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Topic- Relationship Between Constitutional Law and Administrative Law

Relationship Between Constitutional Law and Administrative Law

Constitutional and administrative law both govern the affairs of the state. Administrative law, an area of law that gained early sophistication in France, was until well into this century largely unrecognized in the United Kingdom as well as the United States. To the early English writers on administrative law, there was virtually no difference between administrative law and constitutional law. This is evident from the words of Keith: “It is logically impossible to distinguish administrative from constitutional law and all attempts to do so are artificial.” Some jurists like Felix Frankfurter even went as far as to call it “illegitimate and exotic”.

The root of all confusion in the United Kingdom is its lack of a written constitution. In a state with a written constitution, the source of constitutional law is the Constitution while the sources of administrative law include statutes, statutory instruments, precedents and customs whereas in the United Kingdom, this distinction is not very clear cut – it is in fact, quite blurred.

Due to this lack of clarity, it will be vital to observe the views of jurists and scholars on the difference between administrative law and constitutional law. According to Holland, constitutional law describes the various organs of the government at rest, while administrative law describes them in motion. Holland contends that the structure of the executive and the legislature comes within he purview of constitutional law whereas their functioning is governed by administrative law.

Jennings puts forward another view, which says that administrative law deals with the organization, functions, powers and duties of administrative authorities while constitutional law deals with the general principles relating to the organization and powers of the various organs of the State and their mutual relationships and relationship of these organs with the individual. Simply put, constitutional law lays down the fundamentals of the workings of government organs while administrative law deals with the details.

The fundamental constitutional principle, inspired by John Locke, holds that "the individual can do anything but that which is forbidden by law, and the state may do nothing but that which is authorised by law". Administrative law is the chief method for people to hold state bodies to account. People can apply for judicial review of actions or decisions by local councils, public services or government ministries, to ensure that they comply with the law. The first specialist administrative court was the Conseil d'État set up in 1799, as Napoleon assumed power in France.

Whatever be the correct position, there always exists an area of overlap between constitutional law and administrative law. In India, this corresponds to the whole constitutional mechanism for the control of administrative authorities – Articles 32, 136, 226, 227, 300 and 311. It can also include the study of administrative agencies provided for in the Constitution itself. Further, it may include the study of constitutional limitations on delegation of powers to the administrative authorities and also those provisions of the Constitution which restrict administrative action; for example, the Fundamental Rights.

The objective and scope of this project will be to draw the relationship between administrative law and constitutional law with respect to India and the Indian Constitution. The researcher will attempt to articulate the doctrinal and contextual links that exist between administrative law and constitutional law. The researcher will make use of appropriate case laws, wherever necessary.

Constitutional Law viewed through Administrative Eyes

Since the English Constitution is unwritten, the impact of constitutional law upon administrative law in England is insignificant and blurred. As Dicey observes, the rules which in other countries form part of a constitutional code are the result of the ordinary law of the land in England. As a result, whatever control the administrative authorities can be subjected to, if any, must be deduced from the ordinary law, as contained in statutes and judicial decisions. But, in countries having written constitutions, there is an additional source of control over administrative action. In these countries there are two sources or modes of exercising judicial control over the administrative agencies – constitutional and non-constitutional. The written constitution imposes limitations upon all organs of the body politic. Therefore, while all authors attempt to distinguish the scope of administrative law from that of constitutional law, they cannot afford to forget not to mention that in a country having written constitution with judicial review, it is not possible to dissociate the two completely.

The acts of the executive or the administration are protected in India in various ways. The legislative acts of the administration, i.e. statutory instruments (or subordinate legislation) are expressly brought within the fold of Article 13 of the Constitution, by defining “law” as including “order, bye-law, rule, regulation, notification” or anything “having the force of law”. As in all common law countries, a delegated legislation can be challenged as invalid not only on the ground of being ultra vires the statute which confers power to make it, but also on the additional ground that it contravenes any of the fundamental rights guaranteed by Part III of the Constitution.

A non-legislative and a purely administrative action having no statutory basis will be void if it breaches any of those fundamental rights which set up limitations against any State action. Thus a non-statutory administrative act may be void if it violates Article 14, guaranteeing equal protection ; Article 29 or Article 30—guaranteeing minority rights; Article 19—guaranteeing freedom of speech, association, etc. ; and Article 16—guaranteeing equality of opportunity in employment . Thus the court would strike down any administrative instruction or policy, notwithstanding its temporary nature, if it operates as discriminatory, so as to violate any fundamental right of the person or persons discriminated against. Non-statutory administrative action will also be void if its result affects a fundamental right adversely where the Constitution provides that it can be done only by making a law. The most significant examples of such a case would be actions affecting Article 19, 21 or 300-A.

An administrative act, whether statutory or non-statutory, will be void if it contravenes any of the mandatory and justiciable provisions of the Constitution, falling even outside the realm of fundamental rights – like Articles 265, 301, 311 and 314. In cases of statutory administrative actions, there is an additional constitutional ground upon which its validity may be challenged, namely, that the statute, under which the administrative order has been made, is itself unconstitutional.19 Where the impugned order is quasi-judicial, similarly, it may be challenged on the grounds, inter alia,

that the order is unconstitutional;

that the law under which the order has been made is itself unconstitutional.

