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RETHINKING GOVERNANCE FOR SOCIETAL PROGRESS: A LEGAL STUDY FOR REFORMS IN INDIAN ADMINISTRATIVE LAW

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ABSTRACT

The study of administrative jurisprudence is crucial to rethinking administrative law for societal progress in India. Understanding the legal framework that governs administrative law and its societal impact is essential to ensure that administrative law is fair and just for all. By conducting a legal study of administrative jurisprudence in India, we can identify the areas that need improvement and work towards creating a fair and equitable system. The research quarries into the challenges within India's administrative law framework, aiming to recognize and analyse flawed concepts leading to inefficiencies and legal inconsistencies. Through qualitative analysis of case law, statutes, and administrative procedures, outdated doctrines hindering effective governance are scrutinized. Employing doctrinal research, judicial interpretations, and legislative enactments perpetuating these flaws are critically evaluated, alongside comparative analysis with other jurisdictions. Beginning with a historical overview, the study highlights non-justiciability, excessive delegation, and procedural complexities as the main issues. Findings reveal unchecked administrative discretion, vague legislative guidelines, and opaque decision-making, eroding public trust and undermining the "Rule of Law". The socio-legal implications are profound, impacting fairness, accountability, and economic evolution. Proposed reforms include judicial, legislative, procedural, and substantive measures to modernise administrative law. This research underscores the necessity of these reforms for a fair, efficient, and accountable administrative system, urging collective action from policymakers, practitioners, and academicians.

Research Statement: *This research aims to uncover faulty concepts within Indian administrative law, propose reforms, and assess their implications for governance and justice.*

Keywords: *Administrative law; non-justiciability; arbitrariness; accountability; executive.*

1. INTRODUCTION

The evolution of administrative law reflects the changing philosophy of the state's role and objectives. As society grows more complex, new challenges arise for the administrative system,[1] necessitating a comparison of past and present state duties. Historically, the state's role was confined to protecting citizens from foreign invasion and maintaining internal peace.[2] However, the shift from a laissez-faire state to a social welfare state has redefined the state's role. The Constitution of independent India, the grundnorm[3] formulates

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1 Inflibnet, *Public Administration: An Introduction, Evolution of Public Administration*, PATHSALA (Mar 28, 2024, 10: 05 AM), https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000030PU/P000179/M016452/ET/14658892832et.pdf

2 Dhakuakh, *Chapter II, Evolution of Indian Administration*, (Mar 27, 2024, 10: 25 AM), https://dhakuakhanacollege.ac.in/online/attendence/classnotes/assignments/1623389518.pdf.

3 T. C. HOPTON, GRUNDNORM AND CONSTITUTION: THE LEGITIMACY OF POLITICS, 72-91 MC GILL LAW JOURNAL (1978).

fundamental laws and significantly impacts governance. It guides legislation enacted by Parliament and its execution, ensuring constitutional validity.[4] The Constitution conditions all government organs—legislature, executive, and judiciary.[5] Parliament codifies laws and delegates authority to the executive for subordinate legislation.[6] Executive authorities, including bureaucrats and government agencies, formulate policies and facilitate public interaction with the government. The judiciary ensures that these organs do not violate constitutional norms, acting as the guardian of the Constitution.[7] Additionally, the judiciary delegates quasi-judicial powers to tribunals to help manage judicial workload.[8] Administrative law governs the exercise of administrative powers, ensuring fairness, accountability, and transparency. Tracing its historical context, Indian administrative law evolved from colonial antecedents to its present form.[9] In 2014, Jacques Chevallier[10] defined the "state of law" as a regime where state power is pragmatically[11] framed by law."[12] The UN supports this ideology, stating that governance involves accountability to laws that are publicly promulgated, equally enforced, and independently adjudicated, consistent with international human rights norms"[13] The Third New International Dictionary from Merriam-Webster defines administrative law as a mandatory rule or mode of conduct enforced by a controlling authority,"[14]. By the end of the 19th century, the "state of law" resembled a "Constitutional State," where government authority was constrained by law, distinct from states

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4 Abhishek Bhargava, *Change in the concept of state-from laissez-faire to Social Welfare state*, INDIAN INSTITUTE OF LEGAL STUDIES (Feb 18, 2024, 11,11 AM), https://www.iilsindia.com/blogs/change-in-the-concept-of-state-from-laissez-faire-to-social-welfare-state/.

5 Tej Bahadur Singh, *Principle of Separation of Powers and Concentration of Authority*, Issue 4&5 J.T.R.I. JOURNAL 1, 8 (1996).

6 Arvind Kurian Abraham, *Delegated Legislation: The Blindspot of the Parliament.* The WIRE (Mar 16, 2022, 12.05 PM), https://thewire.in/government/delegated-legislation-parliament-executive

7 *Id.* at 2.

8 Dr. D. Uma Maheshwari, *Evolution of Administrative Law*, TNDALU (Jan 28, 2020, 12:20 PM), https://www.tndalu.ac.in/econtent/1.

9 Dr. MANOJKUMAR HIREMATH, f. Karnataka State Law University (KSLU), *Administrative Law*, (Mar 27, 2024, 10: 25 AM), https://bvbelladlawcollege.org/wp-content/uploads/2021/03/Administrative-Law.pdf.

10 Thomas Schmitz, *The Rule of Law in the Global Development of Constitutionalism*, DUSSELDORF UNIVERSITY PRESS 2017, at 177,179.

11 Martin Loughlin, *The Concept of the State, Foundations of Public Law* (Oxford, 2010; online ed), OXFORD ACADEMIC, Sept. 1, 2010, at 199, 200.

12 *Id at 202.*

13 Rule of Law Unit, *What is the Rule of Law*, UNITED NATIONS, (Mar 27, 2024, 10: 25 AM), https://www.un.org/ruleoflaw/what-is-the-rule-of-law/.

