

ADMINISTRATIVE LAW

Delegated Legislation and Principle of Natural Justice.

Course Outcomes

Outcome no.	Course Outcome After completion of the course the students will be able to:	Blooms Taxonomy Level
CO1	Define Evolution, Nature and Scope of Administrative law	1
CO2	Classify quasi-judicial and quasi legislature powers of administration.	2
CO3	Summarize various types of Delegated legislations, their constitution and functions.	2
CO4	Differentiate with changing dimension of administrative action in various countries.	4
CO5	Illustrate quasi-judicial administration, judicial administration, tortious liabilities and contractual liabilities.	3

Syllabus--

- Syllabus

Definition

- Administrative law deals with the powers and functions of the administrative authorities , the manner in which the powers are to be exercised and remedies which are available to the aggrieved persons when those powers are abused by these authorities.

Jain and Jain – Definition of Administrative Law

- Administrative Law deals with 4 aspects:
- Composition and the powers of administrative authorities.
- Fixes the limits of the powers of these authorities.
- Prescribes the procedure to be followed by these authorities in exercising such powers.
- Controls these administrative authorities through judicial and other means.

Reasons for the growth of Administrative Law

- Change in the philosophy as to the role played by the state. The traditional and minimum function of a state is defense and administration of justice. Now it is being extended to Welfare State. So there is a demand by the people that the government must solve their problems rather than merely define their rights. Thus burden on each of the organs of the government increased .

Inadequate judicial system

- ❑ Judiciary was slow , costly, un expert , complex and formalistic.
- ❑ Overburdening of judicial system- speedy disposal was not possible- resulted in strikes and lock out in disputes between employers and employees.
- ❑ As a result industrial tribunals and labor courts were established – they possessed techniques and expertise to handle these complex problems.
- ❑ Tribunals are not courts but executive authorities having judicial powers.

Inadequate legislative process

- The legislative process was also inadequate. Legislature had no time and technique to deal with all the detailed rules and procedure.
- Detailed procedure made by the legislature were found to be defective and inadequate.
- All these resulted in the delegation of some legislative powers to the administrative authorities.
- When rule making is done by the executive branch it is known as delegated legislation.

Scope for experiments

- There is scope for experiments in administrative process
- A rule can be made , tried for some time and if it is found defective it can be altered or modified within a short period.
- legislation is rigid and administrative rule making is flexible.

Preventive measures

- Administrative authorities can take preventive measures- licensing , rate fixing etc.
- They can also take effective measures for enforcement of preventive measures like, suspension, revocation , cancellation of licenses etc.

Delegated Legislation

- Separation of powers- legislature, executive and judiciary.
- In the modern state legislature after formulating general policies empowers the executive to make rules to give details for varied reasons.
- When executive makes rules in exercise of the power conferred to them, it is known as delegated legislation.
- Delegated legislation is also known as subordinate legislation.

Reasons for the growth of Delegated Legislation

- Pressure upon parliamentary time-
- As a result of the expanding horizons of state activity the bulk of the legislation is so great that it is not possible for the legislature to devote sufficient time to discuss all the matters in detail.
- Legislature , therefore formulates the general policies and empowers the executive to fill in details by issuing necessary rules , regulations, by –laws etc.

