

Exploring the Foundations of Administrative Regulations: Constitutional Basis, Police Powers, Eminent Domain, and Taxation

Shilpa S

LLM Student, School of Legal Studies, CUSAT

Abstract

Administrative regulation refers to the set of rules and regulations established by administrative agencies to implement and enforce laws enacted by legislatures. These agencies, often part of the executive branch of government, play a crucial role in ensuring the smooth functioning of government programs and services. Administrative regulations serve as a bridge between broad legislative frameworks and specific actions necessary for effective governance. Administrative regulations are created to translate legislative intent into actionable rules. They specify the details and procedures necessary for the implementation of laws.

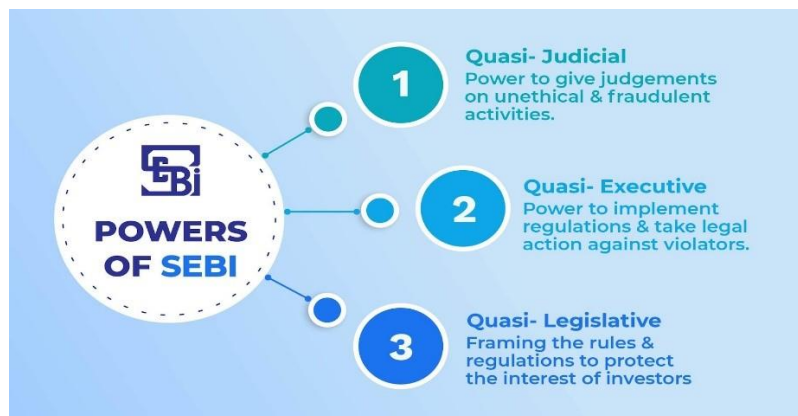
The primary goal is to ensure that government policies are executed efficiently and effectively. Administrative agencies are responsible for creating and enforcing regulations within their designated areas of authority. These agencies can operate at the federal, state, or local levels and are granted specific powers by legislatures to carry out their functions. The process of creating administrative regulations typically involves public input, expert analysis, and consultation. Agencies may publish proposed rules, solicit feedback from stakeholders, and then finalize the regulations based on the collected input. This participatory approach helps ensure a more comprehensive and informed regulatory framework.

Administrative regulations cover a wide range of areas, including environmental protection, public health, finance, transportation, and more. The scope of regulations can be broad or specific, depending on the legislative mandate given to the administrative agency. Once regulations are established, agencies are responsible for enforcing them. This may involve monitoring compliance, conducting inspections, and imposing penalties for violations. Effective enforcement is crucial for maintaining the integrity and effectiveness of the regulatory system.

Administrative regulation requires a delicate balance. On one hand, regulations must be robust enough to address the complexities of governance, but on the other hand, they should not be overly burdensome or restrictive. Striking this balance is essential to ensure that regulations achieve their intended objectives without stifling innovation or economic growth. Administrative regulations operate within a broader legal framework. They must align with the constitution and existing laws, and their implementation may be subject to judicial review to ensure compliance with legal principles. Administrative regulation is a critical component of the modern governance structure. It bridges the gap between legislative intent and practical implementation, ensuring that laws are translated into actionable measures for the benefit of society. The process is designed to be transparent, inclusive, and responsive to the dynamic needs of the community.

ADMINISTRATIVE REGULATIONS

In addition to tribunals, commissions and quasi judicial authorities there are certain regulatory agencies such as SEBI ,RBI ,etc. These perform a combination of legislative, administrative and quasi-judicial functions. It is any government authority other than a court and a legislature that affects the state and its citizens through rule making ,adjudication and implementation.it is also an executive body that serves public interests which is the reason for its existence ;it shall not represent any private interests . It is also a quasi-legislative body that establishes and prescribes rules and regulations to implement the law; it shall not have absolute discretion to determine or change the law. It is also a quasi judicial body that conducts hearings and decides on cases; shall not have inherent powers of a pure judicial court. for example,



