International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 24-01-2021; Accepted: 11-02-2021; Published: 08-03-2021
www.lawjournals.org
Volume 7; Issue 2; 2021; Page No. 44-48

The contour of administrative law

Rishita Sharma
BA LLB, Law Student, VIPS, GGSIPU, Delhi, India

Abstract
In recent years, the concept of the administrative has been undergoing a radical change. The present trend of judicial opinion is to restrict the doctrine of immunity of prerogative powers from judicial review where purely governmental functions are directly attributable to the royal prerogative, such as whether a treaty should be concluded or the armed forces deployed in a particular manner or Parliament dissolved on one day rather another, etc. The shift in approach to judicial interpretation that has taken place during the last few years is attributable in large part to the efforts of Lord Denning in Laker Airways' case. The attempt was to project the principles laid down in Padfield's case into the exercise of discretionary powers by the executive derived from the prerogative, and to equate prerogative and statutory powers for purposes of judicial review, subject to just exceptions. Thus, the present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops, entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the Courts to assert their power to scrutinize the factual bases upon which discretionary powers have been exercised. The decision of the House of Lords in Padfield's case is an important landmark in the current era of judicial activism in this area of administrative law [1]. The administrative law of India is heavily based on English law. This paper makes a serious attempt in understanding the notions of administrative law.

Keywords: rule of law, delegated legislation, natural justice

Introduction
Ivor Jennings has opined that Administrative law is the law relating to administration. It determines the organization, power & administrative duties of the administrative authorities. The present paper is aimed at understanding the basic concepts associated with administrative law which *inter alia* includes red light theory, green light theory, delegated legislation, rule of law, principles of natural justice and etc. It has to be kept in mind that red light theory operates against absolutism. Red light theory seeks to keep governmental agencies within the bounds of law through judicial control. The green light theory, on the hand, stresses upon political control. The mix of judicial and political control paves the way for amber light theory. Our administrative law like that of England is squarely founded on the doctrine of ultra vires i. e. jurisdiction. One of the best features of our administrative law is the range and the effectiveness of the remedies provided in Article 226 of the Constitution. In our modern highly organised society were administrative acts and decisions intimately affect the well-being and happiness of so many citizens, particularly those who are poor, life would be intolerable if there were no means of ensuring that interference by administrative action with the liberty or property of the individual did not exceed that which had been authorised by a representative legislature and also by the Constitution and that the administrative decisions so authorised were fairly made [2].

Delegated Legislation
According to Sir John Salmond, "Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority." Subordinate legislation is the legislation made by an authority subordinate to the legislature. Such legislation is to be made within the framework of the Powers so delegated by the legislature and is, therefore, known as delegated or subordinate legislation. In *Schechter Poultry Corp. v. United States* [3], it was observed by Justice Cardozo that delegate legislation is a necessary evil. Commenting on the significance of delegated legislation it was observed by Hon'ble SC in *Arvinder Singh v. State of Punjab* [4], that delegation of some part of legislative power becomes a compulsive necessity for viability. If the 500-odd parliamentarians are to focus on every minuscule of legislative detail leaving nothing to subordinate agencies the annual output may be both unsatisfactory and negligible. The Lawmaking is not a turnkey project, ready-made in all detail and once this situation is grasped the dynamics of delegation easily follow. The principle was reaffirmed in *Devi Das Gopal Krishnan v. State of Punjab* [5], to the effect that in view of the multifarious activities of a welfare State, it cannot presumably work out all the details to suit the varying aspects of a complex situation. It must necessarily delegate the working out of details to the executive or any other agency.

Reasons for delegated legislation is as under
a. Parliament is already tasked with framing all kinds of statutes and thus it is not possible for the parliament to deal with every matter in detail.
b. Technicality of numerous matters calls upon the parliament to delegate law making power to experts.
c. In situations of expediency and emergency, it will be illogical for the parliament to frame law as quick action is required, which can be best achieved by any delegated body.
d. Parliament can't see foresee every contingency while making laws & thus it bestows law making power upon executive.

