandem with the emergence of the modern state. They serve us here both to


\(^{29}\) *Supra* note 4.

describe what administrative law is and to act as normative (i.e moral and political) supposition about what its role in society ought to be.31

1.3.1 Red Light Theory

Red light theories are those which see the aim of administrative law as being to curb state activity so as to protect the individual. This terminology was first time used in control of English administrative law by Harlow and Rawlings in 1984 in their evaluation of the objectives of administrative law. The greatest exponents of this tradition would be Dicey himself with his emphasis upon the rule of law as a mechanism for the control over the acts of government and the protection of the individual32. Red light theories perceive the prevailing tradition of English administrative law as positivist, focusing on law as a system of rules and downplaying the limit between law and morality, as opposed to realist, i.e. seeing law in action or law as its functions within society.

The following are the main features of Red light theory. Red light theorists believe that

(i) Law is superior over politics.
(ii) The administrative state needs to be kept in check.
(iii) The best way to do this is through rule based adjudication in the courts.
(iv) The goal of the public law project should be to improve liberty. It helps but is not necessary to be a small government ideologue to support this theory.33

1.3.2 Green Light Theory

Green light theory based on the ideas of collectivism and corporate state acting in an interventionist way to improve the well being of the community. They advocate an alternative tradition in which the use of executive power to provide services for the benefit of the community is entirely legitimate and the functions of the courts in checking executive action are a questionable activity.34 In other words, Green light theorists see administrative law as existing to help the state to meet certain policy objectives. They

31 Ibid.
33 Supra note 30.
34 Supra note 28 at 29-30.
tend to minimize the role of the courts and underplay the existence of general principles. They emphasize the role allotted to political institutions i.e. taking a ‘functionalist approach’ to the allocation of functions. They want to encourage efficiency in the governing process. It basically comes down not to resisting interventionism, but to make the policy efficient and provide justice for individuals. Such theorists generally prefer political to legal accountability. They don’t want the courts to interfere with functions allocated by statute as this is to substitute in the court for the rightful decision maker. The main proponents of this school of thought include Laski, Robson, Jennings and Griffith.\footnote{Supra note 4 at 7.}

According to Green light theorists-

(i) Law is merely a type of political discourse and is not superior to administration.

(ii) Public administration is not a necessary evil but a positive good.

(iii) Administrative law is not to stop bad practices but to promote and facilitate good administrative practices and that rule based adjudication is not necessarily the best way to do this.\footnote{Id at 10.}

(iv) Liberty is to be promoted, but liberty in a collective sense i.e. the liberty that is only possible through interventionist government e.g. action against homelessness.

1.4 Growth and Development of Administrative Law

Administrative law has been considered as the most “outstanding legal development of twentieth century”\footnote{Vanderbilt’s Introduction to Schwartz, French Administrative law and the Common Law World xiii(1954).}. It does not mean, however, that there was no Administrative Law in any country before the twentieth century. Being related to public administration, Administrative Law should be deemed to have been in existence in one form or another in every country having some form of Government. It is as ancient as the administration itself as it is a concomitant of organized administration. The advent of the
concept of Welfare State during the Nineteenth Century led to the development of Administrative Law, as a branch of legal discipline separate and distinct from the Constitutional Law.\textsuperscript{38} The profound change in the conception of Government, as to the role and function of the State, attributed to the growth of Administrative Law. Prior to this change, laissez-faire was the ruling principal gospel. It manifested itself in the theories of individualism, individual enterprise and self-help.\textsuperscript{39} It emphasized on minimum government control, maximum free enterprise and contractual freedom. The state was known to be the “law and order” State.

1.4.1 India

1.4.1.1 In Earlier Times: In ancient times, there was no Administration Law in existence in India in the sense in which the subject is studied today. In India, Administrative law can be traced to the well-organised and centralized administration under the Maurya and the Guptas, several centuries before the Christ.\textsuperscript{40} The rule of Dharma was in action. The kings and the administrators observed the rule of Dharma and none claimed any exemption from it. The fundamental principles of natural justice and fairness were followed by the kings and officers as the administration could be run on those principles which were accepted by Dharma. Concept of Dharma was even wider than ‘Rule of Law’ or “Due process of law”.\textsuperscript{41} There was no machinery to enforce the rule of dharma so far as applied to the king. However, it was moral duty of the king to abide by the rule of Dharma.

1.4.1.2 In Modern Times: The rapid growth of Administrative Law in modern times is the direct result of the growth of administrative powers and functions. With the establishment of the East India Company and the advent of the British Rule in

\textsuperscript{38} Prior to the nineteenth Century, Administrative Law was discussed as forming part of Constitution Law.
\textsuperscript{40} Kautilya, Arthasastra(1961)56-75; Kane, History of Dharmasastra, vol.1, (1968) 201; Jayaswal, Manu and yajnavalkya , (1930) 92-101; Majumdar, Problems of Public Administration in India (1952) 11; A.k. chanda, Indian Administration , (1965) 15-42.
\textsuperscript{41} P.V. Kane, History of Dharmasastra, (1968) 1.
India, the powers of the Government had increased. Many Acts, Statutes and legislations were passed by the British Government, regulating public safety, health, morality, transport and labour relations. The ruling foreign power was primarily interested in strengthening its own domination. The object of early British administration was to maximize profit and for this efficiency in the administration was the chief necessity. Therefore during the Company days, the Courts were tools in the company’s hands. The executive had overriding powers in matters of administration of justice. However, the establishment of the Supreme Court at Calcutta in 1774 under the provisions of the Regulating Act, 1773 inaugurated an era in independent judicial administration. But with the passage of the Act of Settlement, 1781, the era came to an end and all the later developments in the judicial system during the Company’s time worked to the detriment of the native population.

