

Administrative Law

V Semester (LL.B.) - Compulsory Course

Growth of administrative law is the by-product of the establishment of welfare state. The multiplicity of state functions necessitated a separate branch of law to organize and regulate different activities. Consequently administrative law as a separate branch of legal discipline gained importance, especially during the middle of 20 century. In India, administrative law is basically principle-based and judge made law drawn substantially from the constitutional law.

The objectives of the course are to comprehend the evolution of administrative law, to appreciate the concepts and principles of administrative law and to understand the working of the administrative institutions.

COURSE OUTLINE

MODULE - 1: INTRODUCTION TO ADMINISTRATIVE LAW

- 1.1. Nature and scope of administrative law
- 1.2. The growth of administrative law
- 1.3. Relationship between administrative law and constitutional law
- 1.4. Rule of law
- 1.5. Separation of powers
- 1.6. Droit Administratif

Time allotted: 6 Hours

Reading List:

- A. The nature and purpose of administrative law (Refer module)
- B. V. Ramaswami, 'Rule of Law and a Planned Society' (Refer module)
- C. M. N. Venkatachaliah, 'Rule of Law: Contemporary Challenges' (Refer module)
- D. Susan Kneebone, 'Administrative Law and the Rule of Law: Still Part of the Same Package?' (Refer module)
- E. Denise Meyerson, 'The Rule of Law and the Separation of Powers' (Refer module)
- F. David Annoussamy, 'French Administrative Tribunals' 26 *Journal of Indian Law Institute*. (Refer module)

MODULE - 2: CLASSIFICATION OF ADMINISTRATIVE ACTION

- 2.1. Pure administrative action
- 2.2. Quasi-legislative action
- 2.3. Quasi-judicial action
- 2.4. Ministerial action
- 2.5. Administrative instructions
- 2.6. Administrative discretion

Time allotted: 6 Hours

Reading List:

- A. Administrative Directions (Refer module)
- B. M. P. Jain, Treatise on Administrative Law, 5th Eds. (2003)
- C. J. J. R. Upadhaya, Administrative Law, Allahabad: Central Law Agency.

MODULE - 3: RULE-MAKING POWER OF THE ADMINISTRATION / DELEGATED LEGISLATION

- 3.1. Concept of delegated legislation and the need for administrative rule-making
- 3.2. Classification of delegated legislation
- 3.3. Restraints on delegation
- 3.4. Constitutionality of delegated legislation
- 3.5. Control over administrative rule-making
 - 3.5.1. Parliamentary control
 - 3.5.2. Procedural control
 - 3.5.3. Judicial control

Time allotted: 8 Hours

Reading List:

- A. P. B. Mukharji, 'Delegated Legislation' (Refer module).
- B. Gabriele Ganz, 'Delegated Legislation: A Necessary Evil or a Constitutional Outrage?' (Refer module)
- C. V. N. Shukla, 'Judicial Control of Delegated Legislation in India' (Refer module).
- D. 'Concept of Excessive Delegation- An Appraisal' available at <http://airwebworld.com/articles/index.php?article=1003>

MODULE - 4: DECISION-MAKING OR ADJUDICATORY POWER OF THE ADMINISTRATION

- 4.1. Concept of administrative adjudication and tribunals
- 4.2. Need for administrative adjudication
- 4.3. Court of law and the administrative agency exercising adjudicatory powers
- 4.4. Modes of administrative decision-making
- 4.5. Problems of administrative decision-making

Time allotted: 3 Hours

Reading List:

- A. Aman Preet Dhingra, 'Administrative or Judicial Tribunal?', 30 *Journal of Indian Law Institute* (Refer module).
- B. Massey, I.P., *Administrative Law*, Eastern Book Company, 6th Edn, (2005).

MODULE - 5: PRINCIPLES OF NATURAL JUSTICE

- 5.1. Rule against bias
- 5.2. *Audi Alteram Partem*
- 5.3. Reasoned decisions or speaking orders
- 5.4. Post-decisional hearing
- 5.5. Exceptions to the rule of natural justice
- 5.6. Effect of breach of natural justice

Time allotted: 10 Hours

Reading List:

- A. 'Aspects of Canadian Administrative Law: Audi Alteram Partem' (Refer module)
- B. Vardhaman L. Jain, 'Living Audi Alteram Partem' (Refer module).
- C. M. P. Singh, 'Duty to Give Reasons for Quasi-Judicial and Administrative Decisions', 21 *Journal of ILI* (Refer module).
- D. S. N. Jain, 'Administrative Law Aspects of Maneka Gandhi', 21 *Journal of ILI* (Refer module).
- E. S. N. Jain, 'Effect of Failure of Natural Justice: The Ultimate Relief', 26 *Journal of ILI* (Refer module).

