



An Analysis of the Role of Administrative Law in Good Governance

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ABSTRACT

The Concept of Administrative Law and Good Governance are complementary to each other. The ultimate object of Administrative Law is to promote good governance. Good Governance is the cherished goal of a civilized nation. The paper aims to discuss about the concept of good governance. Good Governance includes transparency, accountability, upholding rule of law responsive, effective and efficient government. Further, it discusses the role of Administrative Law in good governance. Administrative Law has significantly contributed in good governance by developing various principles like Principles of Justice, Principle of Proportionality which makes government accountable and responsible in discharging its functions, it has also established various bodies which keeps check on governmental actions, the administrative authorities perform quasi-legislative and quasi-judicial functions which helps in achieving the cherished goal of good governance.

Keywords: Administrative Law, Good Governance, Transparency, Accountability, Development.

INTRODUCTION

The concept of Administrative Law and Good Governance are complimentary to each other as the object of Administrative Law is to promote good governance by making government transparent and accountable for its actions.

Administrative Law is sine qua non for effective and efficient government. The concept of Administrative Law and Good Governance is as old as human civilization. Administrative law is the study of law that deals with administration, and the law made by the administration. Administrative law is the branch of the public law which deals with the structure, power, along remedies available to the individuals. Varied definition of administrative law has been given by different scholars. According to Professor Dicey, administrative law determines the duties and liabilities of all state officials against private individuals who have certain rights which they can exercise against state officials in a specified procedure. According to Ivor Jennings, administrative law deals with the administration of an organization, its power, and duties. According to Wade administrative law deals with administration its composition, power, duties, rights of individuals liability of the authorities. To sum up, the object of Administrative Law is to promote good governance.

Administrative Law is not concerned with the merits of the decision but the procedure followed to take a decision because if the procedure is unfair then probably decision is also not fair. Administrative Law is not a codified law but is made up of various judicial decisions, doctrines and principles. Thus, Administrative law plays an important role in improving efficiency of the administration. The rules, procedures and principles of manner of exercising power prescribed by administrative law are simultaneously principles underlying good governance. They also share a common goal. Administrative law also helps to realize the three underlying principles of good administration: i.e. accountability, transparency and public participation. Thus, Good Governance and Administrative Law are intrinsically related to each other.

1.2 Good Governance

Governance is the process whereby public institutions conduct public affairs manage public resources and guarantee the realization of human rights¹. Good governance accomplishes this in a manner essentially free of abuse and corruption, and with due regard for the rule of law². The State is primarily composed of three wings- the legislature, the judiciary and the executive. While the legislature makes the law, the judiciary decides the disputes between the parties and the executive implements the law. No matter how efficient the laws are made by the legislature until and unless they are implemented by the executive in an efficient manner, they do not really serve much purpose. Thus, implementation of the laws by the executive or the government forms at the core of the good governance. The concept

¹Dele Adetoye, "THE SYMMETRICAL RELATIONSHIP BETWEEN GOOD GOVERNANCE AND DEVELOPMENT", IV International Journal of Economics, Commerce and Management, 573 (2016)

²Ibid



of good governance in the simplest term means, running the government efficiently and effectively, which leads to maximum good for maximum number of people. Good Governance is still a cherished goal for many democracies around the globe. Good Governance is not an abstract concept but many factors constitute it. In order to be labelled as good governance, the government is expected to discharge its constitutional duties, promote social and economic development and provide political stability. Some of the principles which constitutes good governance are:

- **Transparency and Accountability**

When the government takes decisions according to certain set of rules and regulations it reimposes faith in the government and the government is said to be transparent. It is antithesis to the concept of arbitrariness. In order to ensure transparency all, the information must be easily available and accessible by the citizens. Accountability means when the government and its agencies are answerable for its actions and decisions to the citizens of the country. When the government is made accountable for its actions and decisions it is more likely to take fair and just decisions, thus, resulting in good governance.

- **Rule of Law**

The concept of Rule of Law signifies that the society is governed by certain established set of rules as opposed to the concept of rule of men. Such a rule protects the people from arbitrary and discriminatory rules and ensures people fair treatment. This will bring a sense of security among the governed.

- **Participatory**

Participation and involvement of the people in the process of governance is the key characteristic of a good governance. Participation by both men and women and by representative of every section of society is important to understand the needs and expectations of the people from the government. Participation can be direct or through some representative.

- **Inclusiveness**

It requires that every section of the society should be involved in decision making process either directly or indirectly. Every section and especially the minorities should feel that their needs and legitimate expectations have been considered in decision making process. If they do not have such feeling then they might not feel unsecured and such decisions would not be accepted thus, causing unrest in the society.

