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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



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Head & Associate Professor

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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NATURE AND SCOPE OF ADMINISTRATIVE LAW

AUTHORED BY - ANURAG KUMAR

INTRODUCTION

1. The nature and scope of administrative law refer to the fundamental characteristics and extent of the legal framework that governs administrative actions and decisions.

1.1 Definition of Administrative Law

Administrative Law is a legal field that focuses on the powers, functions, and responsibilities of different organs of the State. The term 'administrative law' lacks a single universally accepted definition due to variations in interpretation among different thinkers.

The user's text is a single letter, "K." Administrative Law, as defined by C. Davis, refers to the legal framework that governs the functions and procedures of administrative agencies. This includes the laws that regulate the judicial review of administrative actions.

Administrative law pertains to the legal framework that regulates the interaction between individuals and the executive arm of the government, specifically when the government is acting in its administrative role.

Ivor Jennings provided a concise definition of administrative law as the body of law that pertains to the activities and procedures of administrative agencies. It establishes the structure, authorities, and responsibilities of administrative bodies.

Administrative law pertains to the authority and exercise of power by administrative bodies, as well as the legal recourse accessible to individuals who have been harmed by the misuse of such power.

The primary purpose of administrative law is to ensure that governmental authorities are constrained by legal boundaries and to safeguard private rights and individual interests.

The ability to create rules (delegated legislation) and the capacity to make decisions (Tribunal/Court) are considered to be highly effective and influential tools in the arsenal of administration.

As Wade noted, every power possesses two intrinsic characteristics:

- (i) They lack absoluteness or restrictedness.
- (ii) there is a high probability that they will be subjected to mistreatment.

Administrative law seeks to regulate the authority of the government, as well as its instrumentalities and agencies. In order to accomplish that goal, administrative law offers a reliable process and sufficient safeguards. It facilitates the balance between two opposing forces:

- (i) Personal liberties
- (ii) The welfare and well-being of the general public.

1.2 The extent of Administrative Law

Administrative law governs the structure, authority, and responsibilities of administrative bodies. The primary focus of Administrative Law lies in the establishment of procedures for formal adjudication, which adhere to the principles of Natural Justice, as well as for the creation of rules.

The ideas upon which the concept of Administrative Law is established are as follows:

- (a) The administration is granted power by law.
- (b) Power, regardless of its extent, is never absolute or uncontrolled.
- (c) The exercise of such powers should be subject to reasonable constraints that are appropriate for the specific context.

Administrative law has been intertwined with administration since its inception, and in India, its early traces may be seen in the treatises published under the reign of the Mauryas, Guptas, Mughals, and the East India Company.

The concept of rule of law is the foundation for Natural Justice, which involves impartial adjudication based on established laws and legal systems, rather than arbitrary decisions or misuse of official power. Natural justice is typically used in situations when no specific laws exist. In such cases, individuals must be afforded the opportunity to present their case and the judgement should be based on the specific facts and circumstances of the case. Furthermore, the

judgement should be impartial and unbiased. Its purpose is to thwart the infringement of individuals' rights by those in positions of authority.

Administrative law delineates the legal rights and responsibilities of private individuals when interacting with public officials. It also establishes the procedures via which these individuals can defend their rights and responsibilities. It ensures that there is a clear system of responsibility and accountability in the administrative operations. Furthermore, there exist specific laws, rules, and regulations that govern and oversee the internal administrative interactions, such as hierarchy and division of labour.

1.3 The Necessity of Administrative Law

A modern state typically consists of three organs:

Legislative

Executive and

The judiciary.

Historically, the primary responsibility of the legislative was to create laws, while the executive branch was responsible for executing those laws, and the judiciary was responsible for administering justice and resolving disputes. However, this conventional delineation of responsibilities has been deemed insufficient in addressing the issues of the current period. The legislature is unable to produce the necessary calibre and quantity of law due to time constraints, the intricate nature of legislation, and the inflexibility of their enactments. The conventional dispensation of justice through the judiciary is intricate, costly, and time-consuming. The states have delegated authority to their executive branch to address any deficiencies in the legislative and judicial branches. As a result, administration has become ubiquitous in the lives of modern citizens. Given the circumstances, an examination of administrative law holds considerable importance.

The scope of administration is extensive and encompasses the following elements:
It formulates policies.

It carries out, manages, and settles legal matters.

It possesses legislative authority and publishes regulations, ordinances, and general instructions.

The expanding administrative functions have established an extensive and intricate network of interactions between the administration and the citizen. The contemporary governance is

pervasive in the everyday lives of an individual and possesses a significant ability to impact their rights and freedoms.

