
REIMAGINING ADMINISTRATIVE BRANCH BEYOND THE INDIAN EXECUTIVE WING: A CRITICAL ANALYSIS

Kumar Shivam, National University of Study and Research in Law, Ranchi

ABSTRACT

The research article aims at contouring the line of distinction between administrative law from the executive wing. This would purport the role of the administrative body as an independent branch amongst the governing agencies, in need of constitutional recognition at par with the three constitutional organs of the Indian Constitution. In order to argue for the independence of permanent executives from the political wing, the author has described the complex nature of Indian Constitution, intervening the civil servants with the political officers, with the former kept out of the purview of as a body capable of holding powers. Along with this, the article showcases the perks of accepting the administrative wing as a separate constitutional organ, protecting the political executive from judicial scrutiny; and avoiding the administrative wing to stand at loggerheads with the political executives.

Keywords: Administrative Law, Administrative Independence, Separation/Distribution of Powers, Judicial Review, Natural Justice, Constitutional Recognition, etc.

BACKGROUND OF RESEARCH:

The Constitution of India, when constructed was built on the principles of constitutionalism which represents that idea of limited governance. This means that every organ established by the constitution have definite boundary within which it is supposed to exercise its powers. The major three organs are the legislature, executive and judiciary. However, in the recent times there is another branch sprawling out of these three organs individually i.e., the administrative branch, which is so burdened with the ground work of making the constitution actually work, that it has been started to be dealt as a separate subject of academic research in universities.

Administrative branch is that wing of the executive which is directly in touch with the subjects sought to be governed by the Constitution. Therefore, it is the administrative wing which brings the constitutional machinery into force. With the increase in duties of the state, and each organ being overburdened by intermingled functions, it is inevitable for the administrative forces to outgrow, in order to compensate for lack of functionaries. Therefore, the administrative wing can be said to be an extension of all the three organs.¹ However, with the growing force and power of the administrative wing, they somehow also hold the power to unduly affect the rights of subjects they are in direct touch with. Therefore, it is that where administrative law comes into place in order to ensure that the administrative powers are being exercised in accordance with the principles of law.²

In order to understand purpose of the research at hand, it is pertinent to distinguish the concepts purported by the terms 'administrative' and 'executive'. The executive part of the Indian government is usually divided into two main categories. The political executive and the permanent executive, both being important parts of how any government works. Elected leaders like the Prime Minister, Chief Ministers, and other ministers make up the political executive and are in charge of making decisions, setting up policies, and explaining their decisions, plans and policies, to the lawmakers and the public. Their positions last for set periods of time and usually end right before new elections happen. By contrast, the permanent executive is made up of full-time government employees like Indian Administrative Service (IAS) officers and departmental secretaries, etc. who actually furnish the routine/ground work, and make sure that government orders and plans are carried out. Officials are selected based

¹ David Fontana, *The Administrative Difference of Powers?* 116 Colum. L. Rev. Online 85 (2016).

² GRIFFITH and STREET, *Principles of Administrative Law*, 2 (1973).

on their knowledge and abilities, and they keep working even if there is a change in government. They also have to stay neutral and do their jobs according to the rules. The permanent executive takes care of day-to-day tasks and makes sure the rules are followed, while the political executive helps to lead them and sets the plan for what needs to be done. In reality, it can be difficult to describe the line of separation of powers between these topics i.e., 'administrative' and 'executive' wings.³ This often leads to disagreements that make it tougher for the government to run rationally and be managed properly.

SIGNIFICANCE OF THE STUDY:

The difference between the establishing sources of the political side of the government and the bureaucracy in India which is laid out in the constitution, confers that the former is established along with some vested powers in it⁴, and the latter is established for those powers vested with the political executive to be brought into force through prescription of appointment procedures.⁵ However, in academic pragmatism, these two roles often get mixed together, adding to the complexity of how the country is run. While the Constitution explains what the Council of Ministers⁶ and civil services (provided through rules⁷ and manuals) should do, it doesn't fully explain their boundaries, which often leads to their jobs running into each other and causing disagreements. This research is important because it looks at how political executives and civil service officials might not always see eye to eye, and tries to figure out what effect this can have on how government is run, how decisions are made, and who is held responsible for what. Factors like governments getting involved in managing jobs, slow decision-making processes in the government agencies, unclear job titles, and politics playing a bigger role in the civil service all make it harder to separate one organization's tasks from the others. The consequences of this blurred interface show up in things like slow or stuck policy decisions, longer delays in getting work done, people losing trust in the government, and a decrease in who is responsible for what. By carefully looking at the rules written in the constitution, how things actually happen in government, and how institutions act, this study tries to find out why the executive and administrative roles sometimes overlap, and suggests ways to make their relationships better and clearer in India. Further, the research will try to

³ Mark Mancini, *The Political Problem with the Administrative State*, 2 *Journal of Commonwealth Law* 55 (2020).

