

BOOK REVIEW

“An Introduction to Administrative Law” Edited by Dr. Rathin Bandyopadhyay and Dr. Rajendra Dhar Dubey, Paragon International Publishers (New Delhi), 2013, Pages –xxi+341, Rs. 595, ISBN : 978-81-89253-80-6.

‘Administrative law’ as a branch of law has gained significance owing to the increase in administrative functions of the government creating a new relation between the Administration and the citizen. With the increase in governmental responsibility over the years the government assumed a new dimension to keep pace with the fast growing socio-economic and political needs ensuring a welfare state. The subject in India is mainly a contribution of the English judges during the administration of the East India Company and thereafter followed by our courts to a large extent and substantially extended forming principles that govern the executive machinery gaining immense significance today. Administrative law ensures governance in compliance with the constitutional principles and promotes rule of law by controlling abuse of power by the executive agencies. Taking into consideration the increasing role of the state and its agencies, it becomes pertinent to be aware of the various aspects of the administrative powers exercised by the government and this book has come in at the right time as a useful guide to those who have an inclination to know the subject.

The book under review brings together the various aspects of Administrative law, the evolution growth and development of the subject, the various functions of the executive as well as the machinery for its redressal and relief under one umbrella. The qualitative contribution made by the authors to this important branch of law gives a comprehensive knowledge to the reader about the subject. The book contains 18 chapters spread over 314 pages and covers almost all the areas which are fundamental in the understanding of the subject.

The Chapter I of the book highlights the origin and development of Administrative Law and discusses the transformation that took place with the intervention of the judiciary over the last few decades. The author has touched upon all the areas where Administrative law plays a significant role such as the powers of the executive under the Constitution, the constitutional remedies available, establishment of Administrative Tribunals, functioning of the Inter-State Council, Finance Commission, Public Service Commission and also the constitutional safeguards available to the public servants.

Since independence, tribunals have proliferated and the number of tribunals is on an increase. These tribunals have been constituted under 323A and 323B of the constitution or set up under other statutory laws as a substitute to ordinary courts. These Tribunals are subordinate to High courts in the states in which they function and the orders given by the Tribunals can be challenged under Art 226 and 136 of the Constitution. In the second Chapter the author discusses the various Administrative Tribunals dealing with multifarious functions, their growth internationally as well as in India which has considerably lessened the burden of the courts. The author has also focused on the limitations of these tribunals which sometimes grossly violate the principles of natural justice, lack uniformity and judicial expertise.

Absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits¹. Discretion, as Lord Mansfield stated it is in classic terms, “means sound discretion guided by law. It must be governed by rule, not by humour: it must not be arbitrary, vague and fanciful.”² The author in Chapter 3 highlights on the exercise of discretion by the administrative agencies in relation to the trade and business activities and its effect on Art 19 (1) (g) of the constitution. The author has rightly pointed out that it is absolutely impossible to abolish the power of discretion from the executive but it can surely be regulated and controlled for a smooth functioning of the government.

The doctrine of Separation of Powers aims at independence of the three main branches of administration –Legislature, Executive and the Judiciary from each other in their working. Chapter 4, 5 & 6 have dealt with this doctrine. The three chapters together give an insight on the application of the doctrine, their relation with each other with the experience in different countries with special mention of India, its importance and the impact of judicial review and judicial activism on the administrative action when there is any encroachment.

The Rule of Law implies that government authority may only be exercised in accordance with written laws which are adopted through an established procedure. The principle is intended to safeguard against arbitrary rulings in individual cases. The Supreme Court in *Keshavananda Bharati V. State of Kerela*³ enunciated this doctrine to preserve the spirit of Rule of Law in the Constitution of India. Chapter 7 and 8 embarks upon the adoption of this principle in Administrative Law and the various measures

¹ *Jaisinghani v. India*, AIR 1967 SC 1427

² (1770) 4 Burr 2528, 2539

³ *Kesavananda Bharti v. State of Kerela*, (1973) 4SCC 225

adopted by the Government through its affirmative actions to protect the weak against the strong, the exploited against the exploiter and the poor against the rich.

Natural Justice is based on the principle of fairness, conscience and equal opportunities to both the parties to a dispute. It is said to be the foundation of the ethics of judicial conscience. Based on these principles, the administrative bodies, tribunals or authorities are authorized to deal with matters within their jurisdiction in an administrative manner. One important aspect of the rules of natural justice is that these rules do not supplant the law of the land but supplement it.⁴ Chapter 9 throws light on the origin, scope and applicability of this doctrine and the judicial approach by chronologically supplementing it with landmark case decisions.