Given that the primary objective of granting the government increased authority is to enhance the quality of life for citizens, it is imperative to monitor the government's actions in a manner that upholds efficiency while also safeguarding individual rights. The tension between individual liberty and government control has persisted for centuries. It is crucial to maintain ongoing vigilance in order to establish a balanced relationship between private interests and the government, which is meant to serve the public interest. Prudence dictates that when granting significant powers to administrative bodies, it is necessary to establish efficient control mechanisms to prevent officers from abusing their authority or using it for inappropriate purposes. The role of administrative law is to guarantee that government duties are carried out in accordance with legal principles and rules of reason and justice.

The objective of administrative law is to safeguard individuals against the potentially harmful exercise of administrative authority by the state. In situations when an individual is adversely affected by any action taken by the administration, they have the right to seek redress. There is no contradiction between having a competent government and regulating the use of administrative authority. Thousands of officials wield administrative powers that have a significant impact on millions of people. Administrative efficiency alone should not be the sole focus of administrative powers. The interests of the people should be the primary consideration when granting administrative power. When the administration's powers are utilised appropriately, they have the potential to establish a welfare state. However, if these powers are misused, they can result in administrative tyranny and the establishment of a totalitarian state.

An exhaustive and methodical examination and advancement of administrative law is necessary, as administrative law serves as a means of regulating the exercise of administrative functions.

1.5 Origins of Administrative Law

Administrative law ideas and standards can be found in numerous places. The main sources of administrative law in India are as follows:

1.5.1 The document that outlines the fundamental principles and laws of India is known as the Constitution of India.

It serves as the main origin of administrative law. According to Article 73 of the Constitution, the executive power of the Union covers topics that the Parliament has the authority to legislate on. States are granted comparable rights under Article 62. The Indian Constitution does not fully acknowledge the notion of separation of powers in a rigorous manner. The Constitution also includes provisions for tribunals, public sector accountability, and government liability, which are significant components of administrative law.

1.5.2 Laws

Acts enacted by the Central and State Governments to ensure peace and order, collect taxes, and promote economic and social development grant authority to administrative bodies to perform essential activities in these areas. These Acts enumerate the obligations of the administration, restrict its authority in specific aspects, and establish a procedure for addressing complaints from individuals impacted by administrative actions.

1.5.3 This section includes ordinances, administrative instructions, notifications, and circulars.

Ordinances are promulgated in situations where unexpected circumstances arise and the legislative body is not in session, hence preventing the enactment of legislation. The ordinances grant the administration the authority to take requisite measures to address such events. The executive issues administrative directives, notifications, and circulars in accordance with the authority conferred under several Acts.

1.5.4 Legal rulings made by a court of law

The judiciary serves as the ultimate authority in resolving conflicts between different branches of government or between citizens and the administration. In India, the Constitution holds ultimate authority and the Supreme Court is entrusted with the power to interpret it. The courts establish administrative rules that control the future behaviour of the administration based on their decisions about the exercise of power, government liability in cases of contract breaches or wrongful acts committed by government employees.

The number 2. Administrative discretion refers to the authority and power granted to administrative agencies or officials to make decisions and take actions within their designated scope of responsibility. It allows them to exercise judgement and flexibility in implementing laws. Discretion, in simple terms, refers to the act of selecting from a range of options without relying on any pre-established criteria, regardless of how imaginative that choice may be.

When creating a will, an individual has the freedom to distribute their possessions in any way they choose, regardless of how random or whimsical it may seem. However, the term "discretion" takes on slightly different connotations when it is modified by the word "administrative". In this context, 'discretion' refers to the act of making choices among several options, while adhering to the principles of reason and fairness rather than personal preferences. This activity must adhere to legal and regular guidelines, avoiding any arbitrary, imprecise, or whimsical elements.

Therefore, to summarise, the authority makes decisions not just based on facts but also in line with policy or expediency, and exercises discretionary powers granted to them.

Granting of autonomy

Discretion is granted in the realm of rule-making or delegated legislation, such as when the legislative provision allows the government to create regulations that it deems necessary to fulfil the objectives of the Act. Essentially, the government is being given significant authority and freedom to create regulations. Similarly, adjudicatory and administrative authorities are granted discretion in a generous manner, allowing them to apply ambiguous statutory requirements on a case-by-case basis.

Seldom does the legislature pass a comprehensive statute that is fully detailed. Frequently, the legislation is incomplete or lacking in detail, resulting in several gaps and granting the administration the authority to act as it considers "necessary" or "reasonable" or if it is "satisfied" or "of the opinion".

Importance of discretion

Due to the intricate socio-economic circumstances faced by the current administration, it is acknowledged that a government solely responsible for ministerial tasks without any discretionary powers would be excessively inflexible and impractical. To some degree, officials must be granted the freedom to decide when, how, and if they will take action. The administration's attitude stems from the frequent need to address complex issues that require investigating facts, making choices, and exercising discretion in order to determine the appropriate course of action. Therefore, the current trend is to grant significant autonomy to different authorities.