⁴ INDIA CONST. art. 53(1).

⁵ INDIA CONST. art. 309.

⁶ INDIA CONST. art. 74 & 75

⁷ All India Services (Conduct) Rules, 1968, r. 3(1), Gazette of India, pt. II, sec. 3(i) (Apr. 13, 1968) (India).

reach to a position it would be making a meritorious comment with respect to recognition of administrative wing as a separate, exclusive and an independent organ moving apart from the executives.

1. NOTION OF SEPARATION OF POWERS:

The doctrine of separation of powers, as put forth by Montesquieu in *The Spirit of the Laws*⁸, calls for each branch of government legislative, executive and judicial to function independently with strict exclusivity. In Montesquieu's time, administrative law wasn't yet a well-recognized field. He paid special attention to ensuring that each branch of government worked separately, so the power of government would be distributed, and freedoms for individuals protected. Administrative law became more influential over the course of the 19th and 20th centuries as governments assumed increasing responsibility for regulating and managing society. He formed these ideas before administrative law became so central to the functioning of contemporary governments. His beliefs about how government ought to be structured and conducted still shape the evolution of contemporary administrative law.

On the other hand, according to Dicey's idea of power separation, people are protected when the branches of government act as checks on one another, which means overlapping is somehow important for a thriving democracy.⁹ Dicey understood that the English constitution allowed each of its parts to keep their autonomy without unduly relying on the doctrine of strict separation. Dicey argued that the bedrock of the British constitution rested on parliamentary sovereignty and the rule of law. Dicey considered the separation of powers a necessary condition for protecting the judiciary. Dicey recognized that the British constitution's power to develop and change over time depended upon allowing shared roles and functions among its branches as long as they protected against unrestrained power.

In India, the Constitution goes for a flexible separation instead of a strict one. In *Ram Jawaya Kapur v. In State of Punjab* (AIR 1955 SC 549), the Supreme Court pointed out that while separation of powers is not treated strictly in the Indian Constitution, the different roles of each branch have been clearly allocated. Sometimes, thanks to this interpretation, the Executive and Legislature are able to take on similar tasks. In the end, it is the Judiciary that plays the final

⁸ Montesquieu, C. de Secondat. (1748). *The Spirit of the Laws*. (Translated by Thomas Nugent, 1750). Retrieved from <https://oll.libertyfund.org/title/montesquieu-the-spirit-of-laws>

⁹ Dicey, A. V. (1885). *Introduction to the Study of the Law of the Constitution*. Macmillan & Co. Available at <https://archive.org/details/introductiontost00diceuoft>

role, making sure constitutional limits are followed. India does not follow any strict separation of powers, and the authors as well as judicial opinions have focused more on the legal issues in India regarding the administrative branch being more related to overtaking the legislative jurisdiction conferred through the constitution on the Indian legislature. This simply means that, Indian judiciary does not treat administration separate from executives, and when the former makes rules or some policy, then it is treated as executive who does not have the authority to interfere with the legislative powers.

2. BLURRED CONSTITUTIONAL BOUNDARY FOR ADMINISTRATION:

According to Article 77, the President of India either personally discharges the Union's executive functions or delegates them to those who are subordinate to him. Furthermore, the President determines the regulations to guide the conduct of government business. As a result, the President has effective executive power by virtue of carrying out actions through staff under his command. Provisions like Article 77 of the Constitution ensures that officers who serve under the President are formally included in the executive machinery of the nation. All civil servants and administrative officials contribute to the execution of government administration, implementing policies and providing public services. Therefore, the administration is constitutionally considered as an integral part of the executive, responsible to the President and the Union Cabinet.

Councils of Ministers are instituted by the President under Article 53 while Governors wield their powers through both ministers and civil servants under Articles 152 and 163. Policy making authorities are lodged within the cabinet council of ministers, while civil servants approved under Articles 309 to 311 implement these policies. An integrated structure is established based on the parliamentary system adopted from that practiced in Britain¹⁰ so that the bureaucracy operates under the direct command of the elected executive and results in harmony, efficiency and responsibility that permeates all parts of government.

