Administrative law is the law that governs the administrative actions. As per **Ivor Jennings-** the Administrative law is the law relating to administration. It determines the organisation, powers and duties of administrative authorities. It includes law relating to the rule-making power of the administrative bodies, the quasi-judicial function of administrative agencies, legal liabilities of public authorities and power of the ordinary courts to supervise administrative authorities. It governs the executive and ensures that the executive treats the public fairly.

Administrative law is a branch of public law. It deals with the relationship of individuals with the government. It determines the organisation and power structure of administrative and quasi-judicial authorities to enforce the law. It is primarily concerned with official actions and procedures and puts in place a control mechanism by which administrative agencies stay within bounds.

However, administrative law is not a codified law. It is a judge-made law which evolved over time.

The growth of Administrative Law.

ENGLAND

In 1885 Albert Venn Dicey, a British jurist, rejected the whole concept of Administrative law. Hence, the numerous statutory discretionary powers given to the executives and administrative authorities and control exercised over them were all disregarded to be able to form a separate branch of law by the legal thinkers. Until the 20th Century, Administrative law was not accepted as a separate branch of law. It was only later that the existence of Administrative law came to be recognised.

The Lord Donoughmore Committee, in 1929, recommended for better publication and control of subordinate legislation. The principle, King can do no wrong, was abolished and the scope of Administrative law expanded by virtue of the Crown Proceeding Act in 1947 which allowed initiating civil proceedings against the Crown as against any private person.

In 1958, Tribunals and Inquiries Act was passed for better control and supervision of Administrative Decisions.

Breen v Amalgamated Engineering Union [1971] 2 QB 175 was the first case wherein the existence of Administrative law in the United Kingdom was declared.

UNITED STATES OF AMERICA

In the United States of America, the existence of administrative law and its growth was ignored until it grew up to become the fourth branch of the State. By then many legal scholars like Frank Good now and Ernst Freund had already authored a few books on Administrative law.

It was in 1933 that a special committee was appointed to determine how judicial control over administrative agencies could be exercised. Thereafter, in 1946 The Administrative Procedure Act was passed which provided for judicial control over administrative actions.

INDIA

The Mauryans and the Guptas of ancient India had a centralised administrative system. It was with the coming of the British that Administrative law in India went through a few changes. Legislations regulating administrative actions were passed in British India.

After independence, India adopted to become a welfare state, which henceforth increased the state activities. As the activities and powers of the Government and administrative authorities increased so did the need for 'Rule of Law' and 'Judicial Review of State actions'.

Henceforth, if rules, regulations and orders passed by the administrative authorities were found to be beyond the authorities legislative powers then such orders, rules and regulations were to be declared ultra-vires, unconstitutional, illegal and void.

Reasons for growth of Administrative law.

The concept of a welfare state

As the States changed their nature from laissez-faire to that of a welfare state, government activities increased and thus the need to regulate the same. Thus, this branch of law developed.

The inadequacy of legislature

The legislature has no time to legislate upon the day-to-day ever-changing needs of the society. Even if it does, the lengthy and time-taking legislating procedure would render the rule so legislated of no use as the needs would have changed by the time the rule is implemented.

Thus, the executive is given the power to legislate and use its discretionary powers. Consequently, when powers are given there arises a need to regulate the same.

The inefficiency of Judiciary

The judicial procedure of adjudicating matters is very slow, costly complex and formal. Furthermore, there are so many cases already lined up that speedy disposal of suites is not possible. Hence, the need for tribunals arose.

Scope for the experiment

As administrative law is not a codified law there is a scope of modifying it as per the requirement of the State machinery. Hence, it is more flexible. The rigid legislating procedures need not be followed again and again.

Difference between Administrative law and Constitutional law.

There are significant differences between Administrative law and Constitutional law.

A Constitution is the supreme law of the land. No law is above the constitution and hence must satisfy its provisions and not be in its violation. Administrative law hence is subordinate to constitutional law. In other words, while Constitution is the genus, administrative law is a species.

Constitution deals with the structure of the State and its various organs. Administrative law, on the other hand, deals only with the administration.

While Constitution touches all branches of law and deals with general principles relating to organisation and powers of the various organs of the State; administrative law deals only with the powers and functions of the administrative authorities.

Simply speaking the administrative authorities should first follow the Constitution and then work as per the administrative law.

Administrative Law in India

Administrative law in India attempts to regulate administrative actions by controlling delegated legislation and subjecting administrative discretionary actions to judicial review. It also provides for the constitution of tribunals and their composition.

- ## Delegated Legislation

When the functions of Legislature is entrusted to organs other than the legislature by the legislature itself, the legislation made up by such organ is called Delegated Legislation. Such a power is delegated to the executives/administrators to resolve the practical issues which they face on a day-to-day basis.

The practice of delegated legislation is not bad however the risk of abuse of power is incidental and hence safeguards are necessary.

