M P JAIN & S N JAIN

PRINCIPLES OF ADMINISTRATIVE LAW

SIXTH EDN. REPRINT 2011

JUSTICE G P SINGH
FORMER C J, HIGH COURT OF MADHYA PRADESH

JUSTICE ALOK ARADHE
HIGH COURT OF MADHYA PRADESH

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Nagpur

M.P. Jain & S.N. Jain

Principles of Administrative Law

The book contains Chapters on Nature & Scope of Administrative Law, Delegated Legislation, Control over Delegated Legislation, Judicial Control, The Doctrine of *ultra-vires*, Administrative Directions, Right to Hearing, When can it be claimed? Administrative Adjudication, Principles of Natural Justice or Fairness, Effect of Failure of Natural Justice, Administrative Powers and Discretionary Powers, Powers of Investigation and Inquiry, Fundamental Rights and Conferment of Administrative Discretion, Sub-delegation of Powers, Judicial Control of Administrative Action, Writs, Appeal to Supreme Court by Special Leave, Statutory Judicial Remedies, Official Secrets and Right to Information, etc., with reference to various Committee Reports, Case Law and exhaustive commentary.

by

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Sixth Edition* Reprint 2011
(Thoroughly Revised)

by

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Dedicated to the

Cherished Memories of

M. P. Jain

and

S. N. Jain

preface to the sixth edition

The fifth edition of this book appeared in 2007. Preparations for the sixth edition have included revision and rewriting at several places and updating of notes.

Since the publication of the last edition, a new dimension has been given by the Supreme Court to the concept of principles of natural justice. Originally, there were said to be two components of the principles of natural justice: (i) nobody shall be condemned unheard, and (ii) nobody shall be a judge in his own cause. It has been held by the Supreme Court that natural justice has an expanding content and is not stagnant. It is, therefore, open to the court to develop new principles in appropriate cases. As a result fairness and transparency in public administration have been added as new components of principles of natural justice.

Where there is no scope for the exercise of discretion or flexibility while carrying out the exercise of fixing the rate of fuel surcharge under tariff notification, opportunity of hearing is not required to be afforded.

While emphasizing the need to assign reasons even in cases of judicial verdicts, the Supreme Court has held that while expedition and brevity are to be encouraged and appreciated, the importance of reasons in support of decisions cannot be ignored. If a case is decided without assigning any justifiable reason, it would be open to legitimate criticism.

It has been reiterated that the purpose of disclosure of reasons is that people must have confidence in the judicial or *quasi*-judicial authorities and assigning reasons minimizes the chances of arbitrariness.

The doctrine of legitimate expectation has been developed in the context of principles of natural justice and it has been held by the Supreme Court that good administration demands the observance of the doctrine of reasonableness in other situations also where citizens may legitimately expect to be treated fairly. It has further been held that legitimate expectation is based on principles of natural justice, but there has to be a basis for giving effect to the doctrine of legitimate expectation. It must not be based on mere anticipation.

The Supreme Court, while dealing with provisions of the Right to Information Act 2005, has held that an applicant cannot be allowed to seek information as to why or for what reasons the Judge has come to a particular decision or conclusion. A Judicial officer is entitled to protection and object is to preserve the independence of the judiciary.

It has recently been held that the view earlier held by Sinha, J. that the Wednesbury principles have been replaced by proportionality principles is not correct and that the Wednesbury principles are still alive and are

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preface to the sixth edition (*contd.*)

applicable for judicial review where no fundamental rights are involved.

As power of judicial review by the Supreme Court and the High Courts is part of the basic structure, they can in exercise of this power, in exceptional cases, direct investigation of a criminal case to the CBI without the consent of the State concerned to uphold the fundamental right under Article 21.

We hope that this new edition will not disappoint readers and they will find it as useful as its earlier editions.

JABALPUR
8th October, 2010

G.P. SINGH
ALOK ARADHE

preface to the fifth edition

The fourth edition of the book appeared in 1986. In preparing the fifth edition, the book has been rearranged and rewritten at many places and has been extensively revised.

Since the publication of the last edition of this book, many significant developments have taken place in the field of Administrative Law.