Types of Delegated Legislation

1. Discretion based: For instance conferring discretion upon executive to bring an act into operation.
2. Purpose based: For instance conferring power upon executive to extend the operation of the act to other areas for attaining the purpose of the act.
3. Title based: For instance empowering the executive to frame rules under the act.
4. Authority based: Authorizing the delegate to further delegate. (This variant of delegation is hit by the maxim *Delegatus not protest delegare*, that is to say that a delegate cannot further delegate).

Judicial Interpretation

1. In *Queen v. Burah* [6], it was held by the Privy Council that Indian Legislature is not the delegate of imperial parliament & it has plenary power of legislation as those of British Parliament.
2. In *Jatindra Nath Gupta v. Province of Bihar* [7], it was held that power to extend the operation of act beyond the period stipulated in the act is a legislative function and cannot be delegated.
3. *In re Delhi Laws Act, 1912* [8], the views of the majority, in brief, was that an executive authority could be authorised to modify either existing or future laws but not any essential feature. Although what exactly constituted an essential feature could not be enunciated in general terms, it was clear from the individual opinions of the Judges who constituted the bench that it cannot include a change of policy. The law as laid down can be summarized into three points:

a. Legislature must discharge its primary legislative function.
b. It can delegate those powers which are ancillary to the law making power and are necessary for making legislation effective.
c. The legislature cannot create a parallel legislature by abdicating its legislative functions.

4. The law as laid down in *In Re Delhi Laws Act*, [9] was reiterated in *Kissan Prakash v. Union of India* [10].
5. In *Keshavlal Khemchand v. Union of India* [11] the amended definition of Non-Performing Assets in the SARFAESI Act fell for consideration. The function of prescribing the norms for classifying a borrower's account as a NPA was held not to be an essential legislative function. If the Parliament chose to define a particular expression by providing that the expression shall have the same meaning as is assigned to such an expression by a body which is an expert in the field covered by the statute and more familiar with the subject, then it cannot amount to excessive delegated legislation. Similar observations have been made in Mardia Chemicals v. Union of India [12].

Henry Eight Clause

The executive can be delegated with the function to remove difficulties in the provisions of statute but the same cannot amount to modifying the very purport of the statute. Such a modification is termed as Henry Eight Clause & is bad in law.

Conditional Legislation

It arises when the executive is delegated with the function of bringing the act into operation on the happening of certain conditions. In *Sardar Inder Singh v. State of Rajasthan* [13], the Rajasthan Tenants Protection Ordinance was promulgated for two years and the ordinance empowered the Governor to extend the life of ordinance if state of affairs mandates the protection of the interest of tenants. It was held to be a valid case of conditional legislation. In *Hamdard Dawakhana v. Union of India* [14], the difference between conditional & delegated legislation was pointed. It was held that in delegated legislation the delegate completes the legislation by supplying details within the limits prescribed by the statute and in the case of conditional legislation the power of legislation is exercised by the legislature conditionally leaving to the discretion of an external authority the time and manner of carrying its legislation into effect as also the determination of the area to which it is to extend.

Delegatus Non Potest Delegare

The maxim is not a rule of law but a rule of construction. The principle which follows from *Central Talkies Ltd. v. Dwarka Prasad* [15], is that sub delegation of power though is generally impermissible but the same may be allowed if it is expressly conferred by the statute or can be inferred from the necessary implication.

Controls on Delegated Legislation

1. Judicial Control in form of judicial review which can be on account of substantive ultra vires and procedural ultra vires. Delegated Legislation has been held to be invalid in following cases:

a. When parent Act is itself unconstitutional
b. Where delegated legislation is inconsistent with parent act or the law of the land.
c. When delegated legislation excludes judicial review & etc
d. When delegated legislation is unconstitutional- In *Dwarka Laxmi Narain v. State of UP* [16], the rules made under Essential Supplies Act, 1946 was held to be unconstitutional when it violated Art. 19(1) (g) of the Constitution.

