THE TAMIL NADU
Dr. AMBEDKAR LAW UNIVERSITY
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ADMINISTRATIVE LAW

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Preface

Administrative law is the body of law that governs the activities of administrative agencies of the government which comprise of rulemaking power when delegated to them by the Legislature as and when the need, power of adjudication to pronounce decisions while giving judgements on certain matters, implementation/enforcement of public policy. Thus, Administrative law determines the organization, powers and duties of administrative authorities. The concept of Administrative Law is founded on the following principles: Power is conferred on the administration by law; No power is absolute or uncontrolled howsoever broad the nature of the same might be; there should be reasonable restrictions on exercise of such powers depending on the situation. It provides accountability and responsibility in the administrative functioning. Though administrative law is as old as administration itself since they cannot exist separately, in India the early signs of existence of administrative law could be found in the treatises written during the reign of the Mauryas, Guptas Mughals as well as East India Company which introduced the modern administrative law in Indian legal system. There are several reasons and factors responsible for the rapid growth of Administrative law in 20th century such as changed relations of Authorities and Citizens; Origin of Welfare State Concept; Inadequacy of the Legislations; Inadequacy of Courts; Technical Experts are with Administrative Organs; Union of both Administrative & Judicial Function; The Judicial System Proved Inadequate In simple words. Thus, the reason behind the growing importance of Administrative law is the assumption by the Administrative authorities of very wide powers including legislative and judicial which was the result of the social welfare state. Since Administrative law is primarily concerned with the control over the exercise of their powers, i.e. to prevent Administrative authorities from abuse and misuse of powers, it has become a subject of growing interest.The study of administrative laws is very significant because the very concept of having a democracy and a government to work for the people would be self-defeating as there would be no responsibility or accountability of the public officials to anybody and the administration would run arbitrarily.

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SUBJECT : ADMINISTRATIVE LAW

Objectives :

Today we are living in a 'administrative age' where there is rising tendency to transfer more and more powers to executive which include quasi judicial as well as quasi-legislative which has become inevitable in modern democratic state. Therefore, there has been a tremendous increase in powers and functions of the administrative authorities and the obvious result is full of danger of its degeneration and unwanted encroachment on human rights and liberties. Hence, there requires adequate control, safeguard through procedural fairness, judicial review and remedies to those affected by the administration. This syllabus has been prescribed with these objectives.

UNIT – I : Introduction to Administrative Law

1. Definition, Nature, Scope - Origin and Development in U.K., U.S.A., France and India -Sources -Administrative Law and Constitutional Law

2. Rule of Law Concept, Evaluation of Dicey's concept of Rule of Law, Modern conception of Rule of Law, Rule of Law in U.K., U.S.A. and India, Rule of Law vis-à-vis Administrative Law

3. Doctrine of Separation of Powers – Meaning, Origin, Montesquieu's Doctrine of Separation of Powers, System of checks and balances, position in U.K., U.S.A., and India-

4. Parliamentary Sovereignty in U.K., Limited Legislative Powers in U.S.A. and India

5. Classification of Administrative Action

a. Nature of Powers–Executive, Legislative and Judicial

b. Legislative function–Quasi Legislative functions – Administrative Directions.

c. Judicial function – Quasi Judicial functions – Tribunals and Administrative Justice

d. Executive function – Ministerial functions and discretionary functions.

UNIT – II : Delegated Legislation

Meaning, Nature, Origin, Development and causes of growth of delegated legislation, Types of Delegated Legislation and Constitutionality of Delegated Legislation-Delegated Legislation and Conditional Legislation, Sub-Delegation-Restraints on Delegation of Legislative Power, Doctrine of Excessive Delegation- Control over Delegated Legislation – Judicial, Procedural and Legislative Control-Administrative directions and Delegated Legislation

UNIT – III : Procedural Fairness and Judicial Review

A. Principles of Natural Justice

Concept, Parameters and application of the Principles of Natural Justice-Rule against Bias-Audi Alteram Partem or the Rule of Fair Hearing – Meaning, Object, Ambit and Ingredients of Fair Hearing, Institutional Decision, Post-Decision Hearing-Reasoned Decisions-Exceptions to the Rule of Natural Justice-Effects of Breach of Natural Justice