14 Neil MacCormick, *The State and the Law in Questioning Sovereignty*, OXFORD ACADEMIC, Jan.2010, at 19, 20.

based on arbitrary power. Modern "state of law"[15] concepts developed with the liberal democratic state,[16] influenced by the "Declaration of the Rights of Man and the Citizen,"[17] inspired by John Locke's social philosophy."[18] Article 16 of the French Declaration[19] asserts that a society without guaranteed rights and separation of powers lacks a constitution. Four main principles of the "Rule of Law"[20] are (i) The state is based on constitutional supremacy, guaranteeing citizen security and rights. (ii) Civil society is an equal partner with the state. (iii) State powers are separated into legislative, executive, and judicial branches with distinct responsibilities. (iv) Legislative power and democracy protect constitutional rights and principles.

1.1. OBJECTIVES OF STUDY

This research paper deals with the persistent issues and challenges within the framework of administrative law in India. By identifying and analysing flawed concepts, the study aims to focus on systemic inefficiencies and legal incongruities. Through qualitative analysis, the study uncovers the root causes of these faulty concepts and proposes viable solutions for reform.

2. RESEARCH METHODOLOGY

Employing doctrinal research methodology, the study critically evaluates judicial interpretations and legislative enactments that have perpetuated these flawed concepts by qualitative analysis of case law, statutes, and administrative procedures. Administrative law has been derived from the constitutionalism of India by application of common principles to the codified laws but there are some similarities and distinctions between both, resulting in the issues and conflicts faced by the other authorities, courts, and citizens of India.

3. KEY PROBLEM AREAS CONCERNING INDIAN ADMINISTRATIVE LAW

To comprehend the current state of administrative law in India, it is essential to trace its historical evolution from colonial antecedents to its present form. Investigating the implications of outdated legal doctrines in contemporary

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15 Catalin Silviu Sararu, *Current Issues in Administrative Law*, CAMBRIDGE SCHOLARS.,2020 at 142, 143.

16 SCHMITZ, *supra* note 10 at 181.

17 SCHMITZ, *supra* note 10 at 182.

18 John Locke's social philosophy asserts, "*The goal of any political association is the conservation of the natural and imprescriptible rights of man"*

19 Article 16 of the French "Declaration of the Rights of Man and of the Citizen" of 1789, sharply asserts, "*Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution"*

20 Reinhold Zippelius, *Rechtsstaat*, WIKIPEDIA, (Mar 27, 2024, 10: 25 AM), https://en.wikipedia.org/wiki/Rechtsstaat.

governance helps identify the issues and challenges through this journey. The roots of discerning certain doctrines and practices continue to pose challenges to efficient governance and are discussed herein.

3.1.DOCTRINE OF NON JUSTICIABILITY

Exploring the limitations imposed by this doctrine and its impact on administrative decision-making informs that the doctrine of non-justifiability[21] is a legal concept that has been passed down from colonial times. It places limits on the extent of judicial review over administrative actions. This can lead to potential abuses of power and an insufficiency of accountability. Referring to the law on judicial review, the hypothesis of non-justiciability has a dual character. First, it designates certain acts of public authority as non-researchable, in other words, exercises of few powers are called "nonjusticiable." For instance, the 'Grant of Honour' by the Queen is still considered by the courts as being non-justiciable.[22] Second, it designates certain powers of reviewing as not being accessible when revising the exercising of a particular type of public power. This is because that ground of review raises conflicts that are not valid for judicial determination subject to judicial review, given its fundamentally discretionary nature. For example, if a party begins with the agency, the dispute shall remain in the agency until the agency has taken 'final agency action.'[23] Two doctrines that apply in this case are the doctrine of exhaustion and the ripeness doctrine.

3.1.1. The exhaustion doctrine[24] is a legal principle where a plaintiff needs to exhaust all possible administrative remedies before obtaining judicial review.[25] It requires the litigant to exhaust the decisional possibilities within the agency hence, until there remains a decisional step to be taken within the agency, a court will often stay off such agency action.

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21 H. Lauterpacht, *The Doctrine of Non-Justiciable Disputes in International Law*, 24 ECONOMICA J. 290, 277–317 (1928).

22 Graham Nassau Gordon Senior-Milne v Advocate General for Scotland, UK, CSIH 39, para 20 (2020).

23 ACUS Recommendations, *Judicial Review of Agency Action*, ADMN. CONFERENCE OF THE U.S. (Mar 28, 2024, 10: 07 AM), https://sourcebook.acus.gov/wiki/Judicial_Review_of_Agency_Action/view#:~:text=As%20a%20general%20matter%2C%20two,merely%20tentative%20or%20interlocutory%20nature.

24 Peter A. Devlin, *Jurisdiction, Exhaustion of Administrative Remedies and Constitutional Claims,* 93 NEW YORK UNIV. L. REV., 2018.

25 Ibid.

3.1.2. The ripeness doctrine[26] defines the limits of a federal court's jurisdiction to adjudicate certain disputes[27]and prohibits judicial review if a dispute is a scientific or technical issue[28] as opposed to being legal.

Many people dispute the legitimacy of judicial review of discretionary administrative decisions, particularly of the reasonableness of those decisions. They base their claims on concerns regarding the jurisdiction of the courts and the constitutionality of such judicial review, on one hand, and considerations of institutional justiciability, on the other. However, the basic problem with such a review, in general, relates to the normative justifiability of the rules of administrative discretion and the law of reasonability, in particular. This problem can be illustrated through the Israeli Supreme Court case decisions[29] in 1993, wherein this Court addressed two cases in which the petitioners challenged Prime Minister Yitzhak Rabin's decision not to dismiss a minister and a deputy minister from his coalition government despite them being indicted on corruption charges[30]

Petitioners[31] contended that, under these circumstances, the Prime Minister was obligated to exercise his discretionary authority to dismiss the ministers. The Supreme Court had to consider the extent of the Prime Minister's discretionary authority and whether there was a legal or moral duty to dismiss the indicted officials. The case highlighted a tension between political discretion and ethical governance, raising questions about the appropriate response of a Prime Minister in situations where government members face serious legal accusations.[32]

3.2. EXCESSIVE DELEGATION OF LEGISLATIVE POWERS

Excessive Delegation of Legislative Powers should analyse the consequences of unchecked delegation and the need for clear guidelines because legislative bodies often delegate extensive powers to administrative authorities, which

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26 Renee Guolee, J.D., *The Ripeness doctrine,* FINDLAW (Mar 8, 2024, 10: 15 AM), https://constitution.findlaw.com/article3/the-ripeness-doctrine.html.