From the Battle of Plassey in 1757 until independence, one significant advantage that the Indian administration had from a centralized but undemocratic form of government was the facility to make laws. During that period the executive was invested with such wide powers to make rules as a modern democratic legislature cannot even imagine. Even prior to the famous Code of Civil and Criminal Procedures known as Cornwallis code of 1793, Elphinstone Code of 1827 and many other regulation were in operation. These regulation laws aimed mainly at the regulation of the powers of the administration and their control. Thus, expansion of the administrative powers and provisions of some kind of control went hand in hand. For instance, Regulation 10 of 1822 which codified the law regarding the excise on salt, opium and general custom dealt mainly with the powers of administrative agencies. It made provisions regarding powers of confiscation, procedure in the proceeding of confiscation and the control to be exercised by the courts. Section 108 of the Regulation of 1822 reminds one of the provisions of the Administrative Procedure Act, 1946, when administrative agencies were

---

42 These included the Arms Act, 1878, the Explosives Act, 1884, the opium Act, 1878, the Epidemic Diseases Act, 1897, the Drainage Act, 1873, the Stage Carriage Act, 1861, the Employees and Workmen’s Disputes Act, 1860.

43 The Court was set up under the Royal Charter, 1774.

44 *Supra* note 8 at 13.
required to record facts, evidence and the decision. Judicial relief was made available only after the exhaustion of administrative remedies. The courts, though had ample powers to set aside an administrative action, yet paid great respect and attention to their decisions.\textsuperscript{45}

Till the end of the British rule in India, the government was concerned with the most primary duties only, and the functions of a welfare state were not discharged. However, increasing and rapid strides in the fields of communication and transport in the west, resulted in the need for the control of administrative agencies through regulatory bodies and tribunals like the Inter-State Commerce Commission in the USA and the Railways and Canal Commission in England. Finally, the two World Wars brought in a plethora of administrative agencies exercising control over almost every aspect of individual life.\textsuperscript{46} There was administration but with little or no control over its agencies.

With the dawn of Independence, the philosophy of Welfare State became a creed with the State. The Constitution, itself, speaks volumes for achieving the objectives. The preamble of the Constitution laid down that the Constitution aims at establishing a sovereign socialist, secular, democratic republic, so as to secure to all its citizens, social, economic and political justice, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and to promote among them fraternity, assuring dignity of the individual and the unity of the nation. Part IV of the constitution entitled “Directive Principles of State Policy”, contains various social and economic objectives for the state to achieve.\textsuperscript{47} All this requires the growth of the administrative process. While the activities and the powers of the government and the administrative agencies increase, there is greater need for the enforcement of the rule of law and judicial review over the vast powers vested with these agencies. For the purpose in view, Article 32,\textsuperscript{48} 136,\textsuperscript{49}

\textsuperscript{45} Ibid
\textsuperscript{46} The Defence of India Act, 1939 and the Rules made there under conferred unbridled powers on the Executive to interfere with life, liberty and property of an individual.
\textsuperscript{47} Part IV, Directive Principles of State Policy under the Constitution of India.
\textsuperscript{48} Article 32 of the Indian Constitution deals with Powers of Supreme Court.
226, 227, vest the Supreme Court and the High Courts, respectively, with power to issue various writs and orders in the nature of writs to check the excesses of the Government and the administrative agencies. Article 300 gives a right to the individuals to file a suit against the government for the torts committed by its servants. Article 311 protects government servant from arbitrary actions of the government in the matters of dismissal, termination and reduction in rank.

The term “law” is given very wide connotation in Article 13 so as to include within its purview all legislative actions, of the administration, such as, order, by-laws, rules, regulations, notifications, etc. An administrative action is not only questionable on the ground of ultra vires doctrine, but also, on the touchstone of Fundamental Rights.

The State, being a Social Welfare State, pervades every aspect of individual’s life. A large number of Government enterprises have come to be started; some key industries, financial institutions and transport services have been nationalized. The State has come to play a major role in promoting socio-economic welfare of labour by regulating the employer-employees relationship and by other means.

It also undertakes planning of social and economic life of the community with a view to raise the living standard of the people and reduces concentration of wealth; it improves slums, plans urban and rural life looks after health, morals and education of the people; it generates electricity, works mines and operates key and important industries. It acts as an active instrument of socio-

---

49 Article 136 of the Indian Constitution confers discretion on the Supreme Court to grant special leave to appeal before itself, from any judgment, determination, sentence, order passed or made by any court or tribunal in any cause or matter.
50 Article 226 of the Indian Constitution deals with powers of High Court.
51 Article 227 of the Indian Constitution deals with powers of High Court to superintendence over all courts and tribunals within the territory of India.
52 Article 300 of the Indian Constitution deals with power and liabilities of the State to sue or to be sued in tortuous acts.
53 Supra note 11 at 102-103.
54 E.g., the Industries (Development & Regulation) Act, 1951; the Essential Commodities Act, 1955; the Import and Exports (Control) Act, 1947.
economic policy regulates individual life and freedom to a large extent, provides many benefits to its citizens and imposes social control and regulation over private enterprise\textsuperscript{55}.

