

BASIC PRINCIPLES OF ADMINISTRATIVE LAW

FACULTY OF LAWS – 2017

ADMINISTRATIVE LAW

Separation Of Powers

Separation of powers is the **division of the powers** and **functions of government** among the three separate arms of government, that is, the **legislature, executive, and the judiciary**.

Division Of Powers

- **Legislative powers**powers by the **legislature**, which is the body **responsible for law making**.
- **Executive powers** powers exercisable by the **executive organ of government** in performing particular **act** or giving particular **order** or making **decisions** generally in relation to particular statutory duties **within their competence**.
- **Judicial powers**exercised when there is an existing **dispute lis inter partes** (**conflict among people**) between two or more parties

Division Of Powers

- ❑ The **legislature** has **legislative powers** to **make laws** for the country...
- ❑ The **executive** has **powers** to **formulate policies, implements** and enforce the law...
- ❑ The **judiciary** **interprets** the laws and **adjudicates** over matters brought before it.

The Legislature May Give Powers...

- The **legislature gives powers to other persons** or bodies to make necessary laws as applicable. These **laws made by the administrative bodies, agency or authority in exercise of the powers given or delegated to them** by the constitution or enabling statutes, which is referred to as delegated legislation.
- Examples of these are byelaws, orders, regulations by local governments, departments, corporations and agencies.
- **BUT “*Delegatus non potest delegare*”.... a delegate may not sub-delegate his/her authority, power or functions to another person, authority, body or agency.**

Let Us Reframe.....

The **functions and powers vested on administrative authorities** and public officers are **conferred on them by**

- The constitution... the supreme law of the land
- By an act of parliament.... state laws or charter establishing such public authority, body agency or corporation.
- A subsidiary legislation or delegated legislation..... made pursuant to the Act of parliament, thus conferring the said power.

Example: The Development Planning Act (ACT OF PARLIAMENT) gives the power to the Planning Authority (PUBLIC AUTHORITY) to issue development permits

WHAT IF?

□ WHAT IF a piece of land purportedly ‘expropriated’ for public purpose but in actual fact transferred to a private business man?

Definition Of ‘*administrative law*’

**NO UNIVERSAL
DEFINITION**

Some Thoughts about ‘What Is Administrative Law?’

- Administrative law **deals with the decision making of administrative units of government** (for example, tribunals, boards or commissions) that are part of a national regulatory scheme in such areas as police law, planning, environment, transport.....

Some Thoughts about ‘*What Is Administrative Law?*’

- ❑ H. W. R. Wade in his book “Administrative Law,” eighth edition, argued that **administrative law** is concerned with **the operation and control of the power of administrative authorities** with **emphasis on functions rather than structure**.
- ❑ He went further, stating that: **“Administrative law is the law relating to the control of governmental powers.”**
- ❑ So, Administrative law is concerned with **how to confine** administrative bodies to their legal role and limit.
- ❑ So, it is a branch of law that aims at **keeping the powers of government within the citizen against their abuse**, and where abused, to provide remedy to the aggrieved citizen.

Some Thoughts about ‘*What Is Administrative Law?*

- Peter Leyland and Gordon Anthony: It is regarded as the area of governmental powers, which **originate in primary legislation** or in the prerogative. It embodies **general principles** which can be applied to the exercise of the powers and duties of authorities in order to ensure that **the myriad of rules and discretionary powers available to the executive conform to basic standards of legality and, fairness.**

Some Thoughts about ‘What Is Administrative Law?’

- ...the administrative authorities are given various tasks to execute in accordance the primary duty of each establishment, organisation or body.
- In discharging their duties, they are vested with **wide powers** some of which are **discretionary** but must be exercised within the purview of the statute, byelaw or any legislation conferring such powers on them...
- So, **administrative law is the law, which keeps the powers of government within the legal bounds** in order to protect the citizen against the abuse of power and where abused, to provide the remedy for the aggrieved person

Some Thoughts about ‘*What Is Administrative Law?*

- The functions entrusted to administrative bodies, that is, public officers and administrative authorities are many. Their **powers** are **often great**.
- Administrative law regulates government or administration such that the agencies do not **arbitrarily exercise their powers** or exceed them. This means that the laws play vital roles in administration.
- Administrative law acts **as a check** in respect of the unlawful **exercise or abuse** of governmental administrative power.

The Way Forward....

**Administrative law must
therefore observe the rule of
natural justice.**

NATURAL JUSTICE

- Concisely natural justice means: The **inherent right** of a person to a **fair and just treatment** in the hand of rulers, their agents and other persons.
- It embodies principles that facilitate good administrative practice.
- For instance, **the two rules of natural justice that a man cannot sit on his own case (Nemo Judex in Causa Sua) and that no man can be condemned unheard (Audi Alterem Partem)**.
- **Example:** a taxi driver cannot be deprived of his licence to operate at an Airport because of an alleged misconduct without first being given a chance to put his side of the case.