

**APPROACHES AND EFFECTS OF ADMINISTRATIVE LAW IN NIGERIAN
POLITICAL AND ADMINISTRATIVE SETTING**

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ABSTRACT

This paper has to do with an attempt to understand the place of Administrative law in the political, social and Administrative settings. We have tried to capture the importance of having laws put in place for effective maintenance of law and order in the world of work and in governance in general. The general conventional wisdom is that educated Administrators always know what to do. The sad story is that liberty and freedom to exercise administrative power have often led to administrative vices like impunity, oppression, victimization and so on. It is therefore needful to put in place administrative laws to provide checks and balances in the administrative setting and to stipulate remedies for those who become victims of executive or administrative high handedness and misrule. The need for laws oversight role in the administrative setting is stressed in this paper. We have also tried to express how the regulatory role of laws will enhance workers' welfare thereby impacting on their general productivity and efficiency. We however noted with dismay that the public complaints commission is not playing its statutory role due to lack of publicity of functions and the politicization of its operations. Our conclusion is that all efforts should be geared towards the optimization of Administrative laws in order to enhance greater harmony and efficiency in all tiers of government in all the sectors of our economy.

Introduction

Administrative law can be said to be an innovation in the Nigerian Political scene because it was brought about by the advent of British administration in Nigeria. This means that before the coming of British administration, Nigeria did not have a national constitution which spelt out how the country should be run, it is important to note that Nigeria being a creation by the British colonialists was tinkered out of many distinct ethnic nationalities. Nigeria came as a result of the welding together of these nationalities into one nation. This gave rise to a new nation which necessitated the need for a national constitution. We can say that the development of constitutional law also led to the development of administrative law, even though the development of administrative law is still at a very low level. Nigeria was first administered through the Royal Company which was eventually handed over to Sir Fredrick Lord Luggard, whose duty it became to fuse the colony of Lagos with their protectorate of Southern and Northern Nigerian. By 1914, this union has been fully consummated, and with this came the Nigerian nation with unified administration. However, unified administration was more in theory than in practice, because both the North and the South had different peculiarities and diversities among the people which demanded modification in the way they were administered. These diversities effectively led some of the early governors and nationalists to advocate a federal system of government where the component ethnic

nationalities are given some form of autonomy to run their regions, in the way they thought best, the 1946 constitution divided the country into three regions with each region having lieutenant governor. In October 1, 1954 a new constitution came into force which created the federation of Nigeria consisting of the federal territory of Lagos and the three regions, west, east and north and the territory of the Southern Cameroon which later broke away from Nigeria. At this time, the constitution that was drawn up made provision for what was then called houses of assembly and house of chiefs, these houses only played advisory role, they were not properly legislative. In 1960, Nigeria became an Independent state under a new constitution, although some may argue that there was no major change under 1960 constitution, but from the perspective of administrative law, every constitutional change will affect configuration of authority, which inevitably will affect the status of administration law. We have under constitutional dispensation federal and regional governments, with their exclusive and legislative responsibilities. However, the regional legislature was to be made to conform to the legislation of the federal parliament.

The 1963 constitution saw the creation of the Midwestern region out of the western region. There have been other constitutional changes which culminated into 1979 and later 1999 constitutions. In these constitutions, more coverage was given to administration, separation of powers, and rule of law, ministerial responsibility, parliamentary and constitutional sovereignty.

Since the military has been in power for more than civilian administration, the development of administrative law owes a lot to military government. What is done in this paper is to examine, how administrative law evolved in the Nigerian constitution and how it has helped in improving the welfare of the citizens through efficient running of government and the dispensations of justice.

Definition

Administrative law means the branch of law which vests power in administrative agencies, imposing certain requirement on the agencies in the exercise of their powers and providing remedies against administrative abuse.

Administrative law was imported into Nigeria by means of local legislation in 1863, and then later in 1914 it became part of the Supreme Court ordinance, which introduced into Nigeria the rules of general application. It is also important to state that administrative law has a lot to do with constitutional law, infact, administrative law is part of constitutional law. In formulating Nigerian constitution, the administrative processes of government were taken into consideration and these laws were formulated to guide the operations of administrative agencies.