With proliferation of Delegated Legislation there is a tendency for the line between legislation and administration to vanish into an illusion. A new dimension has been added by the Supreme Court with regard to challenge to the validity of delegated legislation. It has been held that where exercise of conditional legislation would depend upon subjective satisfaction of the delegate, on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive rival class of persons and those who are likely to lose the existing benefits, compliance with principles of natural justice is a must.

The question whether despite delegation of powers the delegating authority will retain the powers or not, has been answered in the affirmative and it has been held that the delegating authority will not only retain the power to revoke the grant but also the power to act concurrently on matters within the area of delegation, except in so far as it may already have become bound by act of its delegate.

The test of identifying an action of an authority as *quasi*-judicial has not been free from difficulty. The Supreme Court has restated the principles to characterize the function of an authority as *quasi*-judicial.

Scope of applicability of principles of natural justice has been redefined. Compliance with principles of natural justice may not be necessary where the individual has no right or where no prejudice would be caused to him. In cases of mass copying no opportunity need be afforded to the individual students before cancellation of examination. Similarly it has been held that in cases of settlement of mass tort action, non-affording of pre-settlement fair hearing would not vitiate the settlement. Although post decisional hearing cannot be a substitute for pre-decisional hearing, yet in a given case post-decisional hearing can obliterate the procedural prejudice caused to an employee.

The concept of legitimate expectation has since been recognized by courts in India and is now well established. The doctrine of legitimate expectation has been evolved by courts to meet cases where a person has no legally enforceable right yet he is likely to be affected by an order passed by a public authority. Doctrine of legitimate expectation imposes in essence a duty on public authority to act fairly. Doctrine of legitimate expectation forms part of principle of non-arbitrariness under Article 14 as

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well as rule of law. Legitimate expectation is a source of procedural as well as substantive rights. Similar to the doctrine of substantive legitimate expectation is the doctrine of promissory estoppel which has also been applied in many cases, even to statutory notifications.

By and large in India the position has been free from void and voidable controversy and it has been held that an order passed by a *quasi*-judicial authority without compliance with natural justice is void.

In the area of judicial review of administrative action, judicial review is generally permissible only in case of illegality, irrationality namely Wednesbury unreasonableness and procedural impropriety. But in cases where fundamental rights are affected the principle of proportionality which contemplates a stricter test of reasonableness is applied.

Attempt of the court has been to widen the scope of Article 12 and to bring in more and more authorities within the ambit of judicial review. Even a private body which performs public duty has been held to be amenable to Part-III of the Constitution.

Even a cooperative society when it satisfies the test mentioned in *Ajay Hasia's* case can fall within the definition of State within meaning of Article 12.

A significant development in the field of Administrative Law is enactment of Right to Information Act, 2005 which will promote transparency and accountability in the working of every public authority. Section 4(d) of the Act casts an obligation on every public authority to provide reasons for its administrative or quasi-judicial decisions to affected persons.

Lokpal has been visualized as the watchdog institution on ministerial probity and to investigate cases of corruption in public life. Lokpal Bill has not been passed so far. However Lokayukta laws have been enforced in many States. It is hoped that in times to come Lokayukta/Lokpal would emerge as a powerful and effective institution, to provide a healthy check against abuse of authority and corruption in public life.

We hope that this new edition of the book will not disappoint the readers and they will find it as useful as its earlier editions.

JABALPUR **G.P. SINGH**
3rd January, 2007 **ALOK ARADHE**

preface to the fourth edition

The first edition of this book appeared in 1971. Since then this book has undergone several editions and reprints. With each edition it has grown in bulk. The text in the 1979 edition ran into 716 pages. The text in this edition runs into 1055 pages. This is a reflection of the fact that the corpus of Administrative Law has been growing very rapidly in India. This is an inevitable consequence of the expansion of state intervention in our daily lives. Virtually no facet of modern life remains untouched by administrative activity.

Since the last edition in 1979, a number of significant judicial pronouncements have been made, the main thrust of these being to strengthen procedural and substantive safeguards *vis-a-vis* the administration which constitutes the grand design of Administrative Law. To begin with, judges were slow in responding to the challenging problems generated by the modern proliferating administrative process. Reasons—judicial conservatism and traditional and in-built restraints within the legal process. But the courts have gradually been able to shed their hesitation and inhibition and are now boldly evolving new principles of administrative behaviour and sharpening their old tools to control administrative process. A student of Administrative Law can regard the period 1978-1985 as the most creative in the annals of the Indian Judiciary. As a result of this judicial creativity, Administrative Law can now be said to have come of age in India. It is a tribute to the Indian judiciary that it is playing a dynamic and creative role in developing Administrative Law. However, it may also be true to say that judicial approach has not always been consistent and informed by a liberal tendency and, at times, one still comes across cases which seek to take the law backwards and are hard to reconcile with the new liberal orientation. But this is the price one has to pay for judge-made law which Administrative Law primarily remains so far in India.

