



ASSESSING ADMINISTRATIVE LAWS AS AN INSTRUMENT FOR GOOD GOVERNANCE

AHMED HAMIDU MAIHA & BANSON PWAPWAT

Department of Public Administration, College of Administrative and Business Studies, Adamawa State Polytechnic, Yola

Abstract

Today governance entails a lot responsibility. This is such because, with the increase in human population, advancement in technology and development, the needs and wishes of citizens have increased and the roles of government in society have increased correspondingly. Administrative law which refers to a branch of our law which vest power in administrative agencies, impose certain requirements on the agencies in the exercise of powers and provides remedies against unlawful administrative acts remain a subject of intellectual inquiry. This paper therefore, attempts to assess administrative law as an instrument of good governance in Nigeria. Special focus is put on the relevance, sources, agencies and powers exercised under administrative law. The paper also provides a preview on good governance, democracy, and democratic governance and the challenges of good governance in a constitutional state like Nigeria.

Keywords: *Administrative law, good governance, constitutional law, government agencies, democracy and democratic governance.*

Introduction

Nigeria as a nation state adopted the English legal system including administrative law at independence in 1960. That is to say that before the coming of British administration, Nigeria did not have a national constitution which spelt out how the country should be ruled. It is without doubts that the development of constitutional law also led to the development of administrative law, although the development of administrative law is still at a very low stage. Historically, Nigeria was first administered through the royal Niger company which was letter handed over to Sir Fredrick Lord Lugard who fused the colony of Lagos with the protectorates of southern and northern Nigeria in 1914.

However, unified administration was more in theory than in practice, because both the north and the south had different peculiarities and diversities who at the same time demanded modification in the way they were administered. It was as a result of this that advocacy for a federal system of government took center stage which resulted in different nationalities given some form of autonomy to run their affairs in the way they thought best. In 1946 a constitution was promulgated which divided the country into three regions with each region having a lieutenant governor. Consequently, in October 1st, 1954 a new constitution came into force which created the federation of Nigeria consisting of the federal territory at Lagos and the three regions, west, east and north and the territory of the southern Cameroon, which later broke away.

Over and above, the character of the successive regimes civilian or military had a free day by engaging in the creations of series of agencies and institutions to manage and define a number sensitive national agenda and programmes. Presently, there are hundreds of government agencies and institutions charged with different functions, especially the delivery of goods and services and the enforcement of certain rules and regulation. Example of such agencies can be cited as NAFDAC, EFCC, CBN, NPA, TETFUND, FAAN, NCC (National Communication Commission).

The Concept of Administrative Law

Like many concept, there is no generally accepted definition of administrative law. However, some writers in the law subject have come up with various understandings on the subject. According to Sir Iron Jennings (2012); Administrative law is the laws relating to administration. It determines the organization powers and duties of administrative authorities. Prof. Wade (1982) argued that:

“Administrative law is the law relating to the control of governmental powers. This is the heart of the subject. All powers are subject to legal limitations; there is no such things as absolute or unfettered administrative power. It is always possible for any power to be abused. And the court will invalidate it...if it infringes the limits which the parliament ordained. The primary purpose of administrative law therefore, is to keep the powers of government within their legal bounds so as to protect the citizens against their abuse. The powerful engines of authority must be prevented from running amok. As well as power, there is duty. It is also the concern of

administrative law to see that the public authorities can be compelled to perform their duties if they make default ... administrative law might be said to be the body of general principles which govern the exercise of power and duties by the public authorities”.

According to Iluyomade & Eka cited in Nwahbara (2016), administrative law is that body of rules which aims at reducing the areas of conflict between the administrative agencies of the state and individuals.

According to Blacks law dictionary, Administrative law is: *“The law governing the organization and operations of administrative agencies (including executives and independent agencies) and the relations of administrative agencies with the legislative, the executives and judiciary and the public.*

Administrative law all over the world ensures the implementation, execution, control and proper operations of things and people. It is an indispensable instrument for any organization for the purpose of management and the achievement of expected goals. Thus, it governs and manage, it is the Administrative and management process, it is the executive arm of government of any unit of a group and also an effective machinery for national stability.

Generally, administrative law is the law that regulates administration. It regulates the powers and duties of government and administrative authorities, and also provides remedies for mall-administration and other administrative wrongs. Primarily, administrative law is concerned with the following duties.

- The organization, funding, powers and procedures of government and administrative authorities/agencies.
- The relationship between or among various level of government, administrative authorities and agencies, and
- The rights and remedies for persons affected by administrative powers and conduct (e.g.) damages, declaration, which involves the prerogative orders of prohibition, certiorari and mandamus) (Nwagbara, 2016).

