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MPA 844



Public Administrative Law Module 1

MPA 844 Public Administrative Law

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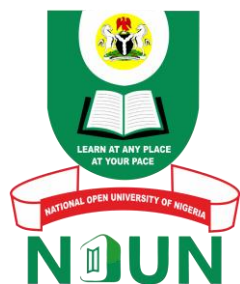
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Unit I Public Administration and Law

1.0 Introduction

This is an introductory unit which will focus on definition and origin of administrative law, functions of law in the society and sources of Nigerian administrative law. It is necessary for you to understand these concepts in order to place in perspective the duties and functions of administrative agencies in Nigeria.

2.0 Objectives

At the end of this unit, you should be able to:

- define public administration and law
- explain the sources of Nigerian law
- itemise the functions of law in society.

3.0 Main Content

3.1 Public Administration and Law

Now, let us start by analysing what public administration is in the administrative law of Nigeria.

3.1.1 Public Administration

This course is titled 'Public Administration Law'. It is instructive therefore to examine the concepts of 'Public Administration and Law' from the beginning for ease of a better understanding. Public administration is a process of organising and executing functions effectively and efficiently in order to achieve the objectives of a nation. It all began from traditional communities where local chiefs, igwes and obas were saddled with administrative responsibilities of maintenance of law and order and control of local infrastructure. For example, the traditional ruler, with the aid of his council members, provided welfare activities to his people, administered justice and adjudicated in dispute settlement at his palace.

At state and national levels, public administration became a science of administration in which elected government officials maintained law and order nation-wide and administered infrastructures on behalf of the public. The function of public administration assumed higher dimensions to include executive, legislative and judiciary. While the executive arm manages the economy and maintains law and order, the legislative arm enacts laws for good order and peace of the nation. The judiciary dispenses justice and upholds constitutional provisions relating to all aspects of national life including fundamental human rights of all citizens.

It can be said therefore that public administration began as activities of traditional community leaders to manage the general affairs of their respective communities, changed with the advent of modernisation, where communities developed to states and nations with

sovereign status, to adopt the toga of general management of the activities and affairs of a nation economically, socially and militarily as we have it today in Nigeria.

3.1.2 Law

Law in its simple meaning refers to a system of rules and regulations that members of society have to obey and apply in their private and public lives in the interest of peace, good governance and recognition of individual rights.

Every society recognises the need for law. The law reflects the values of a given society. No nation can function properly unless its citizens conform to the laws of the land and respect them. Such a nation is said to be based on the “rule of law” in which every citizen is protected by law and is equal before the law.

Public administration law therefore refers to the body of rules and regulations that relate to the administration of a state or nation. Public administration law technically christened as administrative law, deals with issues of powers and duties of administrative functionaries, charged with the responsibilities of state governance. Public administration law embodies regulations which relate to the exercise of powers and spells out remedies for aggrieved citizens who feel abused by the exercise of administrative powers by public authorities. It is best to consider the body of knowledge which comprises public administration law, simply as administrative law.

Public administration relates to the management, duties and rights of managers who are charged with the administration of executive duties of a government. In other words, the practical management activities of the executive department and its agencies are covered in the realm of public administration.

“Public” therefore refers to the understanding that those who are charged with the administration of government are accountable to the public. They apply law in service to the people.

In other words, public administration is the law of society that is managed by the executive functionaries who are accountable to the public. It comprises all operations executed by elected or appointed executives who manage human and material resources of a nation in order to achieve pre-determined objectives. Government policies and programmes within the three-tiers of government are executed on behalf of the public who are the repository of power delegated to public functionaries. Public administration law is therefore the law that governs the administration of a country by elected representatives of the country who act in elected capacities.

3.2 Origin of Administrative Law

A review of one of the definitions of administrative law proffered by Sir Ivor Jennings indicates that the subject deals with the organisation, powers and duties of administrative authorities. It follows from the foregoing that the origin of administrative law can be traced to our traditional past when society was governed by local chiefs or obas and their functionaries. The council of chiefs or obas was regulated by community approved rules of conduct recognised by all. Although the traditional authority embodied the law of the people, the system also provided procedures for individuals to seek redress where traditional functionaries acted wrongly or above their powers.