Delegation of power is aimed at increasing administrative efficiency. In modern times the executive is being entrusted with wide powers which give way to ample possibilities of its abuse. Therefore control: procedural, parliamentary and judicial provides a check in misuse of this power. The authors in Chapter 10 and 11 delve upon this important aspect of Administrative law and also the measures of its improvement. Besides laying down the growth, extent and criticism of Delegated legislation the author in Chapter 10 has suggested measures to minimize the hazards of the technique of delegated legislation. On the other hand in Chapter 11 the author has elaborated on the necessity of Delegated Legislation and has classified into its various forms highlighting its legal consequences for its non-compliance.

In Chapter 12 the author makes a commendable classification of administrative, legislative and judicial functions exercised by the executive authority. The various ingredients in administrative actions and the remedies available through Judicial Review and various other measures adopted by the state to check the abuse of power for ensuring effective administrative action is lucidly presented in the work.

Public Interest Litigation today needs no introduction. The Judicial activism in the form of PIL which allows accepting a mere letter written to the Chief justice as a petition under Art 226 and 32 of the constitution has brought in a wave of revolution. It has succeeded to give enormous relief to the poor and the oppressed class against executive arbitrary action in particular. Chapter 13 brings in different facets of the PIL providing relief against administrative action and critically examines its achievements so far.

Art 299 and 300 of the Indian Constitution deal with the liability of the state under contracts and for torts respectively. The authors in Chapter 14 and 15 analyse the various provisions dealing with the rights and duties of the government and the emergence of judicial activism that has made

⁴ *Jain exports (P) Lt. v. Union of India*, (1968) 3 SCC 579

valuable contribution on expanding the liabilities of the government. In Chapter 14 the author has given a detailed background of the state liability, its constitutional perspective citing relevant case decisions. Chapter 15 carefully analyses the statutory provisions and the judicial interpretation of the tortuous liability of the state.

The Public Corporations are set up to operate nationalized industries or for the organization of other public enterprises and services and also to sort out special problems arising out of the execution of large scale irrigation and power projects covering more than one state and others. These corporations are guided by Constitutional and Administrative law. Chapter 16 deals with Public Corporation and gives a summary of the working of these corporations and their contribution in attaining economic and social objectives of the state.

Corruption in the administration hinders decision making process and gives rise to all kinds of vices. It may turn out to be the national poison denying India its unique historic opportunity to escape the age-old trap of poverty, inequality and economic backwardness.⁵ The increasing number of administrative functions have resulted in corruption and abuse of power by the authorities. Therefore the citizens' grievances are addressed through the establishment of 'Ombudsman'. The word 'Ombudsman' relates to a small man's battle against administrative injustice. Sweden was the first country to adopt this institution. In India it is an Ombudsman type of functionary called Lokpal and Lokayukta recommended to function to enquire into allegations of corruption and maladministration against Ministers and public servants of the state. Although, a few number of states have adopted it but the centre till date has not been able to show it the light of the day. Through Chapter 17 the author discusses these aspects critically and rightly points out that only a strong and independent ombudsman system having constitutional sanction can lead to setting and maintaining standards of good administration for government departments.

The Gram Nyayalayas Act, 2008 was enacted for establishment of Gram Nyayalayas or village courts for speedy and easy access to justice system in the rural areas of India. The Act came into force from 2nd October 2009. It is disheartening that the Act has not been implemented properly due to financial constraints, reluctance of lawyers, police and other government officials. Chapter 18 is devoted to the functioning of these Gram Nyayalayas and focuses on the various functions and the objectives the Act aims to fulfill. The author has carefully highlighted the various measures of providing accessible adjudication to people in rural areas removing social and economic backwardness through this machinery.

⁵ N.Vittal, *Ending corruption? How to clean up India*, 119 Penguin Viking, 2012

In conclusion, it may be said that the book under review is coherent, systematic, well arranged, comprehensive and integrated study of all the topics in a simple language and lucid exposition. The well arranged table of cases at the beginning is useful to the readers. The book is well presented with an attractive cover and moderately priced. However, the Right to information and Vigilance Commission which play instrumental role in curbing red-tapism, corruption and arbitrary administrative action could have been dealt with in greater detail. The book would surely dispel the ignorance about administrative law to students of law and also a layman. Besides, it will be appreciated by administrators, government employees and legal practitioners, law professional and researchers.

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