



## **FACULTY OF JURIDICAL SCIENCES**

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

**Subject : Administrative Law**

**Subject code : BAL306**

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# 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 24



(ii) Substantive Defects In case of delegated legislation, unlike and Act of the Parliament, the court can inquire into whether it is with in the limits laid down by the present statute. If a piece of delegated legislation were found to be beyond such limits, court would declare it to be ultra vires and hence invalid.

**(R.V.Minister of Health, (1943), 2 ALL ER591).**The administrative authorities exercising legislative power under the authority of an Act of the Parliament must do so in accordance with the terms and objects of such statute. To find out whether administrative authorities have properly exercised the powers, the court have to construe the parent statute so as to find out the intention of the legislature. The existence and extent of the powers of administrative authorities is to be affixed in the light of the provisions of the parent Act. Mandatory or directory procedural provision The question whether particular procedural requirements are mandatory or directory must be examined with care. In case the statute provided for the effect of noncompliance of such requirements, then it is to be followed by the courts without difficulty. But uncertainty creeps in where the statute is silent on the point and decision is to be made by the judiciary. The courts is determining whether the provisions to this effect in a particular Statute are mandatory or directory are guided by various factors. They must take into consideration the whole scheme of legislation and particularly evaluate the position of such provisions in their relation with the object of legislation. The nature of the subject matter to be regulated, the object of legislation, and the provisions as placed in the body of the Act must all be considered carefully, so as

to find out as to what was the intention of the legislature. Much would depend upon the terms and scheme of a particular legislation, and hence broad generalizations in this matter are out of place. Judicial control over delegated legislature Judicial control over delegated legislature can be exercised at the following two levels :-

1) Delegation may be challenged as unconstitutional; or

2) That the Statutory power has been improperly exercised. The delegation can be challenged in the courts of law as being unconstitutional, excessive or arbitrary. The scope of permissible delegation is fairly wide. Within the wide limits. Delegation is sustained it does not otherwise, infringe the provisions of the Constitution. The limitations imposed by the application of the rule of ultra vires are quite clear. If the Act of the Legislature under which power is delegated, is ultra vires, the power of the legislature in the delegation can never be good. No delegated legislation can be inconsistent with the provisions of the Fundamental Rights. If the Act violates any Fundamental Rights the rules, regulations and bye-laws framed there under cannot be better. Where the Act is good, still the rules and regulations may contravene any Fundamental Right and have to be struck down. The validity of the rules may be assailed as the stage in two ways :-

i) That they run counter to the provisions of the Act; and

ii) That they have been made in excess of the authority delegated by the Legislature. The method under these sub-heads for the application of the rule of ultra vires is described as the method of substantive ultra vires. Here the substance

of rules and regulations is gone into and not the procedural requirements of the rule making that may be prescribed in the statute. The latter is looked into under the procedural ultra vires rule.

Power of Parliament to repeal law Under the provision to clause(2) of Article 254, Parliament can enact at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State, Ordinarily, the Parliament would not have the power to repeal a law passed by the State Legislature even though it is a law with respect to one of the matters enumerated in the Concurrent List. Section 107 of the Government of India Act, 1935 did not contain any such power. Art. 254 (2) of the Constitution of India is in substance a reproduction of section 107 of the 1935 Act, the concluding portion whereof being incorporated in a proviso with further additions. Now, by the proviso to Art. 254 (2), the Indian Constitution has enlarged the powers of Parliament and, under that proviso, Parliament can do what the Central Legislature could not do under section 107 of the Government of India Act, and can enact a law adding to, amending, varying or repealing a law of the State when it relates to a matter mentioned in the concurrent List. Therefore the Parliament can, acting under the proviso to Art. 254 (2) repeal a State Law. While the proviso does confer on Parliament a power to repeal a law passed by the State Legislature, this power is subject to certain limitations. It is limited to enacting a law with respect to the same matter adding to, amending, varying or repealing a law so made by the State Legislature. The law referred to here is the law mentioned in the body of Art. 254 (2), It is a law made by the State Legislature with reference to a matter in the Concurrent List containing provisions repugnant to an earlier law made by Parliament and with the consent to an earlier law made by Parliament and

with the consent of the President. It is only such a law that can be altered, amended, repealed under the proviso. The power of repeal conferred by the proviso can be exercised by Parliament alone and cannot be delegated to an executive authority. The repeal of a statute means that the repealed statute must be regarded as if it had never been on the statute book. It is wiped out from the statute book. In the case of **Delhi Laws Act, 1951 S.C.R. 747**, it was held that to repeal or abrogate an existing law is the exercise of an essential legislative power. Parliament, being supreme, can certainly make a law abrogating or repealing by implication provisions of any preexisting law and no exception can be taken on the ground of excessive delegation to the Act of the Parliament itself.

