UNIT ONE: INTRODUCTION TO ADMINISTRATIVE LAW

The Modern Welfare State and Evolution of Administrative Law

- The change in the role of government ‘Police state’ to the ‘welfare state’
- Then need for conferring more power on the administration and simultaneously the need for controlling this power.
- Power vs. Control…to ensure liberty
- By- product of the growing socio-E

- **complex relations= certainty, misuse of power, regulation**

Role of laissez fair (police state).....

- Minimal government control
- Maximum free enterprise,
- freedom of k+
- The management of social and economic life was not regarded as government responsibility
- Unequal bargaining power between labour and management=poverty & con of capital
- Human misery-----

Then to welfare state=

- ✓ state intervention,
- ✓ social control
- ✓ and regulation of individual enterprise

- Accumulated power=poses danger to rights, freedoms, liberty and privacy...
- Threats of big government=resulted adm law

Definition, Purpose, Scope and Sources of Administrative Law

Definition

While defining

- ✓ 1.concerned with the manner of exercising governmental power. The decision making process is more important than the decision itself.
- ✓ 2.Ultimate purpose=controlling exercise of governmental power

1. Schwartz "the law applicable to those administrative agencies, which possess delegated legislative and adjudicative authority.'=controlling? Remedies?

2. Jennings "the law relating to the administration. It determines the organization, powers and duties of administrative authorities." No distinction made

3. Dicey

- ‘Firstly, it relates to that portion of a nation’s legal systems which determines the legal status and liabilities of all state officials.
- Secondly, defines the rights and liabilities of private individuals in their dealings with public officials.
- Thirdly, specifies the procedures by which those rights and liabilities are enforced.’ =concerned only with **judicial control** of public

4. Massey/wider and working definition “Administrative law is **branch of public law** which deals with the **organization and powers of administrative and quasi administrative agencies and prescribes the principles and rules by which an official action is reached and reviewed in relation to individual liberty and freedom**”

Based on the definitions above, we may conclude that administrative law:

- **1.studies powers of adm agencies**

nature and extent of such powers is relevant to determine whether **any administrative action is ultra vires or there is an abuse of power.**

- **2. studies the controlling mechanism of power.**

Purpose of Administrative Law

- ✓ It has a control function, acting as a check in respect of the unlawful exercise or abuse of administrative power.
- ✓ It can have a command function by making public bodies perform their statutory duties
- ✓ It embodies positive principles to facilitate good administrative practice; for example, in ensuring that **the rules of natural justice or fairness** are adhered to.

- ✓ It operates to provide accountability and transparency, including participation of interested individuals and parties in the process of government.

- ✓ It may provide a remedy for grievances at the hands of public authorities.

Governing principles of adm law

- **1.Administrative justice.**

In administrative decision- making the rights and interests of individuals should be properly safeguarded.

- **2. Executive accountability..**

Those who exercise admn power can be called to explain / justify their action

- **3.Good administration...**

Any Admn decision/action should

Sources of Administration Law

1. The Constitution

It contains some provisions dealing with the manner and principle of government administration and accountability of public bodies and officials.

- General principles of government adm.Powers,
- Separation of power...
- Accountability Art 12
- Internal organization 77(2)
- Delegated law making 77(13)
- Rule of law Art9....

2. Legislation: enabling or establishment

3. Delegated legislations (reg,

Scope of Administrative Law

Public Law/Private Law

✓The rules and principles of AL are applicable in a r/sh b/n citizens and the state; they do not extend to cases where the nature of the r/sh is characterized by a private law function.

✓Scope of AL extend only when AA performing their public law duty (public law function)

Substance vs. Procedure

- Many of the definition and approaches to AL are limited to procedural aspects of the subject.
- The focus of AL is mainly on the manner and

Theoretical Perspectives

A. Red Light Theory.

- ✓ originated from a political tradition of 19thc laissez faire (minimal state) theory.
- ✓ Considers that the function of law is to control the state power. *Hence, AL serves the* ***function of controlling excess and arbitrary power, mainly by the courts***

B. Green Light Theory

- ✓ This theory is **originated from the utilitarian tradition**, which proposes **promoting the greatest good for the greatest number**.

