A STUDY ON THE PRINCIPLE OF DROIT ADMINISTRATIF

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ABSTRACT

The principle of droit administratif is a fundamental concept in French administrative law that governs the relationship between the government and its citizens. This principle emphasizes the importance of protecting individual rights and interests from abuses of power by government authorities.

A study on the principle of droit administratif explores the historical development of this concept and its application in contemporary administrative law. The study examines the various legal frameworks and institutions that have been established to ensure the protection of individual rights, such as administrative courts and the Conseil d'Etat.

The study also analyzes the different approaches to implementing the principle of droit administratif in practice, such as the use of administrative discretion and the delegation of powers to administrative agencies. Additionally, the study considers the challenges and limitations that arise in applying this principle, particularly in cases involving national security or emergency measures.

Overall, a study on the principle of droit administratif is crucial for understanding the role of administrative law in protecting individual rights and ensuring government accountability.

Keywords: Droit Administratif, Conseil d'Etat, Tribunals

1. INTRODUCTION

1.1 Background of the research

An important area of law is administrative law since it deals with how statutory entities are applied in society. It fits the description of a by-product of thorough government. The administrative law's structure is evolving along with the government's changing duties, adapting to the environment in which it is used. The French term for administrative law, Droit Administratif, rose to prominence in the 18th century.[1]

Among the topics addressed by administrative law are the application of the applicable statutes, the operations of governmental entities, and governmental administrative actions. Because French administrative law covers a greater range than that of any other nation, it is applied differently than it is in any other nation. Being the foundation for the development of administrative law in several nations across the world, droit administratif comes up for consideration.

In France, there was a parallel system of administrative courts known as the Droit Administratif. This method was designed to reduce the burden of administrative disputes on civil courts while establishing distinct criteria for administrative issues. The resolution of administrative conflicts in India has been a topic of significant discussion among the judges. There are parallel courts in India that serve as tribunals for a variety of cases, including company disputes, tax concerns, railway claims, debt recovery claims, and army conflicts, in addition to the administrative tribunals.

1.2 Objectives

1. To know the rules of the Droit Administratif.

2. To know the characteristics of the Droit Administratif.

3. To know the adoption and working of the Droit Administratif in India.

[1] WHAT IS DROIT ADMINISTRATION? PRINCIPLES, CONSEIL D'ÉTAT AND DRAWBACKS KALYAN CITY LIFE BLOG, https://kalyan-city.blogspot.com/2013/01/what-is-droit-administration-principles.html (last visited Mar 10, 2023)

1.3 Research Questions

1. What are the rules of the Droit Administratif?

2. What are the characteristics of the Droit Administratif?

3. How Droit Administratif is adopted in India?

2. RESEARCH METHODOLOGY

The methodology used in the research is collection of secondary data from the various sites. The data has been taken from the various internet sources and journals. The data was collected and then was compiled to make this paper.

3. LITERATURE REVIEW

- A.V. Dicey, a British jurist, once opined that France lacks the rule of law as a result of the Droit Administration. He believed that the Droit Administration was against or opposed to the Law. Yet it seems he was off base.[2]

- According to British Jurist Albert Venn Dicey (4th Feb 1835 - 7th April 1922), the Droit Administrative system is based on the following of two ordinary principles, namely:

    1. The government and its every servant possess special rights, privileges, and prerogative as against private citizens.

    2. Such rights and privileges, etc., are determined on the principles different from the consideration that fixes the legal rights and duties of the citizens.

4. DATA ANALYSIS

4.1 Droit Administratif

Droit Administratif, a corpus of public law that is frequently referred to in numerous sources, establishes the duties of public administrative bodies and aids in regulating the administrative

[2] Droit Administratif upsc.oureducation.in, http://upsc.oureducation.in/classification-of-administrative-action/ (last visited Mar 10, 2023)

relationships between the State and its inhabitants. Napoleon Bonaparte's name is connected to the entity that is organised in accordance with the regulations imposed by the administrative courts. The conflict between the orthodox Bonapartists and the reforming Parliaments was a major factor in the environment that surrounded the French Revolution of 1789. The former favoured the exclusive jurisdiction of regular courts, and the latter supported the primacy of executive authorities. The Conseil du Roi and the Conseil d'Etat were then acknowledged as the two institutions that replaced one another as the ruling bodies in pre- and post-revolutionary France, respectively.

France prior to the French Revolution gave birth to Conseil du Roi. This group served as the King's legal and administrative counsellor. In addition to its executive duties, the Conseil du Roi carried out judicial tasks, such as mediating conflicts between the country's nobility. The judiciary was gradually being eclipsed in the 16th century by the expanding authority of the government, represented by the Conseil du Roi.[3] The independence of the Conseil du Roi turned out to be bad for the regular courts. When the environment gradually shifted in 1789 from the pre- to the post-revolutionary period, such discriminating excess of authority in the hands of the administration was constrained.

