

Dr. VIPIN KUMAR SINGH

Assistant Professor

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Topic- Droit Administrative

Droit Administrative

Droit administratif, has been defined by French authorities in general terms as “the body of rules which regulate the relations “of the administration or of the administrative “authority towards private citizens”; and Aucoc in his work on droit administratif describes his topic in this very general language:[1] “Administrative law “determines (1) the constitution and the relations of “those organs of society which are charged with the “care of those social interests which “are the object of public administration, by which “term is meant the different representatives of society “among which the State is the most important, and “(2) the relation of the administrative authorities “towards the citizens of the State.”

It was once all but complete; it is now far less extensive than it was thirty-six years ago. It forms only one portion of the whole system of Droit administratif. It has been imitated in most of the countries of continental Europe. For Droit administratif has, of recent years, been so developed as to meet the requirements of a modern and a democratic society, and thus throws light upon one stage at least in the growth of English constitutional law. It is, however, this very contrast between administrative law as it exists in France, and still more as it existed during by far the greater equality before the law of the land which are firmly established in modern England, that mainly makes it worth while to study, not of course the details, but what de Tocqueville calls the *notions generales* of French droit administratif.

The prerogative writs of certiorari and prohibition are available against the decisions of administrative tribunals.

Council d’Etat:

This was formed for the judicial and administrative works. This also gives suggestions or opinions to the government in the general administrative matters. In the Council d'Etat there are four types of judicial officials- a president, vice presidents in required number, presidents of different departments and auditeurs. There are five departments in the Council d'Etat , There is the Department of Finance, Department of General Construction, Social Department, Home Department and Department of Justice. The heads of these departments are called as presidents. The main head of the Council d'Etat is the prime minister of France, in his absence, the Minister of Justice acts as the president. In practice, the vice president does most of the works of the president. The auditeurs are also of two types-'Master of Petitions' and 'Councilor of State' The council has been given very wide powers over the administrative tribunal. The council goes into the merits of questions of law as well as fact. The council also entertains on application in recession to test the legality and propriety of the decisions of the tribunal and the council may take up the error or law apparent on the face of the record, even in case of revision..

With regard to statutes, it is formally provided that all bills introduced into parliament by the government must have been submitted for the Conseil's advice. The parliament may or may not accept it. In principle, it can present to parliament a new bill containing provisions which conform neither to its original bill nor to the modifications suggested by the Conseil d'Etat; for, although this appears to frustrate the requirement of consultation, parliament must retain complete freedom to adopt whatever text it pleases.

Quite apart from the legislative process, the Conseil d'Etat has the duty of acting as general legal adviser to the government and to individual ministers.

BASIC PRINCIPLES OF DROIT ADMINISTRATIF:

- The power of administration to act 'suo motu' and to impose directly on the subject the duty to obey its decision.
- The power of administration to take decisions and to execute them 'suo motu' may be exercised only within the scope of the law which protects individual liberties against administrative arbitrariness.
- The existence of a specialized administrative jurisdiction. One speaks of administrative jurisdiction because there decision relate to the superior control of the conseil d'Etat either by means of appeal.

This is principle laid down by the conseil d'Etat, that from administrative decisions. There is a right of appeal to the conseil even where the law is silent or if it provides. That the tribunals are the final authority.

One good result of this is that an independent body reviews every administrative action. The conseil d'Etat composed of eminent civil servant deals with a variety of matters like claim for 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.[1]

SIMILARITIES BETWEEN THE ENGLISH RULE OF LAW AND DROIT ADMINISTRATIF OF FRANCE:

- The Droit administratif of France resembles (have a similarity to) the English rule of law, because both are the result of 'Case law' or judge made law.
- The conseil d'Etat of France has been converted from an executive into a judicial or quasi-judicial body by the gradual (not rapid) process of its judicial from and its executive function. In England, the judicial system has grown as a result of transfer to parts of the King's council of judicial powers originally exercised by the 'King-in-council. However, the parliament destroyed the arbitrary authority of courts like the Star Chamber and of the council. In France, Droit administratif and administrative tribunals were not only tolerated (sustain) but progressively thrived (prosper) and have come to stay.
- In England, the crown and its servants was something beyond and above the ordinary law. Such a concept of administration thrived in France.