As a Consequence of the growing socio-economic welfare activities, the State has come to assume more and more powers. Though, there is increase in State activities all over, yet the largest extension in depth and range of functions and powers has taken place at the level of executive- cum- administrative organ. Now, the functions of a modern state may broadly be placed into five categories, viz., the state as protector, provider, entrepreneur, economic controller and arbiter.\textsuperscript{56}

The First attempt at the academic level for formulation of any structure of administrative law was made by Shri N.N. Ghosh in his Tagore Lectures delivered in 1919, made available in a book: *Comparative Administrative Law*. In the sense this work may be said to be a compendium of the comparative politics, constitutional law and administrative law, as they were understood in India at that time. But though a major portion of this book was devoted to the organisation of the governmental system and the public administration, it was a precursor of administrative law in the modern sense in so far as it laid stress upon the need for legal control over public officials and the remedies of the subjects against public authorities in general. Then, the subject found a place in the curriculum of the Lucknow University under the inspiration of Dr. R.U.Singh, the Dean of the faculty of law, under whose care Dr. A.T. Markose wrote his thesis on Control of Administration Action in India. Markose studied the reported cases of the Supreme Court of three years (1953, 1954 and 1955) and found that about half of the cases dealt with mattes of administrative law. Out of 250 reported cases, 119 belonged to administrative law category. Of 275 pages of Supreme Court judgments, 229 related to the subject of administrative law.\textsuperscript{57} Obviously, it has increased considerably thereafter.

---


\textsuperscript{57} Administrative law in India, (1961) 257 cited by Fazal: *Judicial Control of Administrative Action in India, Pakistan and Bangladesh*, (1990) 9.
The administrative process has grown so much that we may claim to be administered rather than governed. In this context the Law Commission of India rightly observed:\textsuperscript{58}:

The rule of Law and judicial review require greater significance in a Welfare State...the vast amount of legislation which has been enacted during the last three years by the Union and the States, a great deal of which impinges in a variety of ways on our lives and occupations. Much of it’s also confers large powers on the Executive. The greater therefore is the need for ceaseless enforcement of the rule of law, so that the executive may not, in a belief in its monopoly of wisdom and in its Zeal for administrative efficiency, overstep the bounds of its power and spread its tentacles into the domains where the citizens should be free to enjoy the liberty guaranteed to him by the constitution.\textsuperscript{59}

The observation of Law Commission is very relevant today when India has adopted the policy of liberalization, privatization and globalization in which administrative law has developed international dimension. Though state is now withdrawing from business, yet its functions as a facilitator, enabler and regulator are bound to increases. It may, thus, be stated that change in the philosophy as regards the role and function of the State, has attributed to the growth of Administrative Law in India.\textsuperscript{60}

Later on, the Administrative Reforms Commission in its interim reports in 1966\textsuperscript{61} has emphasized for the redressal of the citizens grievances against the administration. A partial action has been taken, on the institution of Lokpal. The office of Lokayuktas have been incorporated at the State level\textsuperscript{62} and attempts are being made to incorporate the Lokpal at centre. In the 2005 two major developments have been taken place:

(a) The Parliament has passed the Right to Information Act, 2005, and
(b) The Prime Minister comments that second Administrative Reforms Commission shall be constituted. However, in the year 2006 an amendment

\textsuperscript{58} Report, Fourteenth Law Commission, II, 672.
\textsuperscript{59} Ibid.
\textsuperscript{60} Devinder Singh, Administrative Law, (2007) 8.
\textsuperscript{61} This commission was appointed on 5\textsuperscript{th} January, 1966 by the President of India.
\textsuperscript{62} At the state level, 18 states have created the institution of the Lokayukta through their respective Lokayukta Acts.
on the request of some States, has been introduced in the parliament to the effect that States may be allowed to close the administrative tribunals. It has two reasons: (a) after the decision of the Supreme Court in *L. Chandra Kumar v. Union of India*,63 these tribunals do not enjoy the exclusive jurisdiction in service matters; and (b) unfortunately, the working of these tribunals has not been proved satisfactory.

1.4.2 England

Administrative Law in England has a long history. There always existed a somewhat messy system of administrative institutions. But, the subject in its modern form is said to have emerged in the second half of the seventeenth century. A number of its basic rules are dated back to that period and some, such as the principles of natural justice, are still older.64

Originally, the English Monarch, who was considered to be “a Divine being”, was conceived to be the fountain head of the justice and had himself, dealt out justice to his subjects. Under the Tudor Monarchy, power was centralized in the state which was exercised through the Star Chamber, enforcing the Privy Council’s superintendence.65

Later on, the function came to be assigned to a few chosen individuals, who were styled, as they indeed still, are as His Majesty’s Judges. The King used to take over any case he pleased and decide it himself. To this situation, Sir Edward Coke could not reconcile.66 He protested and said, “God has bestowed upon your Majesty great endowments, but you are not learned in the laws of the realm. Law is an art and protects you and your subjects in safely and in peace.” In the Royal battle, Coke asserted, “the king ought not to be

63 (1997) 3 SCC 261.
64 Supra note 13 at 13.
65 Id at 14.
courts simply adopted the traditional concepts of administrative law and applied them to self regulatory bodies, regardless of their legal status.\textsuperscript{75}

