

Lectures on  
**ADMINISTRATIVE  
LAW**

**C.K. TAKWANI**



**Third Edition**

**EASTERN BOOK COMPANY**

# Lectures on Administrative Law

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*Fiat justitia, ruat coelum*  
(Let Justice be done though Heavens fall !)

"I may be wrong, but I am always clear."

—LORD DENNING

THIS EDITION IS  
DEDICATED  
TO  
MY GURU  
SHRI P.T. CHHAYA

गुरु गोविन्द दोऊ खड़े, काके लागू पाय ।  
बलिहारी गुरु आपणे, गोविन्द दियो बताय ।।

\* संत कबीर

## FOREWORD

Liberation from foreign bondage was an intermediate step, the goal being liberation from social oppression, freedom from economic exploitation and release from political subservience, as enshrined in Part IV of the Constitution, which envisaged a social order free from any kind of exploitation and assuring an equal opportunity to every one in this country to be able to advance in pursuit of excellence and to be an honoured member of an egalitarian society. This constitutional goal completely and basically transformed and revolutionised the functions of the State, such as from a police State to a welfare State. To translate this goal into action specially in an underdeveloped country like ours, the State had to undertake, on a massive scale, welfare activities with a multi-pronged drive which of necessity must include adequate facilities for education in different systems, employment for unskilled, semi-skilled and skilled workmen, medical relief, unemployment and old age pensions, housing, cheap clothing, making available basic necessities of life at modest price, etc. *Laissez faire* approach under the foreign masters had to yield to all enveloping State activity affecting the citizen in all walks of his life. Employment Exchanges, industrial licences, export and import controls, distribution control, price control, quality control, enforced by the State affected the citizen at every point in his routine day-to-day life. Inevitably, *albeit* grudgingly, the State machinery became all powerful, the only control on the bureaucracy being the running thread of the Constitution, the rule of law, which in its practical application means that governmental authority shall be exercised according to law. Any action of executive must have the backing of law, which must either be known or knowable. That brought in the concept of administrative law which, Professor H.W.R. Wade defines to mean that it is the law relating to the control of governmental power, being the body of general principles which govern the exercise of powers and duties by public authorities.<sup>1</sup>

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1. H.W.R. Wade, ADMINISTRATIVE LAW, 4th Edn.

## PREFACE TO THE FIRST EDITION

Administrative Law is now considered to be an important branch of law. In almost all cases, the principles of Administrative Law are invoked in one form or the other. Thus, Administrative Law has not only arrived but has come to stay. Pursuant to the recommendation made by the Bar Council of India, most of the Universities in India have prescribed it as a subject for LL.B. and LL.M. Examinations.

This book is essentially meant for students. My humble attempt in writing this book is to present fundamental principles of Administrative Law as they have been developed through the judicial process. Administrative Law is not codified but has grown out of cases. I have gone through almost all the standard books on the subject. I have also studied leading English, American and Indian cases and have tried to state and explain the well established principles clearly, lucidly and precisely. I have also taken care to see that the book becomes useful to the Bench and the Bar by including recent decisions of our Supreme Court and also of foreign courts. Taking into account the recent trend of the law courts, principles of natural justice, doctrine of judicial review and judicial remedies have been discussed in detail with reference to decided cases.

I am greatly indebted to Hon'ble Mr. Justice P.D. Desai of the Gujarat High Court for encouraging me to write this book and for giving valuable suggestions. I am equally grateful to Sarvashri J.R. Nanavati, Mayoora Pandya and other Advocates who have helped me in the present work. I am also thankful to my wife for taking keen interest and effectively assisting me. I acknowledge my deep sense of gratitude to all those friends and colleagues who expressed their goodwill for the completion of the present work. I will be failing in my duty if I will not make mention of my personal friends and colleagues Sarvashri Mohit Shah, Mustak Kadri and Kamal Mehta, without whose help it would not have been possible for me to complete the present work in time.

I am profoundly grateful to Hon'ble Mr. Justice D.A. Desai of the Supreme Court for obliging me by giving a very erudite, thought-provoking and instructive foreword.

I am thankful to Shri Surendra Malik, Advocate, Supreme Court (Chief Editor, *Supreme Court Cases*) for taking personal interest in the book. The publishers deserve compliments for bringing out this publication so neatly, expeditiously and in an attractive manner.

I hope the present work will fill the lacuna in this field and that the students and professors of law as well as the Bench and the Bar will welcome it.