27 Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 670 n.2 (2010) ("Ripeness reflects constitutional considerations that implicate 'Article III limitations on judicial power,' as well as 'prudential reasons for refusing to exercise jurisdiction.'") (quoting Reno v. Catholic Soc. Servs., Inc., 509 U.S. 43, 57 n.18 (1993))

28 WILLIAM F. FOX, JR, UNDERSTANDING ADMINISTRATIVE LAW, 506-538(4th ed. 2000) https://www.lexisnexis.com/documents/pdf/20090218103837_large.pdf.

29 Ariel L. Bendor, *Are There Any Limits to Justiciability,* MckinneyLaw, (Mar 8, 2024, 10: 15 AM), https://mckinneylaw.iu.edu/practice/law-reviews/iiclr/pdf/vol7p311.pdf,

30 Shoshana Netanyahu, *The Supreme Court of Israel: A Safeguard of the Rule of Law,* 5 PACE INT'L L. REV. 1, (1993).

31 Smt. Selvi & Ors. v. State of Karnataka, Criminal Appeal No. 1267 of 2004, https://main.sci.gov.in/jonew/judis/36303.pdf.

32 The Government of Odisha, Arts. 35(b), 38(3), S.H. 214 1992 (India).

results in unreasonableness, arbitrary decision-making, and legal uncertainties. To ensure proper checks and balances, the Supreme Court laid down certain tests and 'constitutional limits' for determining 'excessive delegation.'[33] It was advised that to ensure clarity in the legislative process, the parent statute should enunciate the legislative policy, guiding principles, and the sphere within which a subordinate legislation can operate. It should not confer unchecked power on the executive, and the delegated legislation must adhere to the principles and limitations outlined in the parent statute[34] Furthermore, the Supreme Court has observed that delegated legislation can be considered to be a "necessary evil,"[35] and an unfortunate but inevitable infringement of the "Doctrine of Separation of Powers," which reserves the power of 'law-making' solely to the legislature.[36] However, there is an inherent danger in the delegation process, where an over-burdened legislature may unduly overstep the permissible limits of delegation and may not rightly articulate the guiding principles within which the delegated legislation must operate.[37]

3.3. LACK OF REASONED DECISION-MAKING

Examining instances where administrative decisions lack transparency and justification is noticeable and remediable. Administrative decisions lacking proper reasoning or rationale not only undermine transparency but also hinder effective judicial scrutiny, impeding the delivery of justice.[38] Acts of administrative functionaries that curb or affect the individual's liberty in any manner must be curbed, furthermore, the lack of providing reasons or not justifying their actions shall invoke Article 14 of the Constitution of India, which guarantees the right to equality before the law and the equal protection of the laws.[39] Such decisions can be arbitrary, discriminatory, or biased, and can have far-reaching consequences on individuals and society. The "Doctrine of Arbitrariness" warrants reasoned decision-making and ensures fairness, objectiveness, and impartiality. Giving reasons is a fundamental element of good administration, hence creating a pertinent duty of the Judiciary and Executive to act accordingly. Moreover, multiple statutes, including The Indian Police Service (Appointment of Promotion) Regulation 1955,[40] the Industries

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33 Pallavi Bajpai & Mohit Vats, *Separation of Power & Delegated Legislation: An Implicit Poise Created by Judicial Detour*, 6 IJCRT. 933,923-936 (2018).

34 M.P. JAIN & S.N. JAIN, PRINCIPLES OF ADMINISTRATIVE LAW, 96 (8th ed.2017).

35 Smruti Poola, *Delegated Legislation A Necessary Evil, 2* IJIRL.13, 1-15 (2021).

36 St Johns Teachers Training Institute v. Regional Director, AIR. 2003 S. C.1533 (India)

37 Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd v. CST, AIR.1967 S.C. 1895 (India)

38 Sofie Arjon Schütte, Paavani Reddy & Liviana Zorz, *A Transparent and Accountable Judiciary to Deliver Justice for All*, UNDP (Mar 18, 2024, 1: 15 PM), https://anti-corruption.org/wp-content/uploads/2017/05/RBAP-DG-2016-Transparent-n-Accountable-Judiciary.pdf.

39 Manager Govt. Branch Press & Anr v. D. B. Belliawpa, AIR 1979 S.C.429 (India)

40 Uma Charan v. State Of Madhya Pradesh, A.I.R. 1981 S.C. 1915 (India)

(Development and Regulation) Act,1941,[41] the Consumer Protection Act, 1986, and the Mines Act, 1952,[42] oblige administrative and quasi-judicial authorities to give reasons for their actions. The obligation placed on them by their parent statute is one of the most frequently used arguments in compelling administrative authorities to give reasons.

3.4. PROCEDURAL COMPLEXITIES

The challenges posed by convoluted administrative procedural complexities are a significant challenge faced by governmental bodies worldwide. Cumbersome administrative procedures often result in delays and hinder the efficient functioning of such bodies, which can exacerbate bureaucratic inefficiencies.[43] This could lead to several issues, including the delay of justice, increased costs, and decreased public trust. One example of how procedural complexities can impact governmental bodies is seen in the Indian judicial system. According to a report by the National Court Management Systems Committee,[44] The average duration of a case in India is around three years, with some cases taking up to 20 years to resolve. This delay is due to various procedural complexities that exist within the Indian judicial system.[45] To improve the functioning of governmental bodies and reduce procedural complexities, several measures can be taken, which include simplifying administrative procedures, automating processes wherever possible, increasing transparency, and ensuring that the right people are in the right positions. Another example of an initiative to reduce procedural complexities in India is the e-court project, which aims to digitize court proceedings and automate administrative processes. This project has already been implemented in over 20 states across India and has helped to reduce the time taken to resolve cases significantly. In short, procedural complexities are a significant challenge faced by governmental bodies, and addressing them requires a concerted effort by all stakeholders.[46]

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41 Anil Kumar v. Presiding Officer And Ors., A.I.R. 1985 S.C. 1121 (India)

42 Union Of India v. Essel Mining & Industries Ltd., A.I.R. 2005 S.C. 5160 (India)

43 Marg Compusoft, *Understanding Cheque Return Charges: What You Need to Know*, MARG ERP LTD, (Mar 18, 2024, 10: 15 AM), https://margcompusoft.com/m/author/marg/page/233/.