1.4.3 America

Administrative Law was in existence in America in the 18\textsuperscript{th} century, when the first federal administrative law was embodied in the statute in 1789, but it grew rapidly with the passing of the Inter-state Commerce. But, in his classic history of American law, Lawrence Friedman\textsuperscript{76} tells us, "in hindsight, the development of administrative law seems mostly a contribution of the 20th century. The creation of the Interstate Commerce Commission, in 1887, has been taken to be a kind of genesis." According to this conventional account, the federal government woke from its laissez faire slumbers in the face of a crisis in the railroad industry. From that beginning, the modern administrative state was built in fits and starts over the next 100 plus years.\textsuperscript{77}

In U.S.A. the man, first to treat the administrative law on a separate subject was Good now who brought out his book on comparative administrative law in 1893. In 1939 President Franklin appointed Attorney General Committee to investigate the need for procedural reforms in the field of Administrative Law. It was the report of this committee in 1946 which resulted in the enactment of the Administrative Procedure Act of 1946, which may be said to constitute a statutory code relating to the judicial control of administrative actions in U.S.A. In this Act, the essential uniform administrative procedure in respect of administrative discretionary and adjudicatory functions of administrative agencies is prescribed. The Procedure also embodies rule of natural justice and inalienable elements of due process.\textsuperscript{78}

\textsuperscript{75} Michael T Molan, \textit{Administrative Law}, (2001) 5.
1.5 Reasons for the Growth of Administrative Law

Administrative law is considered as an intensive form of government and developed most sophisticated philosophy of law for controlling of the arbitrary and discretionary powers of the administrative authorities. It deals with the pathology of functions. The functions that are discharged by the administrative authorities differ from time to time depending upon the changes in socio-economic conditions in any nation.

The following factors are responsible for the phenomenal growth and development of administrative law:

(i) **Change in the Philosophy of the State**- During the last century, there has been a radical change in the philosophy as to the role and function of the State. The negative policy of maintaining ‘law and order’ and of ‘laissez faire’ is given up.\(^{79}\) The state has not confined its scope to the traditional and minimum functions of defence and administration of justice, but has adopted the positive policy and as a welfare State has undertaken to perform varied functions for the welfare of its citizens. It has to provide them security from their cradle to grave, to protect their environment, to educate them at all stages, to provide them with employment, training, houses, medical services, pensions, food, clothing and shelter. To carry out such complicated task, the state needs a huge administrative apparatus.\(^{80}\) And, this has, led to the growth of administrative process and administrative law.

(ii) **Industrialization and Modernization**- During the Twentieth century, there has taken place phenomenal growth in science and technology, leading to industrialization and modernization in the whole world. Industrialization has given rise to many crucial problems of labour-management relations, competition between industrial establishments. Modernization has created serious problems such as haphazard urbanization, exploitation of natural

\(^{79}\) Supra note 2 at 5.

\(^{80}\) Supra note 13.
resources, environment pollution, transport and traffic automation, cultural conflicts. All these have given rise to consequential problems, such as, unemployment, growth of slums, erratic production and distribution of economic powers, dismal health, education, staggering inflation, commercial malpractices. These problems cannot be solved except with the intervention by State. All this has led to the growth of Administrative law in India.\textsuperscript{81}

(iii) Expectations of Peoples- The modern day governance is based upon the welfare of the citizens. The expectations of the citizens from its government are very high and the accountability of government has also increased. There is demand by the people that the government must solve their problems rather than merely define their rights and come forward to actively help the weaker sections of the society to bring about equality and harmony in the Society. This implies the expansion of administrative process and administrative law.\textsuperscript{82}

(iv) To Meet Emergency Situations- In order to meet the emergency situation, the administration is usually to be armed with power for quick response meeting the unforeseen calamity. It is only administrative adjudication which could meet the emergency situations. So it is preferred to the regular courts.\textsuperscript{83}

(v) Inadequacy of Law-Making Organs- Our legislatures are overburdened and do not find sufficient time to enact laws to meet the changing needs of the modern government. They also lack expertise, flexibility, experimentation and quick decision and cannot pass that quality and quantity of laws, which are needed in functioning of modern welfare state. Under these circumstances, it was felt indispensable to delegate some powers to the administrative authorities. There is, therefore, inevitable growth of administrative legislative process.\textsuperscript{84}

\textsuperscript{81} Supra note 11 at 12.
\textsuperscript{83} Supra note 60 at 10.
\textsuperscript{84} Supra note 81.
(vi) Inadequacy of traditional judicial system – The traditional judicial system is technical, expensive and dilatory. The judicial process in which decisions are made after hearing and on the basis of evidence on record has proved to be inadequate, in responding to the new challenges, resulted in the functioning of a welfare and functional Government. It has led to the growth of administrative adjudication process through the establishment of Administrative Tribunals which are possessed with techniques and expertise to handle problems in an effective and speedy manner.85

(vii) Non-technical character of administrative process- Administrative agencies can avoid technicalities. Administrative process represents a functional rather than a theoretical and legalistic approach. The traditional judiciary is conservative, rigid and technical. The courts cannot decide cases without formality and technicality. Administrative tribunals are not bound to follow the rules of evidence and procedure. They can take practical view of the matter and decide complex problems as required in view of the socio-economic conditions.86

(viii) Scope for Experimentation in Administrative Process- In administrative process, there is scope for experimentation. 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 some time and if it is found defective, it can be altered or modified within a short period.87 Thus, legislation is rigid in character while the administrative process is flexible.

