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ADMINISTRATION LAW AS A TOOL AGAINST ILLEGAL DETENTION

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ABSTRACT

Administrative law is a branch of law that regulates the activities and functions of administrative agencies. One of the critical areas in which administrative law plays a crucial role is in preventing and remedying illegal detention. The right to liberty is a fundamental human right enshrined in various international and domestic laws. However, in many countries, individuals are frequently subjected to arbitrary detention or detention without due process. Administrative law ensures that administrative agencies, such as immigration authorities or law enforcement agencies, do not abuse their power and unlawfully detain individuals. Through the judicial review, administrative law allows individuals to challenge the legality of their detention and seek redress for any violations of their rights. Additionally, administrative law provides for various mechanisms, such as Habeas Corpus petitions and detention review boards, that can be used to challenge and remedy unlawful detention. Thus, administrative law serves as a critical tool for protecting the fundamental rights of individuals and ensuring that administrative agencies operate within the bounds of the law.

Keywords: - Habeas Corpus, Illegal Detention, status quo, Administrative tool

I. Introduction

Administrative law is a branch of law that deals with the actions and decisions of administrative agencies and government bodies. One area where administrative law plays an important role is in protecting individuals from illegal detention. Illegal detention occurs when the government holds an individual in custody without lawful authority.

Administrative law provides a framework for individuals to question the legitimacy of their imprisonment by government officials. "For example, administrative law provides the rights to the individual and also ensures that no one is hurt by any act of government officials using power beyond their limit it also provides to right to know the reason for their detention and that they have the right to challenge the legality of their detention before an independent administrative tribunal or court"[13].

Administrative law can also be used to hold government officials accountable for any abuse of power or violation of legal procedures during the detention process. For example, administrative law may require that government officials provide regular updates to detainees and their families and that they provide adequate access to legal representation.

Administrative law can play an important role in protecting individuals against illegal detention by ensuring that the procedures and processes used by government agencies and officials are fair and transparent.

For example, administrative law can require that individuals who are detained be provided with adequate notice of the reasons for their detention, as well as an opportunity to be heard and to contest the legality of their detention. Administrative law can also require that

[13] Dalia Fuleihan, The Detention of Asylum-Seekers in Bulgaria, Boston University School of Law International Human Rights Clinic (April 04, 2023, 2:34 PM), https://refugeesolidaritynetwork.org/wp-content/uploads/2018/12/BU-RSN-Bulgaria-Report-final-final-2018.pdf.

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detention be subject to periodic review to ensure that it remains lawful and necessary.

In addition, administrative law can provide for remedies such as habeas corpus, which allows individuals who are unlawfully detained to seek release from custody. Administrative law can also provide for damages or other forms of relief in cases where individuals have been wrongfully detained.

Overall, administrative law can be a powerful tool in protecting individuals against illegal detention by ensuring that government agencies and officials are held accountable for their actions and that individuals are afforded the protections and rights to which they are entitled under the law.

II. Objectives

1. Identify the relationship between Constitutional Law and Administrative Law.
2. The purpose of this study is to determine to what extent administrative law can provide protection against illegal detention.
3. To understand the development of Administrative Law as a whole.

III. Research Methodology

This research paper follows the doctrinal research methodology which contains primary and secondary sources of research taken from various articles, books, statutes, different websites, legislation, and judicial precedents. Dr. S.N. Jain observed, *"Doctrinal research involves analysis of case law is arranging, ordering and systematizing legal proposition and study of the legal institution through legal reasoning or rational deduction".*[14]

IV. Relationship between Administrative Law and Constitutional Law

In the current legal system, administrative law is to be considered a separate field of legal studies; however, administrative law recognizes that there may be some places where the areas of administrative law and constitutional law overlap. This is known as water shades in administrative law. It may comprise the whole of the administrative authority's control mechanisms outlined in Articles 32[15], 136[16], 227[17], 267[18], and 311[19] of the Indian Constitution. The directive principle of the State policy covered under Part IV of the Constitution may also be included. It may also cover studies on the administrative agencies covered by Articles 261[20], 263[21], 280[22], 315[23], 323-A[24], and 324[25] of the Constitution itself. Moreover, it could include constitutional restraints on the delegation of power to administrative agencies as well as those provisions in the Constitution that restrict administrative action, such as fundamental rights. As a result, the water sheds under administrative law demonstrate that it is not entirely separate from constitutional law. Yet they are placed near one another. The fact that the two are different from one another indicates the supplementary and complementary nature of both.