- **Effectiveness and Efficiency**

Good governance requires that the institutions produce the desired results by making optimum use of the resources. The resources at its disposal should be wisely used. Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal³. The needs of not only present generation but of future generation should also be considered and decisions should be taken accordingly. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment⁴.

- **Responsive**

It requires institutions to be sensitive and responsive to the needs and expectations of the people within reasonable time period.

- Providing good education opportunities, development of basic infrastructure like roads, power, irrigation etc, creating employment opportunities and reducing inequalities in the society.

1.3 Importance of Good Governance

The concept of governance is as old as human civilization Governance determines the quality of life of the governed. The deepest cause of development failure is not the lack of resources or international isolation, rather it could be ascribed to lack of good governance-the inability or unwillingness to apply public resources judiciously and effectively to generate public goods and services⁵.

The fortune of the subjects is depended on how the ruler of a nation will govern its people. Governance determines the fortune of a nation. While good governance leads to prosperity on the other hand bad governance can make a nation collapse. Today we see the fall and collapse of Sri Lanka which is primarily due to bad governance. The situation through which the country is going is enough to make one understand the importance and significance of a good

³ Muhammad Ali, “ Governance and Good Governance : A Conceptual Perspective” The Dialogue, Vol 10 Number 1, 73

⁴ Ibid

⁵Supra Note 1



government. The importance of Good Governance for the development and prosperity of a nation is mostly undermined and underestimated. Good Governance leads to social, economic and political development of the nation.

The constitution makers were also aware and conscious of the significance and importance of good governance and therefore they included Directive Principles of State Policy (DPSP) in the constitution which imposed certain duties on the state. They were aware that by imposing certain duties on the state it would lead to good governance and prosperity of a nation. Undoubtedly, it has led to good governance and prosperity and welfare of the citizens. In pursuance of DPSP, the state has enacted various legislations like Minimum Wages Act, 1948, Dowry Prohibition Act, 1961 etc. This has indeed led to the achievement of the most cherished goal of good governance where the subjects are happy and satisfied by the government.

1.3.1 Economic Development

The relationship between good governance and economic development can be well understood with the on-going situation of Sri Lanka and Pakistan. The bad governance has led to the fall and collapse of the nation leaving its people in miserable condition. The governmental policies, its decision making has far-reaching consequence on the destiny of the nation. The good governmental policies and good decision making will lead to prosperity of a nation while bad policies and decisions shall make a nation collapse. The Constitution of India also lays duty upon State to provide for social, economic and political welfare of the people. To provide for economic progress it has specific provisions for removing exploitation and protecting economic rights of the people particularly, of women and children. The constitution makers were conscious that economic development is imperative for good governance.

1.3.2 Social Development

Good Governance is also essential for social development particularly for a country like India, where people of different class, caste and religion live together. Social discontent among them will cause unrest in the society, thus, ultimately hampering economic, political and all other developments. In order to promote good governance, it is imperative that there is fair distribution of wealth and minorities feel safe in such a society. The Constitution makers were conscious about the social development and therefore they incorporated the idea of social justice in the Preamble and in various provisions of Part IV of the Constitution promoting social development. In order to remove inequality Article 15, 15(4), 16(4), 17 were incorporated in the Constitution and by 42nd Amendment words like “Socialist” and “Secular” were included to promote the ideology of social welfare state. The Constitution also provides for reservations of SC’s, ST’s and OBC’s to remove social disparity. Further, Article 38 casts a duty on State to secure social order for the promotion of the welfare of the people. These provisions will get life only when the government discharges its obligations with true and honest intentions leading to social development.

1.3.3 Political Development

Political Development and the concept of good governance go hand in hand. It is the political leaders of a country who are responsible for governance, good or bad. Good governance will certainly lead to political stability and development. In many developed countries like United States of America, good governance has been instrumental leading to economic and social development of the country. Conversely, the third world countries have failed to attain their goals owing to bad governance. Such countries are characterised with corruption, lack of accountability, transparency and lack of political stability. Thus, the future of nation lies in the hands of the people who are responsible for managing the affairs of the nation. The Constitution makers were aware of the impact a political structure on the future of a nation and therefore it chose for itself a democratic, socialist and secular setup. It also gave right to vote to the citizens of the country to choose for itself a responsible government. Now the duty is cast upon the citizens to choose for itself a responsible government which could help the country achieve its development goals.