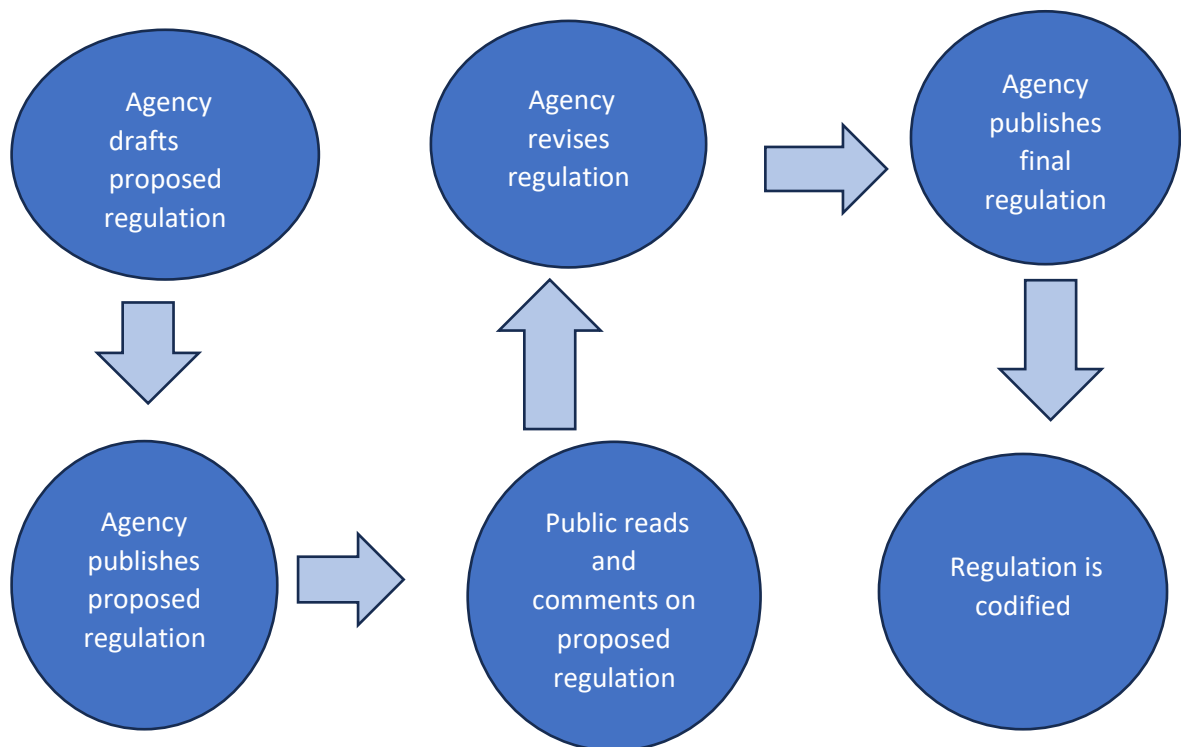
SECURITY EXCHANGE BOARD OF INDIA (SEBI)¹ is an administrative agency which performs a combination of quasi-legislative, quasi-judicial and quasi-executive functions. The quasi executive function of SEBI is to implement regulations and take legal action against violators. The regulations made by SEBI (administrative agency) is termed as SEBI regulations(administrative regulations).

Legislature must delegate this power to the agency to make regulations. These regulations have the same effect as that of a statute passed by the legislature. These regulations are a set of rules assist in the identifying the operation.They tell how ,by whom ,where and when things are to be done. They contain procedural information such as step by step processes, specific responsibilities, timelines , amounts ,percentages ,etc

There is a step by step process how an agency publishes final regulation .First of all ,agency drafts the proposed regulation then, agency publishes proposed regulation ;after publishing it ,public reads and comments on proposed regulation and agency revises the regulation. After all, agency publishes the final regulation and the regulation is codified .