To provide maximum satisfaction for most of its people, the state should assume a broader role/should possess wider power

- ✓ considers that the function of **AL** is **to facilitate the operation of the state**.

- ✓ Since there is a deep-rooted suspicion on governmental power, this theory desire to minimize the encroachment of the state on the rights of individuals.
- so advocates strong control against big government b/c wider power is danger to the right /liberty.
- Generally it is more conservative and power control-oriented

- It is based on the rationale that bureaucrats will function most efficiently in the absence of intervention.
- **AL** aims to simplify the procedures and enhance efficiency.
- It regards law not as a controlling mechanism, rather as facilitative tool.
- Consequently, it considers the court‘s intervention as an obstacle to efficiency.

The Relationship b/n Administrative Law and Other Concepts

1.Constitutional Law and Administrative Law
2.Administrative Law and Human Rights
3. Administrative Law and Good Governance
4. Administrative Law and Democracy

1.Constitutional Law and Administrative Law

similarity

- Both Categorized as **public law** since they govern the relationship between the government and the individual.
- **AL is a tool for implementing the constitution**. give life **to ppl** of the contn and **AL** enhance cont nal value like **democ and ROL**
- **AL and CL**, share a common ground, and supplement each other in their mission **to bring about administrative justice.**

difference

- Related to their scope.

While CL= deals, **in general**, **with the power and structures of government**, i.e. the legislative, the executive and the judiciary,

AL = its scope of the study **is limited to the exercise of power by the executive branch of government.**

- CL , being the supreme law of the land, **formulates fundamental rights which are inviolable and inalienable.**

AL does not provide fundamental rights. Rather

Its purpose is providing

- **principles,**
- **rules and**
- **procedures**
- **and remedies** to protect and safeguard fundamental rights.

2.Administrative Law and Human Rights

SIMILARITY

1. Both systems of law **aim at restraining arbitrary or unreasonable governmental action** and, in so doing, help to protect the rights of individuals.

2. Both share a **concern for fair and transparent process,**

- the availability of review of certain decisions(unlawful decision)
- and the provision of effective remedies for breaches of the law.

3. Both Assert that governments must not intrude on people's lives without lawful authority.

4. Both embody concepts of judicial (or restraint)/ self control to the expertise of the executive in certain matters.

DIFFERENCE

1. HRL= is principally **concerned with protecting and ensuring substantive rights and freedoms**,

- **whereas AL= focuses more on procedure and judicial review** = to preserve a strict distinction between the legality and the merits of a decision.

2. HRL =**protects rights as a substantive end in themselves**,

- **whereas AL =focuses on process as the end and it may be blind to substantive outcomes**, which are determined in the untouchable political realm of legislation or government policy.
- The three broad principles of AL are largely neutral on substantive outcomes:

✓ administrative justice,
✓ executive accountability
✓ and good administration

3. HRL= have intention of securing human dignity, **whereas AL=** is more **committed to good decision-making and rational administration**.

3. Administrative Law and Good Governance

i. The rules, procedures and principles for exercising power w/c is prescribed by **AL** are simultaneously principles underlying **GG.**

ii. One of the common destinations of AL and GG is the attainment of administrative justice.

- The set of **values of administrative justice** which mainly comprises openness, fairness, participation, accountability, consistency, rationality, legality, impartiality and accessibility of judicial and administrative individual grievance procedures are commonly shared by AL and GG.

iii. AL also helps to realize the three underlying principles of good administration

- ✓ accountability,
- ✓ transparency and
- ✓ public participation.

The administrative law system, when working properly, enhances the traditional processes of ministerial and parliamentary accountability in any system of government.

- ❖ AL also ensures transparency in the conduct of government administration and the decision making process.

4. Administrative Law and Democracy

- True democracy states that the executive government would be accountable to the people.
- Even though administrative law is concerned with executive accountability, for a true democracy to flourish, accountability should be manifested in all branches of government.
- Administrative law is rooted in the principle of rule of law. Rule of law, in turn nourishes democracy.
- Every truly democratic system of government rests upon the rule of law, and no system is truly democratic if it does not.
- In order for a government to be both democratic and subject to the rule of law, the government must be accountable, to the electorate and the courts.

Administrative Law in Civil Law and Common Law Countries

CIVIL LAW

- The scope of AL is wider in the continental system compared to its common law counterpart.