In the case of *S. Kandaswamy Chettiar v. State of Tamil Nadu*, the Maharashtra Vacant Lands (Prohibition of Unauthorised Occupation & Summary Eviction) Act, 1955, was enacted to prevent unauthorised occupation of vacant lands and to allow for the quick eviction of unauthorised occupants. The Act granted the competent authority the power to declare a land as vacant without providing any specific guidelines for the exercise of this power. Therefore, the Act was deemed to be in violation of Article 14.

Judicial oversight of administrative actions

Administrative bodies possess extensive authority, and their exercise of judgement might be compromised by various reasons. Hence, it is imperative for the government to establish an effective process for providing appropriate reparation.

In India, the methods of judicial oversight of administrative action can be categorised into the following three categories:

2.1.1 Pertaining to the constitution.

The Constitution of India holds the highest authority, and all the branches of the government derive their existence from it. The Indian Constitution explicitly includes provisions for judicial review. Hence, a legislative Act must adhere to the stipulations of the Constitution, and it is the responsibility of the judiciary to determine if the Act complies with the Constitutional requirements.

If a law is determined to be in violation of the Constitutional requirements, the Court is obligated to declare it unconstitutional and, as a result, null and void.

2.1.2 Statutory Review refers to the process of legally examining and evaluating a certain matter or issue.

The process of statutory review can be categorised into two distinct components:

- (i) **Statutory Appeals:** Certain Acts allow for an appeal from a statutory tribunal to the High Court specifically on matters of law. For example, Section 30 of the Employees Compensation Act, 1923.
- (ii) **High Court reference or statement of case:** Numerous statutes allow an administrative tribunal to refer a case or make a statement of the case to the High Court. According to

Section 256 of the Income-tax Act, 1961, if the assessee applies to the Tribunal and the Tribunal rejects their request to present the case, the assessee can then go to the High Court. If the High Court determines that the judgement of the Tribunal is wrong, it has the authority to demand that the Tribunal provide a detailed account of the case and submit it to the High Court.

2.1.3 Conventional or Just

In addition to the remedies mentioned above, there are certain common remedies that individuals can seek against the administration. The ordinary courts have the power to give these remedies under the ordinary law, specifically against the administrative authorities. These remedies are alternatively referred to as equitable remedies and encompass:

An injunction is a legal order that requires a person or entity to stop a particular action or behaviour.

- (a) Declaratory Action
- (b) Pursuing legal recourse for financial compensation.

Judicial review is a legal process that allows the judiciary to review and assess the constitutionality of laws and actions taken by the government.

The most significant check on administrative action is the authority of judicial review.

Judicial review is the power of courts to invalidate the actions of the legislative and executive branches if they are determined to be in violation of the constitutional provisions.

Judicial Review refers to the authority of the highest court in a particular jurisdiction to declare the actions of other government agencies within that jurisdiction as unconstitutional.

The idea of judicial review was established and advanced by the American Supreme Court, notwithstanding the absence of a specific provision in the American Constitution for judicial review. Judicial review is not a process of appealing a decision, but rather an examination of how the decision was produced. Judicial review focuses on the decision-making process rather than the actual conclusion itself.

The power of judicial review extends to both legislative and executive or administrative actions.

The Court carefully examines the executive act to see if it falls within the authorised scope of power granted to the authority implementing it. If the actions of the executive or administration are proven to be in violation of the Constitution or the appropriate Act, they are declared null and void. The Court's stance seems to be more stringent when it comes to the discretionary powers of the executive or administrative agencies.

The Court does not oppose granting discretionary power to the executive, but it anticipates the presence of clear standards for the exercise of such power. The Court intervenes when executive or administrative authorities possess unregulated and unguided discretion, or when the entity entrusted with power abuses its discretion.

In the case of *Mansukhlal Vithaldas Chauhan v. State of Gujarat*, the Supreme Court clarified that when exercising the power of judicial review, it does not act as a Court of appeal. Instead, it focuses on examining the process by which a decision was made, especially since the Court lacks the necessary expertise to correct administrative decisions. Allowing a review of administrative decisions would mean the Court would be replacing the decision with its own, which is also subject to error. The Court's focus should be limited to the issue of legality. The focus should be on:

Is the decision-making authority exceeding its jurisdiction?

Did you make a legal mistake?

Did you violate the principles of fairness and justice?

- Arrived to a conclusion that would be deemed unreasonable by any rational tribunal, or

Did it misuse its authority?

