# Administrative Law: Concept, Definition, Nature, Scope and Principle and its Sources

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# Administrative Law: Concept, Definition, Nature, Scope and Principle and its Sources

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## Summary:

This article tries to analyze the concept, nature, scope and principles of administrative law. Administrative law is the law governing the Executive, to regulate its functioning and protect the common citizenry from any abuse of power exercised by the Executive or any of its instrumentalities. Administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Administrative Law as a law is limited to concerning powers and procedures of administrative agencies. It is limited to the powers of adjudication or rule-making power of the authorities. It is a new branch of law which has evolved with time and shall continue to evolve as per the changing needs of the society. The aim of administrative law is not to take away the discretionary powers of the Executive but to bring them in consonance with the 'Rule of law'.

## 1. Introduction of Administrative Law

Administrative law is part of the branch of law commonly referred to as public law, the law which regulates the relationship between the citizen and the state and which involves the exercise of state power. So, it is a part of the legal framework for public administration. Public administration is the day-to-day implementation of public policy and public programs in areas as diverse as immigration, social welfare, defence, and economic regulation—indeed in all areas of social and economic life in which public programs operate.

Administrative law is the body of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda.

Administrative law is considered a branch of public law. Administrative law deals with the decision making of such administrative units of government as tribunals, boards or commissions that are part of a national regulatory scheme in such areas as police law international trade manufacturing the environment, taxation, broadcasting immigration and transport. Administrative law expanded greatly during the twentieth century, as legislative bodies worldwide created more government agencies to regulate the social, economic and political spheres of human interaction.

## 2. Concept of Administrative Law:

Administrative law is a branch of public law that is concerned with the procedures, rules, and regulations of a number of governmental agencies. Administrative law specifically deals with such administrative agencies' decision-making capabilities, as they carry out laws passed by state and federal legislatures. An example of administrative law is the regulation and operation of the Social Security Administration, and the administration of benefits to the people.

Administrative law is that body of law which applies for hearings before quasi-judicial bodies, boards, commissions or administrative tribunals supplement the rules of natural justice with their own detailed rules of procedure.

Through jurisprudence, common law or case law, these principles have each been expanded and refined beyond their original simplistic design to form distinct bodies of law forming together what the legal system refers to as administrative law.

## 3. Definition of Administrative Law:

Administrative law deals with the legal control of government and related administrative powers. In other words, we can define administrative law as the body of rules and regulations and orders and decisions created by administrative agencies of government.

Administrative law consists of complaints respecting government action that adversely affects an individual. Thus, administrative law involves determining the legality of government actions. There is a two-fold analysis: the legality of the specific law itself and the legality of particular acts purportedly authorized by the specific law.

Governments cannot perform any act by itself. Governments act through government officials who must act within certain limitations. A government's power to act comes from legislation. Thus, government officials must act within the parameters (or scope) of such legislation which give their actions lawful authority. These are lawful actions. If government officials act outside the scope of their lawful authority and individuals are affected by these acts, then the principles of administrative law provide individuals with the ability to seek judicial review of the administrative action and possible remedies for the wrongful acts.

It is indeed difficult to evolve a scientific precise and satisfactory definition of administrative law. Many jurists have attempted to define it. But none of the definitions has completely demarcated the nature, scope and contents of Administrative Law. Either the definitions are too broad and include much more than what is necessary or they are too narrow and do not include all the necessary contents.

### 3.1 Definition by Ivor Jennings

Ivor Jennings in his "The law and the constitution, 1959" provided the following definition of the term "administrative law".

According to him, "administrative law is the law relating to the administrative authorities".

This is the most widely accepted definition, but there are two difficulties in this definition.

(1) It is very wide definition, for the law which determines the power and functions of administrative authorities may also deal with the substantive aspects of such powers.

For example: - Legislation relationg to public health services, houses, town and country planning etc. But these are not included within the scope and ambit of administrative law, and

(2) It does not distinguish administrative law from constitution law.

### 3.2 Definition by K. C. Davis

According to K. C. Davis, "Administrative law as the law concerns the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action".