In the modern State, public law includes both constitutional law and administrative law. Any attempts to differentiate between administrative law and constitutional law are therefore logically impossible and artificial. Administrative law had previously been mentioned and examined in texts on constitutional law, but it had not received a unique and independent examination.

Constitutional law has several definitions of administrative law. As per Holland, administrative law portrays the various governmental organs in motion, whereas constitutional law represents them at rest. Hence, in this perspective, the legislative, executive, and judicial structures are the subject matter of constitutional law, whereas their

[14] S.N. Jain, Doctrinal and Non-Doctrinal Legal Research,14 JILI487(1972).

[15] The Constitution of India, 1950.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] The Constitution of India, 1950.
[22] *Id.*
[23] *Id.*
[24] *Id.*
[25] *Id.*

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responsibilities are governed by administrative law. So, it may be said that constitutional law is the fundamental law that provides administrative law its very own soul and blood.

The fact that both constitutional law and administrative law are parts of public law implies that constitutional law is the genesis of administrative law and that the two disciplines are intimately connected. The organization, function, authority, and responsibilities of administrative agencies are dealt with by administrative law, whereas the general principles governing the structure, authority, and relationships of the various state organs to one another and the general public are dealt with by constitutional law.

It's fairly complicated to understand how constitutional law and administrative law relate to one another. Administrative law has got its roots in constitutional law. In nations like India, which has a codified constitution of its own, the constitutional law further regulates administrative acts by placing restrictions on the functions of administrative bodies. Hence, it is difficult to separate administrative law from constitutional law in a nation with a written constitution and judicial review.

According to *Mait Land*, constitutional law deals with the broad framework and norms that regulate the function, whereas administrative law deals with the specifics of those functions. As a matter of convenience, the boundary between constitutional law and administrative law is drawn since every scholar of administrative law is required to study certain constitutional law.

As a result, administrative action in India may be judged on the following criteria:

- The action must be performed per the norms and regulations.
- The norms and regulations must comply with the relevant legislation.
- If the Constitution is altered, the change must adhere to or be consistent with the Constitution's core framework.

A. The doctrine of water shades in administrative law:

The doctrine of water shades is significant because it provides a framework for drawing a line that demarcates the appropriate boundaries within which both laws should operate. It explains how constitutional law and administrative law are related, as stated by several English scholars, including Dicey and Holland. Their definition makes it very evident that the laws are interdependent and related to one another.

Currently, the field of law recognizes administrative law as a distinct and independent branch. The right perspective appears to be that if two circles representing administrative law and constitutional law are formed, they may overlap at a particular point, and this region may be called the administrative law watershed. It is thus necessary to create a line between these two laws to specify the area within which each law's jurisdiction is to be exercised.

V. Challenges faced by administrative law as a tool against illegal detention

Illegal detention can be prevented and addressed using administrative law. However, using administrative law to address this issue might provide several challenges. Many of these challenges include:

1. **Lack of clarity in administrative law:** Administrative law is not often clear in its language or in its provisions, which makes it challenging to properly enforce and execute.
2. **Lack of resources:** The administrative bodies in charge of enforcing administrative law may not have the personnel or funds to properly investigate and prosecute cases of illegal detention.
3. **Complicated legal procedures:** Administrative law procedures can be complicated and time-consuming, making it challenging for people who have been wrongfully detained to seek

justice. This may deter people from bringing a case against the parties responsible for their detention.

4. **Political interference:** Political interference might hinder administrative agencies from doing their jobs unbiasedly and efficiently. This may be especially troublesome when the people in charge of implementing administrative law are chosen by politicians who can have conflicting agendas.

5. **Opposition from law enforcement agencies:** Law enforcement agencies may oppose attempts to regulate their behavior through administrative law, seeing such regulation to be an intrusion on their power.

6. **Limited jurisdiction:** Only some forms of detention or specific actors, including government workers, may fall within the limited jurisdiction of administrative law. It may be challenging to address detention practices used by non-governmental actors or in situations beyond the purview of administrative law as a result.

7. **Low level of public awareness:** Many individuals might not be informed of their rights regarding detention under administrative law. They may find it challenging to pursue legal action against individuals responsible for their detention, and advocacy organizations may find it challenging to gather support for anti-detention measures.

Thus, while administrative law may be a useful instrument in the fight against illegal detention, it is crucial to acknowledge and resolve these issues to make sure administrative law is successful in defending the rights of people.