(a) Limits of permissible delegation When a legislature is given plenary power to legislate on a particular subject, there must also be an implied power to make laws incidental to the exercise of such power. It is a fundamental principle of constitutional law that everything necessary to the exercise of a power is included in the grant of the power. A legislature cannot certainly strip itself of its essential functions and vest the same on an extraneous authority. The primary duty of law making has to be discharged by the legislature itself but delegation may be reported to as a subsidiary or ancillary measure. (**Edward Mills Co. Ltd. v. State of Ajmer, (1955) 1. S.C.R. 735**) Mahajan C.J. in **Hari Shankar Bagla v. State of Madhya Pradesh, A.I.R. 1954 S.C. 555 : (1955) 1.S.C.R. 380** at p. 388 observed : "The Legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The legislature must declare the policy of the law and the legal principles which are to control and given cases and must provide a standard to guide the officials of

the body in power to execute the law". Therefore the extent to which delegation is permissible is well settled. The legislature cannot delegate its essential legislative policy and principle and must afford guidance for carrying out the said policy before it delegates its delegates its subsidiary powers in that behalf. (**Vasant Lal Maganbhai Sanjanwala v. State of Bombay, A.I.R. 1961 S.C. 4**) The guidance may be sufficient if the nature of things to be done and the purpose for which it is to be done are clearly indicated. The case of **Hari Shankar Bagla v. State of Madhya Pradesh, A.I.R. 1954 S.C. 465: (1955) 1 S.C.R. 380** is an instance of such legislation. The policy and purpose may be pointed out in the section conferring the powers and may even be indicated in the preamble or else where in the Act. (b) Excessive delegation as a ground for invalidity of statute In dealing with the challenge the vires of any State on the ground of Excessive delegation it is necessary to enquire whether - The impugned delegation involves the delegation of an essential legislative functions or power, and In **Vasant lals case (A.I.R. 1961 S.C. 4)**. Subba Rao, J. observed as follows; "The constitution confers a power and imposes a duty on the legislature to make laws. The essential legislative function is the determination of the legislative policy and its formulation as a rule of conduct. Obviously it cannot abdicate its functions in favour of another. But, in view of the multifarious activities of a welfare State, it (the legislature) cannot presumably work out all the details to sit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. But there is a danger inherent in such a process of delegation. An overburdened legislature or one controlled by a

powerful executive may unduly overstep the limits of delegation. It may-

- a) not lay down any policy at all;
- b) declare its policy in vague and general terms;
- c) not set down any standard for the guidance of the executive;

d) confer and arbitrary power to the executive on change or modified the policy laid down by it with out reserving for itself any control over subordinate legislation. The self-effacement of legislative power in favour of another agency either in whole or in part is beyond the permissible limits of delegation. It is for a Court to hold on a fair, generous and liberal construction of on impugned statute whether the legislature exceeded such limits.

## MCQs

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1. . Delegated legislation concept is applicable to
  - a) Only parliament
  - b) Only state legislative assembly
  - c) Both
  - d) None of above.
  
2. Which one of the following features does not support the federal character of Indian Constitution?
  - a) Distribution of powers between Centre and States
  - b) Authority of Courts
  - c) Supremacy of the Constitution
  - d) Single citizenship
  
3. Administrative law is a branch of
  - a) Private law
  - b) Public Law
  - c) Property Law
  - d) Constitutional Law
  
4. . Rule of law denotes
  - a) Two meanings
  - b) Five Meanings
  - c) Three Meanings
  - d) Single meaning
  
5. ‘Power of Parliament to modify the rights conferred by this part in their application to forces etc.’ is the basis of which of the following Articles of the Indian Constitution?
  - a) Article 32
  - a) Article 33
  - b) Article 33(1)
  - c) Article 32(1)