DIFFERENCES BETWEEN THE ENGLISH RULE OF LAW AND DROIT ADMINISTRATION

The following points of differences have been mentioned:

- Droit administratif is not the law of a class and it is a distinct body of law which may affect and does affect the rights of French citizen. In England, there are laws, customs or regulations which determine the positions of civil servants of the Head of the State. These laws, customs and regulations constitute the law of a class. The powers exercisable by

the civil servants under these laws, customs and regulations must be exercised in accordance with ordinary common law principle.

- If an official in England exceeds (be more) the authority given to him, he incurs (suffer) the common law responsibility for his wrongful act and he can not plead in his defense strict obedience to official orders and he becomes amenable (responsible to law) to the authority of ordinary courts for the tort he has committed. But in France the government and its servant exercise wide discretionary powers which is not under the control of any court. The executive or its servant can not be made amenable to the jurisdiction of any tribunal for an act of the state.

REASONS OF SUCCESS TO DROIT ADMINISTRATIF:

Droit administratif has been quite successful in subjecting the rule of law. This success may be attributed to a combination of the following factors:

- The composition and functions of the Droit administratif itself.
- The flexibility of its 'case law'.
- The simplicity of the remedies available before the administrative courts.
- The special procedure evaluated (natural process) by those courts.
- The character of the substantive law which they apply.

Analysis of Nepalese situation with reference to Droit administratif:

There is no clear constitutional provision about the administrative tribunal in Nepal. There is operating a revenue tribunal and some special tribunal make-up timely. There is one administrative court established by civil service Act, 2049 (and regulation 2050) section 75. It has not effectiveness. Its name and function is contradiable with other countries. Rules, regulations, bylaws, schemes, orders, notification, directions and circulars are main forms of delegated legislation which makes the effectiveness to the administrative function.

So far the province of administrative law is concerned, it embraces the existence of various administrative bodies such as wage board, central board of revenue, commission of inquiry and advisory boards, tariff commission and also there are administrative tribunals for the judicial function. Provisions of adjudicatory authority, (e.g. decisions of the administrative authorities or tribunals i.e. regional administrator, C.D.O., D.D.C., V.D.C., ministerial, departmental decisions etc. It gives the social justice and to fulfill the administrative purposes. The informal sources of administrative law in Nepal

are:- Public Service Commission procedure Act, direction, rule, Karbhai Bandej Act, 2009, Nepal Corruption elimination Act, 2010, Nepal Civil Service Act, 2013 and rule 2021, Administrative reform commission report, Citizen Right Act, 2012, Muluki Ain, 2020, Administrative function reform karya toli, 2056 etc.

Historically, the executive was identified with sovereign, in whose name many acts were performed by the prime minister, cabinet, and other ministers. But the executive today includes all those officials, public authorities and other agencies by which functions of government are performed within the executive are therefore to be included the civil service, the armed forces, the police, local authorities(who exercise executive functions within a defined locality) and independent statutory bodies (e.g. DDC, VDC, ward office etc.). The budget is framed by the executive and after being finally approved by the legislature the executive at different levels spends vast sum of money and all revenues are also collected by the executive at lower levels.

In France, the conseil d'Etat is the supreme authority to correct the decisions of various administrative authorities. This council functions for all practical purposes like a judicial body the proceedings are conducted in public and the parties may represent themselves through counsels. The council give comprehensive judgments and these constitutes valuable precedents for the future.

Administrative law governing the conduct, powers and procedures of administrative agencies. It is control mechanism of the public administration. It deals in particular with the quasi-legislative and quasi-judicial powers of administrative authorities along with their executive powers and their control. There is greater emphasis upon the study of judicial exercise of their diversified powers. For e.g. Administration procedure (regulation) Act, 2028, Corruption elimination Act, 2017, Authority abuse investigation, commission Act, 2048, Civil Service Act, 2049 and regulation 2050, Public Service Commission (procedure) Act, 2048, Health Service Act, 2052, Administrative court rule, 2051, VDC, DDC Act, 2048, Local autonomous govern Act, 2055 etc.

The English administrative law is based on the concept of the Rule of Law, French administrative law is conducting according to the theory of Droit administratif. Nepalese administrative law is regulating according to mixed system of heterogeneity, though, Droit administratif or administrative law studied as separate subject from long ago. The scope of administrative law in our country is very much similar to that in the United States and India.