### 3.3 Definition by Prof. Wade

According to Wade (Administrative Law, 1967) any attempt to define administrative law will create a number of difficulties. But if the powers and authorities of the state are classified as legislative, administrative and judicial, then administrative law might be said "the law which concerns administrative authorities as opposed to the others".
Again, there are some difficulties with this definition also. It falls to distinguish administrative law from constitutional law Like Jennings definition mentioned above, this is also very wide definition. It includes the entire legal field except the legislature and the Judiciary. It also includes the law of local government. It is also said that it is not possible to divide completely and definitely the functions of legislative, executive and judiciary.
It is very difficult to say precisely where legislation ends and administrative begins. Though enacting a law is function of the legislature the administrative authorities, legislate under the powers delegated to them by the legislature and this delegated legislation is certainly a part of administrative law.

### 3.4 Definition by Jain and Jain

According to Jain and Jain, "Administrative law deals with the structure, powers and function of the organs of administration, the limits of their powers, the methods and procedures followed by them in exercising their powers and functions, the method by which their powers are controlled including the legal remedies available to a person against them when his rights are infringed by their operation".
Administrative law, according to this definition, deals with four aspects: -

- It deals with composition and the powers of administrative authorities.
- It fixed the limits of the powers of such authorities.
- It prescribes the procedures to be followed by these authorities in exercising such powers and,
- It controls these administrative authorities through judicial and other means.

### 3.5 Definition by Griffith and Street

According to Griffith and Street, (Principles of administrative law, 1963), the main object of Administrative law is the operation and control of administrative authorities, it must deal with the following three aspects: -

- What are the limits of those powers?
- What sort of power does the administration exercise?
- What are the ways in which the administrative is kept within those limits?

### 3.6 Improvement to Griffith and Street's Definition

According to the **Indian Law Institute**, the following two aspects must be added to have a complete idea of the present - day administrative law: -

- What are the procedures followed by the administrative authorities?
- What are the remedies available to a person affected by administration?

### 3.7 Definition by Garner

According to Garner, administrative law may be described as "Those rules which are recognised by the court as law and which relates to and regulate the administration of government."
Thus Administrative law can be said to be science of power of Administrative authorities, and the nature of their powers can be studied under the three heads:

- Legislative or Rule making,
- Purely Executive,
- Judicial or Adjudicative

## 4. Nature of Administrative Law:

Administrative Law is a new branch of law that deals with the powers of the Administrative authorities, the manner in which powers are exercised and the remedies which are available to the aggrieved persons, when those powers are abused by administrative authorities.

The Administrative process has come to stay and it has to be accepted as a necessary evil in all progressive societies. Particularly in welfare state, where many schemes for the progress of the

society are prepared and administered by the government. The execution and implementation of these programmes may adversely affect the rights of the citizens. The actual problem is to reconcile social welfare with rights of the individual subjects. The main object of the study of Administrative law is to unravel the way in which these Administrative authorities could be kept within their limits so that the discretionary powers may not be turned into arbitrary powers.

## 5. Scope of Administrative Law:

Administrative Law as a law is limited to concerning powers and procedures of administrative agencies. It is limited to the powers of adjudication or rule-making power of the authorities. Thus, it is limited to:

- Establishment, organization and powers of various administrative bodies
- Delegated legislation - the Rule-making power of the authorities
- Judicial functions of administrative agencies such as tribunals
- Remedies available such as Writs, Injunction etc.
- Procedural guarantees such as the application of principles of Natural Justice
- Government liability in tort
- Public corporations

There are several branches of the science of law. The Administrative Law is a recent branch of the science of law. In the political science there are few Administrative organs. Certain functions have been allotted to these organs in the Administrative Machinery. The Administrative law deals with the structure, functions and powers of the Administrative organs. It also lays down the methods and procedures which are to be followed by them during the course of remedies which are available to the persons whose rights and other privileges are damaged by their operations.

From the few lines above explaining the meaning of the Administrative law, we can notice the exact scope of this new branch of Law.