To effectively achieve this mandates Ferman (2014) opined that administrative law is sub-divided into three parts:

- a. The statutes endowing agencies with powers and establishing rules of substantive law relating to those powers.
- b. The body of agency made law, consisting of administrative rules, regulations, reports, opinions containing findings of facts and orders, and

- c. The legal principles governing the acts of public agents when those act conflicts with private rights.

Sources of Administrative Law

There are four identified sources of administrative law:

- **The constitution:** This is the mother of various administration bodies and agencies.
- **Acts and Statutes:** These are laws passed by the legislature which provide details on the powers, functions and modes of control of several administrative bodies.
- **Ordinances, Notification, and Circulars etc.:** These are ordinance or orders issued by the presidents in a federal system of government for particular period of time. These ordinances give additional powers to administrators in order to meet urgent national matters.
- **Judicial Decisions:** Judicial decisions or judgment passed has over the years constituted a major source of administrative law in democratic states. These judgments have been responsible for several laid down principles related to administrative actions.

The Importance of Administrative Law

The complexity, scope and span of control of issues with which regulatory agencies deal with often requires that their activities be controlled through rules and regulation. Therefore, the relevance of administrative laws in our society is driven by the following:

- **Good governance:** Administrative law is established to help provide good governance which at the end of the day impact positively on the life of the citizens. A good government no doubt reduces to the barest minimum the arbitrary abuse of the fundamental right of citizens. When in any case the administrative laws are made to outline the due process for carrying out the management of government agencies, it becomes very effective as an instrument of control and checks.
- **Seeking redress:** Administrative law provide a flat form for citizens to seek redress either through the law courts process or through the public complaints commission against injustice suffered in the hands of government officials. This is clearly demonstrated through the mandate of the federal character commission to ensure equity in the spheres of employment promotion and appointment, thereby making it possible for citizens from minority groups to be represented and employed.

- **Administrative Control:** Oluyede (1986) contended that administrative laws make it possible for a constitutional control of the politics of the country. Thus, politicians are made to play the game according to the rules thereby ensuring sanity in the polity which can create the necessary environment for the private business sector to thrive and progress.
- **Financial Control:** Administrative laws ensure that there is control over the finances of the nation, it ensures that government functionaries do not embezzle the money of the state or country frivolously. The Economic and Financial Crime Commission (EFCC) and the Code of Conduct Bureau (CCB) play this important role in Nigeria.
- **Legislative Control:** Robert G. Lee (1985) argued that administrative law check on the administration of the legislature, thereby making them people oriented. As an instrument of control the 1999 constitution chapter iv SS33-44, provide the citizens fundamental human rights i.e. right to life, personal liberty, fair hearing, free movement, freedom of expression, family life etc.
- **Peace and Stability:** According to Frank (1973) administrative law enhance the achievement of peace and justice, it help in the eradication of poverty thus protecting the poor and the vulnerable etc.

Administrative Agencies

Administrative agency according to the United State (US) administrative procedures act (1946) mean: *Each authority of the government of the United State other than the congress and the courts.*

Nwagbara (2016) argued that an administrative agency is constituted by the executive's arm of government. Thus, a government authority other than a court or legislative department which affects the right of private parties involving issues of adjudication, rule making, investigating, prosecuting, negotiating, settling or acting.

Administrative agencies may be a commission board, authority, Berau, office, department, corporation, division or agency. Agencies that are created by the constitution have their powers and functions codified in the constitution. However, the powers and functions of statutory agencies are found in the enabling acts. Administrative agencies are found everywhere at the federal, state and local government levels. As an act of delegated legislation, they are authorities to make certain Rules and Regulations, judicial work by being empowered to determine whether or not the law has been violated and to impose penalty as appropriate.

Examples of constitutionally created administrative agencies are found in S.153 (1) CFRN 1999 which includes the following:

- a. Code of conduct Bureau
- b. Federal character commission
- c. Federal civil service commission
- d. Independent National Electoral Commission
- e. National Defense Council
- f. National Economic Council
- g. National Judicial Council
- h. National Population Commission
- i. National Security Commission
- j. Revenue Mobilization, Allocation Fiscal Commission

Statutory Agency

In Nigeria, the national assembly in its capacity as the law making arm of government has enacted some statutes which authorized the establishment of administrative agency. Example of such statutory agencies includes:

- a. Economic Financial Crime Commission act 2004
- b. Independent Corrupt Practice Commission (ICPC) act 2000
- c. National Drugs Law Enforcement Agency (NDLEA) act 1989 etc.