Parliamentary Control

a. Every delegated legislation must be laid before parliament. In *Atlas Cycle Ltd. v. State of Haryana* [17], it was held that requirement of laying the rules before the parliament is directory and not mandatory. It will largely depend upon the scheme of the parent act.
b. Every delegated legislation must be examined by the scrutiny committee
c. Delegated legislation must be published.
d. Committee on Subordinate Legislation

Amongst the mechanisms evolved by the legislature to exercise control over the delegated legislation, the most important is the constitution of the Committee on Subordinate Legislation. It is this Committee of the legislature which examines if the powers conferred by the Constitution or delegated under an Act passed by the legislature have been duly exercised and are within the conferment or delegation, and not beyond. It has to see that delegated legislation does not transgress into areas not prescribed for it, and also that it does not venture to intrude into the sphere which is the sole concern of the legislature

itself. Rajya Sabha Committee on Subordinate Legislation was first constituted in 1964. The Committee consists of fifteen members including the Chairman who is nominated by the Chairman, Rajya Sabha. The Committee holds office until a new Committee is nominated. Normally, the Committee is re-constituted every year.

Prinicples of Natural Justice

Brief Introduction

Natural Justice is a branch of Public law. It can broadly be classified into three basic principles

a. *Nemo debet esse judex in propria causa* (No man shall be a judge in his own cause).
b. *Audi alteram Partem* (Hear the other side)
c. Speaking Orders (Reasoned Order)

Doctrines Explained

1. Rule against Bias

Rule against bias owes its origin in three postulates

1. No man shall be a judge in his own cause
2. Justice should not only be done but also seen to be done
3. Judge, like Caesar's wife, should be above suspicion.

The implication is that judge shall be independent and must inspire confidence. There are four variants of bias namely

a. Pecuniary bias

Dimes v. Grand Junction Canal [18], is locus classicus on this point. In Dimes case the order passed by a judge who was a shareholder in the company of one of the parties to the dispute was set aside on the ground that judge may have been laboring under pecuniary bias. In *Manak Lal v. Prem Chand* [19], it was held by Hon'ble Supreme Court that pecuniary interest, howsoever small it may be, would disqualify a person from acting as a judge. In *J. Mohapatra v. State of Orissa* [20], it was held that even the possibility of bias is fatal.

b. Personal bias

A.K. Kraipak v. Union of India [21], holds the field on this point. In Kraipak case, a a person who was the member of selection committee for IFS was also the candidate in said exam. It was held to be a case of personal bias. In *State of UP v. Mohd. Nooh* [22], a departmental enquiry was being conducted. When the witness turned hostile, the judge deposed as witness & thereafter passed an order upon his own deposition. It was held that that such a personal biasness constituted gross violation of PNJ.

c. **Bias as to subject matter**

In *Gullapalli Nageswara Rao v. A.P. SRTC* [23], the validity of nationalization of motor transport was assailed. The objections were heard by the officials who were one of the parties to the dispute and hence it was held to be within the meaning of bias as to subject matter.

2. Audi Alteram Partem

It encompasses following to be mandatory

a. Notice – Before taking any action, the party must be given a notice to show cause.
b. Hearing: The party must be given an opportunity of being heard before any adverse action is taken against him. In *Cooper v. Wandsworth Board* [24], it was held that power of the board to demolish building is subject to the right of the owner of the building to be heard. In *Maneka Gandhi v. Union of India* [25], when the passport of the petitioner was impounded without giving an opportunity of hearing to her then it was held to be violation of natural justice. It was further clarified that if pre decisional hearing cannot be accorded then post decisional hearing must be given. *In Kehar Singh v. Union of India* [26], Hon'ble SC concluded that there is no right in the condemned person to insist on an oral hearing before the President under Article 72. In *State of Bihar v. Lal Krishna Advani* [27], it was clarified that it is incumbent upon the Commission to give an opportunity to a person, before any comment is made or opinion is expressed which is likely to prejudicially affect that person. Needless to emphasise that failure to comply with principles of natural justice renders the action non-est as well as the consequences thereof.
c. All materials appearing in evidence against the accused must be disclosed to him by the adjudicating authority and give an opportunity of rebuttal.
d. He who hears must also decide or that is to say, one who decides must hear.