VI. Habeas Corpus: A remedy against illegal detention

"The term 'Habeas Corpus' is derived from the Latin phrase 'Habeas Corpus Subi Bi Cendum' which translates as *Produce the body*"[26]. Habeas corpus is a legal remedy that allows an individual who is being detained unlawfully to challenge the legality of their detention in court. The writ of habeas corpus requires the person who is detaining the individual to produce them before a court and provide a legal justification for their detention. If the court finds that the detention is unlawful, the individual must be released.

There have been many notable cases where the writ of habeas corpus has been used to challenge the legality of detention. One such case is ***Boumediene v. Bush***[27], where the United States Supreme Court ruled that detainees at *Guantanamo Bay* have the right to contest their detention's legality under the writ of habeas corpus. The court determined that the inmates were entitled to constitutional rights, including the right to due process, and that the government's policy of detaining individuals at Guantanamo Bay without trial was unconstitutional.

Another notable case is ***Ex parte Milligan***, where the Supreme Court held that the writ of habeas corpus could be used to challenge the detention of civilians during the Civil War. The court found that the Constitution protected the rights of civilians even during times of war and that the government could not detain individuals without due process of law.

Overall, the writ of habeas corpus is a crucial legal remedy that protects individuals from being unlawfully detained by the government. It is a powerful tool that ensures that the government respects the fundamental rights of its citizens and provides a check on the government's power.

In the case of ***Rajakkannu v. State Of Tamil Nadu***[28], Rajakkannu, a member of the Tamil Nadu Legislative Assembly, challenged the

[26] Abhipsa Mohapatra, Naisargika Mishra, Administrative Law: A Tool Against Illegal Detention, 2 International Journal For Legal Research And Analysis 5, 7 (2022).
[27] Boumediene v. Bush, 553 U.S. 723 (2008).
[28] Rajakkannu v. State of Tamil Nadu, (2009) 2 MLJ 569 (Mad HC).

State government's detention order issued in 1982 under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, and Slum Grabbers Act ("the Act"). The detention order was granted because Rajakkannu was a "goonda" and his actions were detrimental to the preservation of public order.

Rajakkannu challenged the detention order on multiple grounds, including that it was imposed without following the Act's statutory processes, was based on irrelevant information, and violated his fundamental rights.

The High Court examined the material relied upon by the State government and found that it was irrelevant and did not establish the grounds for detention under the Act. The Court also found that the mandatory procedures under the Act were not followed in issuing the detention order. Therefore, the Court quashed the detention order and ordered the release of Rajakkannu. In summary, the Madras High Court ruled that the detention order against Rajakkannu was passed without following the mandatory procedures and was based on irrelevant materials. Therefore, the order was quashed and Rajakkannu was ordered to be released.

VII. Evolution of Administration Law

Administrative law is the branch of law that regulate the activities and functions of governmental administrative agencies. These administrative agencies are responsible for implanting the rules and regulations that affect a wide range of concerns to ensure the safety, of the public. "Administrative law is not a new concept it first emerged in the late 19th and 20th centuries as to the growth of administrative authority's response to the needs of industrialization and the social welfare state. The United States was the first the development of administrative law, with the Administrative Procedure Act (APA) of 1946 being a landmark legislation in this regard which established procedures for the operation of administrative agencies and provided for public participation in the rulemaking process"[29].

The origins of administrative law date back to the United States when the federal government began to establish agencies to carry out its policies. One of the earliest examples was the Patent Office, which was created in 1790 to issue patents and trademarks. As the federal government grew and became more complex, administrative agencies also multiplied. "By the early 20th century, administrative[30] agencies had become an important part of American governance, with the creation of agencies such as the Interstate Commerce Commission (1887) and the Federal Trade Commission (1914). During this time, administrative law also began to take shape as a distinct branch of law".

In the decades following the APA, administrative law continued to evolve, with a focus on improving the accountability and transparency of administrative agencies. During the mid-20th century, administrative law grew in importance as administrative agencies expanded in scope and power. The APA provided a framework for the operation of administrative agencies and set out procedures for public participation, notice and comment, and judicial review of administrative decisions.