At the same time, several systems have been established to supervise the administration and assign accountability for all administrative acts. Controls were enforced by court-based checks, parliamentary oversight and strict adherence to rules instituted for public officials. These measures though allow effective administration and democratic accountability to coexist, but

¹⁰ Alderman, R. K., & Cross, J. A. (1979). Ministerial Reshuffles and the Civil Service. *British Journal of Political Science*, 9(1), 41–65.

executive and administration closely cooperate and support each other, which leads to the administrative wing also being counted under the loop of the broad term ‘executive’.

3. SEPARATION OF ADMINISTRATIVE POWERS:

As discussed previously, while the traditional idea of separation of powers puts administration within the executive, currently, it is being argued in India that this needs to be reconsidered. Presently, those in charge of administration are responsible for transforming laws into action as well as drafting rules and making judicial decisions, function that were once in the hands of legislators and judges. While Securities and Exchange Board of India, Telecom Regulatory Authority of India and the Competition Commission of India have the same legislative support, their functions are different from those of the general executive. They manage their own affairs, have experts from the field staffing them and operate without being controlled directly by politicians. The way they are held accountable is not through elections, but mainly through parliament, courts and set procedures. As seen in *Union of India v. R. Gandhi*¹¹ (2010), it is acknowledged that like courts, administrative tribunals and regulatory commissions with judicial authority and should act independently. As a result of these changes, the administrative system should be considered a separate system within the constitution alongside the executive.

4. ADMINISTRATIVE LAW AS A DISTINCT DISCIPLINE:

Leading American legal scholar I.P. Massey¹² recommends that administrative law should be set apart as its own area within government law. He points out that with administrative practices becoming more popular, the government is less likely to leave things to luck and instead plans and makes new rules. He points out that governments depend on administrative agencies to handle major social, economic and technological problems. According to Massey, these shouldn’t be used by executives alone. Natural justice, reasonableness, proportionality and judicial review guide these rules now. According to him, because administrators are now more important, we must make sure clear rules and recognition policies are put in place for state organizations. It is clear from his statement that administration links executive action to constitutional requirements for democratic government.

¹¹ *Union of India v. R. Gandhi*, 2010 SCC (11) 1

¹² I.P. Massey, *Administrative Law* (10th Edn. EBC 2022)

5. SIGNIFICANCE OF DIFFERENTIATING ADMINISTRATION FROM THE EXECUTIVE:

In order to advocate for granting administrative wing the status of a separate wing, it is pertinent for us to understand two things. Firstly, it is pertinent to understand the degree of accountability of administrative wing to constitution and judiciary. Secondly, it is important to understand the implications of any entity being recognized as the organ of a state.

5.1. DEGREE OF ACCOUNTABILITY FOR ADMINISTRATION IN INDIA:

Being able to separate the executive and administrative arms matters significantly in the law and constitution, mainly regarding accountability. Although they belong to the executive branch, the prime minister and the cabinet handle different jobs and are managed differently. Questions, debates and votes of no confidence hold the political executive accountable to the legislature. However, when it comes to the administrative system made up of civil servants, regulators and public officials, their actions can be checked through judicial review, rules made by Parliament, special conduct codes and institutions like the Central Vigilance Commission and the Comptroller and Auditor General.¹³ This means we must view and treat the two types of organizations differently.

In administrative law, judicial review focuses mainly on administrative decisions and addresses them when they are shown to be illegal, irrational, improper or violating crucial rights. Most of the time, these checks apply only to decisions when there is a break in the constitution. Natural justice, legitimate expectation and proportionality are not used in policy decisions made by ministers like other laws are used by administrators. In simple words, if the administrative decisions are being already tested on the constitutional grounds, then there is no reason to keep it devoid of constitutional recognition. Along with this, without a dividing line, it is possible for courts to judge political decisions and for parliamentary touchstones to be applied to decisions usually made by government officials. Therefore, in a country like India which has a written constitution, the actions of its administration (being part of the executive) can be reviewed by courts with special attention to what is allowed in their constitution, not

¹³ S. Firdaus, Separation of Powers in the Contemporary State, Int'l J.L. Mgmt. & Human. (2020), <https://ijlmh.com/paper/separation-of-power-in-the-contemporary-state/>.