A diagram showing how regulations are issued by an administrative agency is given below;

¹ established on 12 April 1988 as an executive body & given statutory powers on 30 Jan 1992 through SEBI Act 1992



An example of an administrative regulation is UGC Regulations 2018, The University Grants Commission (UGC) has notified UGC (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018, in the Gazette of India on 18.07.2018. As per these regulations, Ph.D. Degree shall be a mandatory qualification for direct recruitment to the post of Assistant Professor in Universities with effect from 01.07.2021. Also, these regulations provide that a person with Ph.D. degree from a foreign university/ institution with a ranking among top 500 in the World University Ranking (at any time) by any one of the following: (i) Quacquarelli Symonds (QS) (ii) the Times Higher Education (THE) or (iii) the Academic Ranking of World Universities (ARWU) of the Shanghai Jiao Tong University (Shanghai) is eligible for direct recruitment as Assistant Professor in universities and colleges. The said Regulations is intended to attract and retain the best quality teachers and to encourage research in Universities and Colleges

CONSTITUTIONAL BASIS

In India, the relationship between Administrative law and Constitutional law is particularly significant. As various constitutional provisions directly impact the control and regulation of Administrative Authorities. These provisions form the Watershed Area² in administrative law where two branches overlap and influence each other.

One crucial constitutional provision is **Article 32** which grants individuals the right to move the supreme court for the enforcement of fundamental rights. This Article acts as a vital control mechanism allowing individuals to seek constitutional remedies when their fundamental rights are violated by administrative authorities.

² The area where two branches of the law overlap and influence each other.

Similarly, **Article 136** confers discretionary power upon the supreme court to grant special leave to appeal providing individuals with a recourse to challenge administrative decisions that may have an impact on their rights or interests. High courts also play a significant role in the control and regulation of administrative authorities through **Article 226**. This article empowers high courts to issue writs, including writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto, to safeguard the rights and interests of individuals and ensure the proper functioning of administrative bodies. Through these writs, high courts can exercise judicial review over administrative actions, ensuring their conformity with the principles of natural justice and legality.

Additionally, **Article 300** addresses the right to property, highlighting the constitutional protection afforded to individuals in matters of property rights.

This provision sets limits on the exercise of administrative powers concerning property, ensuring that administrative authorities do not arbitrarily infringe upon an individual's property right

Other provisions such as **Articles 227,311,263,280,262,315,324** also deals with administrative authorities.

POLICE POWERS

Chief Justice John Marshall coined the term 'police powers' in *Brown v Maryland*³, the police power has been a pivot of American constitutional thinking.

As recently in 1991, the supreme court spoke in *Barnas v Glen theatre*⁴³

"the traditional police power of the states as one which we have upheld as a basis for legislation this plurality opinion of the court defined it as the authority to provide for the public health, safety and morals"

As the eminent holder of the Roosevelt professorship in Berlin has so well said;

"The police power is the dark continent of our jurisprudence. It is the convenient repository of everything for which our justice classifications can find no other place"

Every right acknowledged to the individual by the state may be abused by him to the detriment of the state.

The state must therefore confer upon the govt the power to watch for and prevent such abuse. This is the

police power

The term police is now used preliminary to denote a body of people organised to maintain civil order and public safety to enforce the law and to investigate breaches of the law

The term police power is that power inherent in every sovereignty to govern men and things under which the legislature may within constitutional limitations, prohibit all things hurtful to the comfort, safety and welfare of society and to add to the general public convenience, prosperity and welfare

In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well-led, well-trained and well-disciplined force of police whom it can trust and enough of them to be able to prevent crime before it happens or if it does happen, to detect it and bring the accused to justice.

One of the most disturbing features of life in our time is the way wrongdoers seek to discredit the guardians of the peace. If hooligans demonstrate in the street, lie down in the highway and obstruct it, whenever they are removed there is a cat call "**police brutality**"

The Constitution of India provides the foundational framework for the police powers and responsibilities. Articles 246 and 355 of the Constitution delineate the distribution of legislative powers between the central and state governments, giving states the authority to enact laws related to public order

³ (25 US 12 wheat) 419
⁴ 501US 560,569 (1991)

and police. This allows for a diverse set of police forces across the country, including state police, central paramilitary forces, and specialized agencies.