B. Administrative Process and Judicial Review

1) Meaning and need for Judicial Review

2) Scope of Judicial Review

Jurisdiction of the Supreme Court -Writ Jurisdiction-Appeal by Special Leave (Art. 136)-Scope and Object of Article 136-Jurisdiction of the High Court

3) Judicial Review of Administrative Action through Writs-

Scope of the Writ Jurisdiction -Against whom the Writ lies-Territorial extent of Writ Jurisdiction -Relief against an Interim Order – Interim Relief [Art. 226(3)]-*Locus-standi*-Kinds of Writ -Grounds for issue of Writs

4) Principles for the Exercise of Writ Jurisdiction

Alternative Remedy-Laches or Dela-*Res Judicata*

5) Public Interest Litigation and *Locus-Standi*

6) Doctrine of Legitimate Expectation and Doctrine of Proportionality

C. Statutory Remedies

a) Injunction- Declaration against the Government - Exclusion of Civil Suits

D. Privileges and Immunities of Government in Legal Proceedings

Privilege to withhold documents - Miscellaneous Privileges of the Government-Notice, Limitation, Enforcement of Court Order- Binding nature of Statutes over the States action-Promissory Estoppel- Right to Information

E. Judicial Control of Administrative Discretion

Meaning, Nature and need of Administrative discretion -Ground and Extent of Judicial Review -Fundamental Rights and Discretionary Powers

F. Liability of the State

Liability of the State in Torts and Contracts

UNIT – IV : Ombudsman, Lokpal, Lokayukta and Central Vigilance Commission

Meaning, Object, Main characteristics, Need and Utility-Origin and development of the Institution -Ombudsman in New Zealand-Ombudsman in England (Parliamentary Commissioner)-Ombudsman in India –Lokpal-Lokayukta in States-Central Vigilance Commission

UNIT – V : Administrative Tribunals and Public Undertaking

(A) Administrative Tribunals

Meaning, Nature, Main characteristics, Origin and development (U.S.A., U.K. and India)-Franks Committee-Tribunal and Court,Similarity and Difference-Reason for growth of Administrative Tribunals-Merits and Demerits of Administrative Tribunal-Procedure and powers of Administrative Tribunal (U.K., U.S.A. and India)-Tribunal under Constitution -High Court's Superintendence over Tribunals-Appeal to Supreme Court by Special Leave-Working of the Administrative Tribunal

Administrative Tribunals under Administrative Tribunals Act, 1985-

Administrative Procedure Act in U.S.A.-Domestic Tribunal

(B) Public Undertaking

Object, Importance, Characteristics, Classification, Reason for the growth - working of Public Corporations-Rights, Duties and Liabilities of Public Corporations-Controls over Public Corporations, Government Control, Parliamentary Control, Judicial Control, Public Control-Role of Ombudsman in Public Undertaking

Books Prescribed :

1. M.P. Jain and S.N. Jain – Principles of Administrative Law
2. S.P. Sathe – Administrative Law
3. I.P. Massey – Administrative Law
4. C.K. Takwani – Administrative Law
5. Kailash Rai - Administrative Law

Reference Books :

1. Wade – Administrative Law
2. De Smith – Administrative Law
3. Foulkes – Administrative Law
4. Indian Law Institute – Cases and Material of Administrative Law
5. Markose – Judicial Control of Administrative action
6. Griffith and Street – Administrative Law
7. Report of the Law Commission – First Report Second Report – Fourteenth Report
8. Report on the Committee of Minister's power Franks Committee report.

