Administrative law

University of Barishal

A Project Proposal

Title : **Administrative Law**

Applied Course : **Computer Fundamental and office Application**

Course level : **Basic**

Submitted to: Tania Islam

Assistant Professor, Department of Computer science and Engineering,university of Barishal

Submitted *by :* Md. Ismail

Department of Law ,University of Barishal, Batch (49)

Administrative law

Contents

Introductory :

Administrative law

Administrative law has become very necessary in the developed society, the relationship of the administrative authorities and the people have become very complex. In order to regulate these complex, relations, some law is necessary, which may bring about regularity certainty and may check at the same time the misuse of powers vested in the administration. With the growth of the society, its complexity increased and thereby presenting new challenges to the administration we can have the appraisal of the same only when we make a comparative study of the duties of the administration in the ancient times with that of the modern times. In the ancient society the functions of the state were very few the prominent among them being protection from foreign invasion, levying of Taxes and maintenance of internal peace & order. It does not mean, however that there was no administrative law before 20th century. In fact administration itself is concomitant of organized Administration. In India itself, administrative law can be traced to the well-organized administration under the Mauryas and Guptas, several centuries before the Christ, following through the administrative, system of Mughals to the administration under the East India Company, the precursor of the modern administrative system. But in the modern society, the functions of the state are manifold, In fact, the modern state is regarded as the custodian of social welfare and consequently, there is not a single field of activity which is free from direct or indirect interference by the state. Along with duties, and powers the state has to shoulder new responsibilities. The growth in the range of responsibilities of the state thus ushered in an administrative age and an era of Administrative law. The development of Administrative law is an inevitable necessity of the modern times; a study of administrative law acquaints us with those rules according to which the administration is to be carried on. Thus the growth of administrative law is to be attributed to a change of philosophy as to the role and function of state. The shifting of gears from laissez faire state to social welfare state has resulted in change of role of the state. This trend may be illustrated very forcefully by reference to the position in India. Before 1947, India was a police state. The ruling foreign power was primarily interested in strengthening its own domination; the administrative machinery was used mainly with the object in view and the civil service came to be designated as the “steel frame”. The state did not concern itself much with the welfare of the people. But all this changed with the advent of independence with the philosophy in the Indian constitution the preamble to the constitution enunciates the great objectives and the socio-economic goals for the achievement of which the Indian constitution has been conceived and drafted in the mid-20th century an era when the concept of social welfare state was predominant. It is thus pervaded with the modern outlook regarding the objectives and functions of the state. it embodies a distinct philosophy which regards the state as on organ to secure good and welfare of the people this concept of state is further strengthened by the Directive Principles of state policy which set out the economic, social and political goals of Indian constitutional system.

Need for the Administrative Law:

The emergence of the social welfare has affected the democracies very profoundly. It has led to state activism. There has occurred a phenomenal increase in the area of sate operation; it has taken over a number of functions, which

were previously left to private enterprise. The state today pervades every aspect of human life. The functions of a modern state may broadly be placed into five categories, the state as:-

- protector,
- provider,
- entrepreneur,
- economic controller and
- arbiter .

Administration is the all-pervading feature of life today. The province of administration is wide and embrace following things within its ambit:

- It makes policies,
- It provides leadership to the legislature,
- It executes and administers the law and
- It takes manifold decisions.
- It exercises today not only the traditional functions of administration, but other varied types of functions as well.
- It exercises legislative power and issues a plethora of rules, bye- laws and orders of a general nature.

Nature and defination of administrative Law:

Administrative Law is, in fact, the body of those which rules regulate and control the administration. Administrative Law is that branch of law that is concerned with the composition of power, duties, rights and liabilities of the various organs of the Government that are engaged in public administration. Under it, we study all those rules laws and procedures that are helpful in properly regulating and controlling the administrative machinery. There is a great divergence of opinion regarding the definition/conception of administrative law. The reason being that there has been tremendous increase in administrative process and it is impossible to attempt any precise definition of administrative law, which can cover the entire range of administrative process.