AL in civil law countries covers issues such as the

- organization,
- powers and duties of administrative authorities,
- the legal requirements governing their operation,
- and the remedies available to those adversely affected by administrative action.

COMMON LAW

In Anglo- American countries, AL is limited to

- delegation of rule-making powers,
- adjudication of administrative cases,
- manners and procedures of exercising these powers,
- controlling mechanisms and remedies….

So studying the composition and structure of administrative power is not its primary concern.

- In France, Italy, Germany and a number of other countries, there is a separate system of administrative court that deals with administrative cases exclusively. so
- AL has developed on its own independent lines, and is not enmeshed with the ordinary private law **as it is in the Anglo- American system.**

- The outstanding characteristic of the Anglo-American system is that the ordinary courts, and not specialadministrative courts, decide cases involving the validity of government action.

AL mainly focuses on control through the courts i.e.

- **judicial review of administrative action by the ordinary courts.**

Droit Administratiff

French administrative law is known as

“droit administratiff”= which means a **body of rules which determine the organization, powers and duties of public administration**.

Droit administratif includes three rules dealing with administrative authorities and officials; for example,

- **appointment,**
- **dismissal,**
- **salary and duties.**

AL in France does not represent the **rules and principles enacted by the parliament rather developed by administrative courts(judge made law)**

- Napoleon Bonaparte was the founder of *the droit Administratiff* who established the *Conseil d’etat.*
- He passed an order depriving the courts jurisdiction on administrative matters that could be determined only by the consei d’etat.
- **France have Dual court structure**
- The highest administrative court is known as **Conseil d’etat**
- Conflict of jurisdiction between ordinary courts and administrative courts are decided by the **agency known as Tribunal des conflicts.**

The Present State and Future Prospects of Administrative Law in Ethiopia

- Administrative law is still not well developed, and it is an area of law **characterized by the lack of legislative reform**. It is also a subject in which too little attention is given in terms of research and publication.

In Ethiopia, the history of government is largely **characterized by**

- **arbitrariness**
- **and lack of effective legislative, judicial and institutional control of power.**

Up to 1987, the previous three constitutions of the 1931, 1955 and 1974 did not contain any meaningful and **practical limit on the power of government**.

- There were some attempts towards **addressing the grievances of citizens against maladministration.**

There was, for instance,

- a legislative effort to establish the Ombudsman during the last days of the Emperor H/S regime. It remained in paper as a result of the fall of the Emperor in 1974.
- In addition the establishment of some **administrative courts like the Civil Service Tribunal and an administrative tribunal** w/c reviewing assessment of tax **may be taken as one step ahead for the evolution of the administrative law in Ethiopia**.

- Administrative law didn’t show any progress during the Dergue regime.
- The present FDRE of the 1995 has **laid down the constitutional framework for the development of the administrative law.**
  - It contains key principles of government administration like accountability, transparency, and public participation.
  - It also envisages the establishment of the Ombudsman and the Human Rights Commission.

UNIT TWO: CONSTITUTIONAL FOUNDATION AND LIMITATION OF ADMINISTRATIVE LAW

Rule of Law as a Basis of Administrative Law

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.
Indicates the state of affairs in a country where, in main,

the law rules.

UNIT TWO: CONSTITUTIONAL FOUNDATION AND LIMITATION OF ADMINISTRATIVE LAW

Rule of Law as a Basis of Administrative Law

- ✓ Rule of law plays an important role in AL.
- ✓ It provides protection to the people against the arbitrary action of the administrative authorities.
- ✓ In simple words, the term _rule of law, indicates the state of affairs in a country where, in main, the law rules.

Procedural Elements

- English constitutional lawyer, Dicey (1888) gave the most influential definition of rule law which mainly comprises the following three elements.

1. Supremacy of Law (Principle of Legality)

- For Dicey 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*

- 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.
- 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.

2. 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.*
- Disputes, as to the legality of acts of government, are to be decided by judges who are independent of the executive.

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

- Another aspect of the principle of equality is that 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 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.

3. Constitution Is the 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 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.

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.

Rule of Law as a Foundation of Administrative Law

- 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 expression “Rule of Law” 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 ROL= underlines that power should be exercised according to law.
- The doctrine of ultra virus =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.