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UNIT :I

INTRODUCTION TO ADMINISTRATIVE LAW

Administrative Law

The expression "Administrative Law" may mean two different things, namely, (a) law relating to administration, and (b) law made by the administration. The latter would itself be of two kinds. Firstly, it may be rules, regulations, orders, schemes, bye-laws, *etc.,* made by the administrative authorities on whom power to make such subordinate legislation is conferred by a statute. This may be called rule-making. Secondly, certain administrative authorities have power to decide questions of law and/ or fact affecting particular person or persons generally, *i.e.,* adjudication. Most of such powers are exercised quasi-judicially. Such decisions apply a statute or administrative policy and instructions to specific cases, in doing so they create a body of administrative law. Administrative law relating to administration engages the attention of lawyers. Administration is government or a department or an agency of the government. Under the Constitution of India the powers of the state are divided between the Union (including the Union Territories) on the one hand and the states on the other hand. Both the Union and the states are divided into three great departments, namely, (1) the executive, (2) the legislature, and (3) the judiciary. Administrative powers are exercised by the executive in either of two ways. It may act in exercise of the executive power of the Union or of a state or it may act under the authority of a specific statute or subordinate legislation. The exercise of all administrative powers is subject to the rule of law. The legal control may be exercised by three authorities, namely, (1) the legislature, (2) the higher executive, and (3) the judiciary. Administrative law concerns itself mainly with the legal control of the government or of administrative authorities by the courts.

It is impossible to attempt any precise definition of administrative law which can cover the entire range of administrative process. The American approach to administrative law is denoted by the definition propounded by ***Davis***. According to him, administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action. It does not include the enormous mass of substantive law produced by the agencies. An administrative agency, according to him, is a governmental authority, other than a court and other than a legislative body, which affects the rights of private parties through either adjudication or rule-making. The emphasis in the definition is on judicial control of administrative agencies. But other control mechanisms, like the parliamentary control of delegated legislation, control through administrative appeals , and through the ombudsman type institution, are quite important and significant and need to be studied for a fuller comprehension of administrative law.

Dicey has defined administrative law as denoting that portion of a nation's legal system

which determines the legal status and liabilities of all State officials, which defines the rights and liabilities of private individuals in their dealings with public officials, and which specifies the procedure by which those rights and liabilities are enforced. The definition is narrow and restrictive in so far as it leaves out of consideration many aspects of administrative law, e.g., it excludes many administrative authorities, which strictly speaking, are not officials of the States such as public corporations; it also excludes procedures of administrative authorities or their various powers and functions, or their control by Parliament or in other ways, Dicey's formulation refers primarily to one aspect of administrative law, i.e. control of public officials. Dicey formulated his definition with the ***droit administratif*** in view.

Sir Ivor Jennigs defines administrative law as the law relating to administration. It determines the organization, powers and the duties of administrative authorities. This formulation does not differentiate between administrative and Constitutional law. It lays entire emphasis on the organization, power and duties to the exclusion of the manner of their exercise. Jennings' formulation leaves many aspects of administrative law untouched, especially the control mechanism. The English administrative law does not lay so much emphasis on procedures of administrative bodies as does the American administrative law. Jennings; definition does not attempt to distinguish Constitutional law from administrative law, and the former "in its usual meaning has a great deal to say concerning the organization of administrative authorities.

A satisfactory and a proper formulation to define the scope, content and ambit of administrative law can be: Administrative law deals with the structure, powers and functions of the organs of administration; the limits of their powers; the methods and procedures followed by them in exercising their powers and functions; the methods by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation.

Origin and Development of Administrative Law

Administrative law is the bye-product of the growing socio-economic functions of the State and the increased powers of the government. 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 amongthem being protection from foreign invasion, levying of Taxes andmaintenance of internal peace & order. It does not mean, however that there was no administrative law before 20th century. In fact administrative law itself is endemic of organized Administration.

Droit Administratif

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 Conseild'Etat. Waline, the French jurist, propounds three basic principles of Droit administrative:

1. the power of administration to act suo motu and impose directly on the subject the duty to obey its decision;
2. the power of the administration to take decisions and to execute them suomotu may be exercised only within the ambit of law which protects individual liberties against administrative arbitrariness;
3. the existence of a specialized administrative jurisdiction. One good result of this is that an independent body reviews every administrative action The Conseild'Etatis 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 de tournament de pouvior (misapplication of power). It has exercised its jurisdiction liberally.

Main characteristic features of droit administratif.