Austin has defined administrative Law. As the law, which determines the ends and modes to which the sovereign power shall be exercised. In his view, the sovereign power shall be exercised either directly by the monarch or directly by the subordinate political superiors to whom portions of those are delegated or committed in trust.

Holland regards Administrative Law “one of six” divisions of public law. In his famous book “Introduction to American Administrative Law 1958”,

Administrative law

Bernard Schawartz has defined Administrative Law as "the law applicable to those administrative agencies which possess of delegated legislation and ad judicatory authority."

Jennings has defined Administrative Law as "the law relating to the administration. It determines the organization, powers and duties of administrative authorities."

In short cut is shown the below Table :

NAME OF SCHOOLER	CUNTRY	DATE	MAIN FEATURE
Bernard	French	1800	delegated legislation and ad judicatory authority
Holland	United State	1700	divisions of public law
Jennings	U.K	1190	powers and duties of administrative authorities
Austin	USA	1800	determines the ends and modes to which the sovereign power shall be exercised.

A careful perusal of the above makes it clear that Administrative Law deals with the following problems:

a) Who are administrative authorities?

b) What is the nature and powers exercised by administrative authorities?

c) What are the limitations, if any, imposed on these powers?

d) How the administration is kept restricted to its laminose?

e) What is the procedure followed by the administrative authorities?

Sources of Administrative Law

There are four principal sources of administrative law in India:-

I. Constitution of India
II. Acts and Statutes
III. Ordinances, Administrative directions, notifications and Circulars
IV. Judicial decisions

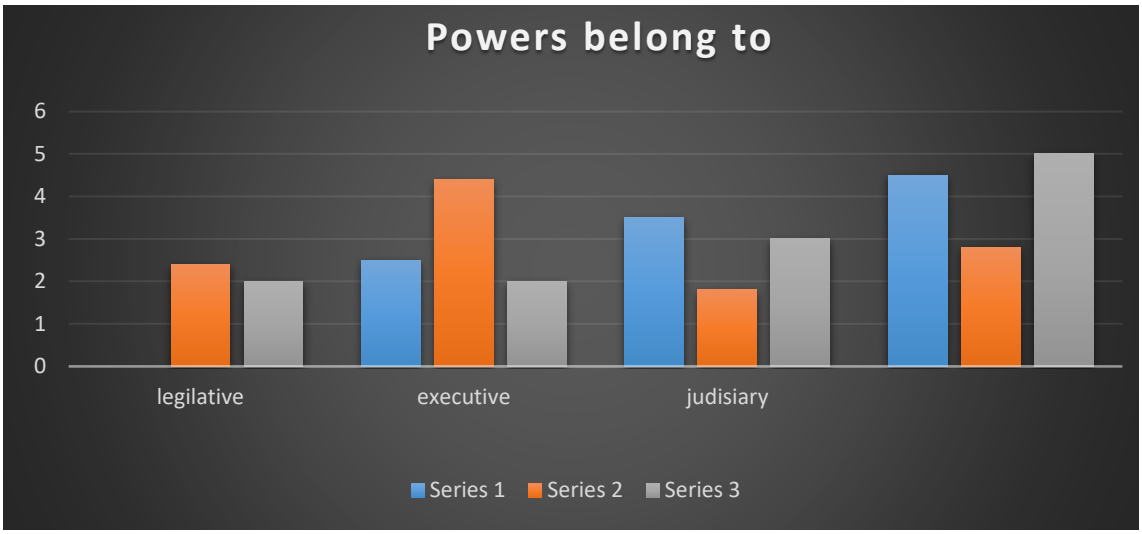
Future Role of Administrative Law

The administrative law has come to stay because it provides an instrument of control of the exercise of administrative powers. The administrative law has to seek balance between the individual right and public needs. As we know in the society there exists conflict between power and justice wherever there is power, there exist probabilities of excesses in exercise of the power. One way is to do nothing about this and let the celebrated Kautilyan Matsanayaya (big fish eating little fish) prevail. The other way is to try and combat this. Administrative law identifies the excesses of power and endeavors to combat there. The learned Author, Upender Baxi, while commenting on the administrative law has rightly observed in. (The Myth and reality of the Indian administrative law, Introduction by Upendra Baxi in administrative law ed. by I.P. Massey 2001 at XVIII) "to understand the stuff of which administrative law is made one has to understand relevant domains of substantive law to which courts apply the more general principles of legality and fairness. In this way a thorough study of administrative law is in effect, a study of the Indian legal system a whole. More importantly, it is study of the pathology of power in a developing society."