44 Bar & Bench Authors, *Supreme Court judge Justice Dipankar Datta to head National Court Management Systems Committee*, Bar & Bench (Mar 16, 2024, 10: 15 PM), https://www.barandbench.com/news/litigation/supreme-court-judge-justice-dipankar-datta-head-national-court-management-systems-committee.

45 Pratik Datta &Suyash Rai, *How to Start Resolving the Indian Judiciary's Long-Running Case*, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (Mar 26, 2024, 10: 45 PM), https://carnegieendowment.org/2021/09/09/how-to-start-resolving-indian-judiciary-s-long-running-case-backlog-pub-85296.

46 OECD, *Debate the Issues: Complexity and Policy-making*, OECD Insights, OECD Publishing, Paris, (Mar 26, 2024, 10: 45 PM), http://dx.doi.org/10.1787/9789264271531-en.

3.5. RELIANCE ON ARCHAIC LAWS

India's legal system is burdened by outdated laws that create ambiguities and hinder governance adaptation to contemporary needs. Many of these laws, formulated in earlier times, have become obsolete not because of their substantive absurdity but due to their inability to keep up with social, political, economic, and cultural changes. The following highlights some lesser-known laws from as early as the 19th century that remain enforced today. While they may seem bizarre, they are still legally binding.

The Indian Post Office Act of 1898,[47] grants the government an exclusive privilege to convey letters, which, if enforced strictly, could render the courier industry illegal. Another example is the Indian Sarais Act of 1887,[48] which allows individuals to use the facilities of five-star hotels, including washrooms, free of charge, with refusal resulting in a 20-rupee penalty. Though beneficial for the common man, it is rarely enforced. The Indian Treasure Trove Act of 1878[49] requires any treasure exceeding 10 rupees in value to be reported to the collector, rejecting the "finders keepers, losers weepers" rule. The Kerala Women's Code Bill of 2011[50] enforces a two-child policy, with a third child leading to imprisonment or a penalty, infringing on basic human rights. The Indian Aircraft Act of 1934[51] classifies kites and balloons as "aircraft," necessitating a special permit to fly them, which is surprising given kite flying's popularity. Section 309[52] of the Indian Penal Code, 1890, which penalizes failed suicide attempts with imprisonment, has been widely criticized as inhumane. The Indian Motor Vehicles Act of 1914 has peculiar requirements for Motor Vehicle Inspectors in Andhra Pradesh, including sparkling white teeth and specific physical features, which seem more suited to a beauty pageant. Lastly, the Young Persons (Harmful Publications) Act of 1956[53] aims to prevent young minds from harmful publications but has been criticized for granting excessive interpretative power to state enforcement agencies.

The Constitution serves as the foundation for enacting and executing laws, imposing legal constraints on governmental authorities to ensure their actions

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47 The Indian Post Office Act, 1898, No.3, Acts of Parliament,1898 https://www.indiapost.gov.in/VAS/DOP_RTI/TheIndianPostOfficeAct1898.pdf. (India)

48 The Sarais Act, 1867, No. 22, Acts of Parliament,1867(India) https://home.wb.gov.in/content/1433144909The_Sarais_Act_1867.pdf.

49 The Indian Treasure-Trove Act, 1878, No.6, Acts of Parliament,1878(India) https://lddashboard.legislative.gov.in/sites/default/files/A1878-06.pdf.

50 The Kerala Women's Code Bill, 1990 (India).

51 The Aircraft Act, 1934, No. 22, Acts of Parliament,1934 (India).

52 Indian Penal Code, 1860, Section309. 'Attempt to commit suicide— Whoever attempts to commit suicide and does any act towards the commission of such offence, shall he punished with simple imprisonment for a term which may extend to one year or with fine, or with both."

53 The Age of Majority Act, 1934, No.9, Acts of Parliament,1875 (India).

align with constitutional principles. The judiciary, as the guardian of the Constitution, is tasked with upholding its provisions and preventing governmental overreach.

4. ARGUMENTS

4.1. AGAINST THE "RULE OF LAW" AND DETERIORATION OF PUBLIC TRUST

This Study argues that arbitrary practices weaken the "Rule of Law" and vanish public trust in the administrative machinery. The concept of "Rule of Law" refers to the government based on principles of law and not of men. This concept was developed by Dicey[54] saying "that the "Rule of Law" is the absolute primacy of regular law as a post to the effect of arbitrary power and eliminate the essence of arbitrariness or perquisites or even white discretionary power on the part of the government"[55] It serves as an ethical code for the exercise of public authority in any nation. The greatest fault of the concept has been its misplaced trust in the efficiency of judicial control as a panacea for all the malicious and some more irrational attitudes towards the administrative system. In a democratic set-up, administrative agencies meet several challenges in resolving many issues daily. There are viable critiques that the administrative agencies are not answerable to various types of public issues.[56] Discretionary authority of administrative agencies is not pure evil but gives much room for misuse.[57] Like all other countries such as the USA, Germany, and France,[58] India does not have a uniform administrative law which is noticeable. Amendment of administrative law is necessary to govern people with efficient, effective, responsive, corruption-free, and citizen-friendly administration. It also ensures people's faith in government and improves social harmony, political stability, and economic development.[59] The OECD report of the year 2000[60] states that public service is public trust. Citizens look for public officials to work in the public interest with fairness[61] and advise core values drawn from

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54 W. A. Robson, *Dicey's Law of the Constitution: A Review [Review of The Law of the Constitution, by A. V. Dicey*, 38. No.2 MICH L. REV. 205, 205-207 (1939).

55 Küris Egidius, *On the "Rule of Law" and the Quality of the Law: Reflections of the Constitutional-Turned-International Judge*, RESEARCH GATE, Jan 2019 131, 135.