Separation of Powers as a Limitation on Administrative Law

The doctrine of separation of powers means that:

- ✓ None of the government, i.e., the legislative, executive and judicial should ever exercise the powers of the other.
- ✓ That the three departments of government are to be separated and distinct.
- ✓ They are to be independent of one another, and each can exercise only one type of authority, legislative, executive or judicial.
- ✓ The same person cannot compose more than one of the three departments of the government.
- ✓ One department should not control and interfere with the acts of the other two departments, and one department should not discharge the functions of the other two departments

The theory of separation of powers signifies three formulations of structural classification of governmental power

i. The same person should not form part of more than one of the three organs of the government; for example, ministers should not sit in parliament.

ii. One organ of the government should not interfere with any other organs of the government. For example, the executive should not interfere in the administration of justice by the courts.

iii. One organ of the government should not exercise the functions assigned to any other organ. For example, the executive branch cannot legislate laws, and as well it cannot adjudicate cases.

The Principle of Separation of Powers as a Limitation on Administrative Law

- According to the principle of separation of powers, the power and function of administrative agencies, or the executive is limited to the execution or enforcement of laws.
- However, in order to ensure efficient and effective enforcement of laws, it has become a compulsive necessity to delegate the executive and administrative agencies with additional legislative and judicial powers (functions).

1. **Delegation of legislative powers by the legislature is clearly against the principle of separation of powers**. However, it is justified on practical grounds:

- lack of time and expertise in the legislature to provide laws necessary to solve a certain social or economic problem
- It makes the administration effective and efficient.

Agencies could not attain their purposes for which they are established unless otherwise they have wider power, mainly rulemaking powers.

2. Agencies also share some of the judicial powers which traditionally belong to the ordinary courts.

- They can decide matters affecting individual rights and freedoms.
- Reversing a license, imposing administrative penalty, with holding benefits (e.g. pension), etc

Giving judicial power to agencies clearly violates the principle of the separation of powers but there are justifications:

- ✓ Some matters, by nature, are technical and require detail expertise. This expertise is found in the specific administrative agencies, not the courts.
- The trial process in the courts is lengthy, costly and rigid due to the complex procedural rules of the litigation. By comparison, a certain matter may be easily decided by an agency or an administrative court with the least cost to the parties and even to the decision-making process.
- .

- Granting legislative and judicial powers to agencies are an exception, or it may be said a ‘necessary evil’.
- This leads to the conclusion that such powers should be given and exercised narrowly i.e. only when it becomes a compulsive necessity to do so.
- Delegation of legislative powers should be limited only to the technical or detailed matters necessary to fill the gap in the law issued by the legislature. In this way, the principle serves to check the legislature not to delegate wider powers.
- Ordinary judicial powers should not be given to administrative agencies or administrative courts. It should be limited only to matters which are technical by nature and require expertise of the administration

UNIT THREE: ADMINISTRATIVE AGENCIES: SUBJECTS OF ADMINISTRATIVE LAW

Nature, Meaning, and Classification of Administrative Agencies

Nature of agencies---accumulation of P.

The **Meaning of Administrative Agency**

Agencies may be defined as

Administrative agencies make individual decisions affecting citizens' lives and they set general policies affecting an entire economy though they are usually headed by officials who are neither elected nor directly accountable to the public.

Although they are within the executive branch, most of them are not mainly accountable to the

A government entity outside of the judiciary or the legislature does not necessarily qualify as an administrative agency. This does not mean that the legislature for some public policy reasons may not opt for a wider inclusive approach in determining which agency may properly be called as agency.

New York Administrative Procedure Act, which reads:

"An agency is any department, board, bureau, commission, division, office, council, committee or officer of the state or a public benefit corporation or public authority at least one of whose members is appointed by the governor, authorized by law to make rules or to make final decisions in adjudicatory proceedings but shall not include the governor, agencies in the legislative and judicial branches, agencies created by interest compact

Determining whether a certain government entity constitutes an agency or not is greatly a matter of government policy so that the legislature may exclude some organs from the scope of an agency.

1.Nomenclature: department, authority, commission, bureau, board etc;...

2.the government entity should be

there may be express exclusion however

Absence of an administrative procedure act in Ethiopia=there is no comprehensive definition of an administrative agency.