However, in the early 18th century, when British colonists visited Nigeria, and enthroned the British style of administration in which her majesty, Queen Elizabeth was the queen with ultimate authority while other arms were lieutenants to the queen, administrative law

became scientific. The various general governors, beginning from Lord Lugard, governed through various constitutions and organs of government. In the post-independence era, when Nigeria assumed full sovereignty with a constitution that guarded the interest of all citizens, public administrative law assumed a new dimension from the erstwhile traditional government where people were governed by chiefs and obas. Government was then saddled with the responsibility of providing governance, infrastructure and economic development. Nigerian nationals in the class of civil servants, government officials, judges, lawyers, doctors, etc, became agents of administration. Their conduct had since then been governed by rules, regulations and principles of administration which provided safeguards for aggrieved Nigerians to seek redress or remedies in the courts of law or tribunals as the case may be.

In providing welfare services, serving public interest and managing the Nigerian economy, government functionaries could inadvertently or deliberately commit wrongful acts to Nigerian citizens. This is where public administrative law sets in to provide hope for the wronged and the oppressed in following constitutional and scientific provisions to right the wrongs that state officials commit in the execution of their duties. In other words, public administrative law emerged as a body of administrative provisions for aggrieved citizens to understand the functions of government functionaries, separation of powers within the government and ways to remedy the administrative wrongs committed by government functionaries in the discharge of their constitutional duties to the nation. The techniques of public administrative law are beneficial to all citizens.

3.3 Definition of Administrative Law

Let us now examine the nature of the words that comprise public administrative law. Let us examine the concept, 'Public Administration and Law'. Thereafter, we will define administrative law from the lenses of informed writers on the subject.

The term 'public' ordinarily suggests something which belongs to the domain of a community, state or nation. It connotes openness and availability for all to see and participate in. In the context of public administrative law, 'Public' would refer to the affairs of a nation e.g. Nigeria. 'Administration' as a concept is an adjective qualifying law. It suggests the act of managing or executing the principles and practices of state functions governed by law. 'Law' in the tripartite phrase 'Public Administrative Law' would refer to rules and regulations that are stable, made by the legislative, executed by the executive arm or government, enforced by the judiciary in the regulation and conduct of public agents or government. It is a truism that every society whether developing or developed, governs itself within the framework of established rules and regulations. In managing government affairs, there are rules and regulations which the term public administrative law covers in the subject matter.

Administrative law is in itself in public domain. Therefore, it is wise to define administrative law which itself is public instead of public administrative law. It would be convenient for the remainder of this course work to refer to the subject as administrative law which by implication comprises public administrative law.

Like most concepts in the humanities or social sciences, there is no one universally acclaimed definition of public administrative law. However, this course will outline some well researched definitions espoused by informed writers on the subject.

Sir Ivor, Jennings (1959) defines administrative law as:

the law relating to administration. It determines the organisations, powers and duties of administrative authorities. According to Oluyede, P. A. (1988), administrative law means that branch of our law which vests powers in administrative agencies, imposes certain requirements on the agencies in the exercise of the powers and provides remedies against wrongful administrative acts.

According to Wade and Bradley (1985), administrative law is a branch of the public law which is concerned with the composition, powers, duties, rights and liabilities of the various organs of government which are encouraged in administration. Or more concisely, the law relating to public administration.

Egwummuo (2000) defines administrative law as,

that branch of public law which aims at indicating the rights of the citizen against attacks (intentionally or inadvertently) emanating from government or its agencies (Page 1)

From the foregoing, it is evident that administrative law regulates the functions, powers and conduct of all government businesses by public functionaries charged with the administration of state affairs. The subject also makes room for remedies for administrative wrongs committed by such functionaries.

3.4 Sources of Nigerian Administrative Law

As has been stated already, administrative law deals with issues that relate to public administration of any nation or a geographical territory that has acquired a sovereign status. It spells out the organisation of public management, powers and duties of public managers in the three branches of government (executive, legislative and judiciary).

The sources of administrative law therefore are as follows.

- The constitution of the relevant country. In Nigeria, the Nigerian Constitution 1979 as amended, is the principal source of Nigerian administrative law. It is the *sine qua non* which must be obeyed in Nigeria.
- All laws that are passed by the legislative of the respective country. In Nigeria, this can be statutes passed by the national and state legislative.
- Ordinances, resolutions and orders adopted by administrative authorities for effective governance.
- Customs and conventions of the nation.
- Judicial decisions of all properly constituted courts.

