

RMM LAW COLLEGE SAHARSA

ADMINISTRATIVE LAW

IIIrd Part

Paper -VII

TOPIC- Rule of law

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The expression —Rule of law plays an important role in administrative law. It provides protection to the people against the arbitrary action of the administrative authorities. The expression 'rule of law' has been derived from the French phrase 'la principle de legalite', meaning a government based on the principles of law. In simple words, the term 'rule of law', indicates the state of affairs in a country where, in main, the law rules. Law may be taken to mean mainly a rule or principle which governs the external actions of human beings, and which is recognized and applied by the state in the administration of justice.

Procedural Elements

Almost all administrative lawyers or anyone embarking a research on this dynamic concept usually starts to treat the subject by espousing the approach and definition given to it by the renowned English constitutional lawyer, Dicey. (1888)gave the most influential definition of rule law which mainly comprises the following three elements.

A. The supremacy of Law (Principle of Legality)

For Dicey (1888 😊) the primary meaning of rule of law is supremacy of the ordinary laws of the land over the actions of public officials and administrative agencies. He writes:

It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, of prerogative, or even wide discretionary authority on the part of the government.

Hence, one aspect of the concept of rule of law is absolute predominance, or supremacy of law over arbitrary, government actions. Simply stated, it means every administrative action that should be taken according to law. Applied to the powers of government, this requires that

every government authority which does some act which would otherwise be a wrong (such as taking a man's house), or which infringes a man's liberty (as by refusing him a trade license), must be able to justify its action as authorized by law. An administrative agency or public official is required to justify its action by clearly establishing that it is expressly or impliedly empowered or authorized by act of the parliament (i.e. proclamation issued by the House of People's Representatives). This means also that in the absence of any authority, the affected party whose rights and liberties have been violated as a result of the action of government, should be able to take the case to court and have it invalidated.

However, acting according to law does not satisfy the meaning of rule of law in the presence of wide discretionary powers. Parliament may confer on the specific administrative agency, wide discretionary powers that enables the agency to take unpredictable and in some cases of the arbitrary actions. Hence, the government should be conducted within the framework of the recognized rules and principles that restrict discretionary power. In many countries, typically in England, many of the rules of the administrative law are rules for restricting the wide powers, which acts of parliament confer very freely on ministers and other authorities.

B Principle of Equality

“ . . .It means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts.”

One meaning of the above statement is that disputes, as to the legality of acts of government, are to be decided by judges who are independent of the executive. This aspect of the rule of law, which is typical characteristics of English administrative law, is largely based on the principle of the separation of powers which prohibits interference among the three government branches, Hence, not only civil cases, but also administrative disputes that should be adjudicated by the ordinary courts; not by the separate administrative courts.

In France, the same principle of separation of powers resulted in a totally opposite conception of the rule of law. According to French administrative law (droit administratif), disputes between the individual and the government are settled by separate administrative courts, the conseil de etat being the supreme administrative court. It is said that this system was developed in France based on the strict interpretation of the separation of powers. Dicey emphatically rejected the French system of the administrative law (droit administratif) because of his emphasis on the ordinary law courts as opposed to any specialized administrative law courts as ultimate arbiter of disputes between the government and the

individual.

Another aspect of the principle of equality is that the issue that states the law should be even-handed between government and citizen. In other words, those laws governing the relationship between individuals should also similarly be applicable to the relationship between individuals and government. This implies that government officials should not entertain different, or special privileges. However, the intensive form of the government and the complexities of administration sometimes necessitate granting special powers (privileges) to the government. What the rule of law requires is that the government should not enjoy unnecessary privileges, or exemptions from the ordinary law.

C Constitution Is a result of the Ordinary Law of the Land

“ It means the constitution is the result of the ordinary law as developed by the courts through the common law tradition and provides for the legal protection of the individual not via a bill of rights, but through the development of the common law”

The rule of law lastly means that the general principles of the constitution are the result of judicial decisions of the courts in England. In many countries rights such as right to personal liberty, freedom from arrest, freedom to hold public meetings are guaranteed by a written constitution. However this is not so in England. These rights are the result of judicial decisions in concrete cases that have actually arisen between the parties. The constitution is not the source but the consequence of the rights of the individuals. Thus, Dicey emphasized the role of the courts as ultimate guarantors of liberty.

