Chapter III
Administrative Agencies and Subjects of Administrative Law

3.1 Nature, Meaning, and Classification of Administrative Agencies

Nature of agencies

- All functions of modern government involve administrative agency
- The 20th century has witnessed an unprecedented proliferation of agencies with varying sizes, structures, functions, and powers charged with the task of day-to-day governing
- Their existence and growth have been the typical characteristics of the modern administrative state (welfare state)
- The vast increase of agencies in number and power has been observed by a U.S. Supreme ***Court judge who makes the following remarks:***

  "The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values today are affected by their decisions than by those of all the courts . . . They have become a veritable fourth branch of government."

The Meaning of Administrative Agency

- Defining an administrative agency is not an easy task
- Agencies come in a huge array of sizes and shapes
- ***Agencies*** may be defined as ***governmental entities, although they affect the rights and duties of persons; they are neither courts nor legislatures***

- For one thing it is true that agencies are not located within the legislative or judicial organ of the government. Although they are within the executive branch, most of them are not mainly accountable to the executive branch

- 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 an agency
  - ✓ ***Black's Law Dictionary defines agency as a governmental body with the authority to implement and administer particular legislation***

- Generally, it can be said that the authority or power of the entity is a common denominator for a precise definition of an agency

- A more detailed definition of an ***administrative agency*** is given in the 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 or international agreement, the division of the military and naval affairs to the extent it exercises its responsibility for military and naval affairs, the division of state police, the identification and intelligence units of the division of criminal justice services, the state insurance fund, the unemployment insurance appeals board."

- You can see from the above definition that a very long description is used to avoid the difficulty of identifying the exact location and scope of an administrative agency.

- 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

- **Generally speaking, we may identify two important elements in distinguishing whether a certain government entity is an administrative agency or not:**
  - ***Firstly***, the ***nomenclature*** may be indicative of the status of an entity as an agency,
    - ✓ Most agencies have names like ***department, authority, commission, bureau, board,*** etc;
  - ***Secondly,*** the government entity should be empowered to ***legislate (through delegation) or adjudicate individual cases, in addition to its merely executive functions***

- ***Generally, an entity is an agency if it has the authority to take a binding action***

- Even though the above two elements are fulfilled, it is also important to check whether there is ***any express exclusion from the above definition***

- The Federal Administrative Procedure Proclamation of Ethiopia (Proclamation No. 1183/2020) defines the term ***Administrative Agency*** as follows:

> **"Administrative Agency"** means an Executive Organ of the Federal Democratic Republic of Ethiopia duly established by law and includes the Executive Organs of City Administrations accountable to the Federal Government (*Article 2(1), of Procol. No. 1183/2020*)

- ***The following parameters should be used to determine whether a certain government entity is an agency or not in the following manner:***

  - The ***nomenclature*** used to describe the entity is ministry, authority, agency, bureau, office, commission, board, etc., or any other similar terms,

  - That it has ***legislative and adjudicative*** power granted by the legislature,

  - That the head of the agency is ***appointed by the executive or the House of People's Representatives***

Classification of Administrative Agencies

- Agencies are created with varying sizes, structures, functions, and powers
- Agencies are categorized into two based on their modes of accountabilities:
  - ***a) Executive Agencies***: those *agencies directly accountable to the executive branch*
  - ***b) Independent agencies:*** those agencies *accountable to parliament*
- In Ethiopia, executive agencies are usually accountable to a certain ministry, or Council of Ministers, or the Prime Minister
- The constitution of 1995 clearly imposes a duty to establish independent agencies:
  - ✓ Independent Agencies under the FDRE Constitution are:
    - The Federal Ombudsman

❑Reasons for the Creation of Agencies

- Agencies are created and assigned specific tasks by the legislature
- They carry out the tasks making decisions of various sorts and supervising the procedure by which the decisions are carried out
- Almost every governmental agency has been created because of a recognized problem in society, and from the belief that an agency may be able to help in solving the problems
- The following are the main reasons for the creation of the administrative agencies:

a)Providing Specificity

- ✓ For instance, the House of People's Representatives cannot ***enact a tax law*** that covers every possible issue that might arise
- ✓ Therefore, ***it delegates to the council of ministers*** and Ministry of Revenue the power to make rules and regulations to fill in the gaps, and create the necessary detail to make tax laws workable
- ✓ It is also true that ***courts cannot handle all disputes and controversies*** that may arise
- ✓ For this reason; ***labour relation boards***, ***tax appeal commission***, etc works like courts

b)Providing Protection

- Many government agencies exist to protect the public, especially from the business community
- For instance;
  - ✓ The ***Environmental Protection Agency*** has been created to regulate environmental pollution
  - ✓ ***Ministry of Education***; to ensure quality of education
  - ✓ ***Ministry of Trade and Industry,*** regulate to protect consumers and the public at large

c)Providing Services

- Many agencies are created simply out of necessity
- If we are to have roads, the ***Ethiopian Roads Authority*** is necessary
- ***Social security programs*** necessitate that there should be a federal agency to determine eligibility and pay benefits