Reason for Creating Administrative Agencies

Administrative agencies are created for the following reasons:

- a. To provide certain Goods/products e.g the liquefied Natural Gas (LNG/NNPC, the Coal Corporation, Tin mining cooperation etc.
- b. To render certain services e.g the Nigerian fire service, water corporation etc.
- c. To manage public assets or resources e.g. Federal Airport Authority of Nigeria FAAN, Nigerian Tourism Development Corporation etc.
- d. Law implementation e.g. CBN rules on lending, NAFDAC for quality product control.
- e. Regulatory functions e.g. CBN for banks, standard organization of Nigeria (SON), FRSC, NAFDAC, CAC etc.
- f. Advisory functions to advice government functionaries on managerial conducts/procedures (Nwagbora, 2016).

Constitutional Law

Constitutional law is the law relating to the constitution of a nation. In most countries, there is an identifiable document or group of documents referred to as the constitution which contains the most important rules governing the nation.

According to Corlin Turpin (n.d), constitutional law can be defined as a body of rules, convention and practices which describe, regulate or qualify the organization and operation of government which also includes the institution and offices comprising the government and doctrines and principles which influences their practice.

According to Austine (1954) constitutional law refers to: *The positive morality or the compound of positive morality and positive laws which fixes the constitution or structures of the supreme government which determines the character of the person or the respective characters of the person in whom, for the time being the sovereignty shall resides.*

According to Salmond (1957) constitutional law: *Is the body of those legal principles which determines the constitution of a state i.e. the essential and fundamental portion of a states organization. Constitutional law therefore is the judicial theory, reflection, or image of the constitution "defector" i.e. the constitutional practice and procedure.*

In a not shell therefore, constitutional law in a democratic society basically deals with issues or concepts which affects the making of the constitution, the distribution of the political power between the different arms of government, the exercise of such functions, and the relationship between such arms and the individual citizens whose rights or freedom are often provided for by the constitution.

Essential of Constitutional Law

The basic elements of constitutional law are:

- It is the organic, fundamental and supreme law of a nation or state.
- All laws contrary to it are null and void and of no effect.
- It may be written or unwritten
- It provide the concept and structure of the government of a given state
- It lays down the basic provisions which will govern the internal life of the country.
- It organizes and regulates the government administrative authorities and people
- It assign and limits the functions of the different authorities and department of government
- It assign and regulates the exercise of constitutional powers by government administrative authorities
- It is a code of government deriving its authority from the people

- Constitutional law is the law that studies constitution, their establishment, operation, interpretation and validity of other law when tested against the criteria of conformity with the constitution.

Good Governance

The concept of governance has attracted a lot of definition from several writers, but not all encompassing for the term is better describer than defined. Chinyere (2013), defined governance as “a process of decision making and the process by which decision are implemented. When decisions are made and implemented, following the laid down due process, it is good governance”.

The World Bank defines governance as “the manner in which power is exercised in the management of a country’s economic and social spares for development. The United Nation Development Programme (UNDP) defined good governance as the use of government to deal appropriately with the problems facing a country. According to the “Institute on Governance” which is an independent Canada-based institution in Ottawa, expressed the concept of governance as:

“Governance determines who has power, who makes decisions, how other players make their voices heard and how account is rendered. Governance is therefore a process of directing the affairs of a given nation or organization under whatever type of system adopted with the intend of creating and sustaining orderliness, peace and promoting the general wellbeing of the people of such organization.

Kale (2002) observed that good governance should therefore be characterized by:

Predictable, open and enlightened public policy with a bureaucracy that is involved with professional ethos acting in furtherance of the public good and the rule of law, transparent processes and a strong civil society participating in public affairs.

Put together, good governance presupposes a pre-requisite to nation building and national development agenda. It encapsulates transparency and accountability in the management of public affairs and the full involvement of the people in the political process and relevant decision affecting their lives.

In summary, Henwood (2001), concluded that good governance should posses the following characteristics: Governance that prevent occurrence of tyranny, anarchy, corruption, instability, paralysis, uninformed decision making,

unaccountability and unjustified secrecy. Governance that result in good, stable, accountable, and free from illegal political trails.

Specifically, for Nigeria to achieve good governance as observed by Chinyere (Op. Cit) it is necessary to promote a sound economic development, there should be a practical functioning of rule of law, a water tight separation of power, “an independent judiciary that is jealously guards its independence, entrenched press freedom based on (objective reportage) as well as respects for fundamental human right, multi-party system and political tolerance based on accepted political culture.