Police Acts and Regulations: Each state in India has its own Police Act and regulations, which govern the organization, powers, and functions of the police force within that state. These acts often define the jurisdiction, roles, and responsibilities of the police and outline the extent of their authority

The Chapter V of The Code of Criminal Procedure entails the obligations and powers provided to the police when making arrests. Chapter 5 contains section 41 to 603. From these sections, police are vested with various powers such as to arrest a person without a warrant, arrest someone who doesn't provide his/her name or place of residence, search the place where the arrested person may have entered or believed to have entered, chase the offender to other jurisdictions, search the arrested person and seize offensive weapons and lastly, the power to capture an arrested person if he/she escapes from lawful custody.

Ahmed Noormohamad Bhatti v. State of Gujarat⁶, A three-Judge bench of the Supreme Court held that a law cannot be held arbitrary for the sole reason that it might be misused by the concerned authority. But on the other hand, Supreme Court has also taken cognizance of the misuse and has questioned the police on their comprehension of public order. D.K. Basu v. State of West Bengal⁷ is another landmark case where the Supreme Court has given an eleven-set of preventive measures which need to be fulfilled in every case of arrest and detention. Failure to comply with these requirements shall result in the offence of contempt of court by the concerned police officer and also culpable to departmental action.

The Supreme Court has taken cognizance of such misuse of power and increase in prevent arrests and custodial deaths. It has taken steps along with The Law Commission to curb such misuse. The apex court issued guidelines in Joginder Kumar v. State of U.P⁸⁴. and D.K. Basu v. State of Bengal which every policeman is required to follow while making arrests.

6,(2005)SC 2115

7.(1997)SCC (4)260

8.(1997)1 SCC 416

To conclude, arrest and preventive laws are necessary for the smooth functioning of the society, but such laws require to be under stricter judicial scrutiny to ensure fair use.

EMINENT DOMAIN

Like the police power, the power of eminent domain is an inherent sovereign power (*US v Jones*)

It is a power to seize property rights for a public use (*kohl v united states*)

It was established earlier that eminent domain unlike the police power may be used to acquire property for historic and aesthetic purposes. The first significant use involving the approval of the use of eminent domain to preserve historic property came in 1896. The power of eminent domain is not limited to the acquisition of any particular interest in land rather it is a broad power capable of reaching any property interest, whether real or personal.

The power of eminent domain is a sovereign power although it may be delegated to private persons and corporations as well as other state agencies and sub divisions. absent statutory authorization the delegate cannot redelegate his powers though he may designate the specific operative agent

LEGAL INSTRUMENTS

a) Land Reforms and the Land acquisition Act (LAA) 1894

Immediately after independence, the power of eminent domain was only of a statutory character, operationalised through Land Reforms legislation and the LAA 1894. Land reform laws are enacted from the 1950s to break the concentration of land with zamindars and to strengthen the rights of landless titlers and tenants

SC of India in its early phase struck down land reform legislation on the grounds that it violated the right to property which was then a fundamental right under Article 19(1) (f) of the constitution. This triggered a severe reaction by Parliament-land reform laws pertaining to takeover of property by the state were moved to the ninth schedule of the constitution from the first (constitutional amendment) Act 1951 onwards, which insulated them from judicial challenge and invalidation. The insertion of Article 31 A-C through the First Amendment Act and the 25th Amendment saved certain laws related to acquisition from challenge under Articles 14 and 19. This elevated eminent domain to a constitutional doctrine although blanket protection from judicial challenge under the Ninth schedule was later considered untenable (significantly after the kesavananda Bharati v. state of kerala⁹ judgment in 1973)⁵

9.(1973)4 SCC 225: AIR 1973 SC 1461

Right to property was removed from fundamental right through the

44th Amendment and added under Article 300A of the constitution

The constitutional status of the doctrine of eminent domain and the unqualified removal of the right to property as a fundamental right without attention to existing social, political and economic inequalities resulted in making Dalits, Adivasis, poor peasants and urban poor most vulnerable to the exercise of eminent domain under LAA 1894

Doctrine of '**Eminent domain**', in its general connotation means the supreme power of the king or the government under which property of any person can be taken over in the interest of general public. However, over the years such taking over the property by the king or the government has been made possible only after compensating the land owner of such property.