56 Prof. Dr. Mukund Sarda, E*merging Doctrines in Administrative Law: A Study*, BHARTI LAW REVIEW J. 35, 30-41(2014).

57 Maheshwari, *supra* note 8.

58 Giulio Napolita*Conflicts and Strategies in Administrative Law*, 12. Int'l J. Const. L. 357, 357–369(2014).

59 ROBERT PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (Simon & Schuster 2000).

60 OECD Public Management Policy Brief, *Building Public Trust: Ethics Measurement in OECD Countries*, OECD PUBLICATIONS PARIS, (Mar 26, 2024, 10: 45 PM), https://www.oecd.org/mena/governance/35527481.pdf.

61 Maheshwari, *supra* note 8.

social norms, democratic principles, professional ethics, and guiding principles for the expected behavior of public officers. These include equality, impartiality, legality, transparency, efficiency, integrity, responsibility, and justice.[62]

4.2. DISCUSSION ON THE MALADIES OF BUREAUCRACY IN INDIA

In examining India's administrative landscape, it is evident that bureaucracy, once envisioned as a facilitator of governance,[63] has metamorphosed into a behemoth of unresponsiveness, red tape, self-perpetuation, self-aggrandizement, corruption, lack of neutrality, political alignment, departmentalism, and status quo.[64] It exhibits aristocratic, authoritarian, and arrogant tendencies, diverging from its intended role as a public servant.[65] The undue formalism procedural adherence, colloquially termed "red-tapism"[66] has entrenched bureaucratic inertia. Bureaucrats prioritize adherence to protocol over service delivery, neglecting the primary objective of serving the community stifling efficiency and innovation, and hindering the effective functioning of the government machinery.[67] Parkinson's Law finds resonance in the burgeoning bureaucracy of India, where the number of civil servants proliferates independent of actual workload.[68] This expansion, driven by a culture of creating work to justify existence, perpetuates inefficiency and draining public resources, exacerbating administrative malaise. Contrary to democratic principles, Indian bureaucrats often assumed a position of mastery rather than servitude, prioritizing personal interests over public welfare, fostering nepotism, and favoritism.[69] Corruption permeates all bureaucratic levels, corroding public service foundations, perpetuating dishonesty, and eroding public trust, which impedes socio-

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62 OECD *supra* note 61.

63 MARG ERG, *supra* note 44.

64 Naveen Kumar, *Impact of Bureaucracy in Changing Administrative Structure in India*, INTERNATIONAL JOURNAL CORNER (Mar 26, 2024, 11: 45 PM), https://www.internationaljournalcorner.com

65 Guillermo O'Donnell, *Bureaucratic Authoritarianism: Argentina*,1966–1973 in comparative perspective, Univ. of California Press 1988, (Mar 26, 2024, 11: 45 PM), https://librarysearch.lse.ac.uk/discovery/fulldisplay?vid=44LSE_INST:44LSE_VU1&search_scope=MyInst_and_CI&tab=Everything&docid=alma995338110302021&lang=en&context=L&adaptor=Local%20Search%20Engine&query=sub,exact,Culture%20--%20Congresses,AND&mode=advanced&offset=20.

66 Barry Bozeman, *A Theory of Government "Red Tape",* 3 JPART.245,273–304(1993)

67 Gene A. Brewer & Richard Walker, *The Impact of Red Tape on Governmental Performance: An Empirical Analysis*, 20 J. Pub. Admin. Res. & Theory 248,233-257(2010).

68 Peter Klimek et al, *Parkinson's Law Quantified: Three Investigations in Bureaucratic Inefficiency*, CORNELL UNIVERSITY (Mar 16, 2024, 10: 45 PM), https://arxiv.org/abs/0808.1684.

69 Tarunabh Khaitan, *Executive Aggrandizement in Established Democracies: A Crisis of Liberal Democratic Constitutionalism*, INT. J. CONST. LAW., 2018, at 11, 12.

economic progress.[70] Despite the principle of political neutrality, partisan affiliations have eroded bureaucratic impartiality and efficacy. [71] The politicization of bureaucracy underscores a symbiotic relationship between bureaucrats and political elites, aligning bureaucratic actions with political interests, compromising institutional autonomy, and fostering a culture of patronage.[72] This nexus undermines democratic governance and public trust.[73] Bureaucratic fragmentation leads to departmentalism, where isolated units prioritize sectional interests over collective welfare. This compartmentalization impedes holistic policymaking and coordination, fragmenting governance efforts.[74] Bureaucrats must transcend departmental silos to foster synergy and coherence in public administration[75], embracing change to meet contemporary challenges.[76]

The multifaceted maladies afflicting Indian bureaucracy demand concerted efforts to overhaul administrative paradigms and foster a culture of accountability, transparency, and responsiveness. Addressing these systemic challenges requires holistic reforms encompassing institutional restructuring, capacity building, and cultural transformation. Only through concerted action can India realize its aspirations of inclusive governance and sustainable development.

4.3. DISCRETIONARY AUTHORITY OF ADMINISTRATIVE AGENCIES IS NOT PURE EVIL UNLESS MISUSED

The findings reveal a pattern of administrative discreteness being exercised without adequate checks, legislative powers being delegated without sufficient

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70 The Commissioner's Human Rights Comments, *Corruption Undermines Human Rights and the Rule of Law* (Council of Europe 2021), COUNCIL OF EUROPE PORTAL (Mar 26, 2024, 10: 45 PM), https://www.coe.int/en/web/commissioner/-/corruption-undermines-human-rights-and-the-rule-of-law.

71 Alex Matheson et al., *Study on the Political Involvement in Senior Staffing and the Delineation of Responsibilities Between Ministers and Senior Civil Servants, RESEARCH GATE, July 2018, 1, 16-18.*

72 A. Cornell, C. H. Knutsen & J. Teorell, *Bureaucracy and Growth*, COMP. POL. STUD., (2020) at 2246.

73 Atul Singh, *Indian Administrative Theory: Context and Epistemology*, 27 ADMIN. THEORY & PRAXIS 51, (51-80) (2005)

74 Renuka I. Priyantha, *Multi-level Governance and Policy Coordination: Challenges of Coordination in Hierarchical and Network Systems, RESEARCH GATE, July 2018, at 188,193.*

75 Kevin C. *Walsh, Judicial Departmentalism: An Introduction*, WILLIAM & MARY LAPOSITORY, (Mar 26, 2024, 9: 45 PM), https://scholarship.law.wm.edu/wmlr/vol58/iss5/8.