(ix) Adoption of Preventive Measures- Administrative agencies can take preventive measures e.g. licensing, suspension, revocation and cancellation of licenses, rate fixing, destruction of contaminated articles, etc.88 unlike ordinary courts of law they have not to wait for the parties to come before them with

85 Ibid.
86 Supra note 82 at 8.
87 Ibid.
88 Supra note 86.
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 and society has suffered the loss.

(x) **Regulatory Measures**- The regulation of the pattern of ownership, production and distribution is considered the responsibility of any good government to ensure the maximum good of the maximum number. This again has led to the growth of administrative process and administrative law.89

(xi) **Evolution of Socialistic Pattern of Society**- The Indian Constitution aims at establishing a sovereign socialist secular democratic republic in India as to secure to all its citizens, inter alia, social, economic and political justice. In Article 38,90 the state is put under an obligation to strive to secure a social order in which social, economic and political justice shall inform all the institution of national life. Article 3991 required the state to direct its policy towards securing that the citizens have equal rights to an adequate means of livelihood; that the ownership and the control of the material resources of the community are so disturbed as best to sub serve the common good; that there is no concentration of wealth and means of production to be common detriment;

---

89 Supra note 69 at 7.

90 Article 38: (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

91 Article 39: The State shall, in particular, direct its policy towards securing-

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitations and against moral and material abandonment.
and that there is equal pay for equal work. All these functions led to growth of administrative law in India.

(xii) To Establish New World Economic Order- Recent growth in global administrative space and the emerging intergovernmental regulations by global agencies with tremendous national consequences has further added new focus to Administrative Law with global dimensions necessary to make new world economic order inclusive and equitable. This has added to the scope of administrative law as an outsourced policy delivery mechanism to enforce responsibility and accountability in global governance not only on states but also on corporate, firms, autonomous agencies, individuals and civil society institutions.92

There are thus numerous factors responsible for the growth of administration and administrative law which are the all pervading features of government today. No list of reasons, howsoever, lengthy it may be, can be complete and exhaustive. Nevertheless, modern welfare government, state activism, socio-economic reforms, growth in science and technology and global administrative space are the main force behind the growth of administrative law and process. But what is important is that for any government to establish sound administrative laws and procedure for public welfare, the proactive participation of people is of vital importance.93

1.6 Advantages and Disadvantages of Administrative Law

1.6.1 Advantages of Administrative Law

(i) Alternative Dispute Resolution - The administrative practices in administrative law usually offer benefits that may not easily available in the standard judicial process. A great example is that administrative law allows parties to easily resolve their disputes by alternative dispute resolution viz.,

92 Supra note 8 at 12.
93 Researcher's own idea.
mediation, negotiation and conciliation etc. These dispute are resolved in a more reasonable and convenient manner as compared to trial courts. It also promotes uniform justice application as it applies to public agencies and public officials.

(ii) **Cheap and Speedy Justice** - Administrative Tribunals provide cheap and speedy justice to litigants as compare to ordinary courts. Thus, the administrative adjudication is more accessible and convenient to the people.

(iii) **Usefulness of Administrative Tribunals** - Flexibility, accessibility and low cost are the important merits of administrative tribunals. In the fast changing world of today, administrative tribunals are not only the most appropriated means of administrative action, but also the most effective means of giving fair justice to the individuals.

(iv) **It benefits the litigants** - The proceeding of administrative tribunal are more benefit to the litigants. This is credited to the speedy justice delivery as well as the cost efficiency. Furthermore, with the use of administrative law and tribunals, ordinary courts no longer require dealing with the administrative matters. The courts are therefore exempted from the time consuming hearing of cases in certain administrative matters.

(v) **Provisions are less open to review** - The provisions of administrative law are less open to review in comparison to criminal and civil law. However, the provisions of administrative law lay down a procedure of review. Administrative law also provides for access to information pertaining to government authorities.

---

96 Ibid.
(vi) **Flexible in nature**- The Process of adjudication in dealing with administrative law is flexible and informal as compared to the rigid, stringent and much elaborated ordinary court procedures.\(^{98}\)

(vii) **Based on principles of natural justice**- In India, administrative law is unwritten law. Therefore while interpreting the administrative law judges have to follow the principles of natural justice which is one of the cardinal principles of administrative law.\(^{99}\)

### 1.6.2 Disadvantages of Administrative Law

Even though administrative process is essential and useful in modern day administration, we should not be blind to the defects from which it suffers or the dangers it poses to a democratic polity. Some of the main drawbacks are mentioned below\(^{100}\).

(i) **Unskilled persons**- In administrative law, administrative tribunals are established with a view to deal with different kinds of administrative disputes. For this purpose, there is need of legal expert. But in administrative tribunal, members of the panel are selected from different walks of life with no or little legal background. They may lack the requisite legal expertise to adjudicate disputes.

(ii) **Unwritten law**- In India, administrative law is unwritten. It is based on general principles of law. Therefore, some time judges misuse their discretionary powers while interpreting the law.