Judicial review is conducted at two distinct stages:

(i) During the process of delegating discretion: Any law can be contested on the basis that it violates the Constitution, and as a result, laws that grant administrative discretion can likewise be challenged under the Constitution.

(ii) During the exercise of administrative discretion, it is not possible for any law to grant absolute finality to administrative action. The Courts have the authority to thoroughly assess both the scope and the manner in which discretion is exercised in order to ensure that it aligns with fundamental rights. In India, the courts have devised many approaches to regulate the use of administrative discretion. These approaches can be categorised into two main groups:

The authority has failed to properly exercise its discretion, which can be considered a 'abuse of

discretion'.

The authority is seen to have not used its discretion at all, which is referred to as the "non-application of mind".

2.3 Administrative Discretion and Article 14

According to Article 14 of the Constitution of India, the State is prohibited from denying any person equality before the law or equal protection of the laws within the territory of India.

Article 14 ensures the principle of equal treatment under the law. It stops the executive from having unrestricted authority. Article 14 aims to eliminate randomness in government actions and guarantees impartiality and equitable treatment. The right to equality provides protection not just against legislation established by the legislature that are based on personal judgement, but also protects the executive from having unrestricted and unpredictable decision-making power. Frequently, a government executive or administrative person is granted significant discretionary authority.

Several instances have arisen where the Act has been contested on the basis that it granted an administrative authority board discretionary power to selectively choose individuals or things, so infringing under Article 14.

When assessing the legality of a statute, the Court evaluates whether the statute establishes any principles or policies to guide the government's exercise of discretion in the selection or categorization process. The Court will not tolerate the transfer of unchecked authority to the Executive to the point where it can engage in discrimination.

The case of *State of West Bengal v. Anwar Ali* established that the Act, which allowed the Government to designate certain instances or types of offences to be handled by Special Courts, was found to be in violation of Article 14 of the Constitution. The Court further declared the Act as unlawful since it did not provide any criteria or standard for categorising individuals, cases, or acts, making it impossible to differentiate them from those not covered by the Act. Furthermore, the requirement for a "speedier trial" was deemed to be an ambiguous, uncertain, and imprecise standard that cannot serve as a valid and rational basis for categorization.

2.4 Administrative Discretion and Article 19

Article 19 of the Indian Constitution provides specific liberties to Indian citizens, although these

freedoms are not unrestricted. These freedoms can be subject to reasonable limitations that are enforced by legislation. Judicial review can be used to assess the reasonableness of the limits. Administrative discretion can potentially impact these liberties.

Several issues have arisen on the issue of the legality of laws that provide the executive branch the power to limit the rights outlined in Article 19(1)(b) and 19(1)(e) of the Indian Constitution, which pertain to the right to peaceful assembly and the freedom to dwell and establish wherever in India. The government has granted the executive authority to remove an individual from a specific region in order to maintain peace and ensure safety, as stipulated by various legislations.

The Supreme Court in *H.R.* refers to the highest court in the United States. In the case of *Banthis v. Union of India*, the court ruled that a licencing provision was deemed unlawful since it granted the executive branch an excessive and unregulated authority. The Gold (Control) Act, 1968, mandated the requirement for licencing dealers in gold ornaments. The Administrator has the authority, as provided by the Act, to issue or renew licences based on many factors, including the number of dealers in a specific region, projected demand, the suitability of the applicant, and the public interest. The Supreme Court determined that all of these considerations were ambiguous and incomprehensible. The Act did not include a definition for the term 'region'. The term 'expected demand' was ambiguous. The terms 'suitability of the applicant' and 'public interest' lacked any objective criteria or standards.

If the Act includes general principles to guide the exercise of discretion, it prevents it from being arbitrary and unrestricted. In such cases, the court will support the Act. However, if the executive has been given unrestricted power to interfere with property or trade and business, the court will declare that provision of the law as invalid.

2.5 Exercise of administrative discretion control

Administrative action cannot be endowed with absolute finality by any legislation. In India, the courts have devised many approaches to regulate the exercise of administrative discretion, which can be categorised into two main categories:

The authority has failed to exercise its discretion appropriately, resulting in a 'abuse of discretion'. The authority is considered to have not utilised its discretion at all, resulting in a lack of thoughtful consideration.

2.6 The improper exercise of judgement or decision-making authority.

(i) Mala fides (poor faith): If the authority exercises discretionary power with dishonest motive or bad faith, the Court will invalidate the action.

Mala fide, often known as poor faith, refers to the presence of dishonest intention or corrupt motive. Regarding the exercise of statutory authorities, it can be described as involving dishonesty, fraud, and malice. Fraudulent exercise of authority occurs when the person holding the power intends to attain a different objective than what they believe the power was given for. The objective could be to advance either a public or private interest.