76 Naufal Virindra, *Digital Mindset: Becoming a Techno-Relevant Bureaucrat, APOLITICAL* (Mar 26, 2024, 10: 45 PM), https://apolitical.co/solution-articles/en/digital-mindset-becoming-a-techno-relevant-bureaucrat.

guidelines or oversight, and administrative decisions being made without proper justification or transparency. Discretionary authority of administrative agencies is not exactly evil but they abuse powers towards society.[77] In the globe of assessment of penalties and punishments in a variety of cases, the administrative authorities imposed a wide range of powers as they 'deem fit.'[78] Factually, this infringes Article 20(1)[79] of our Constitution. In many cases,[80] the punishments awarded were questioned on the grounds of fairness and violation of principles of natural justice[81] such as the magnitude of the act or misconduct committed[82] and the penalties inflicted being questioned as arbitrary, unfair, and disproportionate.[83]

4.4. SOCIO-LEGAL IMPLICATIONS: EXPLORING HOW FAULTY ADMINISTRATIVE CONCEPTS DIRECTLY AFFECT THE GOVERNMENT-CITIZEN RELATIONSHIP

The pursuit of good governance necessitates a comprehensive approach to administrative reforms, encompassing political, organizational, legal, and attitudinal dimensions. By embracing flexibility, responsiveness, and innovation, bureaucracies can transition from traditional hierarchical models to adaptive, citizen-centric entities. As governance paradigms evolve, administrative reforms serve as catalysts for fostering accountability, efficiency, and public trust in the pursuit of equitable and inclusive development.

5. GOVERNMENT ACCOUNTABILITY AND CITIZEN-FRIENDLY ADMINISTRATION

5.1. TRANSPARENCY AND RIGHT TO INFORMATION

Amendment of administrative law is necessary to govern people with efficient, effective, responsive, corruption-free, and citizen-friendly administration.[84] It also ensures people's faith in government and improves social harmony, political stability, and economic development. There are different ways to control delegated legislation. The process of deliberating legislative powers on governing authorities is beneficial and essential but is also harmful because of

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77 Maheshwari, *supra* note 8.

78 E. H. Schwenk, *The Administrative Crime, Its Creation and Punishment by Administrative Agencies*, 42 MICH. L. REV. 5, (51-86) (1943).

79 INDIA CONS. art. 20.

80 SCHWENK, *supra* note 79.

81 VIRINDRA, *supra* note 77.

82 VIRINDRA, *supra* note 77.

83 Sarda, *supra* note 57.

84 S. N. Sangita, *Administrative Reforms for Good Governance*, 63 INDIAN J. POL. SCI. 325, 325-350 (2002).

the contingency of abuse of powers and other consequent evils.[85] In the consensus of conception, proper providence must be taken to ensure command of power as wider discretion is most likely to result in arbitrariness. The power circumscribed under subordinate legislation must be scrutinised by the Court if the need be. The Legislature is not enough to ensure the advantage of the practice or to avoid the danger of its misuse hence, certain other techniques of control emerging in this field may be 1) Procedural; 2) Parliamentary; and/or 3) Judicial.[86] Judicial control may be classified further into two classes, "Doctrine of Ultra Vires" and the "Use of Prerogative Writs."

5.1.1. PROCEDURAL CONTROL OVER DELEGATED LEGISLATION

All the safeguards proposing protection from the jeopardy of the ill-use of subordinated legislation must be followed while forming rules and regulations.[87] One method is antecedent publicity of codified rules to inform affected parties about the proposed rules, guidelines, and regulations to enable them to make representation before the rule-making body. The "Rules of the Publication Act," of 1893[88] has a provision to issue a notice of proposed 'statutory rules' to interested stakeholders who make suggestions and representations or feedback regarding the proposed rules, which are considered before finalizing and implementing the statutory rules. However, the "Statutory Instruments Act," of 1946[89] omitted this practice and despite the omission, the "Committee on Ministers Powers 1932," underlined the advantages of this practice. This public participation in delegated legislation ensures transparency, reasonability, and certainty.[90]

5.1.2. PARLIAMENTARY CONTROL IN INDIA OVER DELEGATION

The Constitution of India, particularly Articles 245 to 255, deals with the legislative powers of Parliament and state legislatures, and the framework for law-making and delegation of powers. Excessive delegation of legislative powers raises concerns about unreasonableness, arbitrary decision-making, and legal uncertainties. To mitigate these risks, the Supreme Court has emphasized

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85 Barkha Tandon, *Abuse of Administrative Discretion, SCC ONLINE,* (Mar 26, 2024, 10: 45 PM), https://www.scconline.com/blog/post/2022/06/24/abuse-of-administrative-discretion-a-detailed-study/.

86 V. N. Shukla, Judicial Control of Delegated Legislation in India, 1 J. IL. Inst. 357 (1959)

87 Shreya Tripathi, *Delegated Legislation and Its Control*, IPLEADERS, (Mar 20, 2024, 10: 45 AM), https://blog.ipleaders.in/delegated-legislation/.

88 The Rules Publication Act, 1893, No. 12, Acts of Parliament 1893 (India).

89 Statutory Instruments Act, UK (1946).

90 John Nader QC, *The Essential Elements of Valid Law*, SPRING BAR NEWS, (Mar 26, 2024, 8: 45 PM), https://www8.austlii.edu.au/au/journals/NSWBarAssocNews/2016/45.pdf.

the need for clear guidelines and strict adherence to constitutional principles.[91] The Supreme Court describes delegated legislation as a "necessary evil,"[92] Parliamentary control over delegation includes several mechanisms such as, that the parent statute should clearly define legislative policy and guidelines to prevent arbitrary decision-making. Delegated legislation must be laid before Parliament for scrutiny and objection, specialized committees, such as the Committee on Subordinate Legislation, and review rules to ensure compliance with statutory authority and constitutional principles. The parent statute should clearly define legislative policy and guidelines to prevent arbitrary decision-making. In conclusion, while necessary for efficient governance, delegation must be controlled by clear principles and robust oversight to prevent abuse and maintain legislative integrity.