—C.K. TAKWANI



## ABBREVIATIONS

AC	..	Appeal Cases
AIR	..	All India Reporter
ALJ/All LJ	..	Allahabad Law Journal
AER/All ER	..	All England Reports
ATC	..	Administrative Tribunal Cases
BLR/Bom LR	..	Bombay Law Reporter
Ben LR	..	Bengal Law Reporter
CC	..	Company Cases
CP	..	Carrington & Payne
CWN/Cal WN	..	Calcutta Weekly Notes
CLJ/Cal LJ	..	Calcutta Law Journal
Ch D	..	Law Reports (English) Chancery Division
Cri LJ	..	Criminal Law Journal
CLT/Cur LT	..	Cuttack Law Times
Guj CD	..	Gujarat Current Decisions
GLH/Guj LH	..	Gujarat Law Herald
GLR/Guj LR	..	Gujarat Law Reporter
IA	..	Law Reports Indian Appeals (Privy Council)
IC	..	Indian Cases
ILR	..	Indian Law Reports
ITR	..	Income Tax Reporter
JT	..	Judgments Today (SC)
KLT/Ker LT	..	Kerala Law Times
KB/KBD	..	Law Reports (English) Kings Bench
LLJ/Lab LJ	..	Labour Law Journal
MIA	..	Moore's Indian Appeals
MLJ/Mad LJ	..	Madras Law Journal
QB/QBD	..	Law Reports (English) Queens Bench Division
RCJ	..	All India Rent Control Journal
RLW/Raj LW	..	Rajasthan Law Weekly
SCC	..	Supreme Court Cases
SCC (L&S)	..	Supreme Court Cases (Labour & Services)
SCJ	..	Supreme Court Journal
SCR	..	Supreme Court Reports
SLJ	..	Services Law Journal
UJ (SC)	..	Unreported Judgments (Supreme Court)
WLR	..	Weekly Law Reports
WR	..	Weekly Reporter

This branch of law in our country is of recent origin, more or less, since the advent of the Constitution. Rule of law eschews arbitrariness or decision according to whim or caprice of authority which flows from the guarantee of equality before law and equal protection of law enshrined in Article 14 of the Constitution. It thus comprehends governmental action according to law and within their prescribed bounds and it would not suffice to say that *quod principi placuit legis habet vigorem* (the sovereign's will has the force of law) but that law can be tested on the touchstone of reasonableness. In *Maneka Gandhi v. Union of India*<sup>2</sup>, the Supreme Court said that the law must answer the test of reasonableness. In order to be in conformity with Article 14 it must be right and just and fair and not arbitrary, fanciful or oppressive. Thus all power must be exercised in a reasonable manner and only to effectuate the purpose for which it is conferred. Law which confers such power must answer the test of reasonableness which aspect the Courts in exercise of their power of judicial review may examine.

In order to effectuate one of the inalienable and inseparable elements of rule of law, the Courts in quest of administrative justice rejuvenated the ancient concept of natural justice in its modern form. This principle was modulated and articulated to enforce fair procedure. Two basic components of natural justice are that no decision adverse to an individual be taken without giving him an opportunity to be heard; and no man shall be a judge in his own cause. These two principles vigorously enforced, eschew personal or official bias and avoidance of rancour of injustice by a decision taken at the back of the individual. Both these principles are well entrenched in our judicial decision making process and the Courts have vigorously pursued the same and invalidated actions taken in violation of the principles of natural justice.

The State activity, however, has so much proliferated that the next step for proper enforcement of administrative law needs to be taken up. Statutory inquiry, a standard device introduced in U. K. for giving a fair hearing to objectors before a final decision is made on some question of Government policy affecting citizen's rights or in-

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2. (1978) 1 SCC 248.

terest, is not very much in vogue in our country. Such an inquiry ensures that administrative power is fairly and reasonably exercised which in ultimate analysis would indicate that it conforms to natural justice. Some statutory tribunals have been introduced but statutory tribunals and statutory inquiry form a comprehensive scheme and one without the other may not fully ensure justice under administrative law. It is more so in the field of delegated legislation which is a prominent feature of present day law making.

In India following the Anglo-Saxon system, we have no separate administrative tribunals such as *Droit Administratif* of France but administrative decisions are also reviewed by ordinary law courts within the limited sphere of their jurisdiction. With the State becoming all powerful, this branch of law has a potentiality of expansion impelling the legal profession and the courts to develop greater expertise in this twilight zone. Judicial activism fortified by the concerted effort of legal profession would help usher in an era of largest good for largest number with proper checks and balances between needs of the State and the rights of an individual. Accordingly, paucity of standard works on the subject is increasingly felt and Mr. Takwani, who has valuable experience both as lawyer and professor, has really prepared a useful and informative book on the subject. I am sure, both the profession and the Judges would find the book useful, handy and fully informative. Topical discussion, profuse quotations and wealth of information has enriched the utilitarian aspect of the book.