just by law.¹⁴

5.2. IMPLICATIONS OF ESTABLISHING ADMINISTRATION AS AN ORGAN:

Conferring the status of a constitutional organ to administrative authorities makes it's a part of the state under Article 12 of the Indian Constitution independent of the broad executive head, and changes both the constitution and the law in the country which is a federal nation. Actions and decisions within the government are regulated by constitutions and protected by Articles 14, 19 and 21, making these rules also applicable to the State's administrative agencies. Because their duties would be governed by the constitution, agencies must act justly, with care and make decisions that seem fair. With the help of Article 32 and 226, courts could verify that decisions made by officials comply with both rules and the constitution. As a result, guidance from legitimate expectation, natural justice and proportionality will govern government administrators' decisions.

It is important to note that administration is responsible for applying federalism in India. The constitution determines how the Union and the States set their policies and regulations at federal and state levels. If we treat them as State bodies, they will follow the same rules while fulfilling the assignments given to them.¹⁵ As a consequence, the federal system is preserved when those in charge, stick to their sectors and respect the freedom of the other governments. When including administrative law in the constitution, it becomes necessary for lawmakers to outline the amount of authority accorded to administration agencies. However, this does not change the position of how the constitutional machinery works in India.

6. PURPORTING ACKNOWLEDGEMENT OF ADMINISTRATIVE WING:

It is true that administrative bodies carry out responsibilities already assigned to the legislature, executive and judiciary. Yet, advocating for institutional recognition as a separate service is not based on its being the only organ, but on it having special skills and being needed for democracy. To summarize, it is not their actions that set them apart, but rather how and why they make decisions that matters.

¹⁴ Abhishek Dubey, The Relationship Between Constitutional Law and Administrative Law: An Indian Perspective, (2006) PL August 7.

¹⁵ Gillian E. Metzger, Administrative Law as the New Federalism, Duke Law Journal, May, 2008, Vol. 57, No. 7, Thirty-Eighth Annual Administrative Law Issue (May, 2008), pp. 2023-2109

- **Government now needs to be more specialized and complex:**

Topics like environmental safety, finances, communication systems and data privacy must be understood, decided upon and handled by professionals in these areas. The old way of organizing businesses can't handle such constant involvement. By acknowledging that administration is an organ on its own, it becomes clear why it needs its own resources, processes and systems of accountability.

- **Functional Autonomy and Hybrid Role**

The administrative bodies in the U.S. tend to perform each of the three functions—legislating, enforcing laws and deciding cases—within the same statute. It is not only an overlap between the two, as a result of its structure and legality, it introduces a new way of government. Acknowledging this mixed nature by codifying laws or special policies helps define rules and ensure the legitimacy of this role.

- **Accountability Reform**

It is a major problem that administrative agencies are not held clearly responsible by either the executive, legislature or judiciary. By taking them out of the executive branch and treating them as a separate organ, the government can introduce more rules for transparency, freedom and review, thus building stronger public trust and better democratic controls.

- **Theoretical and Legal Clarity**

Considering administration, a part of the executive from a constitutional point of view ignores its real structure and weakens how we talk about the law. While the idea of the administrative wing as a separate organ is mostly hypothetical, it could make it easier for experts, legal bodies and politicians to fit its features with suitable doctrines.

CONCLUSION:

As per the popular legal wave, the executives and administrative form part of a single source, yet they have various distinct objectives under the Indian system and must not be combined. According to the Constitution, the leadership of the executive branch is responsible to the legislature. It is the responsibility of civil servants, boards and statutory authorities to apply

and manage policies and governance where the issues affect ordinary people. Thanks to the executive, the administration follows rules based on justice, common sense and correct procedures. The group of technocrats can perform the duties of a legislature, a court and an executive and these actions often stay in effect for a longer period and impact a larger area than those done by politicians.

Since administration plays a crucial role and many institutions are involved, adding the administration as an independent section of the government to the Constitution would be appropriate. Should the move happen, it would improve how decisions are made and who makes them in each area. When the administration is recognized by the constitution, it clearly shows its responsibility in safeguarding federalism, executing social justice laws and securing the stability of government whenever elections in the country are held. When administration plays a big role in a government's duties, the government has less independence and must act based on what the political executive commands. Regarding the administrative as an important part of government and law, like the legislature and the court, would describe how the system functions today, uphold the rule of law and help build citizens' faith in each organ.