Constitutional law thus advances itself into the judicial review chapter in administrative law in a country like the USA or India. The courts in these countries have to secure that the administration is carried on not only subject to the rule of law but also subject to the provisions of their respective Constitutions. It can be observed that an attack upon the constitutionality of a statute relates to constitutional law and the constitutionality of an administrative action concerns administrative law, but the provisions of the same Constitution apply in both the spheres.

The object of both the common law doctrine of rule of law or supremacy of law and a written constitution is the same, namely, the regulation and prevention of arbitrary exercise of power by the administrative agencies of the Government. The rule of law insists that “the agencies of the Government are no more free than the private individual

to act according to their own arbitrary will or whim but must conform to legal rules developed and applied by the courts". The business of the written constitution is to embody these standards in the form of constitutional guarantees and limitations and it is the duty of the courts to protect the individual from a breach of his rights by the departments of the Government or other administrative agencies.

Administrative growth in constitutional matrix

Administrative law is a by-product of intensive form of Government. During the last century, the role of Government has changed in almost every State of the world; from a laissez faire state to a welfare and service state. As a result, it is expected of the modern state not only to protect its citizens from external aggression and internal disturbance, but also to take care of its citizens, right from birth to their death. Therefore, the development of administrative process and the administrative law has become the cornerstone of modern political philosophy.

Today there is a demand by the people that the Government must redress their problems in addition to merely defining their rights. The rights are elaborately defined in the Constitution but the policies to protect these rights are formulated by the Government (the executive) and implemented by the administrative agencies of the State. There thus arises a direct nexus between the constitutional law and administrative law where the former acts as a source from which the rights of the individuals flow and the latter implements its policies accordingly mandated to preserve the sanctity of those rights.

It is widely agreed that the right of equality in the American Constitution will be a sterile right if the black is the first to lose his job and the last to be reemployed. In the same manner the equality clause in the Indian Constitution would be meaningless if the Government does not come forward to actively help the weaker sections of society to bring about equality in fact. This requires the growth of administrative law and administrative process under the welfare philosophy embodied in the constitutional law.

The Genus-Species Relationship

Administrative law has been defined as the law relating to administration. It determines the organisation, powers and duties of administrative authorities. This definition does not make any attempt to distinguish administrative law from constitutional law. Besides, this definition is too wide because the law which determines the powers of administrative authorities may also deal with the substantive aspects of such powers. It may deal with matters such as public health, housing, town and country planning, etc which are not included within the scope of administrative law. Administrative law, however, tends to deal with these matters as the Constitution has embodied the principle of a welfare State, and the State can execute and implement these rules veraciously in the society only through administrative laws. Prof. Sathe observes that:

“Administrative law is a part of constitutional law and all concerns of administrative law are also concerns of constitutional law.”

It can therefore be inferred that constitutional law has a wide sphere of jurisdiction, with administrative law occupying a substantive part. In other words, constitutional law can be termed as the genus of which a substantive portion of administrative law is the species.

Constitutional determination of the scope of administrative function

The Indian Constitution is unanimously and rightly termed as the “grand norm” with respect to domestic legislations. The Constitution circumscribes the powers of the legislature and executive and limits their authority in various ways. It distributes the governmental powers between the Centre and the States. It guarantees the fundamental rights to its citizens and protects them from any abridgement by the State by way of legislative or executive action. The courts interpret the Constitution and declare the acts of legislature as well as executive as unconstitutional if they violate the any provision of the Constitution.

It also bridles the legislature in that they cannot make a law which delegates essential legislative powers or which vests unrestrained discretionary powers with the executive so as to make its arbitrary exercise possible. The validity of an executive act is seen with reference to the power given to it by the legislature. The Constitution has, however, in turn laid down the framework defining the extent of laws made by Parliament and the State Legislatures. Constitutional law therefore enjoys the status of the prime moderator monitoring legislative actions and in turn installs a yardstick upon the extent of the rules made by the executive while acting in the capacity of a delegate. It can be inferred indisputably that constitutional law plays a critical role of the key channel from where the guidelines determining the scope of administrative action flow, thereby establishing a unique relationship between the two very distinct but highly related spheres of law.

Conclusion

Although the relationship between constitutional law and administrative law is not very emboldened to be seen with naked eyes but the fact remains that concomitant points are neither so blurred that one has to look through the cervices of the texts with a magnifier to locate the relationship. The aforementioned veracities and illustrations provide a cogent evidence to establish an essential relationship between the fundamentals of both the concepts. If doubts still persist, the very fact that each author, without the exception of a single, tends to differentiate between the two branches of law commands the hypothecation of a huge overlap.

The separate existence of administrative law is at no point of time disputed; however, if one draws two circles of the two branches of law, at a certain place they will overlap depicting their stern relationship and this area may be termed as watershed in administrative law. In India, in the watershed one can include the whole control mechanism provided in the Constitution for the control of administrative authorities i.e. Articles 32, 136, 226, 227 300 and 311. It may include the directives to the State under Part IV. It may also include the study of those administrative agencies which are provided for by the Constitution itself under Articles 261, 263, 280, 315, 323-A and 324. It may further include the study of constitutional limitations on delegation of powers to the administrative authorities and also those provisions of the Constitution which place fetters on administrative action i.e. fundamental rights.