The following characteristic features are of the Droit Administratif in France:-

1. Those matters concerning the State and administrative litigation falls within the jurisdiction of administrative courts and cannot be decided by the land of the ordinary courts.
2. Those deciding matters concerning the State and administrative litigation, rules as developed by the administrative courts are applied.
3. If there is any conflict of jurisdiction between ordinary courts and administrative court, it is decided by the tribunal des conflicts.
4. Conseild'Etat is the highest administrative court.

Prof. Brown and Prof. J.P. Garner have attributed to a combination offollowing factors as responsible for its success

i) The composition and functions of the Conseild'Etat itself;

ii) The flexibility of its case-law;

iii) The simplicity of the remedies available before the administrative courts;

iv) The special procedure evolved by those courts; and

v) The character of the substantive law, which they apply.

Despite the obvious merits of the French administrative law system, Prof. Dicey was of the opinion that there was no rule of law in France nor was the system so satisfactory as it was in England. He believed that the review of administrative action is better administered in England than in France. The system of Droit Administratif according to Dicey, is based on the following two ordinary principles which are alien to English law:

Firstly, that the government and every servant of the government possess, as representative of the nation, a whole body of special rights, privileges or prerogatives as against private citizens, and the extent of rights, privileges or considerations which fix the legal rights and duties of one citizen towards another. An individual in his dealings with the State does not, according to French law; stand on the same footing as that on which he stands in dealing with his neighbor.

Secondly, that the government and its officials should be independent of and free from the jurisdiction of ordinary courts. It was on the basis of these two principles that Dicey observed that Droit Administratif is opposed to rule of law and, therefore, administrative law is alien to English system. But this conclusion of Dicey was misconceived. Droit Administratif, that is, administrative law was as much there in England as it was in France but with a difference that the French Droit Administratif was based on a system, which was unknown to English law. In his later days after examining the things closely, Dicey seems to have perceptibly modified his stand.

Despite its overall superiority, the French administrative law cannot be characterized with perfection. Its glories have been marked by the persistent slowness in the judicial reviews at the administrative courts and by the difficulties of ensuring the execution of its last judgment. Moreover, judicial control is the only one method of controlling administrative action in French administrative law, whereas, in England, a vigilant public opinion, a watchful Parliament, a self-disciplined civil service and the jurisdiction of administrative process serve as the additional modes of control over administrative action. By contrast, it has to be conceded that the French system still excels its counterpart in the common law countries of the world.

India: In India, 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

modern administrative system. But in 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. Administrative Law has been characterized as the most outstanding legal development of the 20th-century. Administrative Law is that branch of the law, which is concerned, with the composition of powers, duties, rights and liabilities of the various organs of the Government.

The rapid growth of administrative Law in modern times is the direct result of the growth of administrative powers. The ruling gospel of the 19th century was ***Laissez faire*** which manifested itself in the theories of individualism, individual enterprise and self help. The philosophy envisages minimum government control, maximum free enterprise and contractual freedom. The State was characterized as the law and order State and its role was conceived to be negative as its internal extended primarily to defending the country from external aggression, maintaining law and order within the country dispensing justice to its subjects and collecting a few taxes to finance these activities. It was era of free enterprise. The management of social and economic life was not regarded as government responsibility. But ***laissez faire*** doctrine resulted in human misery. It came to be realized that the bargaining position of every person was not equal and uncontrolled contractual freedom led to the exploitation of weaker sections by the stronger e.g. of the labour by the management in industries. On the one hand, slums, unhealthy and dangerous conditions of work, child labour wide spread poverty and exploitation of masses, but on the other hand, concentration of wealth in a few hands, became the order of the day. It came to be recognized that the State should take active interest in ameliorating the conditions of poor. This approach gave rise to the favored State intervention in and social control and regulation of individual enterprise. The State started to act in the interest of social justice; it assumed a "positive" role. In course of time, out of dogma of collectivism emerged the concept of **"Social Welfare State"** which lays emphasis on the role of State as a vehicle of socio-economic regeneration and welfare of the people.

Administrative Law and Constitutional Law

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 andwelfare 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. These directives confer certain non-justiceable rights on the people, and place the government under an obligation to achieve and maximize social welfare and basic social values of life education, employment, health etc. In consonance with the modern beliefs of man, the Indian Constitution sets up machinery to achieve the goal of economic democracy along with political democracy, for the latter would be meaningless without former. Therefore, the attainment of socio-economic justice being a conscious goal of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power holder.

