



## **FACULTY OF JURIDICAL SCIENCES**

**Course : BALLB , 3<sup>rd</sup> Semester**

**Subject : Administrative Law**

**Subject code : BAL306**

**Faculty Name : Ms Taruna Reni Singh**

# ADMINISTRATIVE LAW

## UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

## UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

## UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

## UNIT IV:

- Liability of the administration: Contractual liability, tortious liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

## Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Administrative Law, Universal Delhi
3. I. P. Massey: Administrative law

# LECTURE 13



**II. Failure to exercise Discretion.** In the following condition the authority is taken to have failed to exercise its discretion and its decision or action will be bad.

i) Non-application of mind: - Where an authority is given discretionary powers it is required to exercise it by applying its mind to the facts and circumstances of the case in hand. If he does not do so it will be deemed to have failed to exercise its discretion and its action or decision will be bad.

ii) Acting under Dictation: - Where the authority exercises its discretionary power under the instructions or dictation from superior authority. It is taken, as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority. The authority entrusted with the powers does not take action on its own judgement and does not apply its mind. For example **in Commissioner of Police v. Gordhandas the Police Commissioner** empowered to grant license for construction of cinema theatres granted the license but later cancelled it on the discretion of the Government. The cancellation order was declared bad as the Police Commissioner did not apply his mind and acted under the dictation of the Government.

**III) Imposing fetters on the exercise of discretionary powers:** - If the authority imposes fetters on its discretion by announcing rules of policy to be applied by it rigidly to all cases coming before it for decision, its action or decision will be bad. The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and if the authority imposes fetters on its discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it, it will be taken as failure to exercise discretion and its action or decision or order will be bad. Administrative Discretion and fundamental rights No law can clothe administrative discretion with a complete finality, for the courts always examine the ambit

and even the mode of its exercise for the angle of its conformity with fundamental rights. The fundamental rights thus provide a basis to the judiciary in India to control administrative discretion to a large extent. There have been a number of cases in which a law, conferring discretionary powers, has been held violative of a fundamental right. The following discussion will illustrate the cases of judicial restraints on the exercise of discretion in India. Administrative Discretion and Article 14. Article 14 prevents arbitrary discretion being vested in the executive. Equality is antithetic to arbitrariness. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. Right to equality affords protection not only against discretionary laws passed by legislature but also prevents arbitrary discretion being vested in the executive. Often executive or administrative officer or Government is given wide discretionary power. In a number of cases, the Statute has been challenged on the ground that it conferred on an administrative authority wide discretionary powers of selecting persons or objects discriminately and therefore, it violated Article 14. The Court in determining the question of validity of such statute will examine whether the statute has laid down any principle or policy for the guidance of the exercise of discretion by the Government in the matter of selection or classification. The Court will not tolerate the delegation of uncontrolled power in the hands of the Executive to such an extent as to enable it to discriminate.

## MCQs

1. . What is the meaning of Delegated legislation
  - a) When parliament confers the law making power to the judiciary.
  - b) When executive confers the law making power to the parliament.
  - c) When parliament confers law making power to state legislative assemblies.
  - d) When parliament confers the law making power to the executive.
2. . Which among the following Committees of parliament, is responsible for scrutinizing delegated legislation?
  - a) Committee of privileges
  - b) General purpose Committee
  - c) Rules Committee
  - d) Committee on subordinate legislation.
3. What is the purpose of Art 50 in the Constitution of India?
  - a) Separation of legislature from the executive.
  - b) Separation of law making power from law executing power.
  - c) Separation of judiciary from executive.
  - d) Separation of delegated legislation from enabling legislation.
4. Which among the following arguments favors delegated legislation?
  - a) Bureaucrats are incompetent and greedy.
  - b) Legislators have sufficient time and expertise to enact every law in full detail.
  - c) Legislators do not have sufficient time and expertise to enact every law in full detail.
  - d) Judiciary is better equipped to enact laws than legislature.
5. . The prerequisite for a delegated legislation is:
  - a) 2/3<sup>rd</sup> majority of all members of both the houses.
  - b) 2/3<sup>rd</sup> majority of all members of only lok sabha
  - c) 2/3<sup>rd</sup> majority of all members of only Rajya SabhaNone of above.