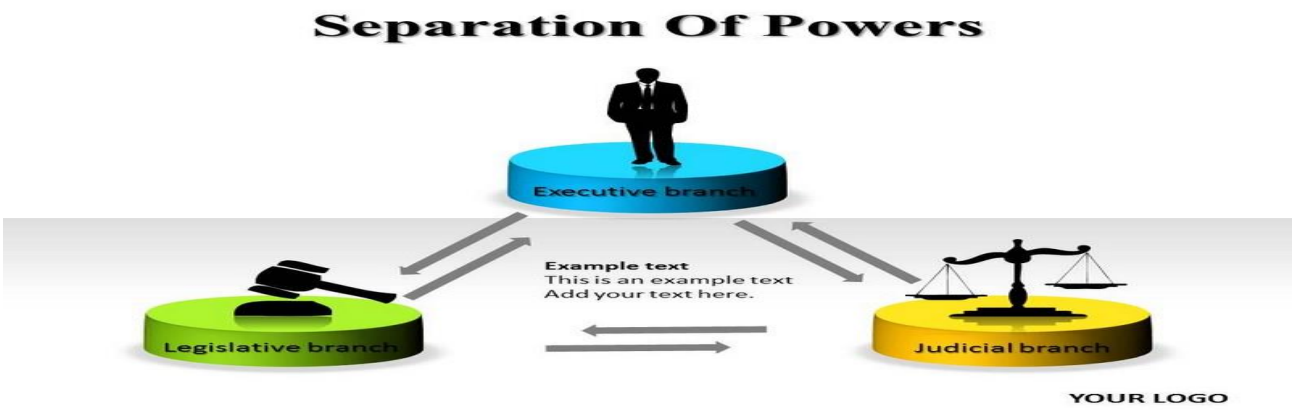
Further, the multifarious activities of the state extended to every social problems of man such as health education employment, old age pension production, control and distribution of commodities and other operations public utilities. This enjoins a new role for administration and also for the development of administrative law.

Separation of Powers

The doctrine of Separation of Powers is of ancient origin. The origin of the doctrine is traceable to Aristotle. In the 16th and 17th Centuries, French philosopher John Boding and British Politician Locke respectively had expounded the doctrine of separation of powers. But it was Montesquieu, French jurist, who for the first time gave it a systematic and scientific formulation in his book 'Esprit des Lois' (The spirit of the laws). Montesquieu's view: Montesquieu said that if the Executive and the Legislature are the same person or body of persons, there would be a danger of the Legislature enacting oppressive laws which the executive will administer to attain its own ends, for laws to be enforced by the same body that enacts them result in arbitrary rule and makes the judge a legislator rather than an interpreter of law. If one person or body of persons could exercise both the executive and judicial powers in the same matter, there would be arbitrary powers, which would amount to complete tyranny, if the legislative power would be added to the power of that person. The value of the doctrine lies in the fact that it seeks to preserve human liberty by avoiding the concentration of powers in one person or body of persons. The different organs of government should thus be prevented from encroaching on the province of the other organ.