3.5 Functions of Law in Society

It is appropriate to give a brief definition of the concept of law before stating its functions in a society. Law consists of rules that regulate the conduct of individuals, businesses and other organisations within the society. Laws of a given society are promulgated in order to protect and sustain that society's values. Law therefore protects citizens and their property against unwanted interference from others. It prescribes penalties for citizens or persons who engage in undesirable activities. Every society is governed by laws because no system of government can function effectively without laws. Governance of any nation is based on the "rule of law" which means that no person in the society, no matter how highly placed, is

above the law of the land. In other words, the President, all members of the executive, the judiciary and legislative branches of government, must obey the laws of the land and support its legal system. Laws are therefore promulgated for the good order and governance of the society.

The primary function served by law in every society including Nigeria, are as follows.

Maintenance of peace, which gives rise to individuals to operate freely in a congenial atmosphere in pursuit of their hearts' desires while at the same time prescribing punishment for those who tilt the balance of equilibrium by committing

- crime.
- Promotion of worthwhile moral standards. For example, prescription of punishment for drug and alcohol abuse by the relevant agencies. Example in Nigeria is the National Drug Law Enforcement Agency (NDLEA).
- The law promotes and encourages social justice in any nation.
- The law establishes order. For example, the legislature enacts laws which are enshrined in the constitution that prohibits discrimination in all its forms including discrimination in employment, discrimination as to state of origin, discrimination as a result of tribe, etc.
- The law promotes orderly change. In other words, it prescribes procedures for orderly change of government as against forceful overthrow.
- The law provides the basis for law suits to be settled prior to trial, thereby forging compromise among litigants.
- The law promotes and sustains individual freedom and fundamental human rights. For example, Chapter 4 of the Nigerian Constitution 1979 espouses fundamental rights of every Nigerian citizen. These rights include the right to life, the right to dignity of the human person, the right to personal liberty, the right to fair hearing, the right to private and family life, the right to freedom of thought, conscience and religion. The right to freedom of expression and the press, the right to peaceful assembly and association, the right to freedom of movement, the right to freedom from discrimination, the right to acquire and own a movable property anywhere in Nigeria and the right to legal aid, among others.

4.0 Conclusion

In this unit, you have learnt the definition and origin of administrative law. The usefulness of law to a society and the sources of Nigerian administrative law were also discussed. Administrative law was presented as the law that governs the duties and functions of elected or appointed representatives of the nation. They manage public policy in the interest of the nation. They are therefore charged with governance, protection of law and order and the duty to maintain peace throughout the territory called Nigeria.

5.0 Summary

You learnt that, as managers who act in trust for all Nigerians, your activities are open to public examination at all times. That is how public administration derived its name, administration that is open to public scrutiny.

6.0 Self Assessment Exercise

1. Define the concept of administrative law and itemise the functions of law in society.
2. Describe the sources of Nigerian administrative law and state the fundamental human rights enshrined in chapter 4 of the Nigerian constitution 1999.

7.0 References/Further Reading

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Unit 2 Sources and Kinds of Administrative Powers

1.0 Introduction

Before the advent of modern public administration the way we have it today, the various communities in Nigeria were governed by traditional rulers, village heads, elders and appointed leaders of different kinds. They derived their powers from tradition, common agreements and values based on common good. The kings and village heads wielded power and were recognised by the communities they led. The leaders had courtiers who assisted rulers to evolve procedures for dispensing justice to all concerned in the interest of common good and well-being of the people.

In public administration, power to regulate and manage the human and material resources of the nation is vested in public officials who are either elected or appointed by prescribed authorities.

Whereas the functions and powers of traditional leaders derive from the customs and way of life of the respective traditional communities, the functions and powers of public officers and administrative authorities, derive from the Constitution of the Federal Republic of Nigeria, on one hand and other statutes on the other hand. In other words, the federal, state and local government councils and public agencies are administrative authorities and have the power to make and execute government policies and to carry out government business. In this unit, you are going to learn about the sources and kinds of administrative powers exercised by public administrators.

2.0 Objectives

At the end of this unit, you should be able to:

- define the concept of power
- classify kinds of administrative powers
- list the sources of administrative powers.