There are three measures of controlling abuse of power through delegated legislation (as adopted in India)-

- **Parliamentary Control**

Parliamentary control is considered as a normal constitutional function because the Executive is responsible to the Parliament.

In the initial stage of parliamentary control, it is made sure that the law provides the extent of delegated power. The second stage of such control involves laying of the Bill before the Parliament.

There are three types of laying-

Simple laying

In this, the rules and regulations made come into effect as soon as they are laid before the Parliament. It is done to inform the Parliament, the consent of the Parliament with respect to its approval of the rules and regulations made are not required.

Negative laying

The rules come into force as soon as they are placed before the Parliament but cease to have effect if disapproved by the Parliament.

Affirmative laying

The rules made shall no effect unless approved by both the Houses of the Parliament.

Procedural Control

Procedural control means the procedures defined in the Parent Act (Act delegating the legislating power) have to be followed by the administrative authority while making the rules.

It involves pre-publication of the rules so that the people who would be affected by the proposed rules know it beforehand and can make representations if they are not satisfied.

After pre-publication is done and once all the concerned bodies, persons and authorities have been consulted the rules are to be published in the official gazette so that the public is aware of the existence of the rules.

Judicial Control

The judiciary looks into the following aspects to **determine the legal validity of the rules so made** using the power so delegated-

1. **If the administrative legislation is ultra-vires the Constitution.**
2. **If the administrative legislation is ultra-vires the Parent Act.**
3. **If the administrative legislation is arbitrary, unreasonable and discriminatory.**
4. **If the administrative legislation is malafide.**

5. **If the administrative legislation encroaches upon the rights of private citizens derived from the common law, in the absence of an express authority in the Parent Act.**
6. **If the administrative legislation is in conflict with another statute.**
7. **Power of the legislating authority to legislate the rule.**
8. **If the administrative legislation is vague.**

- ## Judicial Review

Judicial review deals with three aspects-

- Judicial review of legislative action.
- Judicial review of the judicial action.
- Judicial review of administrative action.

When it comes to administrative law judicial review of administrative action becomes a vital part of it.

An administrative authority must have discretionary powers to resolve real-time issues. However, the decisions taken by exercising these discretionary powers must be reasonable. Reasonableness is the 'Rule of Law's' response to the challenge of discretion. It brings discretionary powers closer to 'rule of law' ideas of transparency, consistency and predictability. Through the process of judicial review- administrative action and discretion are checked and controlled.

Judicial review ensures the legality of the administrative action and keeps the administrative authority within its bounds. The Court inquires if the administrative authority acted according to the law. However, the Courts cannot and do not substitute the opinion of the administrative authority with their own.

Courts, in a matter challenging administrative actions, hence look, if there was a failure in the exercise of the power of discretion, if there was an abuse of discretionary power, if there was any illegality and/or procedural impropriety.

- ## Administrative adjudication – Tribunals.

Tribunals are constituted for speedier adjudication of disputes and settlement of complaints. In a tribunal, matters are adjudicated by a Bench comprising both judicial and non-judicial members. Tribunals are not, however, a substitute for

Courts. In India, there are a number of tribunals which are constituted under the Central Acts. Some of the Tribunals are listed below.

1. Administrative Tribunal- constituted under the Administrative Tribunal Act, 1985.
2. Industrial Tribunal- constituted under the Industrial Dispute Act, 1947.
3. Railway Rates Tribunal- constituted under the Railway Act, 1989.
4. Claim Tribunal- constituted under the Motor Vehicle Act, 1939.
5. Income Tax Appellate Tribunal- constituted under Income Tax Act, 1961.
6. National Green Tribunal- constituted under National Green Tribunal Act, 2010.
7. Competition Appellate Tribunal- constituted under the Competition Act, 2002.

In L. Chandra Kumar v Union of India, the Supreme Court had held that tribunals are the court of first instance in respect of the areas of law for which they were constituted. All the decisions of the Tribunals are, however, subject to scrutiny before the Division Bench of the High Court within whose jurisdiction the concerned tribunal would fall, through an appeal.

- ## Lokpal and Lokayuktas Act, 2013

The Lokpal and Lokayuktas Act, 2013 is an anti-corruption Act which provides for the establishment of the institution of Lokpal which would inquire into allegations against public functionaries and matters connecting them. The Act provides for an investigation into complaints of maladministration. The office of the Lokpal is an equivalent to that of an Ombudsman.

The Act was a result of the massive public protest against corruption under the leadership of Anna Hazare.

The Lokpal is an officer of the Parliament having as his primary function, the duty of acting as an agent for the Parliament for the purpose of safeguarding citizens against the abuse or misuse of administrative power by the executive.

- ## Right to Information Act, 2005

The Act provides for the right to information of citizens to gain access to information under the control of public authorities. The Act promotes transparency and accountability of every public authority.

