Development of administrative law in France

The existence of an administrative authority (le droit administratif) in France, separate and distinct from the civil law, dealing, in the main, with the competence of the administrative authorities and watching over the relations amongst themselves and with private individuals, distinguishes fundamentally the administrative and legal system of France from that of Anglo-Saxon countries.

A study of the history of French administrative law during the last hundred years will show that its development has consisted principally in the working out of remedies for the protection of private individuals against the arbitrary and illegal conduct of the administrative authorities and in the extension of the control of the administrative courts (particularly the council of state) over the acts of these latter authorities. It is somewhat analogous to the power of American courts to refuse to enforce unconstitutional acts of the legislature.

This control has gone through a very interesting process of development. During the early years of the First Empire when the judicial courts were, in large measure, the servile instruments of Napoleon, they refused to entertain the plea of illegality as a bar to prosecution for the violation of all acts of the administrative authorities, from the lowest to the highest. In 1800, however, the court of cassation which three years before had held that the inferior judges had no right to refuse to enforce prefectural or municipal police ordinances on the ground of their illegality, changed its opinion and ruled that they were not bound to impose fines for the violation of such ordinances.

During the period of the Restoration when the judges became more independent in consequence of the adoption of the rule of non-removability, they went further and held that they were not even bound to impose fines for the violation of ordinances issued by the King Legality of nearly every administrative act for the violation of which a fine is prescribed, and illegality includes not merely nonconformity to the laws but also incompetence, vice of form, violation of the principle of equality of citizens, of personal liberty, liberty of conscience, inviolability of domicile, violation of property rights, etc.

Even so-called ordinances of public administration issued by the President of the Republic upon the advice of the council of state, which until 1907 could not be questioned either before the administrative or judicial courts, are now attackable before both classes of courts on the ground of illegality and during the world war, when the French Parliament delegated extraordinary ordinance power to the President, the judicial courts regularly entertained the exception of illegality against such ordinances. This power of the judicial courts to declare illegal the ordinances of the administrative authorities is, as Hauriou remarks, one of the “correctives” of the French administrative system which

cannot be ignored. it offered a means of control over administrative conduct which was more frequently invoked than now, its importance having decreased in consequence of the remarkable extension of the control of the administrative courts, the effect of which has been to reduce correspondingly the control of the judicial courts."

Development of administrative law in UK

In 1885 a British jurist A.V. Dicey rejected the whole concept of Administrative law. Due to this several legal thinkers suspended the notion of acknowledging the various statutory powers given to administrative authorities to form a separate branch of law. They disregarded the control exercised by such authorities to be anything distinct in itself. Hence, until 20th century administrative law was not given its due in England. It was only later that the concept came to be recognised.

In 1929, Lord Donoughmore Committee recommended for better publication and control of subordinate legislation. The legal maxim that the king can do no wrong, was abolished and the scope and extent of administrative law was expanded by the Crown Proceeding Act, 1947. It allowed initiation of civil proceedings against the Crown in a similar fashion to any ordinary private citizen.

The Tribunals and Inquiries Act, 1958 brought about better control and supervision of administrative decisions. Breen v Amalgamated Engineering Union was the first case wherein the existence of administrative law in England was recognised.

Development of administrative law in USA

The existence and growth of administrative law was ignored in the United States until it grew into being the fourth branch of Democracy. Also several legal jurists like Frank Goodnow and Ernst Freund had authored several books on administrative law which bolstered its position in the States.

Dr. Freund in his observation of the characteristics of American and English system found that American growth of administrative power didn't encounter a temperamental opposition like it did in England. Rather it was checked by the distribution of powers under a federal system. Not until 19th century the Congress used its interstate commerce powers for regulatory purposes, with recourse into administration by commission.

Bulk of the legislations, at first, was administered without general supervision; the central-state administrative organisation was built slowly. As a result administrative control in the US was less bureaucratic and hence less centralised.

In the United States the rise of administrative law is contemporaneous with the need for governmental regulation of industry. Such a need led to the creation in 1887 of the Interstate Commerce Commission

(ICC). In 1933 a special committee was appointed to determine how judicial control over administrative agencies could be exercised. Thereafter, the Administrative Procedure Act, 1946 was passed which provided for judicial control over administrative actions.

American administrative law developed from the operation of these different regulatory agencies, vested with significant powers to determine, by rule or by decision, private rights and obligations. As the regulations and orders promulgated by these organs impinged more and more upon the community and the bar that counseled it, the development of legal rules to ensure the subordination of agency activities to law became of concern to jurists. During the 1920s courses on administrative law began to be offered in law schools, the American Bar Association set up a special committee on the subject, and it came increasingly to occupy the attention of courts and lawyers.