(iii) **Partiality**- In administrative Tribunals, many or all of the members of the administrative tribunals are at the same time employees of the various offices or agencies; they might not be free from bias and partiality towards the agency.\(^{101}\)

---

\(^{98}\) *Ibid.*

\(^{99}\) *Supra* notel 1 at 202.

\(^{100}\) Researchers own ideas.

\(^{101}\) *Ibid.*
1.7 Judicial Review

Judicial review is a great weapon in the hand of judges to control the actions of administrative authorities in India. It comprises of the power of courts to declare unconstitutional and unenforceable any law, order and actions taken by public authorities which is inconsistent or in conflict with the basic law of the land. It is based on the rule of law which is basic structure of the Indian Constitution which cannot be damaged or destroyed even in the amending power of Article 368 of the constitution.103

Article 13 of the Indian constitution deals with the power of judicial review which has been conferred on the Supreme Court and High Courts under Article 32 and 226 which can declare a law unconstitutional if it is inconsistent with any of the provisions of part III of the Constitution. It aims at to ensure that the administrative authorities while performing its functions does not abuse its power and the individual receive just and fair treatment. Thus, the power of judicial review is exercised by courts to prevent arbitrariness and favoritism and to control discretionary powers of the administration.104

1.8 Problem Profile

Administrative law is much growing phenomenon in recent time which developed not to sanctify executive arbitrariness but to check it and protect the rights of the people against the administration’s excesses. Therefore, the central theme of administrative law is also the reconciliation of liberty with power. It is law concerning the power and procedures of administrative agencies, including the law in governing judicial review of

102 Law is Greek, Administrative Adjudication in India, available on www.lawisgreek.com/administrative-adjudication-in-india.
104 Ibid
Introduction

administrative actions. Judicial review of administrative action is perhaps the most important development in the field of public law and most important weapon in the hands of the judiciary for the maintenance of the rule of law. It is the duty of judiciary to find out the extent and limits of the power of coordinate branches, viz. executive and legislature and to see that they do not transgress their limits.\textsuperscript{105}

Separation of power in the context of Administrative Law is a device to check tyranny and authorisation. The rationale underlying the doctrine that if all power is concentrated in one and the same organ or person, there would arise the danger that it may enact tyrannical laws, execute them in a despotic manner and interpret them in an arbitrary fashion without any external control.\textsuperscript{106} Its object is the preservation of political safeguards against the capricious exercise of power. The goal of doctrine is to have a government of law rather than of official will or whim.\textsuperscript{107} But, in strict sense this doctrine is undesirable and impractical and therefore, it is not fully accepted in modern times because neither the powers of the government can be kept in watertight compartments nor can any government run on strict separation of powers. There is also the inherent difficulty in defining in workable terms the division of powers into legislative, executive and judicial. still, one features of doctrine is emphasized by the jurists is that the judiciary must be independent of and separate from the remaining two organs of the government because the courts were intermediary between the people and the other organs of the state, in order to keep the latter within the parameters delineated by the constitution, an independent judiciary is an indispensable requisite of a free society under the Rule of law.

Dicey’s rule of law which was founded on the separation of powers, is a standard to judge the action of the government department and a system of rules for preventing the abuse of discretionary power because wherever there was discretion, there

\textsuperscript{105} Supra note 18 at 237. 
\textsuperscript{106} Supra note 17 at 23. 
\textsuperscript{107} Id at 12.
was room for arbitrariness which led to insecurity of legal freedom of the citizen.\textsuperscript{108} Now, the main problem is whether the administrative authorities follow in discharging their functions such procedures as are reasonable, consistent with the rule of law, democratic values and natural justice. It is the task of Administrative Law to ensure that the government functions are exercised according to law, on legal principles and according to rules of reason and justice; that adequate control mechanism, judicial and others, exist to check administrative abuses without unduly hampering the administration in the discharge of its functions efficiently\textsuperscript{109} and willingness of the courts to assert their power to scrutinize the factual basis upon which discretionary powers have been exercised. Therefore, in order to control and review administrative action, the judiciary have propounded and developed various principle for what is required, in the present day context, is to develop a viable system of Administrative Law, maintaining a balance between personal rights and freedoms on the one hand and administrative needs and exigencies of a developing Social welfare State, on the other.\textsuperscript{110} Since the Government and the parliament has been, by and large, lacking in their efforts in this direction, the burden has been cast on the judiciary to give shape to the principles for regulating the functioning and behavior of the administration.\textsuperscript{111}

In India, Judicial review is a special power granted to Supreme Court and High Court to declare such a law and action invalid or unconstitutional which are inconsistent or in conflict with the provisions of the constitution. This is also one of the requirements of the rule of law which is the part of the basic structure of Indian Constitution.\textsuperscript{112} While judicial review over administrative action has evolved on the lines of common law doctrines such as ‘proportionality’, ‘legitimate expectation’, ‘reasonableness’ and principles of natural justice, the Supreme Court of India and the various High Courts were given the power to rule on the constitutionality of legislative as well as
The main object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and to ensure that the authority reaches a conclusion which is correct in the eye of law.

The control-mechanism used for the above-said purpose includes writs, appeals, reference to the courts, injunctions, declaration suits for damages against the administration, etc. Writs are issued by the Supreme Court and the High Courts under the Provision of Articles 32 and 226 respectively. Article 136 contains provision for grant of special leave to appeal to Supreme Court from the decisions of the tribunals. This power is in the nature of special or residuary power, exercisable outside the purview of ordinary court, where requirement of justice demands interference by the Supreme Court.

