

Administrative Law - Scope and Nature



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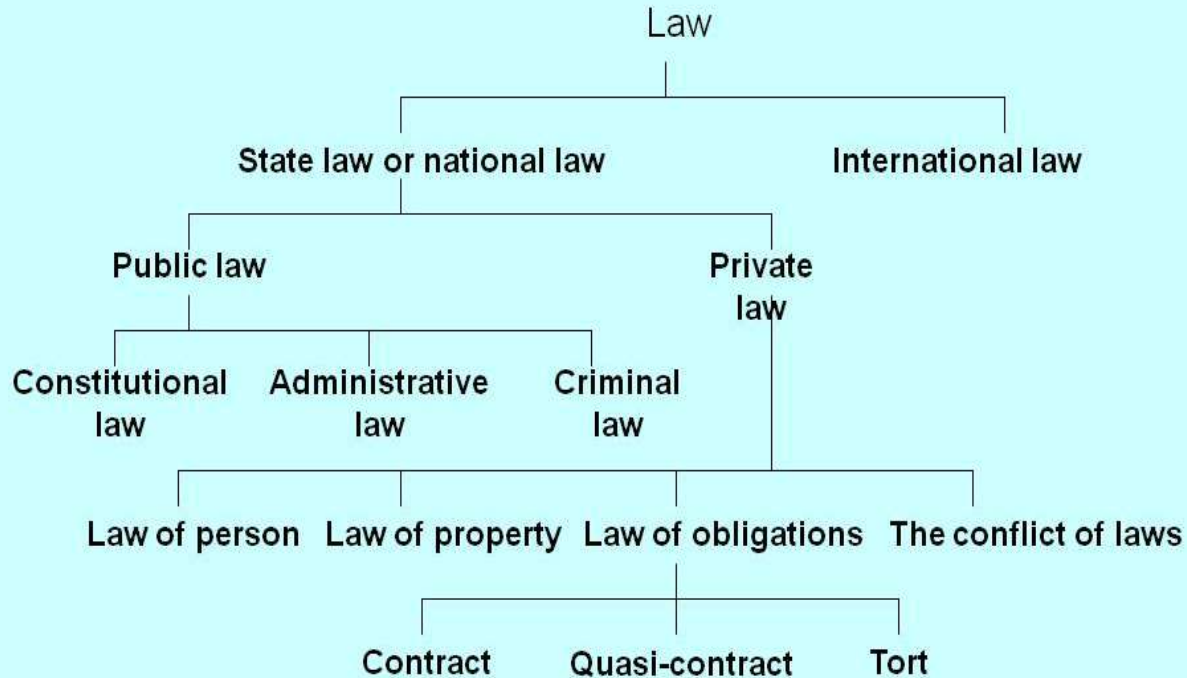
Objectives

The objective of the session are to:

- **Understand need and importance of Administrative Law**
- **define administrative law**
- **Explain the scope and nature of administrative law.**
- **Discuss the sources of administrative law**
- **Discuss the justification for administrative law**



Classification of Law



The National Law can be broadly classified into Public and Private Law

Public Law

Constitutional Law

Criminal Law

Administrative Law

Public Law

is that part of law which governs relationships between individuals and the government, and those relationships between individuals which are of direct concern to society.

Administrative law

- **Administrative law came to be recognized as a separate branch of law in the middle of the 20th century.**
- **Today it has become major area of study separate from constitutional law**
- **the administrative process has increased so tremendously that today we are living not in its shade but shadow.**



Reasons for Growth of Administrative Law

- **Change in the concept of government- Laissez faire to welfare state & now contracting out state**
- **Inadequacy of judicial system**
- **Inadequacy of legislative process**
- **Scope for experimentation**
- **Non technical character**
- **Adoption and policing of preventive measures**

What is Administrative Law?

- **A branch of ‘public law’**
- **It mainly concerns with**
- **Organization, power and functions of executive authorities**
- **how administrative authorities get public powers**
- **procedural rules for the use of public powers,**
- **substantive requirements administrative authorities have to take into account when using their powers,**
- **objection procedures and judicial protection against administrative action.**



“Properly exercised the new powers of the executive lead to the Welfare State; but abused they lead to the Totalitarian State.”

(Lord Denning)



Definition

- **No single well accepted definition of administrative law**
- **Either has been defined in a broad or narrow sense**
- **Initially was considered part of Constitutional law**



“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”.

(Jain and Jain, Principles of Administrative Law)

- **Thus Administrative law attempts to regulate administrative space, domestic and global, in order to infuse fairness and accountability in the administrative process necessary for securing equity and inclusiveness in the domestic and world order.**
- **Broadly there are Four bricks of A.L**
 - **Prevent abuse of power**
 - **Encourage citizen to get impartial determination of disputes**
 - **Eliminate encroachment of rights of individuals**
 - **Accountability**

Administrative Law- Nature

- Not codified like property law or contract law.
- Includes statute law, administrative rule-making, precedents, customs, administrative directions, etc.
- Involves study of something which may not be termed "law" - such as administrative circulars, policy statements, memoranda and resolutions, etc.
- Includes study of "higher law" as well, like the principles of natural justice.
- basically and wholly remains a judge-made law.