courts to adjudicate disputes between the citizen and the administration owes its origin to the theory of separating of powers. The principle was categorically adopted in the making of the Constitution of the United States of America. There, the executive power is vested in the president. Article the legislative power in congress and the judicial power in the Supreme Court and the courts subordinates thereto. The President is not a member of the Congress. He appoints his secretaries on the basis not of their party loyalty but loyalty to himself. His tenure does not depend upon the confidence of the Congress in him. He cannot be removed except by impeachment, However, the United States constitution makes departure from the theory of strict separation of powers in this that there is provision for judicial review and the supremacy of the ordinary courts over the administrative courts or tribunals. In the British Constitution the Parliament is the Supreme legislative authority. At the same time, it has full control over the Executive. The harmony between the Legislator and the (Executive) is secured through the Cabinet. The Cabinet is collectively responsible to the Parliament. The Prime Minister is the head of the party in majority and is the Chief Executive authority. He forms the Cabinet. The Legislature and the Executive are not quite separate and independent in England, so far as the Judiciary is concerned its independence has been secured by the Act for Settlement of 1701 which provides that the judges hold their office during good behaviour, and are liable to be removed on a presentation of addresses by both the Houses of Parliament. They enjoy complete immunity in regard to judicial acts. In the British Constitution the Parliament is the Supreme legislative authority. At the same time, it has full control over the Executive. The harmony between the Legislator and the (Executive) is secured through the Cabinet. The Cabinet is collectively responsible to the Parliament. The Prime Minister is the head of the party in majority and is the Chief Executive authority. He forms the Cabinet. The Legislature and the Executive are not quite separate and independent in England, so far as the Judiciary is concerned its independence has been secured by the Act for Settlement of 1701 which provides that the judges hold their office during good behaviour, and are liable to be removed on a presentation of addresses by both the Houses of Parliament. They enjoy complete immunity in regard to judicial acts.



His tenure does not depend upon the confidence of the Congress in him. He cannot be removed except by impeachment, However, the United States constitution makes departure from the theory of strict separation of powers in this that there is provision for judicial review and the supremacy of the ordinary courts over the administrative courts or tribunals.

RULE OF LAW

The Expression "Rule of Law" plays an important role in the administrative law. It provides protection to the people against the arbitrary action of the administrative authorities. The expression 'rule of law' has been derived from the French phrase 'la Principle de legality'. i.e. a government based on the principles of law. In simple words, the term 'rule of law, indicates the state of affairs in a country where, in main, the law rules. Law may be taken to mean mainly a rule or principle which governs the external actions of the human beings and which is recognized and applied by the State in the administration of justice.

Rule of Law is a dynamic concept.

It does not admit of being readily expressed. Hence, it is difficult to define it. Simply speaking, it means supremacy of law or predominance of law and essentially, it consists of values. The concept of the rule of Law is of old origin. Edward Coke is said to be the originator of this concept, when he said that the King must be under God and Law and thus vindicated the supremacy of law over the pretensions of the executives. Prof. A.V. Dicey later developed on this concept in the course of his lectures at the Oxford University. Dicey was an individualist; he wrote about the concept of the Rule of law at the end of the golden Victorian era of laissez-faire in England.

Basic Principles of the Rule of Law

A. Law is Supreme, above everything and every one. No body is the above law.
B. All things should be done according to law and not according to whim
C. No person should be made to suffer except for a distinct breach of law.
D. Absence of arbitrary power being hot and sole of rule of law

E. Equality before law and equal protection of law

Rule of Law and Case law

In an early case S.G. Jaisinghani V. Union of India and others, (AIR 1967 SC 1427) the Supreme Court portrayed the essentials of rule of law in a very lucid manner. It observed: " The absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion when conferred upon executive authorities must be continued within clearly defined limits. The rule of law from this points of view means that decisions should be made by the application of known principles and rules and, in general such decision 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 unpredictable and such a decision is antithesis of a decision taken in accordance with the rule of law".