❑ Purpose of Administrative Agencies

- The function of administrative agencies is closely related to the reasons for their creation
- A certain administrative agency comes into existence when the legislator creates an agency for either of those reasons
- Accordingly, the following may be summarized as purposes of the administrative agencies:

a) Regulation

- ✓*To control monopoly power*
- ✓*To control excess profit*
- ✓*To compensate for externalities (Spillover)*
  - *Environmental Pollution-caused by industries*
- ✓*To compensate for inadequate information*
- ✓*To compensate for unequal bargaining of powers*
  - *e.g employee and employer*

b) Government exactions

- ✓ In addition to regulation, administrative agencies may also engage in government exactions
- ✓ Government exactions are the traditional powers and responsibilities of agencies
  - Such functions include collection of tax and military conscription

c) Disbursement of money or other commodities

- ✓ This purpose of administrative agencies is also the prominent one that characterizes the welfare state

- ✓ In this regard, through the social security program and other government systems of insurance or compensation, agencies disburse public money as the payment of pensions for veterans or assistance for the aged, the disabled, the unemployed, and generally the needy

d)Provision of goods and services

- ✓Nowadays, the government is in charge of building and maintaining roads, highways, and dams, the provision of police force and other protective services
- ✓Funding public education and health services may also be mentioned as additional examples

❑Powers of Administrative Agencies

- ***Nature and Source of Power of Administrative Agencies:***
  - ✓Delegation- legislature and courts delegate some their powers
  - ✓Enabling (Establishment) Act

❑Classification of Powers of Administrative Agencies

- ✓*Legislative (Rule Making) Power*
- ✓*Judicial (Decision – Making) Power*
- ✓*Administrative Power*

Chapter IV
Rule-Making Powers of Administrative Agencies

- ***Objectives of this Chapter include:***
  - *Meaning and justification for delegated legislation*
  - *Scope of delegated legislation*
  - *Form and classification of rule-making*
  - *Rulemaking procedures*
  - *Controlling mechanisms*
  - *General overview of rule-making procedures in Ethiopia*
  - *Rulemaking under the Administrative Procedure Proclamation no.1183/2012*

4.1 The Nature and Definition of Delegated Legislation

- '***Delegated legislation***' is legislation made by a body or person to whom the parliament has delegated its power to legislate
- It refers to a binding law issued by a body subordinate to the parliament
- In Ethiopia, delegated legislation refers to ***directives and regulations*** issued by administrative agencies and the Council of Ministers, respectively
- Generally, delegation refers to the act of entrusting another authority or empowering another to act as an agent or representative

- ***The Need for Delegated Legislation***
  - ✓ Clearly parliament does not have the time or resources to enact every single piece of legislation
  - ✓ Generally, reasons for the need for delegated legislation:
    - *a) Limitation on Parliamentary Time –see Art. 58(2)*
    - *b) Technicality of Subject Matter*
    - *c) Flexibility*
    - *d) Emergency*

❑Theoretical Objections against Delegated Legislation

- There are two theories against the delegation of powers:

a) The doctrine of non-delegability of power

- ✓ This holds that power delegated to one branch may not be redelegated to another
- ✓ Hence, the legislature cannot delegate the power to make laws to any other body or authority
- ✓ One of the most commonly cited sources of the rule of nondelegation is the common law maxim:

  "***delegates potestas non potest delegari***" which means that a delegate cannot further delegate his power
- ✓ Simply, the maxim indicates that power that has been delegated originally may not be redelegated

b) the doctrine of separation of powers

- ✓ Another objection to delegation of power is based on the doctrine of separation of powers
- ✓ The powers entrusted to one department should be exercised exclusively by that department without encroaching on the power of another

❑Scope of delegated legislation

- Delegation of some part of legislative powers 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 and significant they may be
- 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

- ➢ Delegated legislation may assume different forms
- ➢ In our country there are mainly two types of delegated legislation; namely, regulation and directive;

a) Regulation

- ✓ Under Art 77(13) of the F.D.R.E. constitution, the Council of Ministers has the power to issue regulations by a power vested to it by the House of People's Representatives
- ✓ The power to issue regulations is found in the specific legislation

b) Directive

- ✓ Each administrative agency issues these types of delegated legislation
- ✓ Agencies issue these subordinate legislations to implement regulations and other primary legislation

4.2 Rule Making Procedure

- An administrative agency is expected to follow some minimum rule-making procedures
- Such procedure is usually provided in a comprehensive manner applicable to every agency at all time
  - ✓ For instance, time (e.g. the American Procedure Act.), the Federal Administrative Procedure Proclamation of Ethiopia

- **Some examples of rule-making procedures in different countries**:
- ***Rule-Making Procedure in England***
  - ✓ Prior Consultation
  - ✓ Laying procedure (reviewed/checked by the parliament)
  - ✓ Negative Resolution Procedure (after being reviewed by the parliament; it may be annulled)
  - ✓ Positive Laying Procedure (after laid before the Parliament; it may be approved/accepted)
  - ✓ Publication

❑ *Rule Making Procedure in U.S.*

- ✓ The Administrative Procedure Act (APA) enacted in 1946 and recodified in 1966, is the procedural roadmap for the federal executive branch
- ✓ Every executive branch, department, and agency in the U.S. must follow the APA's minimum adjudication and rule-making procedures

❑ *Rule-making Procedure in Ethiopia*

➢ See the Federal Administrative Procedure Proclamation No.1183/2020 [in Ethiopia

- ✓ *Article 8 – Noticing*
- ✓ *Article 12- Time and manner of ratifying directive*
- ✓ *Article 10- Public Hearing*
- ✓ *Article 11- Exemptions from Procedures*
- ✓ *Article 16- Filing of directives (Registration)*
- ✓ *Article 14-Explanatory Statement*

Thanks!