Sir Ivor Jennings said administrative laws had to do with the scope of governmental activities which embraces how government is organized, how it exercises its power and what it is expected to do. It acts, as an object of control, specifies the duties of governmental agencies with the view of ensuring that they function effectively. He spoke of what the law should do to help the government do their work. According to William Robson,(1951) it is the law that regulates the privileges of civil servants and administrative procedures. They relate to public administration, when a public officer violates the regulation, he or she is not supposed to be tried in ordinary law court, but in administrative courts, where appropriate rules will be used to determine the case. People under administrative law are the public servants, state, public agencies, and all forms of public institutions. Davis Foulkes(1986) says the way administrative machinery has developed in modern times has necessitated the coming into being of administrative law. It is concerned

with public law and operates through institutions. For him, it should be concerned with how institutions get their powers and how they use these powers and the nature of these powers. Foulkes(1986) looks at it from the legal point of view, he talks about the relationship that exist between government functions and how to ensure that conflict that arise through the relationship are settled amicably through the instrumentality of administrative law, since people relate together, they are bound to offend each other so there is need for administrative law to settle such disputes. David Kenneth(1975) says, at times some administrative laws are seen to be bad, there are no laws preventing the administrators from behaving badly, so there should be laws to guide them to fall in line with acceptable behaviour. Kenneth points out that the whole essence is to ensure that administrative processes are not abused. It can be seen as a law which helps the administrator to act under political directions to get things done. That administrative law are to guide and check the excesses of the public servant to help him or her not to abuse his or her office. For Yardley (1969), administrative law provided umpires in the adjudication of cases between conflicting administrative processes. He sees administrative law as performing both negative and positive functions. B. Schwartz(1983)) sees administrative law from the point of view of control and supervision of administrative operations. Administrative laws act as oversight, oversees what goes on, it defines the limits of governmental powers and also provide legal remedies for those who may be adversely affected by the law. It is not just saying you will suffer this or that, but if you are badly affected, what compensation will be given to you because most government do not think of compensation but only punishment, so government should provide what should be done to compensate one who is badly affected in the course of administrative function. Unlike Jessing, Wade (1985) stresses what the law should do to help government if it fails to discharge its responsibilities well. His definition is the same as that of Jennings but the addition is that administrative law should be extended to include the liabilities that may be incidental to administrative practice. It is not only concerned with the powers, duties, but also looks at the fact that these powers and privileges may be abused by administrators. Dicey (1951) says that there is nothing like administrative law before this time, he was talking about a separate catalogue of laws that will address administrative matters. He says that the laws we have is common laws that do not concern administrative processes, that there is need to carve out a set of laws to take care of administrative processes. He said administrative law should be concerned with subjecting government to judicial control. Government should not be allowed to do what they like; they should be subjected to the control of laws. He said there should be administrative courts presided over by administrators who understand the workings of government to handle cases which concern government and their agencies.

Theoretical Framework

Theory of Administrative Law

Adolf Merkl General Administrative Law(1997)written by Zoran Jelic, said administrative theory is concerned with administrative acts, administrative procedures, wrong administrative acts, administrative penalty, organs of administration, systems of organization of administration, etc. This theory is necessary here because administrative law here is seen as a set of rules that regulate the directions of formation of administrative acts, including both formal and informal. For Merkl, administration is a conscious human action, which means there must be means and the end. He pointed out that all state functions such as administrative acts, are ends which can be achieved only by certain means. Thus the law is the end that is achievable by legislative means, and administrative acts are ends achievable

by administrative procedures. This theory is significant because it identifies and locates relevant problems and proposals for appropriate solutions to be sought.

Administrative Law as it Relates to Welfare of Citizens

Administrative law is established to help to put in place good government which at the end of the day will impact positively on the welfare of the citizens. It will also reduce to the barest minimum the arbitrary abuse (abuse of power) of the fundamental rights of citizens. When the administrative laws are made to outline the due legal process for carrying out the administration of government agencies, it becomes very effective as an instrument of control. This means that it will contain the rules and regulations guiding the operations of government. As it relates to the welfare of citizens, we can clearly say that administrative laws are made in order to ensure good government, in such a way as to ensure that the constitutional provisions which ensure good life for the citizens are maintained, that is, division of government into the arms of government. If the two arms are not guided by administrative procedures they are bound to clash one with another at the end of it, it is the citizen that suffers. So administrative laws, help to avoid such conflicts by providing the guide lines which if the three arms adhere to will minimize friction or conflicts, because the popular saying goes that when two elephants fight, it is the grass that suffers, If there are administrative laws put in place, it is the citizens that bear the brunt of the conflict. Therefore administrative laws provide sanctions against abuse of power on the part of the organs of government.