The modern concept of the Rule of Law

IT is fairly wide and, therefore, sets up an idea for government to achieve. This concept was developed by the International Commission of Jurists, known as Delhi Declaration, 1959, which was later on confirmed at Lagos in 1961. According to this formulation, the Rule of Law implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld. During the last few years the Supreme Court in India has developed some fine principles of Third World jurisprudence. Developing the same new constitutionalism further, the Apex Court in Veena Seth v. State (AIR 1983 SC 339) of Bihar extended the reach of the Rule of Law to the poor and the downtrodden, the ignorant and the illiterate, who constitute the bulk of humanity in India, when it ruled that the Rule of Law does not exist merely for those who have the means to fight for their rights and very often do so for the perpetuation of the status quo, which protects and preserves their dominance and permits them to exploit a large section of the community. The opportunity for this ruling was provided by a letter written by the Free Legal Aid Committee, Hazaribagh, Bihar drawing its attention to unjustified and illegal detention of certain prisoners in jail for almost two or three decades. Recent aggressive judicial activism can only be seen as a part of the efforts of the Constitutional Courts in India to establish rule-of-law society, which implies that no matter how high a person, may be the law is always above him. Court is also trying to identify the concept of rule of law with human rights of the people. The Court is developing techniques by which it can force the government not only to submit to the law but also to create conditions where people can develop capacities to exercise their rights properly and meaningfully. The public administration is responsible for effective implementation of rule of law and constitutional commandsy.

fairly the objective standards laid down by law. Every public servant is a trustee of the society and is accountable for due effectuation of constitutional goals. This makes the concept of rule of law highly relevant to our context.

Droit Administratif

Meaning of Droit administrative:

French administrative law is known as Droit Administratif which means a body of rules which determine the organization, powers and duties of public administration and regulate the relation of the administration with the citizen of the country. Droit Administrative does not represent the rules and principles enacted by Parliament. It contains the rules developed by administrative courts. Napoleon Bonaparte was the founder of the Droit administrative. It was he who established the Conseil d'Etat. He passed an ordinance depriving the law courts of their jurisdiction on administrative matters and another ordinance that such matters could be determined only by the Conseil d'Etat. Waline, the French jurist, propounds three basic principles of Droit administrative

One good result of this is that an independent body reviews every administrative action. The Conseil d'Etat is composed of eminent civil servants, deals with a variety of matters like claim of damages for wrongful acts of Government servants, income-tax, pensions, disputed elections, personal claims of civil servants against the State for wrongful dismissal or suspension and so on. It has interfered with administrative orders on the ground of error of law, lack of jurisdiction, irregularity of procedure and detournement depouvior (misapplication of power). It has exercised its jurisdiction liberally.

CLASSIFICATION OF ADMINISTRATIVE ACTION

Administrative action is a comprehensive term and defies exact definition. In modern times the administrative process is a by-product of intensive form of government and cuts across the traditional classification of governmental powers and combines into one all the powers, which were traditionally exercised by three different organs of the State. Therefore, there is general agreement among the writers on administrative law that any attempt of classifying administrative functions or any conceptual basis is not only impossible but also futile. Even then a student of administrative law is compelled to delve into field of classification because the present-day law especially relating to judicial review freely employs conceptual classification of administrative action. Thus, speaking generally, an administrative action can be classified into four categories:

i) Rule-making action or quasi-legislative action – Legislature is the law-making organ of any state. In some written constitutions, like the American and Australian Constitutions, the law making power is expressly vested in the legislature. However, in the Indian Constitution though this power is not so expressly vested in the legislature, yet the combined effect of Articles 107 to III and 196 to 201 is that the law making power can be exercised for the Union by Parliament and for the States by the respective State legislatures. It is the intention of the Constitution-makers that those bodies alone must exercise this law-making power in which this power is vested.

ii) Rule-decision action or quasi-judicial action – Today the bulk of the decisions which affect a private individual come not from courts but from administrative agencies exercising ad judicatory powers. The reason seems to be that since administrative decision-making is also a by-product of the intensive form of

government, the traditional judicial system cannot give to the people that quantity of justice, which is required in a welfare State. Administrative decision-making may be defined, as a power to perform acts administrative in character, but requiring incidentally some characteristics of judicial traditions. On the basis of this definition, the following functions of the administration have been held to be quasi-judicial function.