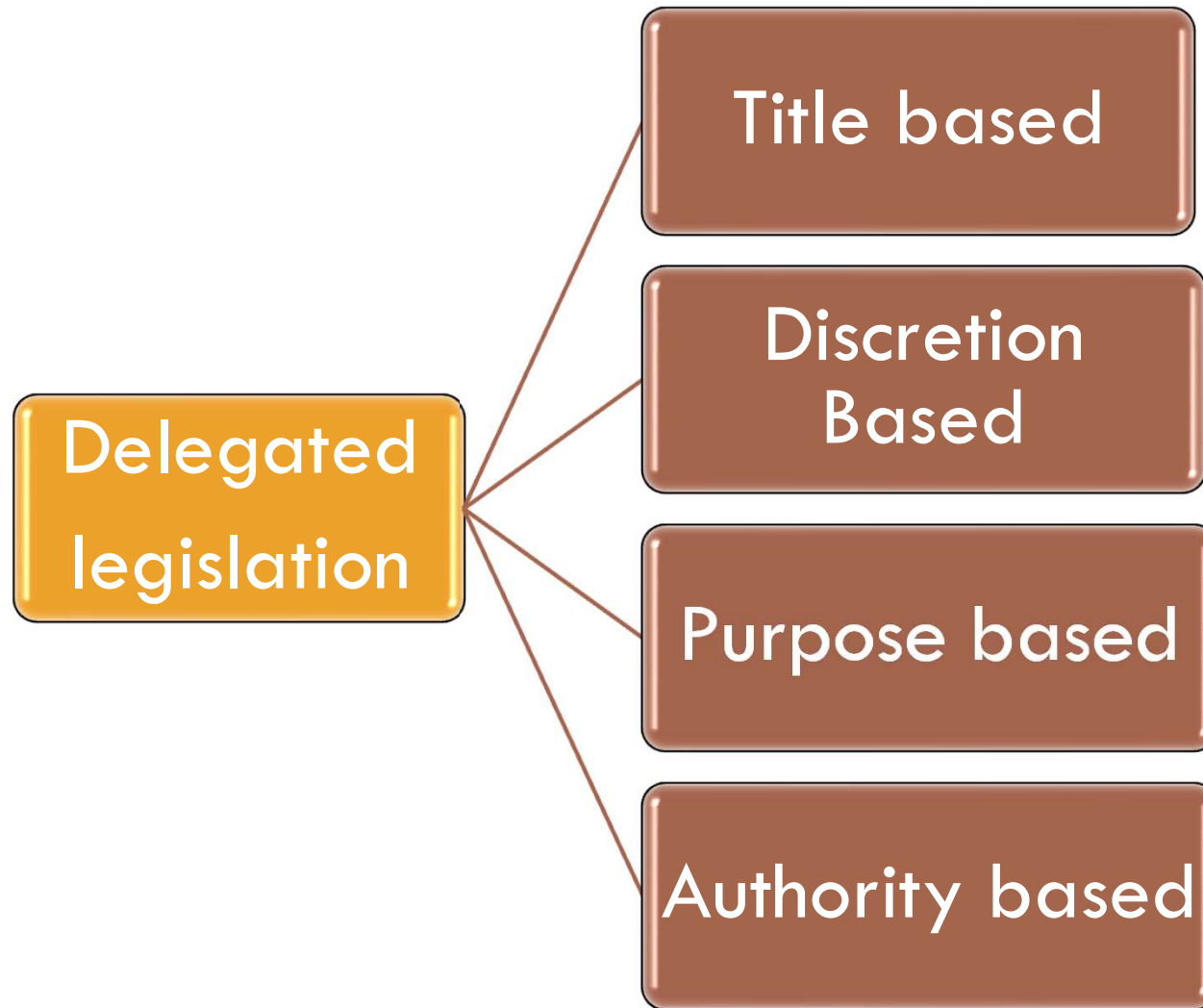
Technicality

- The subject matter of modern legislation is very often a technical nature. That resulted in the conferring of powers to the experts to deal with the technical problems. Eg. Gas, Atomic energy, drugs, electricity etc.

Flexibility

- Legislative process is slow and technical . At the time of passing any legislative enactment, it is impossible to foresee all the contingencies which may arise in future.

Forms of delegated legislations



Permissible Delegations

- The legislature provides the gun and prescribes the target , but leaves to the executive the task of pressing the trigger.
- The legislature formulates the policy and delegates to the executive the task of supplying the details. This type of legislation is known as Skelton legislation ,because the legislature makes the law in the form of Skelton and it is the executive which provides flesh and blood to this Skelton.

Kunj Behari Lal Butail v. State of H.P

- The S.C held that the essential legislative functions , consisting of determination of
- or choosing of legislative policy and
- formally enacting the policy into binding rules of conduct cannot be delegated by the legislature.
- Only ancillary or subordinate legislative functions can be delegated.

Power of inclusion and exclusion

- Some times the legislature makes the law , but the power to bring the individuals , institutions, or commodities within the purview of the statute would be given to the government .
- The Act contains the criteria , standard or principles for the guidance of the government. Other wise the delegation is liable to be struck down.

The power to modify the statute

- When the legislature passes an Act, it may not foresee all the difficulties that may arise in implementing it.
- The power is there for given to the executive to modify a statute to remove difficulties which may arise while implementing the Act.

