

Constitutional And Administrative Law Notes

ADMINISTRATIVE LAW - YR 2010

I. INTRODUCTION

A. The Constitution and Administrative law

Mauritius inherited a written constitution when it acceded to independence on 12th March 1968. The constitution of Mauritius is the Supreme law of the country. It is a comprehensive document which governs the relationship among the various organs of the State and also regulates the relationship between these organs and individuals.

Briefly, the constitution provides for the following:

- Mauritius is a sovereign and democratic State;
- The different organs of the government, their powers and functions;
- Rights and freedoms of individuals;
- The relationship between the government and the people.

B. Separation of Powers

The Constitution creates Mauritius as a State and by creating Mauritius, the Constitution also creates the 3 institutions through which the Government functions, which are as follows:

- A. The Parliament / Legislature
- B. The Executive
- C. The Judiciary

These three organs of the Government operate to regulate the life of people. However, they can only function effectively if there is a separation between them. Therefore, in Mauritius we have the doctrine of Separation of powers, which provides that there should be no encroachment in the powers of each organ.

This is important for the good functioning of the Government because in a democratic country the government is accountable to the people.

On one side of the constitutional chessboard sits the **GOVERNMENT**, which functions through its 3 institutions (Legislature, Executive and Judiciary) and on the other side is the **PEOPLE** which have been given various rights and freedoms under the Constitution.

Roshan Bundhoo

Constitutional and administrative law notes are essential for understanding the framework that governs the relationship between individuals and the state, as well as the structures and functions of government institutions. These notes provide a comprehensive overview of the principles, concepts, and case laws that define the legal landscape within which public law operates. This article will delve into the significant aspects of constitutional and administrative law, highlighting their importance, key principles, and relevant case law.

Understanding Constitutional Law

Constitutional law is the body of law that defines the structure of the state, delineates the powers of government entities, and guarantees fundamental rights to individuals. It is the supreme law of the land, and any law that contradicts it is deemed invalid.

Key Principles of Constitutional Law

1. **Supremacy of the Constitution:** The Constitution is the highest law, and all other laws must conform to its provisions.
2. **Rule of Law:** The law applies equally to all individuals, ensuring that no one is above the law.
3. **Separation of Powers:** The government is divided into three branches—executive, legislative, and judicial—each with distinct powers and responsibilities to prevent the concentration of power.
4. **Checks and Balances:** Each branch has mechanisms to limit the powers of the others, promoting accountability and preventing abuse of power.
5. **Fundamental Rights:** Constitutions often enshrine certain rights that protect individuals from government overreach.

Constitutional Frameworks

Constitutions can be categorized into two main types:

- **Written Constitutions:** These are codified documents that outline the structure of government and the rights of individuals. Examples include the United States Constitution and India's Constitution.
- **Unwritten Constitutions:** These are not codified in a single document but consist of statutes, legal conventions, and judicial precedents. The United Kingdom is an example of a country with an unwritten constitution.

Understanding Administrative Law

Administrative law governs the activities of administrative agencies of government. It encompasses the rules and regulations that these agencies create, as well as the legal principles governing their actions. Administrative law ensures that the powers exercised by these agencies are lawful, reasonable, and in accordance with the Constitution.

Key Principles of Administrative Law

1. **Legality:** Administrative bodies must act within the authority granted to them by statute.
2. **Reasonableness:** Decisions made by administrative bodies must be rational and not arbitrary.
3. **Fairness:** Individuals affected by administrative decisions have the right to a fair hearing and to be treated fairly by administrative authorities.
4. **Transparency:** Administrative processes should be open and accessible to the public, promoting accountability.

Types of Administrative Actions

Administrative actions can be classified into several categories:

- Rulemaking: The process by which administrative agencies create regulations.
- Adjudication: The legal process by which an administrative agency resolves disputes.
- Enforcement: The actions taken by administrative agencies to enforce compliance with regulations.

