

JUDICIAL CONTROL OVER ADMINISTRATIVE PROCESS

Objectives of the course

Administrative law is mainly a judge-made law and has secured its present features through a myriad of judicial decisions. The historical evolution of the judicial agencies reviewing administrative procedures, jurisdictional aspects of administrative decision making subjected to review, the grounds on which decisions are challenged, the scope of review of delegated legislation and the limitations on the judicial review of administrative action are to be studied in detail in this course. The procedural fairness is the key to good administrative decision and the various remedies rendered in judicial process clear the way for achieving administrative justice. The ever increasing number of delegated legislation in the form of rules, regulations, circulars and general orders has the characteristics of law, which though framed by administration, impose burden on the rights of citizens. Keeping this specie of administration beyond judicial review is neither in the interests of the general public nor for laying down standards of administrative behaviour. This course, with the above mentioned perspective in view, comprises the following 5 units to be spread out to a period of one semester.

Syllabus

1. Concepts and Agencies

Concept of judicial review in Common law countries and French system – Judicial review in India – Jurisdiction of Supreme Court, Administrative Tribunal and High Court

2. Grounds of review

Doctrine of ultra vires – Unreviewable discretionary powers – Discretion and justifiability – Violation of fundamental rights- Extraneous consideration – Delegation – Acting under dictation – Malafides and bias – Lack of rationality and proportionality.

3. Procedural fairness

Procedural fairness – legitimate expectation – Natural justice and duty to act fairly – Bias and personal interest – Fair hearing.

4. Remedies

Writs – Injunction and Declaration.

5.Limits of judicial review

Locus standi and public interest litigation – Latches- Resjudicata and alternative remedies.

PRESCRIBED BOOKS AND JOURNALS

- S.P. Sathe, Administrative Law (1998), Butterworths, India.
De Smith, Judicial Review of Administrative Action (1995), Sweet and Maxwell.
I.P. Massey, Administrative Law (1995), Eastern, Lucknow.
Bagawati Prasad Banerjee, Writ Remedies, (1999), Wadhwa, Nagpur.
M.P.Jain, The Evolving Indian Administrative Law (1983), Tripathi, Bombay
Jain & Jain, Principles of Administrative Law (1986), Tripathi
M.P. Jain, Cases and Materials on Administrative Law (1996), Vol.I, Wadha, Nagpur.
Fazal - Judicial Control of Administrative Action in India and Pakistan (1969)
Jain and Jain - Principles of Administrative Law (1993) Chs 7, 8, 13, 14 & 15.
Schwartz and Wade - Legal Control of Government Chs. 9-12
Davis - Administrative Law - Text Chs. 4, 11, 12 & 18-20
Brown and Garner - French Administrative Law - (1973) Chs. 7 & 9
Jaffe - Judicial Control of Administrative Action
A.T. Markose, Judicial Control of Administrative of India