3.0 Main Content

3.1 Definition of Power

The word 'power' like most concepts in social sciences does not enjoy the luxury of a universally acceptable definition. However, the following three definitions are presented to you for ease of showing that 'power' has a basic connotation.

- The Oxford Advanced Learners Dictionary defines power as "The ability to control people or things" (p. 910)
- Black's Law Dictionary defines power as
 - "The ability to act or not to act"
 - "Dominance, control or influence over another"

- “The legal right or authorisation to act or not to act; the ability conferred on a person by the law to alter, by an act of will, the rights, duties, liabilities or other legal relations either of that person or another” (p.1189)
- Robbins and Judge (2007) opine that:

“Power refers to a capacity that A has to influence the behaviour of B, so that B acts in accordance with A’s wishes” (p.470)

The words ‘control’, ‘potential’ to act or not to act, and ‘influence’ resonate from above definitions. They naturally originate the question, where does power come from?

3.2 Sources of Administrative Powers

Administrative powers may be classified into three and have their respective sources as follows:

- Express power, as enshrined in the constitution
- Incidental powers; and
- Implied powers.

Express Power

Express power refers to authority to perform duties or functions specifically authorised by an enabling statute, like the Nigerian Constitution, an act of parliament or a subsidiary legislation which may be made by a public corporation/agency or authority.

Incidental Powers

These are powers which are not specifically given as express powers are, but which may be necessary in order to carry out an express power. For example, the constitution empowers the national assembly (made up of the Senate as the upper chamber and the House of Representatives, as the lower chamber) to make laws for the good order and governance of Nigeria. Appropriately, the national assembly through its joint committee may undertake trips abroad to study, select public institutions or processes of enacting certain laws. That act of incurring travelling expenses, which is not expressly written in the constitution, can be justified under incidental powers. That is power that is exercised as necessary or incidental to the duty imposed on the national assembly by the constitution.

In *Ekemode v. Alausa*, where the plaintiff instituted an action for the loss of his canoe, damaged after it was seized, the high court held that the destruction of the canoe cannot be viewed

“...as either necessary or incidental to the duty imposed on the defendant by his employer for the purpose of exercising its authority to clear the foreshore and landing route. In the absence of evidence to the contrary, the result is that the defendant’s wrongful act cannot be regarded as apparently having been done in any of the circumstances entitling him to protection under the statute”.

Implied powers

These are powers that an administrator feels is so close to his express powers that he assumes are derived from express powers. This often times turns out to be a fallacy of assumption, where an administrator feels he has authority to execute an action when truly

he does not possess such powers. Any power that is not expressly given by statute or incidental to it, is void and of no effect.

3.3 Kinds of Administrative Powers

The functions of public administration which are carried out by various organs of government and functionaries include the following:

- Planning
- Organising
- Staffing
- Directing
- Coordinating
- Reporting and
- Budgeting.

In order to ensure the effective and efficient execution and functioning of the business of government, administrative powers have been classified mainly as comprising legislative power, executive power, and judicial power.

3.3.1 Legislative power

Chapter I, part II, of the 1999 Constitution of the Federal Republic of Nigeria, lists the powers of the Federal Republic of Nigeria. Section 4(1) specifically states that:

“...the legislative powers of the Federal Republic of Nigeria shall be vested in a national assembly for the federation which shall consist of a senate and a house of representatives”.

Section (2) specifically charges the national assembly with the duty to make laws for the “peace, order and good government of the federation...”

Similarly, section 6 states that “the legislative powers of a state of the federation shall be vested in the house of assembly of the state.”

Both the national and state assemblies operate through committees in the discharge of their statutory functions.

3.3.2 Executive power

Look at section 5 of the Constitution of the Federal Republic of Nigeria which vests executive powers in the President and Commander-in-Chief of the Federal Republic of Nigeria. The President may exercise his powers directly or through his Vice-president or through his ministers or relevant officers in the public service of the federation. Similarly, the executive powers of a state are vested in the governor of that state (section 5(2) 1999 Constitution).

In administrative terms, executive power is power to perform designated duties, put plans into action or to perform a piece of work. The President of Nigeria and the various state governors are the chief executive officers of Nigeria and the various states respectively. The President may exercise his constitutional rights to manage the affairs of Nigeria, directly or indirectly through the Vice-president, ministers, or through officers in the public service of Nigeria. The president may delegate duties, but remains responsible for the actions of delegates.