The scope of Administrative law can be narrated as under: -

- The methods and procedures of these Administrative organs are also studied by this new branch of law.
- It covers the nature of structure, powers and functions of all these administrative organs.

- It also makes available all the relevant remedies to the persons whose rights are infringed by the operations of these organs during the course of Administration.
- Why and How the Administrative Organs are to be controlled is also viewed by the Administrative law.

In this way along with the development in the Political Science and along with the idea of federal Administration, the separate branch of Administrative law has been developed. It is to be clearly noted that this branch of Law is exclusively restricted to the Administrative organs only. The delegated legislations are supposed to be the backbone of the Administrative law.

## 6. Sources of Administrative Law:

### 6.1 Constitution

The Constitution is the creator of various several administrative bodies and agencies. It gives brief details about the mechanism and the administrative powers granted to various authorities. The Constitution is the supreme law of the land. Any law or act which is inconsistent with it has no force or effect. The effect of this provision is that laws and administrative acts must comply with the Constitution. The Constitution is binding on the executive branch of government in every sphere of administration. Constitution establishes a variety of agencies and administrative structures to control the exercise of public power.

### 6.2 Acts and Statutes

Acts and Statutes passed by legislature are important sources of administrative law because they elaborately detail the powers, functions and modes of control of several administrative bodies.

### 6.3 Ordinances, Notification and Circulars

Ordinances are issued by the President (at Union / Federal level) and Governor (at State level) and are valid for a particular period of time. These ordinances give additional powers to administrators in order to meet urgent needs.

Administrative directions, notifications and circulars provide additional powers by a higher authority to a lower authority. In some cases, they control the powers.

### 6.4 Judicial decision

Judicial decisions or judge-made law have been responsible for laying down several new principles related to administrative actions. They increased the accountability of administrative actions and acted as an anchor between the notifications, circulars etc. to be linked and complied directly or indirectly with the constitutional or statutory provisions.

## 7. Principles of Administrative Law:

### 7.1 Judicial Review:

Administrative law is generic term, it encompasses all aspects of legal regulations of governmental powers, and judicial review of the administrative actions refers to the jurisdiction of the courts to ensure that governmental decision makers act within law. The exercise of legal power may often involve the exercise of discretion to choose between alternative courses of action or, indeed, whether or not to act at all. The essence of discretion is, however, that it is contained within legal limits. A power not contained within such limits would be arbitrary. The principles of judicial review serve to set legal limits to the exercise of discretionary powers. Judicial review is concerned with the legality of the decision made, not with the merits of the particular decision

### 7.2 Principle of legitimate expectation

It was, in fact, for the purpose of restricting the right to be heard that 'legitimate expectation' was introduced into the law. It made its first appearance in an English case where alien students of 'Scientology' were refused extension of their entry permits as an act of policy by the Home Secretary, who had announced that no discretionary benefits would be granted to this sect. They had no legitimate expectation of extension beyond the permitted time and so no right to a hearing, though revocation of their permits within that time would have been contrary to legitimate expectation. Official statements of policy may cancel legitimate expectation; just as they may create it.

## 7.3 Principle of reasonableness

The concept of discretional decision making is one of the main issues of administrative law. The term discretion has been used to indicate administration's choice to achieve its goal without arbitrariness since it achieves its goals by involving all citizens. Wielding this power, it can make choices from a range of solutions, but bounded by the principle of reasonableness. This principle expresses the logical relationship that must exist between discretional decisions and the evaluation of all public and private interests involved in the circumstances of the case.