Speaking Order

It has been beautifully observed by Hon'ble SC in *Sec. & Curator Victoria Memorial v. Howrah Ganatantrik Nagrik Samity* [28], that reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Every order must be supported by reasons. In *M.P. Industries Ltd. V Union of India* [29], it was held that administrative tribunals are duty bound to give reasons for their orders as their orders are capable of affecting rights of parties. *In Shrilekha Vidyarthi v. State of UP* [30], it was laid that non-assignment of reasons may arise on account of public policy.

Exceptions to PNJ

1. Article 311(2) itself carves out an exception out of Principles of natural justice.
2. It is well settled that violation of PNJ in administrative matters makes the order null and void. However it has to be always kept in mind that requirement of PNJ can be dispensed with by the statute itself as has been laid down in *S.N. Mukherjee v. Union of India* [31].
3. The principle which requires that a member of a selection Committee whose close relative is appearing for selection should decline to become a member of the selection committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need not be applied in case of a constitutional Authority like the Public Service Commission, whether Central or State was the principle laid down in *Ashok Kumar Yadav v. State Of Haryana* [32].
4. It follows from *Election Commission of India v. Subramanian Swamy* [33], that doctrine of necessity is a well-recognized exception to PNJ. It was laid down in *Charan Lal Sahu v. UCC* [34], that if there was any remote conflict of interests between the Union of India and the victims from the theoretical point of view the

doctrine of necessity would override the possible violation of the principles of natural Justice.
5. Interest of security of state, waiver are some other important exceptions to PNJ.

Rule of Law

The term 'Rule of Law' is derived from the French phrase la principe de legalite (the principle of legality) which refers to a Government based on principles of law and not of men. In this sense the concept of 'Rule of Law' is opposed to arbitrary powers. Sir Edward Coke is said to be the originator of this concept, when he said that the king must be under the God and Law and thus vindicated the supremacy of law over the pretentions of the executives.

A V Dicey later developed on this concept but his concept of the Rule of Law contemplated the absence of wide powers in the hands of Government officials. According to Prof Dicey, rule of law contains three principles or it has three meanings as stated below:

1. Supremacy of Law
2. Equality before Law
3. Predominance of Legal Spirit.

In *Indira Nehru Gandhi v. Shri Raj Narain* [35], the constitutional validity of clause 4 of Art 329A fell for consideration.

Clause (4) of Art 329A read as follows: (i) No law made by Parliament before the commencement of the Constitution (39th Amendment) Act, 1975 in so far as it relates to the election petitions and matters connected therewith shall apply or shall be deemed ever to have applied to or in relation to the election of any such person as is referred to in clause (1) to either House of Parliament; (ii) and such election shall not be deemed to be void or ever to have become void on any ground on which such election could be declared to be void or has before such commencement been declared to be void under any such law; (iii) and notwithstanding any order made by any court before such commencement declaring such election to be void, such election shall continue to be valid in all respects; (iv) and any such order and any finding on which such order is based shall be and shall be deemed always to have been void and of no effect.

While declaring that Clause 4 is unconstitutional it was held that Rule of law postulates that the decisions should be made by the application of known principles and rules and in general such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is not predictable and such decision is the antithesis of a decision taken in accordance with the rule of law. The effect of impugned clause (4) is to take away both the right and the remedy to challenge the election of the PM & thus offends rule of law.

Separation of Power

The doctrine of separation of powers has originated from Aristotle but was made popular by John Locke and Montesquieu. Indian Constitution, unlike Constitution of United States of America and Australia, does not have express provision of separation of powers. At this point reference may be made to Article 50.

In *Ram Jawaya Kapur v. State of Punjab* [36] it was held that the Indian Constitution has not indeed recognised the doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another.