3.3.3 Judicial power

Judicial powers are provided for in section 6(1) of the 1999 Constitution of the Federal Republic of Nigeria. The section specifically states that

“The judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the federation.”

Section 6(2) vests judicial powers of a state in the courts of that state. Chapter vii of the 1999 Constitution, specifically in section 230, creates courts that may exercise judicial powers, including the Supreme Court which is the apex court in Nigeria. Section 5 of the 1999 Constitution specifically lists the courts it recognises as

- “The supreme court of Nigeria
- The court of appeal
- The federal high court
- The high court of the federal capital territory, Abuja
- A high court of a state
- The sharia court of appeal of the federal capital territory, Abuja
- A sharia court of appeal of a state
- The customary court of appeal of the federal capital territory, Abuja
- A customary court of appeal of a state
- Such other courts as may be authorised by law to exercise jurisdiction on matters with respect to which the national assembly may make laws; and
- Such other courts as may be authorised by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a house of assembly may make laws.”

It must be noted however, that although the 1999 Constitution provides that the courts may exercise judicial powers in actions brought before them, section 6(6) (c) and (d) limits the power of the courts to exercise powers on any “issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and principles of state policy set out in chapter ii of this constitution”.

Section 6 (d), states that the courts “shall not, as from the date when this section comes into force, extend to any action or proceeding relating to any existing law made on or after 15 January 1966 for determining any issue or question as to the competence of any authority or person to make any such law”.

In exercising judicial powers, the courts must entertain disputes between parties whose evidence must be received and considered as espoused by the maxim *‘audi alteram partem’*. The courts must entertain presentation of arguments by counsels to both parties on disputed issues of law. The courts may exhaust their procedures in investigation and interrogation of parties to disputes.

3.4 Separation of Powers

The theory of separation of powers is anchored on the notion that in order to avoid arbitrariness, high handedness and excessive executive action, it is necessary to distribute government powers among the organs of government in such a manner as to ensure fairness, rule of law and objectivity.

The organs of government, which separation of powers applies to, are: the executive, the legislative and the judiciary. Each branch of government has its duties and functions spelt out in sections 4, 5 and 6 respectively of the 1999 Constitution of the Federal Republic of Nigeria.

The doctrine of separation of powers, though it is not directly enshrined in the Nigerian Constitution, became necessary in order to avoid what would be excesses of elected members of the national assembly, a domineering executive and a toothless judiciary. All three organs of government have separate and distinct powers, which when operated properly make the operators accountable for their actions. These powers as captured in sections 4-6 of the 1999 Constitution, serve as checks on the powers of the organs of government. The organs of government are expected to work in harmony and cooperation with each other.

3.5 Examples of Actions Reflecting Separation of Powers in Nigeria

- The national assembly generates bills which become acts only when the president assents to them. (Section 58 (1) of the 1999 Constitution). In some circumstances the national assembly may dispense with presidential assent to bills.
- The president appoints ministers which list will be sent to the national assembly for confirmation.
- The supreme court of Nigeria rules on appeals sent to it without consultation with the executive arm of government.
- Although the president may appoint the chief justice of the federation with recommendations from the judicial council, he is not bound to pick the first name out of the three names sent to him for appointment.

4.0 Conclusion

In conclusion, administrative powers inure to all the three branches of government in order to ensure smooth management of government business. The powers, though mutually exclusive, are expected to be executed in harmony and collaboration without any organ forcing the other to tow its views. The 1999 Constitution, which is our country's *sine qua non*, respects and recognises the interdependence of the three organs of government.

5.0 Summary

The task of managing government business in Nigeria is performed by the three organs of government namely the executive, the legislative and the judiciary. In pre-independence period, various communities were governed by monarchs, chiefs and tribal leaders whose sources of administrative powers derived from customs and consent of the people. In post-

independence period however, sources of administrative power for government business derived from express powers authorised by enabling statutes e.g. the Nigerian Constitution and acts of parliament or subsidiary legislation.

In the Nigerian presidential system of government, power is shared between the three branches of government. The theory of separation of powers is encouraged in order to avoid dominance of one organ of government over the other. The main advantage of the tradition of separation of powers is that it prevents arbitrariness and excessive show of power by any organ of government.

6.0 Self Assessment Exercise

Define the concept of power and discuss the classification of administrative power under the 1999 Constitution.

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