DELEGATED LEGISLATION

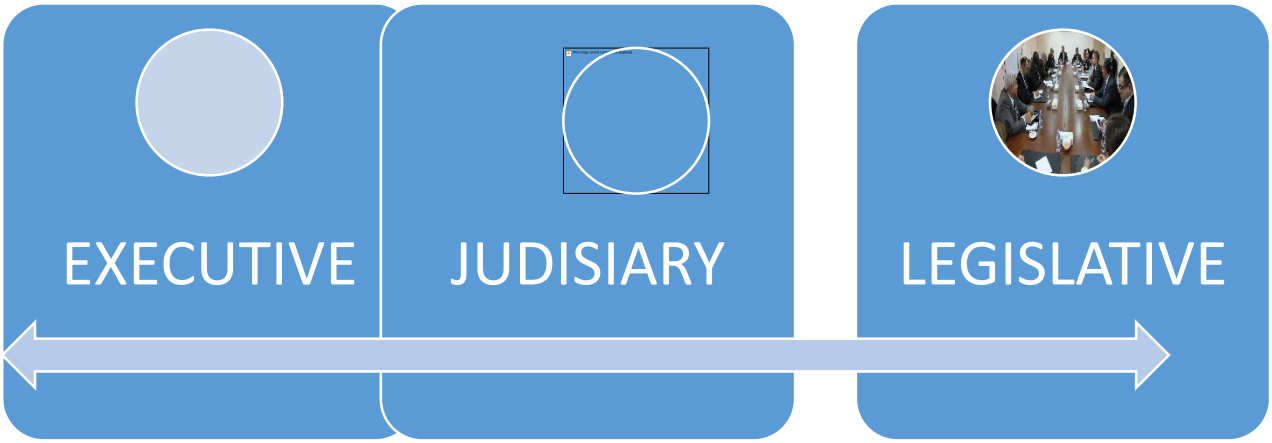
One of the most significant developments of the present century is the growth in the legislative powers of the executives. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law. We know that there is no such general power granted to the executive to make law it only supplements the law under the authority of legislature. This type of activity namely, the power to supplement legislation been described as delegated legislation or subordinate legislation. Why delegated legislation becomes inevitable The reasons as to why the Parliament alone cannot perform the jobs of legislation in this changed context are not far to seek. Apart from other considerations the inability of the Parliament to supply the necessary quantity and quality legislation to the society may be attributed to the following reasons :

Why delegated legislation becomes inevitable

The reasons as to why the Parliament alone cannot perform the jobs of legislation in this changed context are not far to seek. Apart from other considerations the inability of the Parliament to supply the necessary quantity and quality legislation to the society may be attributed to the following reasons :

Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required. The Parliament cannot act quickly because of its political nature and because of the time required by the Parliament to enact the law. ii) The bulk of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters. The Parliament cannot provide the society with the requisite quality and quantity of legislation because of lack of time. Most of the time of the Parliament is devoted to political matters, matters of policy and particularly foreign affairs.. iii) Certain matters covered by delegated legislation are of a technical nature which require handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject

matter. "Parliaments" cannot obviously provide for such matters as the members are at best politicians and not experts in various spheres of life.



Nature and Scope of delegated legislation Delegated legislation

means legislation by authorities other than the Legislature, the former acting on express delegated authority and power from the later. Delegation is considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power if restored to within proper limits. The delegation should not, in any case, be unguided and uncontrolled. Parliament and State Legislatures cannot abdicate the legislative power in its essential aspects which is to be exercised by them. It is only a nonessential legislative function that can be delegated and the moot point always lies in the line of demarcation between the essential and nonessential legislative functions. The essential legislative functions consist in making a law. It is to the legislature to formulate the legislative policy and delegate the formulation of details in implementing that policy. Discretion as to the formulation of the legislative policy is prerogative and function the legislature and it cannot be delegated to the executive. Discretion to make notifications and alterations in an Act while extending it and to effect amendments or repeals in the existing laws is subject to the condition precedent that essential legislative functions cannot be delegated authority cannot be precisely defined and each case has to be considered in its setting.