The Administrative law is an important weapon for bringing about harmony between power and justice. The basic law of the land i.e. the Constitution governs the administrators. Administrative law essentially deals with location of power and the limitations thereupon. Since both of these aspects are governed by the Constitution, we shall survey the provisions of the Constitution, which act as sources of limitations upon the power of the State.

The Indian Constitution has been conceived and drafted in the mid-twentieth century-an era when the concept of social welfare State is predominant. It is thus pervaded with the modern outlook regarding the objectives and functions of the State. It embodies adistinct philosophy of government, and, explicitly declares that India will be organized as a social welfare State, i.e., a State that renders social services to the people and promotes their general welfare. This concept of a welfare State is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of the Indian Constitutional system. These directives confer certain non-justiceable rights on the people, and place the governments under an obligation toachieve and maximize social welfare and basic social values like education, employment, health etc. In consonance with the modern beliefs of man, the Indian Constitution sets up machinery to achieve the goal of economic democracy along with political democracy. Thus the **Constitution of India** is having significant effect on laws including **administrative law**. It is under this fundamental laws are made and executed, all governmental authorities and the validity of their functioning adjudged. No legislature can make a law and no governmental agency can act, contrary to the

Constitution no act, executive, legislative, judicial or quasi-judicial, of any administrative agency can stand if contrary to the Constitution.

The Constitution thus conditions the whole government process in the country.The judiciary is obligated to see any governmental organ does not violate the provisions of the Constitution. This function of the judiciary entitles it to be called as guardian of the Constitution. The Administrative process has grown so much that it will not be out of place to say that today we are not governed but administered. It may be pointed out that the Constitutional law deals with fundamentals while administrative with details. Thus whatever may be the arguments and counter arguments, the fact remains that the administrative law is recognized as separate, independent branch of legal discipline, though at times the disciplines of Constitutional law and administrative law may overlap. Further clarifying the point he said the correct position seems to be that if one draws two circles of administrative law and Constitutional law at a certain place they may over lap and this area may termed as water shed in administrative law .In India, in the Watershed one can include the whole control mechanism provided in the Constitution for the control of the administrative authorities that is Article 32, 226,136,300 and 311.

Sources of Administrative Law

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

a. Constitution of India
b. Acts and Statutes
c. Ordinances, Administrative directions, notifications and Circulars
d. Judicial decisions

Rule of Law Concept

The term **'Rule of Law'** refers to a government based on principles of law and not of men. In a democracy, the concept has assumed different dimension and means that the holders of public powers must be able to justify publically that the exercise of power is legally valid and socially just. Dicey developed this concept of 'Rule of Law'. Dicey said 'Rule of Law' means, "the absolute supremacy of predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, or prerogative, or even wide discretionary authority on the part of the government." According to him, wherever there is discretion there is room for arbitrariness. The term Rule of Law is used in contradiction to 'rule of man' and 'rule according to law'. It is modern name for natural law.

The term Rule of Law can be used in two senses: (i) formalistic sense: and (ii) ideological sense. If used in the formalistic sense it refers to organized power as opposed to a rule by one man and if used in an ideological sense it refers to the regulation of the relationship of the

citizen and the government and in this sense it becomes a concept of varied interest and contents.

In its ideological sense, the concept of Rule of Law represents an ethical code for the exercise of public power in any country. Strategies of this code may differ from society to society depending on the societal needs at any given time, but its basis postulates are universal covering all space and time. These postulates include equality, freedom and accountability.

Evaluation of Dicey's concept of Rule of Law

Dicey's formulation of the concept of 'Rule of Law', which according to him forms the basis of the English Constitutional Law, contains three principles:

(i) Absence of discretionary power in the hands of the government officials.

(ii) No person should be made to suffer in body or deprived of his property except for a breach of law established in the ordinary legal manner before the ordinary courts of the land. In this sense, the Rule of Law implies:

(a) Absence of special privileges for a government official or any other person;

(b) All the persons irrespective of status must be subjected to the ordinary courts of the land;

(c) Everyone should be governed by the law passed by the ordinary legislative organs of the State.