Judicial Review of Administrative Actions

Judicial review is the process by which courts examine the actions of administrative agencies to ensure they comply with the law. Courts can invalidate administrative actions that exceed the agency's authority, are unreasonable, or violate principles of natural justice.

Grounds for Judicial Review

1. Illegality: The agency acted beyond its legal authority.
2. Irrationality: The decision was so unreasonable that no reasonable authority could ever have come to it.
3. Procedural Impropriety: The agency failed to follow the proper procedures required by law.
4. Violation of Natural Justice: The right to a fair hearing was not provided.

Significant Case Laws in Constitutional and Administrative Law

Understanding key case laws is crucial for grasping the application of constitutional and administrative principles. Here are some landmark cases:

Constitutional Law Cases

1. Marbury v. Madison (1803): Established the principle of judicial review in the United States, enabling courts to invalidate laws that conflict with the Constitution.
2. Brown v. Board of Education (1954): Declared racial segregation in public schools unconstitutional, reinforcing the principle of equality under the law.
3. Kesavananda Bharati v. State of Kerala (1973): Established the Basic Structure Doctrine in India, asserting that certain fundamental features of the Constitution cannot be altered.

Administrative Law Cases

1. *Ridge v. Baldwin* (1964): The House of Lords held that a public authority must follow fair procedures before dismissing a public servant.
2. *Council of Civil Service Unions v. Minister for the Civil Service* (1985): Established the principle of procedural fairness in administrative decision-making.
3. *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* (1948): Introduced the Wednesbury test, a standard of reasonableness for administrative decisions.

The Interaction Between Constitutional and Administrative Law

Constitutional and administrative law are intricately linked. Constitutional law provides the framework within which administrative law operates, ensuring that administrative actions comply with constitutional principles. Conversely, administrative law helps to implement constitutional rights and obligations, functioning as a tool for governance.

Importance of Constitutional and Administrative Law

1. **Protection of Rights:** These branches of law ensure that individual rights are safeguarded against arbitrary state action.
2. **Accountability:** They promote accountability of government agencies and officials, ensuring that they act within their powers.
3. **Legal Certainty:** By establishing clear rules and procedures, they provide predictability and stability in governance.
4. **Conflict Resolution:** They offer mechanisms for resolving disputes between individuals and the state, enhancing the rule of law.

Conclusion

In conclusion, constitutional and administrative law notes serve as a vital resource for understanding the legal frameworks that govern the relationship between individuals and the state. By exploring key principles, significant case laws, and the interaction between these two branches of law, one gains insight into the mechanisms that ensure justice, accountability, and the protection of rights. As societies evolve, the significance of constitutional and administrative law continues to grow, shaping the future of governance and individual liberties. Understanding these concepts is essential for anyone engaged in the study or practice of law, public policy, or governance.

Frequently Asked Questions

What are the key principles of constitutional law?

Key principles of constitutional law include the supremacy of the constitution, separation of powers, checks and balances, and the protection of fundamental rights.

How does administrative law differ from constitutional law?

Administrative law focuses on the rules and regulations created by governmental agencies, while constitutional law deals with the structure and interpretation of the constitution itself.

What is the significance of judicial review in constitutional law?

Judicial review allows courts to determine the constitutionality of legislative acts and executive actions, ensuring that no law or action contradicts the constitution.

What are common remedies available in administrative law?

Common remedies in administrative law include judicial review, mandamus (compelling action), prohibition (preventing action), and declaratory relief.

What role does the Constitution play in administrative law?

The Constitution serves as the foundational legal framework that guides the establishment, operation, and limits of administrative agencies and their powers.

How do constitutional amendments affect administrative law?

Constitutional amendments can alter the authority and functions of administrative agencies, impacting how laws are interpreted and enforced.

What is the doctrine of ultra vires in administrative law?

The doctrine of ultra vires holds that actions taken by administrative agencies that exceed their legal authority are invalid and unenforceable.

Why is the rule of law important in constitutional and administrative law?

The rule of law ensures that all individuals and government actions are subject to and accountable under the law, promoting fairness, justice, and equality.

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