Proper publicity of delegated legislation is essential to ensure reasonability and certainty.[93] Antecedent publicity of statutory rules and appropriate publicity of delegated legislation are two important safeguards that can help to achieve this goal.[94]

5.1.3. JUDICIAL CONTROL OVER THE DELEGATED LEGISLATION

Judicial oversight of delegation in legislation manifests through two primary avenues: challenging delegation's constitutionality and scrutinizing the exercise of statutory power. The judiciary plays a pivotal role in upholding constitutional principles and[95] ensuring adherence to legislative intent within delegated legislation. The doctrine of ultra vires serves as a crucial tool wielded by the judiciary to maintain the integrity of delegated legislation. Delegation may face constitutional challenges if deemed unconstitutional, excessive, or arbitrary.[96] However, within reasonable bounds, delegation is permissible so far as it aligns with constitutional provisions. The judiciary, guided by the rule of ultra vires, imposes limitations on delegated legislation.[97] If the legislative act

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91 The Supreme Court of India has addressed the issue of excessive delegation in several landmark cases.
- In Re Delhi Laws Act, A.I.R. 1951 S.C.R. 747 (India).
- Avinder Singh v. State of Punjab, A.I.R. 1979 S.C 321(India).
- Kunj Behari Lal Butail v. State of H.P, A.I.R. 2000 S.C.1069 (India).

92 Dr. Raj Deo Singh, *Delegated Legislation: A Necessary Evil*, 4 GR .18, 18-25 (2023)

93 John Nader QC, *The Essential Elements of Valid Law*, AU.J. 2016, at 10, 11.

94 Richard C. Fitzgerald, *Safeguards in Delegated Legislation*, CanLII, J. (Mar 20, 2024, 10: 45 AM), https://www.canlii.org/en/commentary/doc/1949CanLIIDocs63.

95 Ashish Srivastava, The Notion of Delegated Legislation in India – A Critical Analysis, SIJL., 2019, at 348, 349.

96 Donald A. Dripps, *Delegation and Due Process*, 988. DUKE UNIVERSITY, 657,657-677(1988).

97 Pratiksha Gautam & Sakshi Nathani, *Judicial Control: Doctrine of ultra vires in Administrative law*, JOURNAL FOR LAW STUDENTS & RESEARCHERS, (Mar 26,

facilitating delegation is ultra vires, any subsequent delegated legislation derived from it is inherently flawed. Notably, delegated legislation must not violate fundamental rights, as any such violation renders the associated rules, regulations, or bylaws null and void. The doctrine of ultra vires operates on both procedural and substantive fronts. Procedurally, acts delegating legislative powers often mandate specific procedural requirements, such as consultation with stakeholders or publication of draft regulations. Failure to adhere to these mandatory procedures renders the resultant legislation invalid in the eyes of the judiciary. However, if procedural requirements are merely directory in nature, non-compliance does not necessarily invalidate the legislation.[98] Substantively, delegated legislation is subject to scrutiny to ensure compliance with the parameters of the parent statute. Should delegate legislation exceed these bounds, it is declared ultra vires and consequently invalid in R. vs Minister of Health.[99] Administrative authorities exercising legislative powers must be exercised with the consistency of the statute's purposes and conditions, as discerned by judicial interpretation of legislative intent.[100]

In essence, the judiciary employs the doctrine of ultra vires to uphold the integrity of delegated legislation, ensuring compliance with constitutional principles and legislative intent.[101]

5.2. IMPERATIVES AND CATEGORIES OF ADMINISTRATIVE REFORMS IN THE ERA OF GOOD GOVERNANCE

The efficacy of legal provisions and their concurrent interpretation is pivotal for the functioning of a just and equitable legal system.[102] Central to this effectiveness is the clarity and logical coherence of these laws and interpretations. This paper explores the weight of simplicity and logic in legal frameworks, advocating for a nuanced approach to the provision of reasons by authorities to improve accessibility and efficacy.[103]

5.2.1. ENHANCING CLARITY AND LOGICAL COHERENCE IN LEGAL PROVISIONS AND INTERPRETATIONS

Using plain language and a logical structure in legal provisions reduces ambiguity and promotes understanding, thereby fostering compliance and

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2024, 8: 45 PM), https://www.jlsrjournal.in/judicial-control-doctrine-of-ultra-vires-in-administrative-law-by-pratiksha-gautam-sakshi-nathani/.

98 SRIVASTAVA, *supra* note 96.

99 R v Minister of Health (1943), 2 ALL ER 59

100 Thomas Reed Powell, *Separation of Powers: Administrative Exercise of Legislative and Judicial Power*, 28 POL. SCI. Q. 34, 34-48.

101 Paul Craig, *Ultra Vires and the Foundations of Judicial Review*, CAMBRIDGE LAW .J., Mar. 1998, at 63, 77.

102 Luka Burazin, *The Concept of Law and Efficacy*, RESEARCH GATE, June 2017, at 12,13.

103 *Id.* at 12.

adherence. Clarity in provisions enhances legal certainty, empowering individuals to confidently discern their rights and responsibilities.[104] Concurrent Interpretation interpreting legal provisions is of equal importance as it elucidates the purpose and amplitude of the law. Interpretations should be supported by principles of simplicity and logical reasoning to ensure consistency and coherence in application.[105] Judicial authorities are responsible for interpreting laws and must provide reasoned explanations that are accessible to all stakeholders. A staggered approach to providing reasons is essential.[106] While brevity is essential for accessibility, it should not compromise comprehensiveness. By furnishing concise yet distinct reasons tailored to the particulars of each case, authorities can strike a balance between clarity and depth of analysis. This approach allows for flexibility, accommodating the complexity of various cases while maintaining clear communication.[107] The reasoning provided by authorities should be context-specific, addressing the nuances of individual cases. Tailoring rationale to unique facts and circumstances enhances the relevance and persuasiveness of decisions. This nurtures trust and confidence in the legal system, as parties perceive decisions to be grounded in thoughtful analysis rather than formulaic application.[108]

In short, simplicity and logic are fundamental to effective legal provisions and interpretations, ensuring accessibility, coherence, and fairness.[109] By prioritizing clarity in provision and reasoning, lawmakers and authorities can enhance the accessibility and efficacy of the legal system.[110] A staggered approach to providing reasons accommodates diverse legal matters while upholding decision-making integrity and rigor.