(iii) The rights of the people must flow from the customs and traditions of the people recognized by the courts in the administration of justice.

Dicey claimed that the Englishmen were ruled by law and law alone; he denied that in England the government was based on exercise by persons in authority of wide, arbitrary or discretionary powers. While in many countries the executive exercised wide discretionary power and authority, it was not so in England. Dicey asserted that wherever there was discretion there was room for arbitrariness which led to insecurity of legal freedom of the citizens.

Another significance which Dicey attributed to the concept of Rule of Law was "equality before the law or the equal subjection of all classes of the ordinary law of the land administered by the ordinary law courts". In England, he maintained, every person was subject to one and the same body of law. He criticized the system of droit administratif prevailing in France where there were separate administrative tribunals for deciding cases between the government and the citizens. He went on to assert that in England there was no administrative law. The idea of having separate bodies to deal with disputes in which

government is concerned, and keeping such matters out of the purview of the common courts, asserted Dicey, was unknown to the law of England, and indeed was fundamentally inconsistent with the English traditions and customs.

Dicey was factually wrong in his analysis as he ignored the privileges and immunities enjoyed by the Crown (and thus the whole government) under the cover of the constitutional maxim that the king can do no wrong and also ignored the many statutes which conferred discretionary powers on the executive which could not be called into question in ordinary courts. He also ignore the growth of administrative tribunals. He misunderstood and miscomprehended the real nature of the French droit administratif . He thought that this system designed to protect officials from liability for their acts, and as such, was inferior to the British system of ordinary courts deciding disputes between the citizen and the state. But, as later studies have revealed, droit administratif is in certain respects more effective in controlling the administration than the common law system. Dicey was denying the existence of administrative law in England.

Dicey asserted, that so long as the courts dealt with a breach of law by an official, there could be no droit administratif in England and the rule of law would be preserved. Dicey thus reluctantly recognized the beginning of administrative law in England under the force of circumstances. However, since then, things have changed rather demonstrably.

Dicey's concept of Rule of Law has had its advantages and disadvantages. Although, complete absence of discretionary powers, or absence of inequality, are not possible in this administrative age, yet the concept of the rule of law has been used to spell out many propositions and deductions to restrain an undue increase in administrative powers and to create controls over it. The rule of law has given to the countries following the common law system, a philosophy to curb the government's power and to keep it within bounds; it has provided a sort of touchstone or standard to judge and test administrative law in the country at a given time. Similarly, rule of law is also associated with the supremacy of courts. Therefore, in the ultimate analysis, courts should have the power to control administrative action and any overt diminution of that power is to be criticized. It also serves as the basis of judicial review of administrative action for the judiciary sees to it that the executive keeps itself within the limits of law and does not overstep the same.

But there has been a negative side of the concept of rule of law as well. A grave defect in Dicey's analysis is his insistence on the absence not only of "arbitrary" but even of "wide discretionary" powers. The needs of the modern government make wide discretionary power inescapable. Perhaps the greatest defect of the concept has been its misplaced trust in the efficacy of judicial control as a panacea for all evils, and somewhat irrational attitude generated towards the French system.

3. Doctrine of Separation of Powers

If the "rule of law" hampered the recognition of administrative law in England, the doctrine of "separation of powers" had an intimate impact on the growth of administrative process and administrative law in the United States. It has been characterized as the "principal doctrinal barrier" to the development of administrative law in the U.S.A. The doctrine of separation of powers is implict in the American Constitution. It emphasizes the mutual exclusiveness of the three organs of the government. The form of government in the U.S.A., characterised as the presidential, is based on the theory that there should be separation between the executive and legislature.

The doctrine of Separation of Powers is of ancient origin. The history of the origin of the doctrine is traceable to Aristotle. In the 16th and 17thCenturies, 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 Doctrine of Separation of Powers

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.

This theory has had different application in ***France, USA and England***. In France, it resulted in the rejection of the power of the courts to review acts of the legislature or the executive. The existence of separate administrative 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.