Characteristics of Good Governance

The following are accepted to be the essential elements of good governance by political writers:

- **Accountability:** Accountability is one of the major elements of good governance which does not only apply to government organization but to private sector and civil society organizations.
- **Rule of law:** Rule of law means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary powers. All executive actions must not contravene the law and there must be equality before the law.
- **Transparency:** This presuppose that all decision taken and their enforcement are done in accordance with set rules and regulations. Information’s should be available and accessible to those effected by such decisions.
- **Effectiveness and Efficiency:** These entails that institutions should produce result that meet the needs and wishes of the people through prudent management of scars resources at their disposal.
- **Equity and Inclusiveness:** This demands that the most vulnerable groups in the society especially women and children have access to improved life and wellbeing. It should also ensure that such groups of people are not left out from the scheme of things or the society’s mainstream.
- **Mediation:** Good governance requires that there should be a platform for the different interest group in the country to reach a broad base consensus on issues of interest of the whole country and how best to achieve it.
- **Separation of power:** Separation of power refers to division of governmental political powers that exist in a state into the three organs of government i.e. (Executive, Legislative and Judiciary) this, no doubt is another corollary for good governance. The idea of separation of power is

also a veritable tool in safeguarding the supremacy of the country's constitution.

- **Participation:** Participation is the cornerstone of good governance. This simply means that there must be respect of freedom of expression and association on one hand and a flourishing organized civil society on the other.

Democracy and Good Governance

Democracy according to Abraham Lincoln means “*government of the people by the people and for the people*” the core components of democracy includes, political pluralism, allowing for the existence of several political parties and workers unions and fair open and democratic elections periodically organized to enable people to choose their leaders freely.

Rusniah Ahmed *et al*;(2011) contended that democracy is regarded as the most stable and peaceful, inter-relationship among civilized nation-states, as well as the most popular means of exercising the right to self-determination. Diamond (1990s) argued that:

“countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbors to aggrandize themselves or glorify their leadership. Democratic governments do not ethnically “clear” their own population and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable open and enduring trading partnership. In the long run they offer better and more stable climate for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environment. They are better bets to honour international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely, within their own borders, they respect competition, civil liberties, property right and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be build.

While the above assertion may not all be true, they however represent the ideals that have motivated many nation-states and international organization to adopt

democracy as the standard form of governance and the centre open which good governance revolves. It is in recognition of this fact that the United Nations (UN) and other world bodies have embraced democracy as the legitimate form of ascending to political power in sovereign states. It is a general consensus that development could be impossible in the absence of democracy as well as for peace and security to be achieved.

Challenges to Good Governance in Nigeria

The challenges to good governance in developing societies like Nigeria are so numerous and overwhelming and has continue to plague any effort to achieve sustainable development. Some of these challenges are highlighted as follows:

- **Corruption:** Corruption is an act committed with the interest to give some advantage inconsistent with official duty and the right of others. A corrupt nation conjures up the images of shady characters i.e. making shady deals with persons in authority, either to do or refrain from doing something in his official capacity. Corruption simply means any deviation from society's norms for the purpose of aggradizing one's personal interest as oppose to the collective interest (Worigji, 2005). Corruption which has been described by writers as a "Hydra headed monster and a world wide phenomenon" has now become an integral part of the Nigerian society in its entire ramification. This manifest in various ways which includes, outright misappropriation of the resources for pure private purpose, nepotism, abuse of public accountability procedures, bribery, money laundering etc. thus, it is the hope of Nigerian that the independent corrupt practices commission (ICPC) established in 2004 and the Economic Financial Crime Commission (EFCC) also established in 2004, will win the battle against the monster. President Olusegum Obasanjo while inaugurating the anti-corruption commission right observed that:

With corruption there can be no sustainable development or political stability. By breeding and feeding on inefficiency, corruption invariable strangles the system of social organizations. Infect, corruption literally is the antithesis of development and progress (Igwe, 2013).

- **Political Instability:** Since independent Nigeria has been marked with a lot of political instability influenced by certain factors which includes; sentiments (1967-1979 civil war), military take over's, annulments of elections, electoral malpractices, lack of focused political ideology and

recently insurgency etc. it is argued that, up to now the nation Nigeria is yet to fashion out a system of government that is practicable and well accepted to all the geo-political zones which is said to have accounted for most of political crises we have been experiencing.

