

# The Impact of the Welfare Philosophy on the Administrative Law

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**Abstract---** The welfare policy has profoundly influenced the administrative law. According to the welfare policy the executive has to perform various function, to perform these functions the organs has to be created and should be vested with appropriate powers. The administrative law deals with the executive organ it is powers and functions so if the executive organ expands then correspondingly the scope of administrative law also expands. Today the executive has under the garb of welfare functions has encroached on all the spectrums of individuals life and hence it become necessary for administrative law to keep a stringent watch upon the executive. To cope up with the exigencies the executive requires the powers like delegated legislation, quasi-judicial powers etc. The present times is regarded as the era of discretionary powers and hence it is for the administrative law to exercise control over such powers to ensure the principles of justice prevail.

**Keywords---** Welfare policy, capitalistic state, laissez-faire state, individualistic dogma, collectivism, delegated legislation, quasi-judicial powers, discretionary powers, tribunals, autonomous undertakings

## I. INTRODUCTION

The nature of the society is always changing because man is constantly in search of new things, commodities and technology etc., consequently, influencing the nature of the society. In the ancient state the society was a capitalistic state, with very few laws. In this type of state, the individuals were left free to indulge in all most all the spheres including the economic sphere. Hence this type of the society is called as a free economy or a capitalistic state. The classic feature of the capitalistic state is that, there is no state intervention by the state or the government in the economic sector and the individuals are left free to produce, or manufacture and sell the commodities according to their sense of profit making. This state was called as a "laissez – faire" state, because the individuals were left free to do as they wished or pleased. The term "laissez faire" means "to do as you please". The state government did not make and enact much laws and also the government performed minimal functions and granted maximum freedom to the individuals to do as they pleased.

- The state performed only three types of functions which were namely as follows as:-
  - a. The first and foremost function of the state was to protect the people from external aggression. To wage a war or to defend the state was the prime function of the state government.
  - b. The second function of the state was to maintain law and order in the state. The state could declare

any acts as offences and punish the wrongdoers with the help of the criminal law.

- c. The last function which the state performed was to collect a few taxes for the maintenance of the state.

Apart, from these activities the state left the individuals free to do anything. Hence this phase was marked by the 'individualistic dogma'.

- After the passage of the time negative impact of the capitalistic state was reflected which was as follows: -
  - a. The commercial group or the industrialists dictated the economic terms which resulted in the exploitation of the common man.
  - b. Economic and social inequality prevailed.
  - c. The economic and social inequality led to disparity in the society and divide between the rich and poor widened.
- Due to the grave consequences of the capitalist state or the "laissez-faire state" the state the state change is policy from the laissez-faire policy to the welfare policy. Again, the welfare policy changed the entire scenario of the state, especially the scope of administrative law which increased in many multifold.
- The impact of welfare policy on the nature of the state. The welfare policy changed the 'individualistic dogma' to the collectivism dogma. This means that the nature of the society changed from the capitalistic state or the "laissez-faire state" to the socialist state. The meaning of welfare policy is that, the state performs all those functions which are in furtherance of the welfare of the people. The

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collectivism dogma implied that the state collectively would progress unlike the capitalistic state in which the progress of only the industrialist class was achieved. Adopting the welfare policy implied that the function and the role of the administrative organ changed beyond imagination. The function and the role of the state as seen in the capitalistic state was minimal but now the state undertook to perform welfare function and the list of the welfare function is very exhaustive and endless. For instance, the executive organ has to provide food grains, give medical help, maintain the roads, grant license, provide education etc. The functions of all the organs increased considerably but the functions of the executive organ increased immensely. The legislative organ in the capitalistic state had to make and enact minimum legislation but now since the implementation of the welfare policy the legislative organ has to make much more legislation which take care of the welfare of the people. For instance, the Maternity Benefit Act, Labour Laws, Consumer Protection Act, The Drugs Act, The Commercial Laws etc. The function of the judiciary of the increased, however the type of functions of the judiciary have not increased but the quantum of the cases has increased tremendously so much so that today the judiciary over burdened with the adjudicatory matters.

- The extensive function of the executive in pursuance of the welfare policy.

It is the executive branch whose role and function has been affected the most. Not only the role and the function of the executive has increased but correspondingly even the structure of the executive has increased. The executive organ includes the following.