In the present era, as a result of globalization and liberalization, there is an increasing trend towards privatization in India which necessarily results in a shrinking of the role of the State and replacing it with the discipline of market forces. By privatization, the government is distancing itself from its responsibility. This is another problem which the India is facing. To deal with the disputes of private organization now the government is establishing tribunals to redress the dispute of private organization. But practically they are not much effective. The courts can issue writs under Articles 32 and 226 of the Indian Constitution against the State only, not against the private organizations and private organization is not state within the meaning of Article 12 of the Indian Constitution. The decision taken by the administrative authorities of private organization remains out of the ambit of writs jurisdiction which leads to violation of fundamental rights of the people. So privatization and Tribunalisation are reducing the

---

114 Chief Constable v. Evans, (1982) 3 All ER 141.
116 Article 12: In this part, unless the context otherwise requires, “the State” includes the Government and Parliament of India and the Government and the Legislature of each of the State and all local or other authorities within the territory of India or under the control of the Government of India.
117 There are six fundamental rights guaranteed to every citizen of India under the Indian Constitution.
scope of writs and judicial review in India. In order to maintain the character of welfare state there must be some check and balances in the discharge of administrative functions.\textsuperscript{119}

Even as the role of the state as service provider is shrinking, but in the modern era there is need to retain and reinforce the role of state in a liberalized and privatized economy. Government intervention in the form of price fixation, laying own conditions of license, presence of nominees on the Board of Directors of private enterprises and regulatory authorities\textsuperscript{120} with enormous powers is necessary in all important sectors which have been totally or partially privatized. Therefore the State has to act as a supervisory role in private sector and functions of a modern state may broadly placed into five categories, viz., the State as protector, provider, entrepreneur, economic controller and arbiter.\textsuperscript{121} Being a welfare State, State today pervades every aspect of human life. To perform such functions and overall development of citizens, the State needs a huge administrative apparatus and this has led to the growth of administrative process and Administrative Law which is the necessity of present time in India.

1.9 Object of the Study

The main object of the judicial review of administrative action is to provide a fundamental safeguard against the abuse of power and to see that the functioning of the various ‘agencies and instrumentalities of the state’ should demonstrate a clear commitment to fairness, impartiality and proportionality while maintaining effective checks against arbitrariness and discrimination.

\textsuperscript{119} Researchers own ideas.
\textsuperscript{120} See e.g., the Telecom Regulatory Authority of India Act, 1997 and Sections 77 and 82 of the Electricity Act, 2003, setting up Electricity Regulatory Commissions. The exclusive power of the Maharashtra Electricity Regulatory Commission to determine the tariff was upheld by the Supreme Court in \textit{BSES Ltd. v. M/S Tata Power Co.}, \textit{AIR} 2004 SC 760.
\textsuperscript{121} Friedmann, \textit{The State and the Rule of Law in a Mixed Economy}, (1971) 3.
1.10 Hypothesis

In the modern welfare state, owing to socio-economic needs of society, the expectations of the citizens are very high from its government. These expectations can only be fulfilled if the administrative authorities are given discretionary powers. But wide discretionary powers are incompatible with the rule of law. Rule of law requires that law should control its exercise. It is the attitude of courts by finding limits to such seemingly unbounded powers which is perhaps the most revealing features of a system of administrative law and the courts should draw those limits in non-discretionary way which strikes the most suitable balance between executive efficiency and legal protection of the citizens by ensuring that the authority does not abuse its power and the individual receives just and fair treatment. Administrative discretion ought to be hedged by policy, standards, guidelines and procedural safeguards; otherwise the courts may declare the statutory provision conferring sweeping discretion as void.

1.11 Research Methodology

Research is an important means of acquiring new knowledge and ascertaining the truth about a subject. The literal meaning of research is to search or to find out and examine again. The dictionary meaning of research is, “a careful investigation or inquiry especially through search for new facts in any branch of knowledge.”

In the field of Law, research occupies a very significant position. As we know that Law is not only a means to maintain law and order in the society but it is also the means of providing social justice and implementing welfare schemes. Law does not operate in vacuum. It operates in society, which is itself influenced by various factors such as social structure, economic conditions, and nature of government, scientific inventions and the outlook of people towards life. With advancement in the technology and the means of communication, different cultures are coming together to give birth to new thoughts and

---

ways of life. In other words, societies have undergone a tremendous change giving rise to complex problems. To solve these complications, law must be up to the mark. This capability can be acquired only through research.

The present study is based on the doctrinal research. The research will involve historical, descriptive and analytical approach to reach its zenith. The researcher has gone through precedent, decided judgments, library, various books, newspapers, journals, articles and Internet on the subject for the purpose of collecting literature and data for the study and analysis.