In the late 20th century, administrative law underwent further changes, with a focus on deregulation and reducing the administrative burden on businesses. This was accompanied by the rise of the regulatory state, where administrative agencies were tasked with implementing complex and technical regulations. More recently, administrative law has come under scrutiny in some countries, with calls for reform to improve accountability and transparency in the decision-making processes of administrative agencies. This has led to the adoption of measures such as judicial review of administrative decisions, and the strengthening

[29] Sage Publication, https://us.sagepub.com/sites/default/files/upm-assets/72280_book_item_72280.pdf, (last visited April 6, 2023).
[30] Institute of Management & Technology, http://www.fimt-ggsipu.org/study/bballb208.pdf, (last visited April 6, 2023).

of oversight and accountability mechanisms for administrative agencies.

VIII. Concept of Administration Law in India

The evolution of administrative law in India can be traced back to the colonial period when the British introduced a system of administration that included the exercise of executive power by the colonial government. After India gained independence in 1947, the Indian Constitution was adopted, which established a democratic form of government and provided for the separation of powers between the legislature, executive, and judiciary.

In the early years of independent India, administrative law was primarily focused on regulating the exercise of executive power by the government. However, as administrative agencies multiplied and became more complex, the need for a separate branch of law to govern their operations became evident. The Indian Administrative Service (IAS) was established in 1946 and was responsible for managing and implementing government policies. In 1950, the Administrative Tribunals Act was passed, which established administrative tribunals to hear disputes between the government and its employees.

In the 1960s and 1970s, administrative law in India underwent significant changes with the establishment of new administrative agencies and the enactment of new laws. "The Central Administrative Tribunal Act was passed in 1985, which provided for the establishment of the Central Administrative Tribunal to adjudicate disputes related to the recruitment, service conditions, and other matters related to civil servants"[31].

In 1991, economic liberalization policies were introduced, which led to the privatization and deregulation of several sectors of the economy. This resulted in a shift in the focus of administrative law towards economic regulation, with the establishment of regulatory agencies such as the Securities and Exchange Board of India (SEBI) and the Telecom Regulatory Authority of India (TRAI). In India, the concept of administrative law in the 21st century has evolved significantly to keep pace with the changing needs of society and the role of administrative agencies in governance. The emphasis on transparency and accountability has been strengthened through legislation such as the Right to Information Act, which gives citizens the right to access information held by public authorities.

The role of administrative agencies in India has also expanded in recent years, particularly in areas such as environmental regulation and consumer protection. As a result, administrative law has become increasingly important in ensuring that these agencies operate within the bounds of the law and are accountable to the public. One of the significant developments in Indian administrative law in the 21st century has been the increasing role of the judiciary in reviewing administrative decisions. The principle of judicial review allows citizens to challenge administrative decisions that are illegal, arbitrary, or unfair. The Supreme Court of India has been particularly active in reviewing administrative decisions, and its judgments have set important precedents in areas such as environmental regulation, social welfare, and human rights.

In recent years, there has been a growing recognition of the need to improve accountability and transparency in the decision-making processes of administrative agencies in India. This has led to the enactment of laws such as the Right to Information Act (2005) and the Lokpal and Lokayuktas Act (2013), which provide for greater public participation and oversight in the functioning of administrative agencies.

Finally, the growing use of technology has also had an impact on administrative law in India. Administrative agencies are increasingly using digital platforms to deliver services and interact with citizens. This has raised new challenges related to data protection, privacy, and

[31] *Supra n 17.*

cybersecurity, which are being addressed through legislation such as the Personal Data Protection Bill. Overall, the concept of administrative law in 21st-century India reflects a growing emphasis on transparency, accountability, and citizen participation in governance, as well as the increasing role of the judiciary in reviewing administrative decisions.

IX. Conclusion and Recommendation

Ironically, those who drafted our constitution and whom themselves had experienced unlawful preventative detention have largely retained the provisions that they endured. Unlawful preventive detention is a clear insult to the values of honesty, personal freedom, and most significantly, freedom of speech. this effort to pressure the government into limiting the cherished rights of its people. Although the goal of the law on "preventive detention" is to stop atrocities, the individual who is being held under suspicion of being the perpetrator of such a crime is also a citizen of the nation, and protecting his rights is just as crucial as stopping any wrongdoing from occurring in society. So, the use of the laws governing preventive detention must comply with a set of inevitable limitations, beyond which the laws become illegal detention. The inmate should be correctly presented to the advisory board, which is supposed to be judicial and comprised of active High court justices. Hence, it can be considered that judicially acclaimed minds have been contacted to evaluate if a certain detention is reasonable. By opposing the status quo, nothing ever changes. Create a new model that renders the old model outdated to modify something.

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