- i. The head of the executive organ of the Centre is the President of the entire state, and the head of the executive organ of each state is the governor of that respective state.
- ii. The executive organ is also called as the government or the administrative organ.
- iii. The executive organ includes all the departments of the government. For instance, the department of education, the department of water irrigation, department of industries, department of finance, department of home affairs department of communications department of aggregation, department of defence and numerous other departments.
- iv. The executive organ not only includes the departments but also the governmental institutions or organizations or the public corporations.
- v. Even the tribunals which may be attached to the departments or may function separately fall in the

executive organ.

- vi. Another class of the organizations which fall in the bracket of the executive organ is the group of the autonomous undertakings. From the above explanation the vastness of the executive organ is evident, this vast executive organization performs even more vast amount of functions.

- The functions of the executive organ.

The functions of the executive organ are three-fold which is as follows.

- i. The original, the essential function of the executive is to execute the laws made by the legislature. The executive organ is created for purpose to perform this function of executing the laws.
- ii. The second function which the executive performs is to make the laws through the concept of delegated legislation. The legislature sometimes is over burdened and hence is not in a position to make the detailed specifications of the law, hence the legislature transfers the sub legislative powers to the executive organ. So, the executive makes the specifications of the laws which are called as delegated legislation.
- iii. The executive even performs the function of executive adjudication which is called as the quasi-judicial function, which means the executive even adjudicates in the administrative matters.

From the above discussion it is implicitly clear that the executive organ performs not only vast functions but all the three types of the functions of the state.

- The impact of the welfare policy on the Administrative law.

The administrative law has always existed because no king or emperor could administer to state with out the help of administrative law. The administrative law which prevailed during the Gupta and the Maurya regime so also during Shivaji's regime was remarkable, as these were remarkable rulers and administrators. Even Lenin could not deny the existence of administrative law; such is the value and importance of administrative law.

Administrative law deals with the administrative organ of the state. When the welfare policy has immense impact upon the structure of the executive and its functions then obviously the welfare policy has influence, the administrative law too.

- i. As the structure of the executive organ has widened, the scope of administrative law has correspondingly increased to deal with the structure and the different organs of the executive.
- ii. Along with the various organs of the executive the powers of the organs have also increased and hence

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the administrative law includes the powers of the various organs of the executive. As stated above the executive enjoys all the three types of powers of the state the administrative law includes the conferment of these powers on the executive powers. Another type of powers which are constantly increasing are the discretionary powers which are not only too vast but also difficult to control.

- iii. It is not sufficient merely to confer the powers upon the executive but it is also necessary to put limitations on these powers. One of the vital aspects of the administrative law is to include the limitations upon the executive powers. In the case of delegated legislation, the administrative law has to put limitation on such powers. For instance, the it is to be seen that weather the delegated legislation is in accordance with the provision of constitutional law, the parent statute, the framework of the parent statute as well as the object of the parent statute.
- iv. The administrative law includes within its scope not only the limitations upon the executive powers but also the procedure to be followed by the executive. In fact, the compliance of the prescribed the procedure also amounts to limitations upon the executive powers. For instance, the executive has to follow the fair procedure otherwise such an executive action is regarded as in contravention to the administrative law. Apart from the specific procedure, the executive has to abide by the principles of natural justice as they constitute an important part of the administrative law.
- v. Another crucial aspect of administrative law is the inclusion of remedies available to the individuals when the executive violates their rights and liberties. The remedies include the constitutional remedies such as the various judicial writs or the compensation for the violation of liberty granted under Article 21 of the Indian constitution. The administrative law also includes other statutory remedies.

The administrative law of today is of different nature as compared with the yester years. The growth administrative law is the direct resultant of the welfare policy. The administrative law deals with the executive organ of the state, the constitutional law also deals with creation of the executive organ of the state and hence administrative law overlap with the constitutional law to some extent. The classic feature of the administrative law is that it is not codified law. The main source of administrative law is the judge made law or the precedent, legal maxim, and opinion of legal scholars. No doubt that

the administrative law always prevailed but due to the concept of the welfare state the administrative law has grown profoundly.

### II. CONCLUSION

Due to the ill effects of the capitalistic state, there was a change in the policy of the state namely the welfare policy which has changed the dimensions of the administrative law. The existence of the administrative law always prevails but the extensive scope of the administrative law is definitely due to the welfare policy, and because of which the executive organs, powers, function and the limitation on those powers have increased. The welfare policy means the state has to take care of the welfare of the people and executive has to perform the activities such as providing minimum food grains, flood relief activities, providing pension, scholarships, taking steps to curb the environmental pollution, granting license etc. So, it is often said that the administrative law governs an individual right from his birth by providing birth certificate until his death by providing death certificate. It is the administrative law which by providing restrictions on the executive powers ensures rule of law to prevail.

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