—D.A. DESAI

## PREFACE TO THE THIRD EDITION

I am extremely happy in placing before the readers the third edition of "Lectures on Administrative Law". I was greatly encouraged by the warm welcome accorded to earlier editions. Though essentially written for law students, the work was appreciated by students, teachers, lawyers and judges. It was prescribed as a textbook in the subject at LL.B. and also at LL.M. level by various Universities. Both the earlier editions were reprinted more than once.

The second edition was published in 1994 and within a very short period, it was reprinted. The third edition was due since then. During the intervening period a number of cases came to be decided by various courts. I have considered all the recent developments in the subject in India and in other countries.

In the present edition, I have revised various topics. Delegated Legislation, Natural Justice, Judicial Review, Administrative Tribunals, Judicial Remedies, etc. have been discussed in greater detail. Some important topics have been dealt with for the first time. Thus, the doctrines of Judicial Accountability, Public Accountability, Proportionality, Legitimate Expectations and other principles find place in the present edition. Excessive Delegation; Delegation in favour of Local Authorities, Doctrine of Estoppel and other topics have been discussed in the light of leading decisions.

A recent decision of a larger Bench of the Supreme Court in *Chandra Kumar v. Union of India*, has opened a new chapter in Constitutional and Administrative Law in India. It has undoubtedly restored majesty of High Courts by interpreting various constitutional provisions and treating the doctrine of judicial review under Article 226 and 227 of the Constitution of India as inviolable basic structure of the Constitution. At the same time, however, it attempted to fetter and circumscribe the powers of the Supreme Court under Article 136 of the Constitution by obliging a party aggrieved by the decision of a Central Administrative Tribunal first to move a High Court before approaching the Supreme Court and thereby 'modifying' the provisions of the Constitution. That part of the decision is not in conson-

ance with the well established legal position and the decision has been discussed with a critical eye.

I may humbly say that I have made all efforts to make the book useful and up to date. Like the previous editions, in the present edition also, I am highly indebted to Hon'ble Mr. Justice P.D. Desai, Chief Justice, High Court of Bombay (Retd.), Hon'ble Mr. Justice M.C. Patel and other brother Judges and friends. I am equally thankful to my personal friend Shri Surendra Malik (*Chief Editor, Supreme Court Cases*) for taking keen interest and in making valuable suggestions. I am also thankful to the staff of Eastern Book Company in sending important decisions of the Supreme Court touching various topics of Administrative Law well in time.

I will be failing in my duty if I do not make mention of my son Nirav and my daughter Krina who helped me a lot in getting case-law on several points and in correcting final proofs.

I hope and trust that, like earlier editions, the present work also will be welcomed by the law students, professors, Bench and the Bar. I will be happy to receive suggestions.

March 1, 1998  
1, Judges' Bungalows,  
Vastrapur,  
Ahmedabad-380 015

—C.K. THAKKER

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*Lecture I*  
**Introduction**

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*In England, we know nothing of administrative law and we wish to know nothing about it.* —DICEY

*If you take up a modern volume of the reports of the Queen's Bench Division, you will find that about half of the cases reported have to do with rules of administrative law....* —MAITLAND

*It may truly now be said that we have developed system of administrative law.* —LORD DENNING

**SYNOPSIS**

1. General
2. Definition of Administrative Law
  - Ivor Jennings
  - Wade
  - K.C. Davis
  - Garner
  - Griffith and Street
  - M.P. Jain
  - Author
3. Nature and scope of Administrative Law
4. Reasons for growth of Administrative Law
5. Historical growth and development of Administrative Law
  - (A) England
  - (B) U.S.A.
  - (C) France
  - (D) India
6. Constitutional Law and Administrative Law
7. English Administrative Law and Indian Administrative Law

**I. GENERAL**

The most significant and outstanding development of the twentieth century is the rapid growth of administrative law. It does not, however, mean that there was no administrative law before this century. Since many years, in one form or the other, it has been very much in existence. But in this century, the philosophy as to the role and function of the State has undergone a radical change. The governmental functions have multiplied by leaps and bounds. Today, the State is not merely a police State, exercising sovereign functions, but as a progressive democratic State, it seeks to ensure social security and social welfare for the common