5.2.2. IMPROVING THE PERFORMANCE AND INTEGRITY OF THE PUBLIC SERVICES

The evolution of governance paradigms, especially since market reforms in the 1990s, highlights the need for administrative reforms rooted in good

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104 H. Ostapenko, *The Role of Legal Certainty Principle in Provision of Access to Justice in Ukraine in Wartime*, 3 AJEE.J.27,25-28(2023).

105 The Metaphysics Research Lab, *Interpretation and Coherence in Legal Reasoning*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, (Mar 26, 2024, 8: 45 PM), https://plato.stanford.edu/entries/legal-reas-interpret/.

106 2 MANJARI KATJU, ELECTORAL PRACTICE AND THE ELECTION COMMISSION OF INDIA POLICIES, 190-91(1E ed. 2023)

107 L. S. Nowell et al., *Thematic Analysis: Striving to Meet the Trustworthiness Criteria*, 16 INTL'l J. QUAL. Methods (2017).

108 *Id.* at 26.

109 *Id.* at 24.

110 Series of Essays, *Prioritizing Accessibility and Clarity in Agency Actions*, THE REGULATORY REVIEW (Oct. 28, 2019), (Mar 26, 2024, 8: 45 PM), https://www.theregreview.org/2019/10/28/prioritizing-accessibility-and-clarity-in-agency-actions/.

governance principles like accountability, efficiency, transparency, and decentralization.[111] This shift necessitates a reassessment of traditional bureaucratic roles, focusing on collaboration with citizens.[112] Governance now emphasizes participation and multi-actor involvement, requiring administrative structures to evolve accordingly.[113] This paper explores the necessity for administrative reforms within contemporary governance frameworks, such as Politically Mandated Reforms, Organizational Flexibility Reforms, Legally Driven Reforms, and Attitudinal Reforms.[114]

Political dynamics significantly influence administrative configurations and functions. Changes in political landscapes necessitate adaptations in administration to align with new policy priorities and governance objectives. Reforms driven by political transitions reflect the changing relationship between government and bureaucracy, requiring adjustments to meet new mandates and expectations. Bureaucratic structures tend toward inflexibility, hindering responsiveness to changing needs and challenges.[115]

Reforms targeting organizational rigidity seek to imbue flexibility through restructuring, reinvention, realignment, and reengineering.[116] Streamlining processes and enhancing agility help organizations better synchronize with dynamic socio-economic contexts and stakeholder demands. Legislative interventions serve as catalysts for administrative reforms, furnishing a framework for institutional change and governance enhancement. Consultative processes preceding legislative action foster dialogue and consensus-building, ensuring that reform initiatives are informed by diverse perspectives. Legal reforms drive for systemic transformation, molding administrative practices and standards.[117] The efficacy of administrative reforms relies on the attitudes and behaviors of individuals within organizations.[118] Cultivating a culture of transparency, innovation, and accountability is crucial for internal change. Attitudinal reforms involve fostering a mindset conducive to embracing reform

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111 MAMTA PATHANIA, *New Paradigms of Governance*, 07, 13 (2023).

112 Mullins, Daniel. (2003). *Accountability and Coordination in a Decentralized Context: Institutional, Fiscal and Governance Issues,* RESEARCH GATE, Jan.2003, at 1, 9.

113 LIMA, VALESCA. COLLABORATIVE GOVERNANCE FOR SUSTAINABLE DEVELOPMENT., RESEARCH GATE, Jan.2021, at 1, 7.

114 S. N. Sangita, *Administrative Reforms for Good Governance*, 63 Indian J. Pol. Sci. 325 (2002),

115 JURNAL Aktor, *Bureaucracy Reform in Achieving Efficient Public Administration*,21, 33-66 (2022).

116 *Id.* at 34.

117 SDGS Campaign, *Pursuing Law Reforms, Strategic Litigation and Legal Empowerment,* SSG ACCOUNTABILITY HANDBOOK (Mar 26, 2024, 8: 45 PM), https://www.sdgaccountability.org/working-with-formal-processes/pursuing-law-reforms-strategic-litigation-and-legal-empowerment/.

118 M. I. Neshkova et al., *The Effectiveness of Administrative Reform in New Democracies*, PUB. ADMIN.REV., 2012, at 324, 327.

initiatives and adapting to evolving mandates.[119] Effective communication, training, and leadership play crucial roles in nurturing a change-oriented organizational ethos.

The imperative for administrative reforms in contemporary governance paradigms is evident. By embracing reforms across political, organizational, legal, and attitudinal dimensions, administrations can effectively respond to the demands of good governance, ensuring responsiveness, efficiency, and citizen-centricity.[120]

6. CONCLUSION AND SUGGESTIONS

As discussed, the identified flawed concepts include unchecked discretion, vague legislative guidelines, and opaque decision-making, undermining governance effectiveness and public trust, etc. Proposed reforms target accountability, legislative clarity, procedural efficiency, and substantive modernization, emphasizing their importance for a fair and efficient administrative system. In response to these findings, the paper proposes a set of reforms aimed at modernising Indian administrative law. These include judicial reforms to enhance accountability through expanded review mechanisms, legislative reforms to delineate clear limits on delegation, procedural reforms to simplify and expedite administrative litigation, and substantive reforms to update and harmonise laws with contemporary governance needs. The paper concludes by emphasising the importance of these reforms for ensuring an administrative legal system that is fair, efficient, and aligned with democratic principles. It calls for a concerted effort by policymakers, legal practitioners, and academics to address these faulty concepts and pave the way for a more responsive and accountable administration.

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[119] *Id.* at 325.

[120] Gerald E. Caiden., *Administrative Reform Comes of Age*, 1991, at 355, 360

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