



## **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 16



1) where an authority to whom discretion is committed does not exercise that discretion himself;

2) where the authority concerned acts under the dictation of another body and disables itself from exercising a discretion in each individual case;

3) where the authority concerned in exercise of the discretion, does something which it has been forbidden to do, or does an act which it has been authorized to do;

4) where the condition precedent to the exercise of its discretion is nonexistent, in which case the authority lacks the jurisdiction to act as all. Under the second category, i.e., abuse of discretionary power, the following instances may be considered: -

1) where the discretionary power has been exercised arbitrarily or capriciously;

2) where the discretionary power is exercised for an improper purpose, i.e., for a purpose other than the purpose of carrying into effect in the best way the provisions of the Act;

3) where the discretionary power is exercised inconsistent with the spirit and purpose of the statute;

4) where the authority exercising the discretion acts on extraneous considerations, that is to say, takes into account any matters which should not have been taken into account;

5) where the authority concerned refuses or neglects to take into account relevant matter or material considerations;

6) where the authority imposes a condition patently unrelated to or inconsistent with the purpose or policy of the expectation statute;

7) where in the exercise of the discretionary power, it acts mala fide;

8) where the authority concerned acts unreasonably. Legitimate expectation as ground of judicial review Besides the above grounds on which the exercise of discretionary powers can be examined, a third major basis of judicial review of administrative action is legitimate expectation, which is developing sharply in recent times. The concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that the legitimate expectation is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place besides such principles as the rules of natural justice, unreasonableness, the fiduciary duty of local authorities and in future, perhaps, the unreasonableness, the proportionality.

**In Union of India v. Hindustan Development Corporations, (1993 3SCC 499)**

the court held that it only operates in public law field and provides locus standi for judicial review. Its denial is a ground for challenging the decision but denial can be justified by showing some overriding public interest. In the instant case, question arose regarding the validity of the dual policy of the government in the matter of contracts with private parties for supply of goods. There was no fixed procedure for fixation of price and allotment of quality to be supplied by the big and small suppliers. The government adopted a dual price policy, lower price for big suppliers and higher price for small suppliers in public interest and allotment of quantity by suitably adjusting the same so as to break the cartel. The court held that this does not involve denial of any legitimate expectation. The court observed: legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an

exhaustive list in the context of vast and fast expansion of governmental activities. By and large they arise in cases of promotions, which are in normal course expected, though not guaranteed by way of statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. Legitimate expectation gives the applicant sufficient locus standi for judicial review. The doctrine of legitimate expectation is to be confined mostly to right of fair hearing before a decision, which results in negating a promise, or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate does not require the fulfillment of the expectation where an overriding public interest requires otherwise. A case of legitimate expectation would arise when a body by representation or by past practice aroused expectation, which it would be within its powers to fulfill. The protection is limited to that extent and a judicial review can be within those limits. A person, who bases his claim on the doctrine of legitimate expectation, in the first instance, must satisfy that there is foundation and thus he has locus standi to make such a claim. There are stronger reasons as to why the legitimate expectation should not be substantively protected than the reason as to why it should be protected. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or arbitrary, discriminatory unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 but a claim based on mere legitimate expectation without any thing more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles

warranting interference. It depends very much on the facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is “ not the key which unlocks the treasury of natural justice and it ought not to unlock the gate which shuts, the court out of review on the merits”, particularly when the element of speculation and uncertainty is inherent in that very concept. The courts should restrain themselves and restrict such claims duly to the legal limitations

. Further **in Food Corporation of India v. M/s. Kamdhenu Cattle Seed Industries AIR 1993 SC 1601**. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent. The Court observed: “The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process.”

In **Lala Sachinder Kumar v. Patna Regional Development Authority, (AIR 1994 PATNA 128)** the court again applied the doctrine of legitimate expectation and held the order of allotment of residential plots issued by the Patna Module – 1 61 Regional Development Authority as bad. In the instant case Regional Development Authority

issued an advertisement inviting applications for the allotment of residential plots. In this process preference was given to the employees of the Patna Regional Development Authority with out considering the case of applicant petitioner, whereas Rules did not provide for any such preferential allotment. The court held that allotment in favour of employees is arbitrary. The applicant petitioner has legitimate expectations to be considered for allotment



## MCQs

---

1. Article 36 of the Indian Constitution says "In part IV, unless the context otherwise requires, 'the State' has the same meaning as in Part III". Which of the following statements regarding the definition of 'the State' is/are found to be correct?
- I. Since this Article adopts the definition of 'state' in Article 12, of the Indian Constitution it would include courts and statutory tribunals, so that they cannot overlook the objectives of the Directives.
- II. Any statutory corporation which answers the tests of a state instrumentality or agency even though it may not be a 'public utility undertaking' is bound to act in consonance with the Directive Principles.
- a) Only I
- b) Only II
- c) Both I and II
- a) None of them
2. . Discordance between law and fact may arise because:
- a) juris or presumption of law
- b) Reputable (Rebuttable) Presumption and Conclusive Presumption
- c) Fictio Juris or fiction of law
- d) All of the above
3. Cicero was a \_\_\_\_\_ jurist
- a) Greek
- b) Roman
- c) Chinese
- d) English
- e) Legislation is derived from two Latin terms, legis which means \_\_\_\_\_ and latum which means \_\_\_\_\_
1. Leg/Legs
2. Law/to make
3. Low/price
4. Rule/Random
5. . Systematic arrangement of rules in a single document concerning a particular subject in a way as to avoid inconsistency and overlapping. The process is known as \_\_\_\_\_.
- a) Legislation
- b) Codification
- c) Prescription
- d) Administrative