In *State of Tamil Nadu v. State of Kerala* [37], the law was summarized as under

1. The doctrine of doctrine of separation of power through not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs – legislature, executive and judiciary.
2. Separation of judicial power is a significant constitutional principle
3. Separation of Powers between three organs – legislature, executive and judiciary – is also nothing but a consequence of principles of equality enshrined in Article 14 of Accordingly, breach of separation of judicial power may amount to negation of equality under Article 14.

Central Administrative Tribunal

The Central Administrative Tribunal had been established under Article 323 - A of the Constitution for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other authorities under the control of the Government.

Legal Issue

Q. Whether Central Administrative Tribunal can supplant the jurisdiction of High Court?

Answer

Overruling *P. Sampath Kumar v. Union of India* [38], it was laid down by Hon'ble Supreme Court in *L. Chandra Kumar v. Union of India* [39], that

1. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, the Tribunals shall not entertain any question regarding the vires of their own parent statutes.
2. All decisions of the Tribunals would be subject to scrutiny before Division Bench of their respective High Courts under Arts. 226/227. No appeal would lie directly to Supreme Court under Article 136 from the decision of the Tribunals.

Conclusion

It emerges that administrative law is not a strait jacket. It is a living organism. As such it is capable of growth, of expansion and of adaptation to new conditions. The administrative law is neither, on the one hand, a Gibraltor Rock, which wholly resists the ceaseless washing of time and circumstances, nor is it on the other hand, a sandy

beach, which is slowly destroyed by erosion of the waves. It is rather to be likened to a floating dock which, while firmly attached to its moorings, and not therefore at the caprice of the waves, yet rises and falls with the time of time and circumstances. In nutshell administrative law is a multifariousness concept and has far-reaching horizons. Administrative Law, being a mode of social engineering, cannot be viewed in isolation. The vitality of law as a living organism is primarily dependent on the judge's ability to interpret the same. We have to continuously remember that administrative law will become a teasing illusion if we forget to bring the notion of constitutional conscience into our service to the mankind. D.Y. Chandrachud, J. locus classicus in *Gujarat Mazdoor Sabha v. State of Gujarat* [40], must not be forgotten wherein his lordship beautifully observed that *the phrase sentinel on the qui vive may have become weather-beaten in articles, seminars and now, in the profusion of webinars, amidst the changing times. Familiar as the phrase sounds, Judges must constantly remind themselves of its value through their tenures, if the call of the constitutional conscience is to retain meaning.*

References

1. *Raghupathy JRV. State Of A.P*., AIR 1988 SC 1681
2. Harijander Singh V. Selection Committee, Kakatiya, AIR 1975 AP 35.
3. 295 U.S. 495.
4. AIR 1979 SC 321.
5. AIR 1967 SC 1895.
6. (1878) LR 3 AC 889.
7. AIR 1949 FC 175.
8. AIR 1951 SC 332.
9. *Ibid*.
10. (2001) 5 SCC 212.
11. (2015) 4 SCC 770.
12. (2004) 4 SCC 311.
13. AIR 1957 SC 510.
14. AIR 1960 SC 554.
15. AIR 1961 SC 606.
16. AIR 1954 SC 224.
17. AIR 1979 SC 1149.
18. (1852) 3 HLC 759.
19. AIR 1957 SC 425.
20. AIR 1984 SC 1572.
21. AIR 1970 SC 150.
22. AIR 1958 SC 86.
23. AIR 1959 SC 1376.
24. (1863) 14 CB (NS) 180.
25. AIR 1978 SC 597.
26. AIR 1989 SC 653.
27. AIR 2003 SC 3357.
28. AIR 2010 SC 1285.
29. AIR 1966 SC 671.
30. AIR 1991 SC 537.
31. AIR 1990 SC 1984.
32. AIR 1987 SC 454.
33. AIR 1996 SC 1810.
34. AIR 1990 SC 1480.
35. AIR 1975 SC 2299.
36. AIR 1955 SC 549.
37. 2014(6) SCALE 380.
38. (1987) 1 SCC 124.
39. (1997) 3 SCC 261.
40. (2020) 10 SCC 459.