The doctrine of separation of power does not apply rigorously even in the United States and some exceptions to it are recognized in the Constitution itself. For instance, a bill passed by the Congress may be vetoed by the President, and to this extent, the President may be said to be exercising legislative functions. Again, certain appointments of high officials are to be approved by the Senate, and also the treaties made by the president do not take effect until they are approved by the Senate; to the extent, the Senate may be said to be exercising executive functions. This exercise of some functions of one organ by the other is justified on the basis of checks and balances, i.e. the functioning of one organ is to be checked in some measures by the other. In India, the doctrine of separation of power has not been accorded as constitutional status. Apart from the directive principle laid down in Article 50 which enjoins separation of judiciary from the executive, the constitutional scheme does not embody any formalistic and dogmatic division of powers.

In India, in Ram Jawaya Kapur v. State of Punjab, in pursuance of the policy of nationalizing text books used in schools in State, Punjab Government issued an executive order acquiring the copyright in selected books from authors and undertaking itself printing, publishing and sale of books. Private publishing houses thus ousted from text-book business. This order was challenged on the ground that executive power of State did not extend to undertaking trading activities without a legislative sanction. The Supreme Court observed, "ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away." It is neither necessary nor possible to give an exhaustive enumeration of kinds and categories of executive functions. Article 73 of Constitution provides that the executive power of Union shall extend to the matters with respect to which parliament has power to make laws. Similarly Article 62 provides for in case of a State Government. Neither of these articles contain any definition as to what the executive function is and what activities would come within its scope.

Indian Constitution has not indeed recognized the doctrine of separation of powers in its absolute rigidity but the function of different parts of government have been sufficiently differentiated and consequently it can be very well said that our constitution does not contemplate assumption by one organ or part of the State of functions that essentially belong to another.

In Asif Hameed V. State of J&K, the selection to the MBBS course in the two Governmental colleges of J&K has been set aside by High court on the ground that the selection was not held in accordance with the direction of the said court given in an earlier case Jyotshana Sharma V. State of J&K. In that case the High Court directed the State government to entrust the selection process of two medical colleges to a statutory independent body which was to be free from executive influence. No such body was constituted. The primary issue, in this case, is whether the High court has the competence to issue directions to the State Government to constitute "Statutory Body" for selection and whether selection made by any other authority is invalid on the ground alone.

The Supreme Court observed that although the doctrine of separation of powers hasn't been recognized under the Constitution, the Constitution-makers have carefully defined the functions of various organs of the State. Legislature, executive and judiciary have to function within their own where demarcated under the Constitution. No organ can usurp the functions assigned to another. The functioning of democracy depends upon the strength and independence of each of its organs. Legislature and executive have all the powers including that of finance. Judiciary has power to ensure that the aforesaid two main organs of State function within the constitutional limits. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by legislature and executive. The only check on court's own exercise is power is the self-imposed discipline of judicial restraint.

While exercising power of judicial review of administrative action, the court is not an appellate authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers. It is entirely a matter for the executive branch of the Government to decide whether or not to introduce any particular legislation. Of course, any member of the legislature can also introduce legislation but the court certainly cannot mandate the executive or any member of legislature to initiate legislation, however necessary or desirable the court may consider it to be. That is not a matter which is within the sphere of the functions and duties allocated to the judiciary under the Constitution.

When the Constitution gives power to the executive government to lay-down policy and procedure for admission to medical colleges in the State then the High Court has no authority

to divest the executive of that power. The State Government in its executive power, in the absence of any law on the subject, is the competent authority to prescribe method and procedure for admission to medical colleges by executive instructions, but the High Court transgressed its self imposed limits in issuing the directions for constituting statutory authority. However, the selection procedure is always open to judicial review on the grounds of unreasonableness, etc.

The "Doctrine of separation of Powers" in today's context of Liberalization, privatization and globalization cannot be interpreted to mean either 'separation of powers' or 'check and balance' or principle of restraint' but 'community powers' exercised in the spirit of cooperation by various organs of the State in the best interest of the people.

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.

ii) Rule-decision action or quasi-judicial action.

iii) Rule-application action or administrative action.

iv) Ministerial action

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. But in the twentieth Century today these legislative bodies cannot give that quality and quantity of laws, which are required for the efficient functioning of a