

# Administrative Law

An Overview

# What is Administrative Law?

- It is a branch of Public Law.
- The law relating to the control of governmental power.
- It is our generation's answer to legislative and judicial inadequacies
- A study of the pathology of power in a developing society.
- It is concerned with the following five questions:
  1. What sort of powers does the administration exercise at present?
  2. What are the limits of those powers?
  3. What are the ways by which the administration is kept within those limits?
  4. What are the procedures followed by administrative authorities in the exercise of those powers?
  5. What are the remedies available to an individual as against the administration?

# Reasons for the growth of Administrative Law

- Changing role of government
- Intensive form of government
- Inadequacy of legislative process
- Inadequacy of judicial system
- Constitutional governance
- Establishment of Regulatory Agencies
- Conferring discretionary powers
- Surveillance of Executive and Administrative Action
- Judicial activism and Public Interest Litigation

# Contents of Administrative Law

- Definition, nature and scope of Administrative law
- Basic Concepts of Administrative Law
- Classification of Administrative Action
- Delegated Legislation
- Administrative Adjudication
- Discretionary Powers of Administration
- Principles of Natural Justice
- Judicial Review of Administrative Action
- Remedies against Administrative Action
- Liability of Government
- Maladministration and its Remedies
- Public Enterprises

# Theories as to the nature of Administrative Law

- **Red light theory:** Administrative law is the control of the administration. Power is dangerous. Where there is power, there is room for abuse and misuse. Hence the need for control.
- **Green light theory:** the function of Administrative Law is to describe governmental powers and to examine how they can be made more efficient and effective. Accepts the desirability of governmental powers.

# Basic concepts of Administrative Law

- Rule of Law
- Separation of powers
- Judicial Review

# Classification of Administrative Action

- Legislative function
- Quasi-judicial function
- Administrative function
- Ministerial function

# Delegated Legislation: Reasons for its growth

- Pressure upon Parliamentary time
- Technicality of the subject matter
- Need for flexibility
- State of emergency



# Delegated Legislation :

## Nature of Power Conferred

- Commencement clause
- Supplying details
- Power of inclusion and exclusion
- Power of extension and application
- Power of suspension
- Power of modification
- Power to remove difficulties clause
- Power to prescribe punishments
- Power to impose tax

# Control of Delegated Legislation

## Legislative control

Pre-natal control

Post-natal control : Laying on the table

Scrutiny Committees

## Judicial control

Where Parent Act is ultravires the Constitution

Where delegated legislation is ultravires the Constitution

Where delegated legislation is ultravires the Parent Act

Unreasonableness

Malafide

Sub-delegation

Retrospective operation

Exclusion of judicial review

# Grounds for Judicial Review

- Illegality
- Irrationality
- Procedural impropriety
- proportionality

# Remedies

## Private Law Remedies

Civil Suits

Injunctions

Declaratory relief etc.

## Public Law Remedies (writs)

Habeas Corpus

Quo warranto

Mandamus

Certiorari

Prohibition etc.