Some specific legislation make a reference to “government agency”, though failing to provide a satisfactory definition.

income tax and the civil servants

federal government is unimportant to determine whether a certain entity is an administrative agency or not.

Naming, role (legislative and /or adjudicative, binding action)

The Draft Administrative Proclamation of the Imperial government (draft proclamation No 251/1967) and that of the draft prepared by the federal

The 1967 draft administrative procedure act uses the term "administrative authority" instead of "administrative agency" and defines it as:

"Any ministry, public authority or other administration of the imperial Ethiopian government, including chartered municipalities, competent to render an administrative decision."

power of the agency to legislate through delegation is missing as criteria.

The draft does not categorically exclude some entities from the purview of an administrative authority. However, it excludes some administrative decisions such as those regarding selection or tenure of public servants, those based solely on inspection tests or

by courts of law, and any decision establishing rules or regulations.
The draft administrative procedure of the federal government too defines administrative agency taking the ability to render an administrative decision as criteria=copy paste....
Classification **of Administrative Agencies**
Agencies directly accountable

Those accountable to parliament=independent agencies.

In Ethiopia, executive agencies are usually accountable to a certain ministry, or council of ministries, or the prime minister.

Accountability,,,,

The executive impacts the work of agencies in so many ways. The Prime minister may freely appoint

However, the appointment of ministers and other commissioners is subject the approval of the house of people's representatives.

Can you mention at least two executive agencies having the name of a ministry, authority, agency and commission?

Independent agencies are accountable to parliament... even though they need the act of the

existence, they’r predetermined by the constitution,,,,,creation is not dependent on the will of the parliament.

Normally, the parliament retains exclusive right to bring a certain executive agency into existence, which includes the power to modify, increase, or decrease the power and function of that agency. By the same token it is up

Examples????

The Federal Ombudsman??

The Human Right Commission??

The National Election Board

The Auditor General

The Population and Census Commission

Formation of Administrative Agencies

Mode of Creating an Agency

Agencies are creatures of the legislature. created in two ways:

Neither the prime minister, nor the council of ministers has the power to create an administrative agency.

Reasons for the Creation of Agencies

A. Providing Specificity

B. Providing Protection

C. Providing Services

Structure and Organization

Purpose of Administrative

Agencies are often created to replace competition with regulation.

To control excess profit

To compensate for externalities

To compensate for inadequate info

To compensate for unequal bargaining of powers

B) Government exactions

D) Provision of goods and services

Powers of Administrative Agencies:

Source of Power of Administrative Agencies?

Meaning and Significance of the Enabling (Establishment) Act=beyond?

Classification of Powers of Administrative Agencies?

- They blend together three powers of government: executive, legislative and judicial powers.
- Administrative agency rules and regulations often have the force of law.
- This tendency has led many critics to charge that the creation of agencies circumvents the constitutional

Critics: administrative agencies constitute an unconstitutional and bureaucratic branch of government with powers that exceed those of the three recognized branches

Supporters of adm agencies: agencies are able to adjudicate relatively minor or exceedingly complex disputes more quickly or more flexibly than the state and

Critics: swiftness and ease at the expense of fairness are not virtues.

1. Legislative (Rule Making) Power

2. Judicial (Decision – Making) Power

Enforcement of law demands imposition of sanction and taking administrative measures and

Agencies' judicial powers: they are in effect applying the facts to the law just like a court.

Consequently, they determine rights, entitlements and benefits of individuals. The decisions may greatly affect individual's rights and benefits, for example, revocation of license, deportation of aliens, determining whether an applicant is entitled to pension,

for non- compliance, dismissal of a civil servant, dismissal of a university student, etc ...

When an agency exercises its judicial function it is engaged in adjudication, a process very much similar with a trial court. While adjudicating a case, it will conduct an oral hearing with direct and cross examination, administers oath, decides on the admissibility

company to produce evidence.
Then by weighting evidences of the applicant and respondent applies and interpreters the law to give a reasoned decision.
To ensure impartiality and fairness the person deciding the matter should be relatively neutral from agency influence

3. Administrative Power

UNIT FOUR: RULE-MAKING (QUASI-LEGISLATIVE) POWER OF ADMINISTRATIVE AGENCIES

Delegated legislation is legislation made by a body or person to whom the parliament has delegated its power to legislate.