Thus eminent domain explained as the power of the king or the government to take over the property of a private person when it is needed for a public purpose. Doctrine of 'eminent domain' is based on two maxims namely,

1. *salus populi supreme lex esto* which means that the welfare of the people is the paramount law.
2. *necessitas public major est quam*, which means that public necessity is greater than the private necessity.

Eminent Domain is power of the sovereign to acquire property of an individual for public use without the necessity of his consent. This power is based on sovereignty of the State. Payment of just compensation to the owner of the land which is acquired is part of exercise of this power. Eminent domain power is regarded as an inherent power of the State to take private property for public purpose. This power depends on the superior domain of the State over all the property within its boundaries. An incidental limitation of this power is that the property shall not be taken without just compensation.

The Constitution of India also recognizes the power of eminent domain. However, this power of the state has been in limelight, more for the mischief that it is allegedly imputed to bring about. Soon after Independence, the Supreme Court was charged with judging the constitutionality of certain laws, which were intended to abolish the feudal zamindari (landowning) system

In entry 42 list III of seventh schedule under Indian Constitution, both union and States government are empowered to enact laws relating to acquisition of property. The use of eminent domain power for land

acquisition is also justified when the public purpose in question can be served by only a specific piece of land, which has no substitute

Acquisition or taking possession of private property which is implied in clause (2) of Article 31 of Indian Constitution, such taking must be for public purpose. The other condition is that no property can be taken, unless the law authorizes such appropriation contains a provision for payment of compensation in the manner as laid down in the clause.

The Supreme Court in *Sooraram Reddy v. Collector, Ranga Reddy District*¹⁰, has articulated the following grounds for review of this power:

1. malafide exercise of power;
2. a public purpose that is only apparently a public purpose but in reality a private purpose or collateral purpose;
3. an acquisition without following the procedure under the Act;
4. when the acquisition is unreasonable or irrational;
5. when the acquisition is not a public purpose at all and the fraud on the statute is apparent

In *Basantibai v. State of Maharashtra*¹¹ the Court did seek to interpret the Article 300-A favourably to the property owners by reading therein the twin requirements of ‘public purpose’ and ‘compensation’. Under Article 300-A the legislature cannot sanction the deprivation of property for a public purpose. However, the Parliament not intended to confer an absolute right on the legislature to deprive a citizen of his property merely by the passing of a blackletter law

Distinction between Eminent Domain Power & Police Power

In *Chiranjit Lal v. Union of India*¹², Supreme Court held that the eminent domain is the inherent right in every sovereign State to take and appropriate the private property belonging to an individual for public purpose. The State under its police power also regulates the use and enjoyment of private property.

The police power can, however, be distinguished from eminent domain power. While under police power, State merely regulates the use and enjoyment of property; under the eminent domain, State can take the property from the owner for public use.⁶

10.(2008)9 SCC 552

Notwithstanding this all pervasive nature of police power is that exercise of police power restricted only to maintenance of law and order situation. In as much as⁷ police is only an assisting machinery. This power seems to be synonymous with the power of eminent domain.

TAXATION

It is impossible to impose a tax on any commodity without, to some extent, restricting consumption demand for that commodity and hence checking its production. If demands for the taxed item is fairly inelastic, as in the case of tobacco products, a substantial tax may reduce purchases but slightly, but this slight modification of consumption and production is, inescapably “regulatory”

Even general taxes are regulatory. Despite uniformity of base, they involve discrimination because they subject to which they are applied is not economically uniform or because effective uniformity of application is administratively impossible Besides these discriminations resulting from economic or administrative nonuniformity, general taxes also exercise a marked regulatory influence on the flow of consumption, expenditure, savings, and investment Not only is every tax, considered as a whole,

regulatory as to commodity competition, business competition, or distribution of national income, but each and every variation of base or rate structure, introduced for revenue reasons or to further fiscal justice or to facilitate administration, exercises more or less economic regulatory effect