Impermissible Delegation

- Power to repeal a law is essentially a legislative function , and there fore, delegation of such power to the executive is excessive delegation and is ultra vires .
- Subject to the provisions of the constitution , the parliament and the state legislature can enact law prospectively or retrospectively. But the power of giving an Act retrospective effect cannot be delegated.

Impermissible Delegation.....

- Article 265 states that no tax shall be levied or collected except by authority of law .
- Here law means law passed by the competent legislature and not made by the executive authority.
- However power can be conferred on the government to exempt a particular commodity from the levy of the tax.
- Though the legislature is competent to delegate legislative power , it may not be unguided or wide. The legislature is required to lay down the criteria or standard so as to enable the delegate to act within the framework of the statute.

Conditional Legislation

- In conditional legislation, the legislature makes the law . It is full and complete. No legislative function is delegated to the executive authority.
- The Act is not brought into force , it is left to the executive to bring the Act into force ,on the fulfillment of certain contingencies and conditions .

Delegatus non potest delegare

- A delegate cannot further delegate.
- When a statute confers some legislative powers on an executive authority and if the latter further delegate that power to another agency then it is sub- delegation.
- Sub-delegation is invalid if it is not specifically mentioned in the parent Act.

The principle of Natural Justice

- The administrative authorities entrusted with the quasi-judicial functions are required to act with fairness and in a just and equitable manner.
- They should follow the principle of Natural Justice.
- There are generally three principles which are considered as the integral part of the principle of Natural Justice.

Natural justice....

- Rule against bias
- A udi alterum partem
- Reasoned Decision or Speaking Orders
- Rule against bias
- The administrative authority who exercise quasi – judicial function should be impartial. He should not have any interest in the subject matter or in the parties to the dispute.

Rule against bias

- The principle of rule against bias is based on two principles
- No man shall be a judge on his own cause .
- (nemo debet esse iudex in propria causa)
- Justice should not only be done , but manifestly and undoubtedly be seem to be done

The rule against bias disqualifies any authority from deciding any dispute if he has any interest in the subject matter or in the parties to the dispute.

Bias is of three types

- Pecuniary bias- the administrative authority exercising quasi judicial function may not have any pecuniary benefit from the subject matter of the dispute. If there is any pecuniary interest he is acting against the principle of natural justice.
- In *Mohapatra & Co. State of Orissa* (1984) 4 SCC 103
- a committee was constituted by the government for the selection of some books for educational institutions. some of the members of the committee were authors of the books. The committee selected the books of the author members. The court held that there was possibility of pecuniary bias and the selection was set aside.

Rule against Bias

- Personal bias
- Personal bias may arise from friendship, relationship, enmity, personal grudge, or professional rivalry.
- A person who is a relative , friend, or enemy of the disputing parties is disqualified from acting as a judge.
- Eg. Being a candidate for selection as well as a member of the selection board.

Rule against bias.....

- Bias as to the subject matter (official bias)
- If the authority who has power to decide a dispute has a general interest in the subject matter of the dispute he is disqualified from acting as a judge.

Audi alterum partem (Here the other side)

- The second essential condition of the principle of natural justice is that the person against whom an action is proposed to be taken should be given a reasonable opportunity to defend himself.
- no man should be condemned unheard or both sides should be heard before passing an order.

Audi alterum partem...

- ❑ Ingredients of fair hearing are:
- ❑ Notice
- ❑ Opportunity of Hearing.
- ❑ Notice
- ❑ Before an action is taken the affected party must be given a notice to show cause against the proposed action and seek his explanation.
- ❑ The notice should contain the time , place, and the nature of hearing.
- ❑ the proposed action and the allegations against the person should be made clear in the notice.

Audi alterum partem

- Opportunity of Hearing
- The authority should give full opportunity to the affected party to produce all the relevant evidence in support of his case.
- The authority must disclose all evidence or materials placed before it in the course of proceedings.
- Any material or evidence adduced by one party cannot be utilized against the other party unless the opportunity to explain , criticize, or rebut the evidence is given to the other party .

Speaking orders or Reasoned decision

- Speaking order means an order which contains the reasons for the decisions.
- Giving reasons in support of an order is considered to be a third principle of natural justice.
- the main advantages of reasoned decision are-
- the party aggrieved will get an opportunity to raise a contention before the appellate authority or revisional court that the reasons which persuaded the authority to reject the case is erroneous .
- It minimize chances of arbitrariness and ensures fairness in the decision making process.
- It introduces clarity in the decisions .