A binding law issued by a body subordinate to the parliament...rg=CM, directives=adm.agen.... Detail...

As legislation should preferably be made by the parliament, and not delegated to non-parliamentary entities, delegated legislation is regarded, at best, a necessary evil that is only tolerated because of the growth in functions and requirements of a modern government.

The Nature and Definition of Delegated Legislation

Q. How do you distinguish adjudicative/administrative actions from quasi-legislative actions?

legislative power is the power to lay down the law for people in general, whereas administrative power is the power to apply the law to them in some particular situation.

A process of performing particular acts or of making decisions involving the application of

general rule of conduct without reference to particular cases and usually for future operation

The Need for Delegated Legislation

Q. Can you identify impacts of retaining all legislative power by the lawmaker (parliament)?

Practical reasons that justify delegation of legislative power

A) Limitation on Parliamentary Time

B) Technicality Subject of Matter

C) Flexibility

D) Emergency

Theoretical Objections against Delegated Legislation

Non-delegability of power: holds that power delegated to one branch may not be re-delegated to another.

It is a cardinal principle of representative government that the legislature cannot dele....

A delegatee can not further delegate his power

It implies that, since the people delegated legislative power to the lawmaker, executive power to the prime minister and cabinet and judicial power to the courts, none of the institutions may re-delegate its power to any other authority.

The doctrine of separation of powers.....

- Delegation of some part of legislative power has become a compulsive necessity due to the complexities of modern legislation.
- Essential legislative functions cannot be delegated by the legislature.
- After the legislature has exercised its essential legislative functions, it can delegate non-essentials, however, numerous

- The delegated legislation must be consistent with the parent act and must not violate legislative policy and guidelines.
- Delegatee cannot have more legislative powers than that of the delegator.

Form and Classification of Administrative Rule Making

- **Regulation**
- **Directive**

They usually contain enacting (source of authority) clauses and that they are

Rule Making Procedure

formal and informal

A rule-making procedure is considered formal when the proceeding is required by another statute to be "on the record after opportunity for an agency hearing.“

informal rule making procedure=e.g public participation through d/t ways.....

An agency shall afford interested persons an opportunity to participate in the rule-making through submission of written data, views, or arguments

Each agency is affirmatively required to consider "all relevant matter presented“

UNIT FIVE: JUDICIAL POWER OF ADMINISTRATIVE AGENCIES

The Meaning and Nature of Administrative Adjudication

1.Conclusiveness..... binding effect on the parties in dispute without any need for confirmation by any other organ.

"...the broad exercising of power which are of a mere advisory, deliberative, investigatory, or

confirmed by another body, involve only the making of a preliminary decision and will not normally be held to be acting in a judicial capacity....”

However, as conclusiveness of the agency’s decision is only one test & not the only test, it should not be confused with other binding acts of an agency passed in its administrative or legislative

But unlike quasi-judicial determination which would focus on the resolution of factual disputes concerning specific parties, rules & regulations are general in their application.

2.availability of some sort of procedural attributes

formal, which is more or less similar to the ordinary court procedures, or informal, which is a simplified procedure that provides only the minimal procedural safeguards

3.presence or absence of interpretation and application of legal rules.

Forms of Administrative Adjudication

Informal Adjudication=the informality of the process of administrative adjudication is among the justifications behind the delegation of judicial power to administrative

notice and hearing.... hearing in the majority of cases does not involve oral hearing, but written submission of opinions, arguments, data, and so on.

Formal Adjudication

involves an almost full-blown trial type hearing

Tribunals and the Tribunal System

Meaning and Nature of Tribunals

As suggested by Garner and Jones tribunals have the following five hallmarks:

- Independence from administration;
- Capacity to reach a binding decision;
- Decision taken by a panel of members (as opposed to a single judge);

Jurisdictional Issues

Tribunals having general jurisdiction (general tribunals) and tribunals having special jurisdiction (special tribunals)……

The French model is a typical example of the tribunals having general jurisdiction on administrative matters (Both adm adj and review of decisions of adm agencies (JR……)

In France, judicial control of the administration is entrusted to adm judges who sit in administrative courts. These courts form a three-tier hierarchy headed by the Conseil d'Etat (Council of State) in Paris, below which are the regional intermediary Courts Administratives d'Appel (Administrative Courts of Appeal) and the Tribunaux Administratifs

These three-tier administrative courts have general judicial jurisdiction on administrative matters falling under their respective material and/or local jurisdictions.