The Act is essential as it keeps the citizenry informed and holds the Government and its agencies accountable to the governed.

What do we study under Administrative Law?

Topic	Sub-topics
Evolution and Scope of Administrative law.	Nature, scope and development of administrative law.
	Rule of law and administrative law.
	Separation of Powers and its relevance.
	The relationship between Constitutional law and Administrative law.
Legislative Functions of Administration.	Delegated legislation and its constitutionality.
	Control Mechanism.
	Sub-delegation.
Judicial Functions of Administration.	Need for devolution of adjudicatory authority on Administration.
	Problems of administrative decision making.
	Nature of Administrative Tribunals.
	Principles of Natural Justice.
Judicial Control of Administrative action	Judicial review of administrative action.
	Evolution of the concept of Ombudsman.

Evolution and Scope of Administrative law.

Nature, scope and development of administrative law.

As one begins to study the specifics of a particular branch of law it becomes important to know why and how the said branch of law came about.

Administrative law is a judge-made law which evolved over time. It is not a codified law. The need for it arose with the increase in administrative actions and its discretionary powers.

Rule of law and administrative law.

The concept of 'rule of law' is that the State should be governed by principles of law and not of men. Administrative laws ensures that 'rule of law' prevails despite the presence of discretionary powers vested in the administrators. Administrative law developed to restrict the arbitrary exercise of powers by subordinating it to well-defined law.

Separation of Powers and its relevance.

'Separation of power' is one of the basics on which the State machinery works. However, with the increase in administrative actions/powers, it is seen that the doctrine cannot be practised with rigidity. Every organ of the State is dependent on the other for smooth functioning, thus, the doctrine of separation of power cannot be exercised by placing the organs of the State in watertight compartments. There has to be a flexible approach while ensuring that no organ encroaches upon the functions of another.

The relationship between Constitutional law and Administrative law.

As every law of the State must satisfy the Constitutional benchmark, it is essential to know the relationship between the Constitutional law and the Administrative law of the State. Constitutional law is the genus and administrative law its species, hence the judge-made law must comply with the constitutional provisions.

Legislative Functions of Administration.

Delegated legislation and its constitutionality.

The Administrative authorities are delegated the power to legislate by the Legislature. Administrative law examines whether the power so delegated to the administrative authorities is permissible within the constitutional definition or not.

1. Control Mechanism.

As the administrative authorities are given the discretionary powers to legislate delegated legislation; administrative law puts in place a control mechanism which keeps a check on the power so exercised by the authorities through-

- Parliamentary control of delegated legislation,
- Judicial control of delegated legislation,
- Procedural control of delegated legislation.

1. Sub-delegation.

When administrative authorities further delegate the power delegated to them it is called sub-delegation. However, such sub-delegation is allowed only when the Act delegating the power to the administrative authorities allows it. Administrative law ensures that sub-delegation of power is as per the law and that such a provision (of sub-delegation) does not make the administrator lethargic.

- Judicial Functions of Administration.

Need for devolution of adjudicatory authority on Administration.

The judiciary of the State could not put in place a mechanism for speedy adjudication, moreover, there was a backlog of cases. Adjudicatory authority was hence devolved upon the administration to resolve the issue. However, it is not an absolute substitute of the judiciary.

Problems of administrative decision making.

Though the administration has been given adjudicatory authority to a certain extent, there are lacunas in the administrative adjudication. For instance, the procedure of a proceeding before an administrative adjudicatory authority is not defined, there is an unsystematic system of appeal, the decisions of the authority are not recorded and vesting of overlapping functions in the same authority are the problem in administrative adjudication.

Nature of Administrative Tribunals.

Thereafter, the nature of administrative tribunals is assessed. The Constitution, powers, areas pertaining to which a Tribunal shall adjudicate is defined.

Principles of Natural Justice.

Administrative law requires that the administrative adjudicatory authority adjudicates matters applying the principles of natural justice, which are namely-

-
    - Rule against bias: That no person should be a judge in one's own case and that justice should not only be done but seen to be done.
- *Audi Alteram Partem: That every person has the right to be heard before a matter is adjudicated in his favour/against him.*
- Speaking order (Reasoned decisions)- That the adjudicating authority must provide the reason behind its decision. This is a newly evolved principle which aims at curbing arbitrariness on part of the adjudicating authority.

• Judicial Control of Administrative action.

• *Judicial review of administrative action.*

The judiciary keeps a check on the other organs of the State through judicial review. The grounds on which this power is exercised on the administrative authority are-

- Abuse of discretion,
- Failure to exercise discretion,

- Illegality, irrationality and procedural impropriety.

Evolution of the concept of Ombudsman.

The concept of Ombudsman evolved to keep a check on the administrative action. An ombudsman is an independent officer of the Legislature who supervises the administration and deals with complaints against maladministration by the administrative authority. It is a check on the administrative bodies by the Legislature.

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'.