In order to avoid the dangers, the scope of delegation is strictly circumscribed by the Legislature by providing for adequate safeguards, controls and appeals against the executive orders and decisions. The power delegated to the Executive to modify any provisions of an Act by an order must be within the framework of the Act giving such power. The power to make such a modification no doubt, implies certain amount of discretion but it is a power to be exercised in aid of the legislative policy of the Act and cannot i) travel beyond it, or ii) run counter to it, or iii) certainly change the essential features, the identity, structure or the policy of the Act. Under the constitution of India, articles 245 and 246 provide that the legislative powers shall be discharged by the Parliament and State legislature. The delegation of legislative power was conceived to be inevitable and therefore it was not prohibited in the constitution.

the Constitution of India lays down that law includes any ordinances, order bylaw, rule regulation, notification, etc. Which if found inviolation of fundamental rights would be void. Besides, there are number of judicial pronouncements by the courts where they have justified delegated legislation. For e.g. In re Delhi Laws Act case, AIR 1961 Supreme Court 332; Vasantlal Magan Bhaiv. State of Bombay, air 1961 SC 4; S. Avtar Singh v. State of Jammu and Kashmir, AIR 1977 J&K 4. While commenting on indispensability of delegated legislation JusticeKrishna Iyer has rightly observed in the case of Arvinder Singh v. State of Punjab, AIR A1979 SC 321, that the complexities of modern administration are so bafflingly intricate and bristle with details, urgencies, difficulties and need for flexibility that our massive legislature may not get off to a start if they must directly and comprehensively handle legislative business in their plentitude, proliferation and particularization Delegation of some part of legislative power becomes a compulsive necessity for viability.

In the case of this normal type of delegated legislation, the limits of the delegated power are clearly defined in the enabling statute and they do not include such exceptional powers as the power to legislate on matters of principle or to impose taxation or to amend an act of legislature. The exceptional type covers cases where – i) the powers mentioned above are given , or ii) the power given is so vast that its limits are almost impossible of definition, or iii) while limits are imposed, the control of the courts is ousted. Such type of delegation is commonly known as the Henry VIII Clause. An outstanding example of this kind is Section 7 of the Delhi Laws Act of 1912 by which the Provincial Government was authorized to extend, with restrictions and modifications as it thought fit any enactment in force in any part of India to the Province of Delhi. This is the most extreme type of delegation, which was impugned in the Supreme Court in the Delhi Laws Act case. A.I.R. 1951 S.C.332. It was held that the delegation of this type was invalid if the administrative authorities materially interfered with the policy of the Act, by the powers of amendment or restriction but the delegation was valid if it did not effect any essential change in the body or the policy of the Act. That takes us to a term "bye-law" whether it can be declared ultra vires ? if so when ? Generally under local laws and regulations the term bye-law is used such as i) public bodies of municipal kind ii) public bodies concerned with government, or iii) corporations, or iv) societies formed for commercial or other purposes. The bodies are empowered under the Act to frame bye-laws and regulations for carrying on their administration. There are five main grounds on which any bye-law may be struck down as ultra vires. They are : a) That is not made and published in the manner specified by the Act, which authorises the making thereof; b) That is repugnant of the laws of the land; c) That is repugnant to the Act under which it is framed; Module – 1 36 d) That it is uncertain ; and e) That it is unreasonable. Modes of control over delegated legislation The practice of conferring legislative powers upon administrative authorities though beneficial and necessary is also dangerous because of the possibility of abuse of powers and other attendant evils. There is consensus of opinion that proper precautions must be taken for ensuring proper exercise of such powers. Wider discretion is most likely to result in arbitrariness. The exercise of delegated legislative powers

must be properly circumscribed and vigilantly scrutinized by the Court and Legislature is not by itself enough to ensure the advantage of the practice or to avoid the danger of its misuse. For the reason, there are certain other methods of control emerging in this field.

Conclution:

The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of on impugned statute whether the legislature exceeded such limits

Bibliography

(n.d.).

C.K Takoyani. (2022). ad law. *adanm unit*.

C.K Takoyani. (2022). ad law. *adanm unit*.

TALUKDER, H. (2024). Constitutional Law, Administrative Law, and Human Rights_ A Critical Introduction (PDFDrive).pdf. *Critical Introduction (PDFDrive).pdf*.