All administrative disputes are finally resolved within the system of the three-tier administrative court of general jurisdiction

There is neither possibility of lodging appeal nor possibility for invoking judicial review against the administrative decision before regular courts in France.

Common law=many adm. Tribunals of special JURI=finally JR BY ord...Courts...

The Tribunal des Conflits, held that the injury arose out of the activities of a *service public*

According to this criterion, ‘a public service is any activity of a public authority aimed at satisfying a public need’.

This definition stresses that for a public service two elements must both be presented: the activity of a public authority, and satisfying a public need.

The 1st element in the concept of *service public*, the activity in

in recent decades.

In particular, it is necessary to distinguish between the public authority's role as creator or director of the public service from its role as provider.

The Advantages and Disadvantages of Administrative Adjudication

cheap, accessible, informal, speedy and specialized justice.

- Lack of legal expertise: The argument here is that, as many of the members of the panel are selected from different walks of life with no or little legal background, they may lack the requisite legal expertise to adjudicate disputes.
- Partiality:
- Violation of the principle of separation of power

The organizational structure of administrative tribunals is different from jurisdiction to jurisdiction. In some countries like France, there are tribunals of general jurisdiction that are hierarchically organized in a way that corresponds to the three-tier ordinary court structure. But many other countries appear to form tribunals of special jurisdiction here and there to

Ethiopia??? FDRE CON??

Inquiries

In this complex technological and democratic world, in addition to tribunals that investigate facts and apply laws to resolve specific administrative disputes, the formation of inquires that conduct fact and/or legal findings and provide recommendation to ministers or other agency heads to take policy considered action

UNIT SIX CONTROLING MECHANISAMS OF GOVERNMENTAL POWERS

The Need for Controlling the Powers of Government

The purpose of the principle of separation of power is to prevent any single branch of the government from becoming too powerful, providing a series of checks and balances; it is to curve despotism and arbitrariness and

As **James Madison** noted in the Federalist **No. 47: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."**

However, the doctrine of separation of state power among

Controlling Mechanisms

- Internal administrative review by superior officials;
- Parliamentary control; Q. How?
- Political control....EXECUTIVE....;
- External administrative review by tribunals;
- External scrutiny and recommendations by Ombudsmen and other watchdog institutions and

What is Maladministration?

- ✓ **Rudeness (though that is a matter of degree)**
- ✓ **Unwillingness to treat the complainant as a person having rights**
- ✓ **Refusal to answer reasonable questions**
- ✓ **Neglecting to inform a complainant on request of his or her rights of entitlement**
- ✓ **Knowingly giving advice which**

- ✓ **Offering no redress or manifestly…….**
- ✓ **disproportionate redress**
- ✓ **Showing bias whether because of color, sex or any other grounds**
- ✓ **Omission to notify those who thereby lose a right of appeal**
- ✓ **Refusal to inform adequately of the right to appeal**
- ✓ **Faulty procedures**
- ✓ **Failure by management to monitor compliance with**

- ✓ **Cavalier disregard of guidance, which is intended to be followed in the interest of equitable treatment of those who use a service**
- ✓ **Partiality and**
- ✓ **Failure to mitigate the effects of rigid adherence to**

UNIT SEVEN: JUDICAL REVIEW

The Meaning and Nature of Judicial Review=The term 'judicial review' has different meaning and scope in different jurisdictions. For example, in the **United States**, judicial review refers to the power of a court to review **a)** the actions of public sector bodies in terms of their lawfulness, or **b)** to review the

But in the United Kingdom's context, the term judicial review refers to the power of the judiciary to supervise the activities of governmental bodies on the basis of rules and principles of public law that define the grounds of judicial review.

Judicial review Vs. Merits Review

the purpose of merits review

If not, the reviewing body can overrule such decision and substitute it with a new decision it deems ‘correct and preferable’

The issue in merits review is to test whether decision complained is ‘right or wrong’.

The process of merits review will typically involve a review of all the facts that support a decision.