Administrative laws provide avenues for the citizens to seek redress either through the law courts or in the public complaints commission against injustices suffered in the hands of government functionaries. Apart from that in Nigeria administrative laws could provide for the consideration of federal character in employment, thereby making it possible for citizens from minority state to get employed, which could have otherwise been impossible. The institution of local government administration is also part of the fall of public administration, because local government administration is instituted in order to make administration of the country easier, so at that level it becomes profitable to citizens as better administration at the local government level makes room for the delivery of democracy dividend. The following are some arbitrary control over local governing which hinders democratic dividend:

- i. Executive control by the State and Federal Governments which disrupts their operations one way or the other.
- ii. Outright interference with the functions of Local Government; and in some cases the usurpation of their financial powers.
- iii. Poor financial base and the relegation of its political autonomy to the background by the higher tier of government
- iv. **Autonomy:** Although the autonomy of local government is constitutionally entrenched and recognised, in reality running the local government derives from the Federal and State Governments rather than the Local Government themselves. The State Government Offices of Local Government Affairs; the Ministry of Local Government, or and the Local Government Service Commission in most cases exert undue influence on the Local Governments, thereby controlling their activities centrally from the State.
- v. **State House of Assembly:** The powers given to the State House of Assembly over Local Government affairs are excessive which subjugate the local government.
- vi. **Political Interference.**

One of the major obstacles to the effective realization of the Local Government objectives is that of Political interference. Arising from different party orientations and interests, etc, which is not healthy for development as it generates political interferences which slows down the rate of development in the rural areas.

General Control over Administration

According to Oluyede(1986), administrative laws make it possible for a constitutional control of the politics of the nation, so politicians are made to play according to the rules of the game, thereby ensuring sanity in the polity, which at the long run create a conducive environment for the private business of citizens to thrive and to make progress.

Finance

Administrative laws ensure that there is control over the finance of the country, it ensures that government functionaries do not spend the money of the country frivolously, administrative laws act as check on them, thereby ensuring that money made for the provision of necessary amenities like roads, water, light are provided and by so doing it puts in place proper accountability mechanisms.

National Assembly

For Robert G. Lee(1985) Administrative laws control the administration of National assembly, thereby making them people oriented. In terms of human rights it safe guards the fundamental human right of citizens as it is enshrined in 1999 constitution as to right to life, personal liberty, fair hearing, free movement, freedom of expression, fair hearing, family life, etc. It also provides for legal remedies against damages which citizens may suffer in the hands of government example, when people are unlawfully arrested and detained without proper procedure, administrative law can be evoked to provide appropriate remedies for the abuse which citizens have suffered.

Complaints commission (special control) of public complaint commission and the code of conduct bureau

The ordinary citizens are provided with this commission because here they can institute direct complaints to this body to investigate any undue influence, negligence or mal-administration by government officials and staff of parastatals. Organization which committed some injustice against the citizens can through the public complaints commission obtain redress for injustice done to him, thus the public complaints commission serve as the watch dog for the ordinary Citizens, thereby protecting the citizens against arbitrary authority which may come in any shape or form.

Public Complaints Commission was established on 16th October, 1975 by the military through degree 31. The commission was empowered to investigate either on its own initiative or on complaint against any administrative actions by federal state agencies, statutory operation, local government authorities and public institutions and companies whether in public or private sectors and officials (p.395)

Riot

Frank Parker(1973) state that in riot administrative law can protect students who are rioting for justice.

Dismissal from employment

Administrative law helps to see the case of dismissal from work if the dismissal is unfair, can help to bring justice or to cause the victim to be restored.

Exam malpractice

There are administrative laws to examine or determine the fate of such students who are involved in examination malpractice at institutional level.

Investigation

Where there is a suspension without a hearing, administrative law can carry out the investigation of the suspension of the staff.

Peace

According to Frank (1973) administrative laws help to achieve peace, justice, to help the poor, the law of natural justice could operate to safeguard individuals to enjoy the right to be heard.

It provides selective overview of the institutional framework within which modern public administration operates in order to facilitate an understanding of the nature of the major bodies governed by administrative law. If the police are the people that have wronged the citizens, the citizens can seek redress.

Administrative laws guide the Nigerian police in enforcing the rule of law in the country which enhances government/citizen's relationship, e.g where people report matters to the police and police will check what the law says on that matter, even though corruption today has made it difficult for proper justice to be attained.

However, there are bottlenecks in achieving the good purpose of administrative law to the citizens because of the following:-

Public Complaints Commission and Code of Conduct Bureau are still subject to the manipulation of the powers that be.

The sovereign immunity which some government functionaries enjoy like Governors, Heads of States, make it difficult for citizens to bring up cases of injustice against them. Against the fact that the Nigerian Political system has been over monitored, justice has become a product to be gained by the highest bidder. This makes it difficult for the ordinary citizens to get justice at all times.