The limitation of power concentrated in the hands of the executive is the revolutionary transformation that was wrought during the post-revolution. The idea of the division of powers controlled this type of transformation. The Conseil du Roi was eventually abolished as a result of this, and Napoleon Bonaparte, who supported reforms and administrative independence, was in charge at the time. This idea inspired the founding of the Conseil d'Etat in 1799 with the goal of removing obstacles in administrative courses. Throughout time, the Conseil d'Etat expanded its responsibilities to include handling legal issues. Although the purpose of the Conseil d'Etat was to end the executive's repression of the judiciary, the executive's influence could not be completely eliminated in this situation either.

The executive issued a decree to carry out the nomination of the members, and the council of ministers had to approve it. Hence, up to that point, the court was unable to exercise its independence and power on its own. The Arrents Blanco, which served as the executive statute in 1873, determined that the Conseil d'Etat had exclusive jurisdiction over all administrative

[3] TRIBUNALISATION OF JUSTICE: APPLICATION OF DROIT ADMINISTRATIF IN INDIA, https://thelawbrigade.com/wp-content/uploads/2021/08/Naeesha-Halai-IJLDAI.pdf (last visited Mar 10, 2023)

disputes. The Tribunal des Disputes, which was presided over by the Minister of Justice and had an equal number of judges from both courts, was chosen to resolve any disputes that could have developed between the ordinary courts and the administrative courts.[4] The growth of the Conseil d'Etat was based on its own ideas, which served as a check on overzealous government action against the people.

4.2 Merits of the System

As the function is carried out by the Conseil d' Etat with assistance from the regional administrative Courts since 1954, France's instrument for reviewing administrative judgements is itself a component of the administration. The burden of evidence under the French system is always on the administration, despite or maybe precisely because of this close relationship between the overseeing or reviewing courts and the administration. Administrative agencies need to be ready to defend their actions. Ridley and Blondel noted that "paradoxically," the Conseil d'Etat was able to examine administrative judgements more carefully than the regular courts ever had.

4.3 Composition and working of Conseil d'Etat

A group of individuals known as the Conseil d'Etat adjudicates claims brought by subjects against the government while also serving as its confidential counsellors. In the second scenario, they take on the role of impartial judges and, if necessary, denounce the presidential action. The Conseil d'Etat is a useful organisation in France as a result of this contradiction. The Tribunal in Conflict resolves disputes over jurisdiction that arise between ordinary courts and administrative courts. This special tribunal has an equal number of administrative and regular judges. The minister of justice oversees it.[5] The Conseil d'Etat's primary responsibilities have always been planning and providing advice. It plans and provides advice for executive business. The Conseil d'Etat is in charge of resolving any administrative issues that arise.

4.4 Rules of Droit Administratif

Droit Administratif is a depiction of regulations set by judges and approved by juries, not of laws passed by the French Parliament. The following are the regulations that, when put

[4] Edwin Borchard, Edwin, "French Administrative Law" (1933). Faculty Scholarship Series. Paper 3445
[5] J.Adi Narayana, Asst. Professor, School of Law, Christ University, Bengaluru

together, form the Droit Administratif:

1. Rules that cover administrative officers and those who work for them.

2. Regulations that address how public services are provided to meet the demands of the public.

3. Administrative adjudication regulations.

The second rule was created to focus on the welfare of the public, which was to be run directly by the public officials or might have been delegated by them and carried out under their authority. The first rule pertains to appointment, removal, allowances, and duties. It was also possible to appoint private organisations to carry out such regulations. The third rule specifies that the Conseil d'Etat is the highest administrative court in the nation. The administrative courts would deal immediately with any rights infringements or injuries involving private people of the country.[6]

4.5 Characteristics of Droit Administratif

What can be deduced from the highlights regarding Droit Administratif above are some of the distinguishing qualities that this administrative law contains. Here is a list of them:

1. The administrative courts, unlike the regular courts of the country, are to decide cases that are related to State and administration-oriented litigation.

2. The rules that are followed while making decisions in litigation-related cases, as noted above, are created by the courts themselves.

3. The Tribunal des Conflicts is the body that makes decisions when there is a dispute over whether court, administrative or ordinary, has jurisdiction.

4. The Droit Administratif protects government employees from the jurisdiction of regular courts.

[6] Edwin Borchard, Edwin, "French Administrative Law" (1933). Faculty Scholarship Series. Paper 3445

5. The creation of Conseil d'Etat is the result of a protracted process around the French Revolution rather than being a one-day plan. It served as both a deciding body and a consulting body.