Substantive Elements

The modern concept of the rule of law is fairly wide and, therefore, sets up an ideal for government to achieve. This concept was developed by the international commission of jurists, known as Delhi Declarations, in 1959, which was later on confirmed at Logos in 1967. According to this formulation, the rule of law implies that the functions of government in a free society should be exercised so as to create conditions in which the dignity of man, as an individual, is upheld.

In recent years, wide claims have been made as to the proper sphere of rule of the law. The presence of representative democracy, beneficial social and economic services and conditions, personal independency (privacy) and independent judiciary has all been taken as indicators and elements of the rule of law. One way to understand the concept is making a contrast between the two approaches which are the ‘formal’ and ‘substantive’ (ideological) versions of the rule of law. The former is not much more than the principle of legality, and the latter insists on a wide range of positive content.

Rule of Law as a Foundation of Administrative Law

In simple terms, the rule of law requires that government should operate within the confines of the law; and that aggrieved citizens whose interests have been adversely affected be entitled to approach an independent court to adjudicate whether or not a particular action taken by or on behalf of the state is in accordance with the law. In these instances, the courts examine a particular decision made by an official, or an official body to determine whether it falls within the authority conferred by law on the decision maker. In other words, the courts rule as to whether or not the decision is legally valid. It is in this way that the principle of rule of law serves as the foundation of the administrative law. It has been repeatedly said that the basic purpose of the administrative law is to control excessive and arbitrary governmental power. This purpose is mainly achieved through the ordinary courts by reviewing and checking the legality of any administrative action. Therefore, administrative law as a branch of law, is rooted in the principle of the rule of law. This principle mainly stipulates that every administrative action should be according to law. The different control mechanisms of power in administrative law by preventing government not to go beyond the authority granted to it by law ensure that rule of law is respected.

Hence, the expression —Rule of Law plays an important role in administrative law. It provides protection to the people against arbitrary action of the administrative law.

To clearly understand the relationship between the rule of law and the administrative law, it is important to examine a related doctrine of the administrative law, which is the doctrine of ultra virus. The doctrine to some extent is a derivation of the principle of the rule of law. The former underlines that power should be exercised according to law. The latter, goes one step further and states that an action of any official or agency beyond the scope of power given to it is ultra virus (i.e. beyond power), hence it is considered as null and void. An ultra virus act does not have any binding effect in the eyes of the law.

The simple proposition that a public authority may not act outside its powers (ultra virus) might fitly be called the central principles of the administrative law. The juristic basis of judicial review is the doctrine of ultra virus. According to Wade & Forsyth an administrative act that is ultra virus or outside of jurisdiction (in case of action by administrative court) is void in law, i.e. deprived of any legal effect. This is, in order to be valid, it needs statutory authorization, and if it is not within the powers given by the act, it has no legal leg to stand on it. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing has happened. Administrative law by invalidating an ultra virus act ensures that

every administrative action is in conformity with the law; indirectly guaranteeing the observance of rule of law.

Rule of law as a foundation of the administrative law has been briefly explained above. But at the same time, you should also be aware of the fact that the principle also serves as a limitation on the scope of administrative law.

It has been clearly pointed out in chapter one that the proper scope of the administrative law is procedure, not substance. This means, it is concerned with the decision-making procedure (how power is exercised), rather than the decision itself. To a wider extent the study of the administrative law has been limited to analyzing the manner in which matters move through an agency, rather than the wisdom of the matters themselves. Whether a certain decision is right is not a matter to be investigated under the administrative law, rather it should be left to the decision-making agency since it purely involves policy considerations. Similarly, the principle of the rule of law does not go to the extent of ensuring whether a certain agency's decision is right or wrong. Its primary meaning is attached to the principle of the legality or the superiority of law. Its concern is to ensure that a administrative action is taken according to law.

The court, in reviewing an administrative action, is expected to see or examine the legality of the action only. In judicial review, the judges do not substitute their own discretion and judgment for that of the government. They simply rule whether the government or its officials have acted within the ambit of their lawful authority. Thus, the judges do not —govern the country, and do not —displace the government when government decisions are challenged in the courts.

The principle of the rule of law, by limiting its scope only to legality, or in some cases to fairness of the administrative action, simultaneously serves as a limitation to the scope of the administrative law.