1.4 Role of Administrative Law In Good Governance

Administrative Law plays a paramount role in a good or a bad governance of a country. Administrative Law is that branch of law which determines the relation between the government and the governed. Though not a codified law but its significance cannot be undermined or understated. Administrative Law is largely the by-product of intensive form of government. In a welfare state the interaction between the government and its people is indispensable. The government is responsible for welfare of its people and thus arises the need for a government which is even more responsible, effective, efficient and accountable. Administrative Law plays a significant role in administering the country and regulating the relationship between people and government. The role of administrative law in Governance can be understood through following points:

- **Administration of Justice**

One of the fundamental hallmarks of a democratic and good governance is the administration of justice. The administration of justice falls primarily within the domain of judiciary. From ancient times, the courts have been discharging this function on the basis of certain established rules and regulations. However, after Independence India adopted the policy of welfare state which resulted in increased interaction between government and citizens



thereby resulting in increased number of disputes thereby overburdening judiciary. Thus, judiciary delegated adjudicatory functions to the administrative authorities. These administrative authorities expedited the dispute resolution and decisions started coming from the people who were experts in the required filed. Thus, this helped in speedy justice and since the decisions came from expert people they became more effective and efficient.

- **Administrative Rule Making**

In a democratic setup the legislature is primarily responsible for rule making but however, after the adoption of welfare state policy the legislature became overburdened and thus, administrative authorities came to the rescue of the legislature and helped relieving its burden. Another significant reason for delegating law-making power to administrative authorities was the changing nature of society from simple to complex. With the changing times as the society became more complex, the rules and regulations became complex in nature and those rules and regulations could only be made by the persons having expertise in the particular area.

The society would be governed effectively and efficiently if the rules are well drafted and well-conceived. Thus, administrative authorities enabled in good governance by drafting efficient and effective rules. Further, these rules made by the administrative authorities are subject to various types of controls like Parliamentary, Legislative and Judicial to ensure administrative rule making power is not misused and abused.

- **Ombudsman**

One of the criteria to measure the success or a failure of a governance system is through its grievance redressal mechanism. How impartial, independent and accessible its grievance redressal mechanism is very pertinent. The government shall consist of all types of people, good and bad, honest and dishonest. In such a condition, having an independent and impartial grievance redressal mechanism is important to maintain good governance. The Administrative Law has developed various agencies like ombudsman, anti-corruption bodies to keep check on governmental actions thereby, supplementing good governance in the country. Ombudsman is an official who is appointed by the government to investigate complaints against maladministration.

- **Development of Various Principles**

The Administrative Law is not a codified law and is based on several principles and doctrines with the object of preventing misuse of power by administrative authorities and protecting individual rights and liberties. Some of such principles and doctrines have been discussed below:

- **Principle of Natural Justice**

Administrative Law is not concerned with the merits of the decision but the procedure followed to take a decision because if the procedure is unfair then most likely the decision is also not fair. The Principle of Natural Justice ensures that the process of decision making is fair by providing that decision is given after giving each party opportunity of hearing and the decision is given by an impartial, independent person along with the reason for decision. This ensures that the decision is fair and makes it more acceptable.

Doctrine of Legitimate expectation

In order to prevent administrative authorities from misusing their powers and protect the rights of the people, the administrative law has developed a very significant doctrine known as doctrine of legitimate expectation. Many times, harm is caused not because of violation of individual rights but because a legitimate expectation from the authority was not fulfilled. Thus, this doctrine enables an individual to institute the suit and protect their rights and liberties.

Doctrine of Promissory Estoppel

This doctrine also enables an individual to institute a suit not because of violation of certain legal provision but because it has acted upon the promise made by the government and later the government refused to fulfil its promise. Thus, this principle of equity compels the government to act upon its promise and have fair dealings with the public.

Doctrine of Proportionality

It is true that every wrongful act must be punished at the same time it is also true that punishment should be proportionate to the wrong done. The doctrine of proportionality checks that the punishment inflicted by government agencies exercising quasi-judicial functions is proportionate to the wrong done thereby, preventing abuse of power.

CONCLUSION

Administrative Law is a by product of extensive form of government. With the adoption of welfare state policy, the government intervention in the activities of people increased thus, the administrative law assumed more importance as it was felt necessary that government power needs to be controlled. Good governance and Administrative Law go hand-in-hand. Traditionally, good governance merely involved maintain law and order but today we have come along way



and accountability, transparency, inclusiveness, equitability sustainable development etc have become the key ingredients of good governance. Administrative law plays an important role in improving efficiency of the administration. The rules, procedures and principles of manner of exercising power prescribed by administrative law are simultaneously principles underlying good governance⁶. Good governance can be achieved by an efficacious, fair and responsible mechanism of administration which is regulated by Administrative Law⁷. So, good governance requires effective working and implementation of Administrative Law, thereby also making the administration responsive, citizen-friendly, transparent and ethical. Today, due to increased governmental functions it has also led to increased delegation of power to the administrative authorities. Thus, it is also pertinent upon the judiciary to keep check on the working of administrative authorities as we live in a polity of checks and balances.

⁶Administrative Law and Human Rights (abyssinialaw.com)

⁷Good Governance And Administrative Law Go Hand-In-Hand - Courting The Law (last visited on 7 August, 2022)