Evaluation

To carry out this evaluation, it is important to determine the usefulness or otherwise of administrative law. Administrative law as we have earlier stated is useful because it enable the government to map out rules, laws and sanctions that guide the relationships between government functionaries and citizens who are at the receiving end of administrative processing, it is useful also because it engenders peace, justice, law and order in the society because it sets the limit to the exercise of administrative authority. It also provides remedies for those who may be injured through the abuse of power. Administrative law enables administrative officers to become conversant with the real purpose for which they are in authority, namely the provision of good government. It also acts as antidote against the abuse of constitution with this both administrators and the citizens are made to know their right and limitations. Administrative laws help the proper functionary or legal machinery within a state. Here the legal officers are empowered to enforce rule of law which will enhance good relationship, between the rulers and the ruled.

According to Frank (1973) administrative law helps to achieve peace, if the law does not help the poor, the solution is to change the law, not change the form of government. Administrative law cannot solve all our problems, they are economic and social as much as legal, however, failure to observe the law will take the country backward, it might end the possibility of helping the poor. Laws are different in each state, the reasons for poverty, the background and living conditions of the poor are different in each state, the attitudes of politicians and public servants towards the poor is different in each state.

Limitation

Though administrative law is said to be useful, it nonetheless has its own limitations. Being a human legal instrument, it is characterised by shortcomings like:-

Limited scope

There are many issues that administrative law may not cover because of the non existence of such cases e.g where if the government abuse the individual and the law does not have any provision as to how such matter should be handled, it means administrative law cannot help the individual to obtain redress.

Difficulty in interpretation

Every law supposedly is infested with loopholes which can be exploited by both legal officer and administrator to their own advantages to the expense of the citizens. Again, an evil minded person can for personal reason or for reasons best known to him decides to misinterpret or misapply administrative law provisions to the advantage of his client, apart from that, some administrative law principles are very ambiguous, this makes it difficult to reach proper interpretation.

Level of Enlightenment

Some citizens because of their state of enlightenment may not be aware of the existence of administrative law provision, so being ignorant, may suffer in ignorance that they may not be in a position to make use of the provision of administrative laws because they are ignorant of the existence of such laws.

General case of corruption

The due process and implementation of administrative law can be flawed through the corruption of those who are supposed to implement them, so when they are blinded with bribe it will make it difficult to apply justice appropriately.

General underdevelopment and poverty

The general underdevelopment and poverty of the country makes it very expensive for citizens to pay the price of engaging the services of legal officer who would help them to secure justice through administrative law.

Conclusion

In conclusion, we can say that administrative law is a valuable aspect of law as it deals with or concerned with the protection of the rights of citizens and it leads to or ensure proper conducts of government business. It institutes procedures for redressing conflicts that may arise in the day to day functions of institutional organization government etc, without administrative law, it would have been difficult to have lay down rules that will guide

government and private administrators to carry out their duties without infringing upon due process.

Though administrative law is very important, in Nigeria it has not yet attained its full operational capacity. This paper is proposing that government should ensure that constitutional provision on administrative law should rigorously be implemented. This can be done through empowering the judiciary to ensure compliance on the part of the administrator and also it is important that the remedies which administrative laws prescribe are enforced.

For administrative laws to be effective, it has to be strengthened through the effective use of prerogative remedies like habeas corpus, certiorari, prohibition, mandamus which enable a legal officer to redress injustice committed against the citizens. We have discovered that in most cases very highly influential people do not obey these orders coming from courts. We have discovered this abuse is rampant during the military administration, it must be noted that nobody is above the law. It is one thing to institute administrative law, it is quite another thing to obey them. The benefit of administrative laws can only be derived when there is due compliance by all the parties involved. When citizens know that there is room for certiorari, it makes judges to be careful not to handle judgements that are partial.

All these remedies are important to administrative laws because without them it will be difficult for administrative laws to be fully achieved. It also necessary to draw up new penalties to protect the public against new schemes that work against general good, they should be regulations that are current that people can adapt to.

Local Government are to be free from the control of the state and federal governments in the management of local affairs. Federal government should not interfere with local government affairs. The arbitrary and high handed removal from office of chairmen should not be so. The immediate example, here is that of Dr. Sam Orji, Chairman of Enugu Local Government. Also, the case in Borno State where the Governor, Lt. Col. Maina, imposed a monthly levy of #3.2 million on the revenue of the state Local Governments which was contributed on the basis of size and population of each local government. Maiduguri Metropolitan Council was levied N250,000 monthly and, but for the removal of the Governor which might lead to the stoppage of the illegal levy, stood to lose one Million naira in a year. So numerous are the instances of these abuse and so widespread is the practice that the Federal Government in March, 1990 set up a panel of four members to monitor the degree to which local governments are self accounting and to report any undue state interference.

These practices offer little hope for any appreciable measure of local government autonomy in the future. If they are continuing in the magnitude in which they are under this administration, how do we expect local Government autonomy to be enhanced? If their attitudes changes positively, then local autonomy will be enhanced but mere exhortations and precepts will avail nothing without attitudinal change.

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