- **Insecurity:** Insecurity in Nigeria is indentified by all kinds of threats to the citizens particularly threat to life and property. The life of the people is marked with all sorts of actions and activities which make the environment unsafe for habitation and development to take peace. The characteristics of such insecurity includes; tribal and ethnics classes, violence by misguided elements, hostage taking, kidnapping for ransoms etc. which in most cases is politically motivated. Therefore, there is an urgent need for citizens to understand that security is a collective business for all and not only the government and its security apparatus.
- **Unemployment:** The international labour organization defined unemployment as the number of the economically active population who are without work but available for an seeking work, including people who lost their jobs and those who have voluntarily left work. Nigeria has been identified as a nation with high percentage of youth unemployment. Our institutions, the universities, polytechnics, colleges of educations and monotchnics yearly continue to turnout new graduates in to the labour market which provide only for few. This huge volume give rise to many vices among the youth such as hooliganism, illicit drug taking and trafficking, armed robbery, prostitution, kidnapping etc. to effectively address the problems of youth unemployment's, emphasis should be placed by all levels of government on skills acquisition to complement the effort of our educational institutions who have introduced entrepreneurship studies in their curriculum.
- **A vibrant Judiciary:** A vibrant judiciary no doubts is indispensable to good governance. To perform the responsibilities conferred on it by the constitution, the judiciary must be wholly and timely responsive. This is because a responsive judiciary is a since qua non to good governance. Some of the factors that can make the judiciary in our nation responsible can include: guide against corrupt practices, avoid ambiguities, shun unnecessary techniques expert applications not to be anathema to proper intervention by the judiciary in determing contentious issues brought before it by parties, avoid delay in the administration of justice etc.
- **Legal Reforms:** Many spheres in our national life urgently requires reforms in order to ensure and secure an efficient and effective political

administration, smooth justice administration, achieve sustainable development and above all balance economic property in all sectors, legal reforms need to be carried in the following key institutions:

- a. The educational sector
- b. The judiciary
- c. The land reform (1978 land use act)
- d. The economic sector
- e. The Nigerian police
- f. The Nigerian prison
- g. The political system
- h. The social sector and
- i. Constitutional review

Conclusion

In conclusion, administrative law which is a branch of public laws that regulates the organization and conduct of government and administrative authorities, their relationship with one another and members of the public and provide remedies for breaches of right is a veritable tool for good governance. In assessing the role administrative law play in providing good governance, this paper evaluated the concept of administrative law, its relevance to sustainable development, agencies created by constitutional provision, and those by legislative statutes where as well reviewed.

The paper also highlighted the major reasons for creating administrative agencies, the subject of good governance, democracy and good governance were critically discussed and the challenges to achieving good governance outlined.

On the whole, it is the recommendation of this paper that the achievement of good governance in a society is a collective responsibility.

References

- Ahmad, R et-al "Democracy and Global determinant factor to legitimate governance and self-determination" Bill Law Journal (2011) Vol. 1, Page 58
- Cases & materials on administrative law in Nigeria (1992) 2th edition, OAU press, Ile-Efe.
- Diamond, L. "Promoting Democracy in the 1990's; Actors and instrument, issues and imperatives" a report to the Cemegie Commission on Preventing deadly conflict, Cornegie Corporation of New York, Dec. 1995.
- Frank, J.F. & James B. L, (1985): the law and the Poor book Maryknoll, New York.
- Hanwood, R, (2001) Good Governance and public system, University of Pretoria

- Kale, "Democracy as a cornerstone for good governance and rule of law University of Maiduguri". Law Journal Vol. 5, 2002.
- Maleni (1982): Administrative law 5th edition Supra.
- Nwagbara, C. Administrative law as the bedrock of administrative agencies and procedures in Nigeria, international journal of Business law research 4(1):9-16 Jan-Mar, 2016
- Olingere, P. "The challenges of good governance in Nigeria under democratic system of government: An appraisal". Ekiti State university, Edo-Ekiti Law Journal 2013 Vol. 5 P. 142
- Oluyede, P.A (1986); Nigeria administrative law, university press Ltd. Lagos.
- Out, M. T "Administrative law and challenges of good governance in Nigeria under democratic system of government: The existing legal reform" International Journal of Advanced scientific research in humanities, Vol. 2, No. 1, Dec. 2017.
- Ozumba, L. N.: Journal of integrative humanism-Ghana, march, 2014.
- Robert, G. L. (1985) Constitutional and administrative law, black stone, press London.
- The law & the constitution (5th Edition); Maleni administrative law 92012) 4th edition, Princeton publishing company Ikeja, Lagos
- www.lawnotes.in/sources of administrative law.