A happy development is that of late the Central Government as well as Parliament have shown some activity in this area as is evidenced by the creation of some tribunals and the proposal to create the *Lokpal*. One however hopes that more active steps will be taken in the near future on the lines of what has been attempted in other common law countries, such as, England, Australia, Canada and New Zealand, so as to take cognisance of the manifold problems besetting this important branch of law. Perhaps, sooner than later, this task will be taken in hand in India.

The present book fully takes note of the various developments in Indian Administrative Law since 1979. This is not however a mere up-dated version of the 1979 edition. As compared with the 1979 edition, this edition

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incorporates many substantial changes : several chapters have been completely rewritten and expanded; several topics have been discussed in greater detail and depth; some chapters have been re-arranged; and some new lines of investigation have been undertaken. A new chapter on Official Secrets has been added. With these manifold changes, it may not be wrong to say that it is a new book rather than merely the new edition of an old book. In spite of these manifold changes, the basic format, structure and style of the book remain as before. I fervently hope that, as in the pass the present book will be found useful by all those who are interested in a study of the subject of Administrative Law.

I have to end this preface on a sad personal note. When nearly one-third of the book had been completed, I suffered a great personal tragedy in the untimely demise of S.N. Jain, my co-author. This somber event left a deep scar on me. For over four decades, S.N. and I had been closely associated. S.N. was my wife's brother, but that was the least significant element in our relationship. He was my student in the Faculty of Law, University of Delhi, from where he passed his LL.B. examination. After his LL.M. from Northwestern University, he joined the then fledgeling Indian Law Institute and, in course of time, he rose to be its Director. I have myself been closely associated with the Indian Law Institute from its very inception. Both of us worked together for several years in the I.L.I. We had been collaborating in Writing this book since 1969. He was a scholar in the true Indian tradition—humble, unassuming and dedicated. His demise creates a void in Indian legal scholarship. It is a deep irreparable personal loss to me.

With S.N.'s demise, the task of completing this book fell on me and I have tried to fulfil this task all alone to the best of my ability. But I have no hesitation in acknowledging that had S.N. been alive to give a hand to this book, it would have been a much better product qualitatively and would have appeared much earlier.

MAY 15, 1986 **M.P. JAIN**

preface to the third edition

The first edition of the book appeared in 1971. Since then the book has grown in bulk which is a reflection of the fact that Administrative Law has been growing very rapidly in India. Since the last edition in 1973, a number of significant judicial pronouncements have been made, the main thrust of these being to strengthen procedural and substantive safeguards vis-a-vis the administration which constitutes the grand design of Administrative Law. To begin with, judges were slow in responding to the challenging problems generated by the modern proliferating administrative process. Reason—judicial conservatism and the traditional and in-built restraints within the legal process. But the courts have gradually been able to shed their hesitation and inhibition and are now boldly evolving new principles of administrative behaviour and sharpening their old tools to control administrative process. Administrative Law can now be said to have come of age in India. It is a tribute to our judiciary that it has been playing a dynamic and creative role in developing Administrative Law. However, it may also be true to say that judicial approach has not always been consistent and informed by a liberal tendency and one still comes across cases which seek to take the law backwards and are hard to reconcile with the new orientation. But this is the price one has to pay for the judge-made law which Administrative Law primarily remains as Parliament has not taken cognisance of the manifold problems besetting this branch of law and do something about it as has been attempted in the common law countries like England, Australia and New Zealand. Perhaps sooner than later, one hopes, this task will be taken in hand in India as well.