The traits listed above provide an overview of how the Droit Administratif is applied. They distinguish between the administrative systems of France and other common law nations. Other than delegation and adjudication, any actions that have an impact on public administration are covered under French administrative law. According to the Droit Administratif, the division of courts for two groups of individuals encourages precision in carrying out the adjudicating procedure. Its justification is that as government employees are familiar with the procedures involved in administrative actions, they are qualified to be heard by administrative courts.

Citizens, however, are not subject to such restrictions; as a result, they must go before regular courts. Because the French administrative system holds the view that the necessity of self-defense is not necessary in the adjudicating procedure, it also lacks the application of the concept of natural justice in regards to the rule of Audi Alteram Partem. The State's immunity from tort responsibility, which is present in English law, was likewise abandoned by France. In France, it is likewise forbidden for administrative courts to interfere with the work of regular courts. The French administrative system is not affected by the weight of precedent legislation since it solely relies on laws that judges have created.

4.6 Adoption and Working of Droit Administratif in India

Even in the past, there existed administrative law in India. Many centuries before Christ, it was fully organised and centralised under the Maurya's and Guptas. The monarchs and bureaucrats upheld the Dharma's norm, and no one sought an exception. The monarchs and officials upheld the fundamental ideas of natural justice and fair play since only those values acknowledged by Dharma—a term that was much broader than Rule of Law or Due Process of Law—could be used to manage an administration. Yet, there was no administrative law as we know it today. The East India Company's founding and the onset of British Control in India boosted the government's authority. The British government issued several Acts, statutes, and laws that control public safety, health, morals, transportation, and labour relations. The State Carriage Act of 1861 marked the beginning of the practise of issuing administrative licences. The Bombay Port Trust Act of 1879 allowed for the creation of the first public corporation. The Northern India Canal and Drainage Act of 1873 and the Opium Act of 1878 acknowledged

delegated legislation. The Indian Explosives Act of 1884 took appropriate and efficient measures to control the trade and transportation in explosives. Many statutes contain provisions relating to the possession of permits and licences as well as the resolution of disputes by administrative bodies and courts.[7] Throughout the 20th century, government social and economic policies significantly impacted residents' private rights in areas including housing, work, planning, education, health, service, pension, and the production of commodities. Conventional legislative and judicial systems were unable to resolve these issues successfully. Administrative law became a dynamic field as a result of the rise in delegated legislation and tribunalization. During the Second World War, the executive branch's authority significantly expanded. The Defence of India Act, 1939 and the Regulations promulgated thereunder granted the administration with broad authority to interfere with a person's life, liberty, and property with little to no judicial oversight. Also, the government issued several directives and regulations addressing a variety of topics in the form of administrative guidelines. The government's operations and duties have expanded considerably after Independence. Important social security measures have been implemented for individuals working in the industrial sector via the Industrial Disputes Act of 1947, the Minimum Wages Act of 1948, the Factories Act of 1948, and the Employees State Insurance Act of 1948. The Indian Constitution clearly incorporates the idea of a welfare state. The constitution contains measures that guarantee social, economic, and political justice as well as equality of opportunity and position for all people. the possession and management of the society's material resources.

5. FINDINGS

5.1 Reasons of Success of Droit Administratif

The rule of law has been successfully subordinated by Droit Administratif. The following reasons, taken together, may be responsible for this success:

- The structure and duties of the Droit Administratif.
- The adaptability of its legal system.

[7] C.Sumner Lobingier, "Administrative Law and Droit Administratif: A Comparative Study with an Instructive Model" Pennsylvania Law Review, 1942, pg 36-58

- The ease with which administrative court remedies can be obtained.
- The specific method that those courts considered (the natural process).
- Their application's substantive law's nature.

6. CONCLUSION

It would be a grave critique if the Droit Administratif failed to sufficiently safeguard the people from the state, but that was not the case. The truth is that this system was able to safeguard citizens against administrative actions or omissions more effectively than the common law system did, and it did it quickly and inexpensively. Droit Administratif was first frequently criticised for being unable to shield the average person from the excesses of government. Nonetheless, subsequent studies have revealed that the Conseil d'Etat has done more than any other institution to safeguard private persons against the excesses of government. Finally, it may be said that every nation in the globe should place a high value on studying administrative law. Due to the Indian polity's stated goals of establishing a socialistic social structure, it is extremely significant in terms of India. The goal of creating a communist society has greatly influenced administrative law and administrative procedure. India's administrative landscape will undoubtedly develop quickly and farther. There are risks associated with a strong desire for quick expansion. In a developing nation with weak democratic foundations, like India, a powerful bureaucracy could have a propensity to treat people's rights like second-class citizens. The tremendous powers of the administration, if well employed, may result in the welfare state; if improperly exploited, they may result in administrative dictatorship and a totalitarian state. As a tool of the regulation of the administrative operations of the government concerned with social welfare, the study and development of administrative law are necessary.

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