Merits review is said to be the sole

Whereas, judicial review is a technical review; while reviewing an agency's decision, the court is concerned with the legality or illegality of the decision under review.

If the court finds out the decision is legal, it will not do anything on it even if the decision deems incorrect in terms of preference.

If the court finds out the decision

vires, it can set it aside and order the concerned agency to reconsider the decision based on the directions of the court

Does not substitute its own new decision in place of an agency's invalidated decision on account of illegality....

The Bases of the Power of Courts to Supervise Administrative Action

power to determine whether an action is lawful or not.

According to these authorities, since the basis of judicial review is common law, no statutory authority is necessary: the court is simply performing its ordinary functions in order to enforce the law

But the practices in some other countries indicate that statutes

In Ethiopia?

- **Coming back to the status of judicial review in Ethiopia, there is no clearly defined jurisprudence on the evolution and status of judicial review.**
- **Judicial review of administrative decision dwells in the fundamental principle of separation of power among the three conventional organs of the state.**
- **Judicial review could be meaningful only when judicial power is**

Grounds of Judicial Review

- A breach of the rules of natural justice (common in Australia..);
- A failure to observe the procedures that were required by law to be observed in connection with the making of the decision;
- The person who purported to make the decision did not have power to make the decision
- The decision was not authorized by law

An exercise of power may be improper if the relevant conduct involves:

- Taking an irrelevant consideration into account
- Failing to take a relevant consideration into account in the exercise of a power;
- An exercise of a power for a purpose other than a purpose for which the power is

- An error of law;
- The decision was induced or affected by fraud;
- There was no evidence or other material to justify the making of the decision

Simple (Narrow) Ultra Vires

1. **Substantive Ultra Vires (Beyond power**
2. **Procedural Ultra Vires=**though the decision maker passes a decision within the scope of the

4. Error of Law

5. Failure to Discharge Statutory Duty

Agency's failure to discharge a statutory duty towards the designated beneficiaries can also give rise to judicial review. For example, in the area of pension and social security, where the concerned organ of the government persistently fails to provide the benefit to the

Broad Ultra Vires (Abuse of power)

1. Unreasonableness

discretionary power should be controlled: uncontrolled (absolute) discretion is an evil to be avoided in most contexts.

2.Proportionality

Use of power for an improper purpose

Forming decision on basis of

3. Bad Faith

The unreasonableness or irrationality of a decision may result from a decision that is induced by bad faith on the part of the decision maker though it might be d/ct to establish bad faith.

Limitations on Judicial Review

- **Standing**
- **Justiciability**
- ***Exhaustion* and Ripeness**

UNIT EIGHT: REMEDIES AND GOVERMENT (ADMINISTRATIVE) LIABILITY

----Remedies

For technical and historical reasons, remedies are broadly classified into public law remedies and private law remedies.

Public law remedies also known as prerogative orders are certiorari (a quashing order), prohibition (prohibiting order),

Private law remedies include injunction, declaration and damages.

Public Law Remedies

Certiorari

The writ of certiorari, also referred to as quashing order, is a procedure through which the reviewing court investigates the legality of an agency's decision complained of, and will quash or

Prohibition

Performs the function of ordering a body amenable to it to refrain from illegal action. It is an order issued by a higher court to prevent an inferior tribunal or administrative authority from exceeding or from continuing to exceed its authority, or from behaving ultra virally while dealing on matters that affect the interest of the complainant.

Mandamus

Mandamus (mandatory order) is the other important public law remedy that deals with agency inaction.

Designed to enforce the performance by governmental bodies of their duties

Quo Warranto

For challenging the qualification of a member of a local authority,

Habeas Corpus

The writ (Crt.order) of habeas corpus (produce the body) is used to obtain the release of someone who has been unlawfully detained, e.g., wrongfully arrested.

Private (Ordinary) Law Remedies

Injunction

Declaration=This is simply asking the court to make a ruling

Damages belongs to the private law remedies

In addition to, or apart from applying for either of the public law remedies such as certiorari, prohibition, mandamus, or the private remedy- injunction, where the applicant suffers a compensable injury due to administrative wrong, s/he may also claim damages in the form of

Thus, there is a possibility for suing the state, its administrative units, and servants for damages based on extra contractual wrongs or for breaches of contractual obligations

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