The **types of tax system in India** is categorized under two sections namely, Direct and Indirect tax. On one hand, direct taxes are inflicted on the taxable earnings that are earned by the people and entities. Here, the pressure is on the assessor himself and not on the seller. But on the other hand, indirect taxes are imposed on the sale of goods and services. Here, the burden stays on the sellers and not the assesses

The **GST system in India** is a blend of all the indirect taxes that have been creating a lot of complexities over time. Certainly, this has facilitated things and now we only have to evaluate three taxes, compared to five or six indirect taxes. The list includes the State Goods & Services Tax (SGST), Central Goods & Services Tax (CGST) and Integrated Goods and Services Tax (IGST). For the case of CGST and SGST, both of them are levied when the sale comes about within the state. However, IGST is assessed when goods are sold between different states

Distinction Between Power of Taxation and Power of Eminent Domain

Powers of taxation and right of eminent domain have much in common. Both are inherent powers in any government and sometime both operate on property. Besides this, both are generally asserted for public use and benefit. It is, therefore, not surprising that both cases confused with each other.

Nevertheless, there is a clear line of demarcation between these two powers. In *Laxmanappa Hanumantappa v. Union of India*¹¹, it was held that deprivation of property by imposition or collection of tax does not amount to acquisition or requisition of property under Article 31(2), which has been deleted by the Constitution (forty fourth amendment) Act, 1978.

In *Chemili Singh v. State of U.P.*¹², it has been held that compulsory acquisition of land for providing houses to dalits cannot be challenged on the ground of violation of right to livelihood which is an integral part of right to life under Article 21.

The following are some of the differences between the power of imposing taxes and power of eminent domain.

1. The power of taxation is not exercisable in respect of certain transactions of the society whose income is below the level of imposing taxes, whereas such exclusion is not, while exercising the power of eminent domain.
 2. The power of taxation of the State is legal power and whereas the power of eminent domain is an inherent power of the State.
 3. Taxation power is exercised to impose and collect taxes and whereas the power of eminent domain is exercised to acquire and hold immovable property of persons for public purposes which is a question of fact in each case.
 4. While exercising the power of taxation the State need not pay any compensation to the person connected instead of that citizen has to pay taxes to the State and whereas in case of power of eminent domain, the State is under an obligation to pay compensation to the person interested⁸
- 11.19551 SCR 769
5. The power of taxation can be exercised against any property, movable or immovable, whereas, the power of eminent domain can be exercised generally

CONCLUSION

These aspects—administrative regulation, police, taxation, and eminent domain—are integral to the functioning of a modern society. Striking a balance between the exercise of governmental powers and safeguarding individual rights is a complex task that requires ongoing attention, public engagement, and adaptation to the evolving needs of communities. Sound policies in these areas contribute to the well-being of citizens and the overall stability of the nation.

The impact of globalization on administrative regulations is profound and requires thoughtful consideration. Striking a balance between global cooperation and preserving national interests is crucial. Policymakers need to navigate these complexities to ensure that administrative regulations foster sustainable development, uphold human rights, and address the challenges posed by an increasingly interconnected world.

BIBLIOGRAPHY

1. [defactolaw.in/post/doctrine of eminentdomainforupsclaw optional](http://defactolaw.in/post/doctrine-of-eminents-domain-for-ups-law)
2. <https://www.jstor.org/stable/1120584>
3. <https://www.prepagent.com>
4. <https://core.ac.uk>
5. <https://jusmundi.com>
6. <https://theleaflet.in>
7. <https://www.wallcliffslawfirm.com>
8. S.P.Sathe;Administrative law; lexis nexis publications ;seventh edition;2017
9. CK Takwani; lectures on administrative law; eastern book company ;seventh edition;2015 10.Paras Diwan; administrative law;lexis nexis publication;2015