MODULE - 6: JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

- 6.1 Jurisdiction of the Supreme Court & High Courts

- 6.2 Public law review principles
- 6.3 Doctrine of legitimate expectation
- 6.4 Doctrine of public accountability
- 6.5 Doctrine of proportionality
- 6.6 Modes of judicial review
 - 6.6.1: Public law review
 - 6.6.2: Private law review

Time allotted: 10 Hours

Reading List:

- A. M. C. Setalvad, 'Judicial Review of Administrative Proceedings' (Refer module).
- B. Lawrence F. Ebb, 'Judicial Review of Administrative Proceedings' (Refer module).
- C. K. I. Vibhute, 'Administrative Tribunals and the High Courts: A Plea for Judicial Review', 29 *Journal of ILI* (Refer module).
- D. 'Legitimate Expectations' (Refer Module – p. 166)
- E. Clark D. Cunningham, 'Public Interest Litigation in Indian Supreme Court: A Study in the Light of American Experience', 29 *Journal of ILI* (Refer module).
- F. A. S Anand, 'Judicial Review – Judicial Activism – Need for Caution', 42 *Journal of ILI* (Refer module).
- G. Syed Shah Mohammed Quadri, 'Judicial Review of Administrative Action', 6 *SCC* 2001, p. 1.

MODULE - 7: GOVERNANCE & PEOPLE

- 7.1: Principles of good governance
 - 7.1.1: Transparency and public accountability
 - 7.1.2: Right to know
- 7.2: Remedies for maladministration
 - 7.2.1: Ombudsman
 - 7.2.2: Lokpal & Lokayukta
 - 7.2.3: Central Vigilance Commission (CVC) & Central Bureau of Investigation (CBI)
- 7.3: Global administrative law

Time allotted: 5 Hours

Reading List:

- A. R. B. Jain, 'Good Governance for Sustainable Development: Challenges and Strategies in India', *Indian Journal of Public Administration* 2004 (Refer module).
- B. A. Subrahmanyam, 'Transparency in Administration and Protection of Human Rights', 44 *Journal of ILI* (Refer module).
- C. Ramjee Singh, 'Panchayati Raj: Grass-roots of Democracy' (Refer module).
- D. Rajeev Dhavan, 'Engrafting the Ombudsman Idea on a Parliamentary Democracy – A Comment on the Lokpal Bill, 1977', 19 *Journal of ILI* (Refer module).
- E. Balram K. Gupta, A Balance-Sheet of State Lokayuktas, 26 *Journal of ILI* (Refer module).

MODULE - 8: LIABILITY OF THE ADMINISTRATION

- 8.1: Liability of the administration in contract
- 8.2: Liability of the administration in tort
- 8.3: Privileges and immunities of the administration in suits
 - 8.3.1: Privilege of notice
 - 8.3.2: Privilege to withhold documents
 - 8.3.3: Immunity from statute operation
 - 8.3.4: Doctrine of promissory estoppels

Time allotted: 10 Hours

Reading List:

- A. V. Ramaseshan, 'Promissory Estoppel and State Liability', 31 *Journal of ILI* (Refer module).
- B. 'Liability of State in Tort', A Consultation Paper by National Commission to Review the Working of the Constitution (Refer module).

BOOKS FOR REFERENCE (For all topics)

Compulsory Readings

1. Massey, I.P., Administrative Law, Eastern Book Company, 6th Edn, (2005).
2. Sathe, S.P., Administrative Law, Seventh Edn, (2004).
3. Takwani, C. K. Lectures on Administrative Law, Eastern Book Co. (2006).
4. M. P. Jain, Treatise on Administrative Law, 5th Eds. (2003).

Recommended Readings

1. Wade, William and Christopher Forsyth. Administrative law, 9th ed. (Oxford: Oxford University Press, 2004).
2. Sir William Wade, Public Law in Britain and India, Bombay: N.M. Tripathi Private Ltd., 1992.
3. Craig, P.P., Administrative Law, Sweet and Maxwell 5th Edn. (2002).
5. Mashaw, Jerry L, Richard Merrill and Peter Shane. 2002. *Administrative Law in the Political System*. Fourth Edition, West Group.
6. O'Brien, David. 2003. *Constitutional Law and Politics: Struggles for Power and Governmental Accountability*. Fifth Edition, Norton Press.
7. M.P. Jain and S.N. Jain, Principles of Administrative Law (Fifth Edition), Nagpur: Wadhwa and Company, Reprint, 2007.
8. Jain M.P., Cases and Materials on Indian Administrative Law in 3 Vols (Vol 1/1994, Vol 2/1996, Vol 3/1999- Edn.