The present book fully takes note of the various recent developments in the Indian Administrative Law. As compared with the 1973 edition, this edition incorporates many substantial changes: several portions and topics have been completely rewritten, expanded, and discussed in greater depth; and a number of new topics have been added, for example, to mention only a few—duty to act fairly, void and voidable, waiver, writs and government contracts, incidents of government contracts, the Central Vigilance Commission. The all-important subject of control of discretionary powers now forms an independent chapter by itself. With these manifold changes, it may not be wrong to say that it is a new book rather than merely the new edition of an old book. In spite of these changes, the basic format, structure and style of the book remain as before.

The authors fervently hope that as in the past the present book will be found useful by all those who are interested in the study of the subject of Administrative Law.

M.P. JAIN

July, 1979 S.N. JAIN

preface to the second edition

We are extremely glad in placing the second edition of Principles of Administrative Law in the hands of the readers. It is a matter of great satisfaction and gratification to us that the first edition of the book was sold out within a year of its publication. It is a testimony to the warm welcome accorded to the book by the students of administrative law. We could have taken the easy way of bringing out a reprint of the first edition. But as administrative law is a fast growing subject, and since the publication of the first edition a number of court cases, some of them quite significant, had arisen, we felt that it would be unjust to the readers to reprint the first edition and leave out of account the new developments in the area. Hence we thought of preparing a new edition. In the new edition nearly 250 more cases have been cited than the first edition.

In this edition, some portions have been rewritten, some have been condensed, additions have been made here and there, and in the light of judicial pronouncements, some of the propositions stated in the last edition have been restated in a somewhat modified form. We were keen to see that the size of the new edition does not grow much as compared with that of the first edition. Yet, in spite of our best efforts to that end, we could not avoid adding some thirty pages to the present edition. We hope that the present edition would continue to serve the needs of the legal community, and would be well received by the students of the subject.

Delhi **M.P. JAIN**
September, 1973 **S.N. JAIN**

preface to the first edition

The growth of administrative process in India may be said to have gathered momentum after Independence in 1947, or more particularly, after the inauguration of the Constitution of India in 1950 conferring a broad writ jurisdiction on the Supreme Court and the High Courts. The study of the Administrative Law in India, the concomitant of the administrative process, came on the horizon in 1957 when the Indian Law Institute held its first seminar on Administrative Law at New Delhi. The study of the subject received a further impetus in 1959 when the Indian Law Institute invited several leading law teachers of India for participating in a seminar on the Indian Administrative Law at Bangalore. Since then, gradually, the subject has caught the imagination of the students and teachers of law in India so that at present there is hardly any law school where the subject is not taught as a part of the LL.B. and LL.M. curricula either on a compulsory or on an optional basis.

Administrative Law represents the growth of a new branch of jurisprudence. It concerns every day life. Nearly 75 % of the present day litigation in India involves some principle or other of Administrative Law. The law deals with the powers of the government and control thereof. Because of the increasing contact of the individual with the administration, knowledge of Administrative Law today becomes extremely desirable, if not absolutely essential, not only for a lawyer but also for any ordinary individual.

The present book is essentially a text book. The aim of the authors in writing this book is to seek to provide a brief, compact and clear enunciation of the principles of Indian Administrative Law and the problems besetting the area. When the authors conceived of the project a few years back, what they had in mind was the paucity of a good text book for the use of students and teachers. Since then, some books on the subject have made their appearance. Nevertheless, the authors feel and hope that the present book would supply the gaps left in the existing literature on the subject of Administrative Law, and would be found useful by the law students, the law teachers, the legal profession as well as by those who pursue other social sciences like political science and public administration.

In India, Administrative Law has been primarily a judge-made law. It is still in its developing stage. It, therefore, suffers from lack of perfect consistency and tidiness. New problems keep coming before the courts every day and the courts are required to make suitable adjustments in the norms and concepts laid down by them. Consequently, not only different courts at the same time, but even the same court at different times, have taken up varying positions which often become hard to reconcile. In

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such a situation, the authors have not refrained from stating their own point of view. In a judge-made law, often every case may be the law unto itself. Until a series of cases occur on a particular problem establishing a number of dots to draw a line, it may not be safe to indulge in a generalisation concerning the law. Nevertheless, in such a situation, it may become inevitable to explain the existence of a dot by mentioning the factual setting in which it has occurred and the process through which it has been reached. The authors have followed such a course in the book at times, but in doing so they have not lost sight of the basic character of the book as a text book.

M.P. JAIN

S.N. JAIN

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