Theories of Administrative Law

- **Red Light Theory**
- **Green Light Theory**
- **Amber Light Theory**



Sources

- **Ever-growing sphere with no fixed terrain**
- **Found all across the board, & still to be found invented, discovered & traced**
- **Integral part of constitution-not only reflects but also shaping it**
- **Most part uncodified & judge made.**
- ***Ubi jus ibi remedium***

Development of Administrative Law-1947-1975

- **Assertion of parliamentary sovereignty**
- **Vast powers of delegated legislation recognized and affirmed**
- **Recognizes doctrine of separation of powers under the Indian Constitution**
- **Expanded the realm of judicial review powers**
- **first device administrators ought to follow the letter and spirit of the statutory powers vested in them**
- **Elaborates NJ doctrine**
- **economic actors contesting an era of control and command economy and citizens seeking to protect their property rights.**

New Indian Administrative Law Formation 1976-1989

- post-Emergency era of cathartic and populist judicial activism
- mantra of arbitrary and un- reasonable State action- part of Article 14, 19, 21
- "procedure established by law" entirely substituted by the full judicial interpretation of the "due process of law"
- Article 12 of the Constitution" Clearly, larger the notion of " State
- SC "missed a unique opportunity" for insisting that "the corporate device will not be allowed to be used as a barrier ... ousting the Constitutional Control of Fundamental Rights"
- "State-like" actors, who exercise powers of life and death over citizens and peoples.

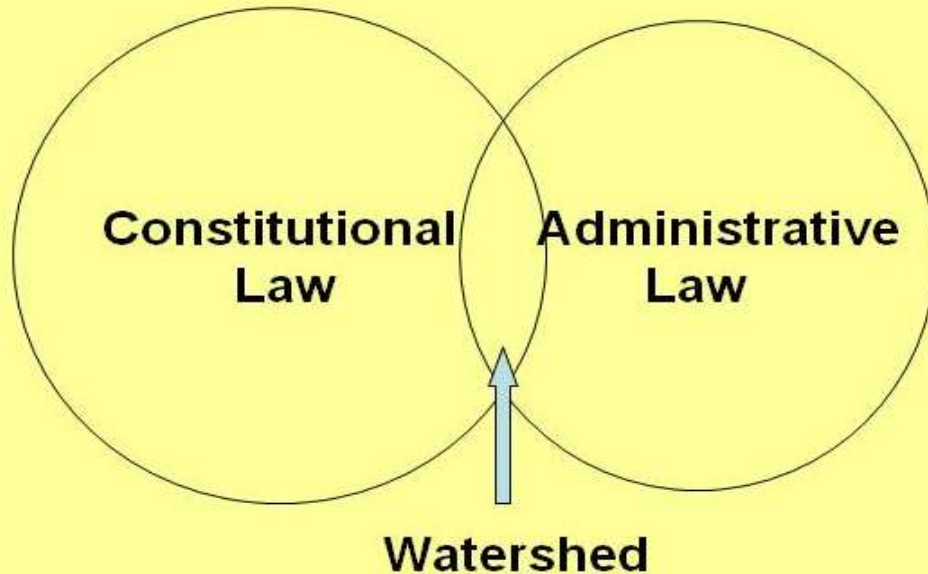
Contemporary Administrative Law Formation

- 1991 onwards- era of LPG
- Emergence of regulatory state
- Now declare NJ very differently.
- A wide, and indeed constitutionally vast, margin of appreciation is now accorded to executive discretion which shapes macroeconomic policy
- the "policy" realm over which justices now relinquish all judicial review control



Constitution and Administrative Law-Relation

- Two schools of thought
- **First** - no difference between the two-both are concerned with functions of government & part of public law
- **Second** - there is difference between the two
- Constitutional Law describes various organs at rest
- Administrative Law describes them in motion



Watershed includes:

- Control mechanism under Constitution
- Administrative Agencies under Constitution
- Constitutional limitations on delegation of powers
- Constitutional provisions relating to FRs which impose fetters on administrative actions



Basic Doctrines of Administrative Law

Rule of Law

- The holders of public power must be able to justify publically the exercise of power as legally valid & socially just
- It must not only be conditioned by Constitution but also in accordance of law and subject to judicial review
- Rules based on principles of freedom, equality, non-discrimination, fraternity, accountability & non-arbitrariness and is certain, regular & predictable
- an aspect of the doctrine of basic structure of the Constitution
- RoL has developed many facets which are not only negatives providing restraints on govt powers
- But also includes affirmative facets-Observance of PNJs, Access to information , Fair dealing of the state in economic policy, etc

Separation of Power

- Power are of three kind
 - legislative
 - executive
 - judicial
- Each of these powers should be vest in a separate and distinct organ
- has contributed has tremendous impact on the development of Administrative Law & functioning of govt.
- Strict application of doctrine is impracticable but its value lies in **checks and balances**
- One feature of the doctrine is that the judiciary must be independent & separate.

Administrative Functions - Classification

Administrative actions may be classified into-

- **rule-making or quasi-legislative action,**
- **rule-decision or quasi-judicial action,**
- **rule-application or administrative action,**
- **ministerial action or pure administrative action.**

“ Quasi is a smooth cover which we draw over our confusion as we might use a counter pane to conceal a disordered bed” - Schwartz

Quiz

- **What is Administrative Law?**
- **What does administrative law include?**
- **Who creates administrative law?**
- **What is the justification for Administrative Law?**
- **What are the sources for Administrative Law?**



Thanks!