## 7.4 Principle of good governance

Good governance is about the processes for making and implementing decisions. It's not about making 'correct' decisions, but about the best possible process for making those decisions. Good governance has eight major characteristics:

- Participatory
- Consensus oriented
- Accountability
- Effective and efficient
- Equitable and inclusive
- Rule of law
- Transparent

## 7.5 Principle of natural justice

"Not only should justice be done, but it should be seen to be done" It is not a written law but has been developed by courts in process of their judicial decisions. It seems to be as old as the system of dispensation of justice itself. It has by now assumed the importance of being, so to say, "an essential inbuilt component" of the mechanism, through which decision making process passes, in the matters touching the rights and liberty of the people. It is no doubt, a procedural requirement but it ensures a strong safeguard against any Judicial or administrative; order or action, adversely affecting the substantive rights of the individuals

## 7.6 The principle of rule of law

"Where laws do not rule, there is no constitution."19 The notion of the rule of law can be traced back to at least the time of Aristotle who observed that given the choice between a king who ruled by discretion and a king who ruled by law, the later was clearly superior to the former. The essence of the rule of law is that of the sovereignty or supremacy of law over man and the government. The rule of law insists that every person- irrespective of rank and status in society- be subject to the law. Although it is always a good precept to beware of fashions in legal thinking, there is substantial support for the view that the foundation of modern administrative law is the rule of law.

## 7.7 The principle of accountability

The principle of accountability requires that there must be in place forums in which decision makers may be called to account to justify their actions. Such accountability may be political or legal. A minister should be accountable to Parliament at the political level to justify, for example, that decisions taken are in the best interests of the nation. The principles of judicial review enable the courts to call decision-makers to account for the legal propriety of their decision-making. The principle of accountability helps in making a clear distinction between direction and arbitrariness. An arbitrary power is one which is open-ended, not subject to identifiable limits and, therefore, not capable of being controlled by the courts

## 7.8 Classification of power

The separation of powers is a useful doctrine in order to measure any undue shift of power toward the executive. It is importance to recognize the scope and extent of a government's executive or administrative powers, and its judicial powers. It is a doctrine which is fundamental to the organization of a state – and to the concept of constitutionalism – in so far as it prescribes the appropriate allocation of powers, and the limits of those powers, to differing institutions. The concept has played a major role in the formation of constitutions. The extent to which powers can be, and should be, separate and distinct, was a central feature in formulating, for example, both the American and French revolutionary constitutions. In any state, three essential bodies exist: the

executive, the legislature and the judiciary. It is the relationship between these bodies which must be evaluated against the backcloth of the principle. The essence of the doctrine is that there should be, ideally, a clear distinction in function between the legislature, executive and judiciary, so that none should have excessive power and that there should exist a system of checks and balances between the institutions.

## 8. Objectives of Administrative Law:

Over the past decade it appears that administrative law, which is the body of law governing the activities of administrative agencies of government, has been minimized, allowing a number of governmental agencies to run ineffectually. Ultimately this has resulted in numerous economic and environmental calamities within the United States, i.e.; British Petroleum, Enron, Wall Street, and the auto industry. The majority of governmental agencies within the United States are underneath the executive branch, with few being a part of the judicial and legislative branches.
Following are the objectives of administrative law:

- Control of government powers:
- Remedy to aggrieved person:
- Equal status of state and public:
- Effective use of government power:
- Public utility:
- Determination of government and public disputes:
- Determination of social problems:
- Performance of administration - improvement:
- Maintenance of Rule of law:

## 9. Conclusion:

Administrative law is the law governing the Executive, to regulate its functioning and protect the common citizenry from any abuse of power exercised by the Executive or any of its instrumentalities. It is a new branch of law which has evolved with time and shall continue to

evolve as per the changing needs of the society. The aim of administrative law is not to take away the discretionary powers of the Executive but to bring them in consonance with the 'Rule of law'.

## 10.Reference:

1. https://legaldictionary.net/administrative-law/
2. http://www.duhaime.org/LegalDictionary/A/AdministrativeLaw.aspx
3. https://kalyan-city.blogspot.com/2010/10/concept-of-administrative-law.html
4. https://en.wikipedia.org/wiki/Administrative_law
5. https://www.lawyersnjurists.com/article/explain-the-nature-and-scopes-of-administrative-law-and-distinguish-it-from-constitutional-law/
6. https://www.lawnotes.in/Scope_of_Administrative_Law
7. https://eziнearticles.com/?The-Importance-of-Administrative-Law&id=4622784
8. https://blog.ipleaders.in/administrative-law-1/