1.12 Research Guidance Questions

A sincere effort has been made in this study to answer the following research guiding questions:-

1. What is the Scope of judicial review of administrative actions?
2. Whether a decision making authority exercise its powers?
3. Whether the authority has abused its powers?
4. Whether the authority has committed an error of law where the Supreme Court has laid down the Scope of Judicial review of administrative action is limited to three grounds, viz, (i) unreasonable which can more appropriately be called irrationality; (ii) illegality and (iii) procedural impropriety.
5. Whether the authority has committed a breach of the principles of natural justice?
6. Whether the authority has reached a decision which no reachable person would have reached?
7. What is administrative discretion?
8. What is administrative action?
9. Whether the Wednesbury’s principle is relevant in recent Scenario?
1.13 Plan of the Study

An effort has been made to present this research work systematically by dividing it into six chapters, detailed as under:

Chapter-I: Introduction

First chapter of my study deals with introductory part. In this chapter I have discussed origin and growth of administrative law, its advantages and disadvantages and objective of study, hypothesis, research guiding questions, plan of study and research methodology etc. This chapter focuses on the following themes relevant for discussion:

- Problem Profile
- Definitions and Meaning of Administrative Law: English and American Approach
- Functions and Characteristic of Administrative Law
- Theories of Administrative Law: Red Light and Green Light Perspectives
- Growth and Development of Administrative Law
- Reasons for the growth of Administrative Law
- Advantages and disadvantages of Administrative Law
- Object of the Study
- Hypothesis
- Research Guidance Questions
- Plan of the study
- Research Methodology

Chapter-II: Administrative Discretion and Concept of Judicial Review

This chapter laid emphasis on administrative discretion and discretionary powers granted to administrative authorities because no government can perform its functions without grant of discretionary power to administrative authorities. For this the officials should be given some choice in the matter of deciding administrative matters. But that should be controlled powers because if complete freedom of action is given to the administration it would lead to the exercise of powers in an arbitrary manner seriously
threatening individual liberty. It is therefore necessary to control discretionary powers to restrain it from turning into unrestricted absolutism.

This chapter has been discussed under the following subheads:

- Administrative discretion
- Definitions and Meaning of Administrative discretion
- Reasons for conferring discretion on Administrative authorities
- Types of Administrative discretion
- Scope and Extent of Administrative discretion
- Administrative discretion and Fundamental rights
- Concept of Judicial Review
- Abuse of discretion
- Failure to exercise discretion

Chapter- III: Judicial Review of Administrative Action: Principles

The most important aspect of the study of administrative law is the judicial control of administrative action. In this chapter judicial review of administrative action under Articles 32 and 226 of the Indian Constitution have been discussed in detail which is essential part of rule of law. In this chapter also the principles for exercise of writ jurisdiction for the enforcement of fundamental rights are laid down which are mandatory and not discretionary. These principles are discretionary and prerogative remedy, laches or delay, alternative remedy, principle of res judicata, anticipatory relief, high court should be approached first, remedial measures, territorial extent of writ jurisdiction etc.

This chapter has been discussed under the following headings:

- Scope of Judicial review
- Jurisdiction of Supreme Court under Article 32
- Appeal by Special leave under Article 136 and its essential conditions
- Jurisdiction of the High Court’s under Article 226 and its scope
- General principles regarding the writ jurisdiction under Article 226
- Provisions under Article 227
- Principles for exercise of writ jurisdiction
Chapter- IV: Grounds of Judicial Review of Administrative Action

Chapter fourth is based on grounds of judicial review of administrative action in India. The main grounds are doctrine of ultra vires, Wednesbury principles, doctrine of proportionality, legitimate expectation and doctrine of public accountability etc. In these doctrines, any administrative act or order which is ultra vires or outside jurisdiction is declared void in law by courts. In this chapter, the meaning of the doctrines, their applicability, scope and their position in India and England with decided case laws have been discussed.

This chapter is discussed under the following headings:

- Doctrine of Ultra vires
- Classification of ultra vires includes substantive and Procedural ultra vires
- Wednesbury principle
- Position of Wednesbury principle in English Law
- Position in India
- Doctrine of proportionality or Strict Scrutiny or CCSU Principles
- Origin and Development of Proportionality in England
- Development of doctrine in India
- Doctrine of Legitimate Expectation
- Origin and Development in England
- Scope of Doctrine in India
- Doctrine of Public Accountability

Chapter- V: Judicial Review of Administrative Action and Writs Jurisdiction

This chapter deals with writs jurisdiction and other remedies provided against judicial review of administrative action in India. The main purpose of providing remedy in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable. These remedies are provided in Articles 32 and 226 of the constitution of India with an object to enforcement of fundamental rights and judicial review of administrative actions in India. The other remedies in private law review which are non-constitutional mode of judicial review of
administrative action can be exercised by the civil and criminal courts, tribunals, special courts like the one constituted under the Scheduled Castes, Scheduled Tribes (Prevention of Atrocities) Act, Consumer Courts and environment authorities etc. In spite of it other remedies like Civil suits, Lokpal, Central Vigilance Commission, Service tribunal, doctrine of self help and their effectiveness have also been discussed.

This chapter is discussed under the following headings:

- Growth of Writ jurisdiction in India
- Historical Development in India
- Writs provisions under different statutes
- Writs Provisions under Indian constitution
- Modes of judicial review of Administrative Action by Constitutional Writs
- Public law review
- Habeas Corpus
- Mandamus
- Certiorari
- Prohibition
- Quo warranto
- Private law review
- Injunction
- Declaratory relief
- An action for damages
- Other remedies
- Civil Suits
- Ombudsman-Lokpal
- Central Vigilance Commission (CVC)
- Service tribunal
- Self help

Chapter-VI: Conclusion and Suggestions

Sixth and Last chapter of my study deals with conclusion and suggestions. In this chapter summary of findings as well as some suggestions for judicial review of administrative action have been discussed in a systematic and summary way.