

Administrative Law : A Primer

Amita Dhanda
Professor Emerita
NALSAR

Objective of the Session

- Building on my General Principles of Law Session
- Familiarising you with what is Administrative Law
- And then providing you with those conceptual building blocks
- Which can help as undertake your duties

What is Administrative Law?

- **the law relating to administration.** It determines the organisation, powers and duties of administrative authorities
- Administrative law is *the law governing the Executive, to regulate its functioning and protect the common citizenry from any abuse of power*
- To ensure government functions are exercised according to law
- Study of the pathology of power in a developing society
- Is an instrument of middle-class Indians to combat governmental power through **Courts**

Administrative Law : Accountability Enforced by Courts

- Makes Administrative Law as Judge Made law
- Social Meaning of Judge Made Law
- Courts are passive agencies
- Give effective results in cases coming before them
- Volatile means of making law
- Trade off between executive and judicial arbitrariness

Green Light Model of Administrative Law

- The Difference between a red and green light model
- Where grievance is redressed within the system
- Addressing grievances is part of the process
- Third parties do not have to intervene for the right thing to be done.

Delegated Legislation

- Law-making power resides with the legislature
- Traditionally it was expected that the legislature- Union or State would perform all the legislative jobs
- Complexity of Modern Administration made that impossible
- The act of transferring the law making power from the legislature to the executive was termed delegated legislation

Permissible and Impermissible DL

- What can be delegated?
- What cannot be?
- How is this power to be exercised
- When is the executive acting beyond its power
- All this we will do tomorrow
- **Today only to understand what is Delegated Legislation**

Distinction between Rule and Discretion

- Rule specifies how an act is to be undertaken
- Discretion provides a **choice** between alternative courses of action
- When A happens B is to be done is a rule
- When X happens you can do Y or Z is a discretion

Norms controlling discretion

- Discretion is about choice but it is not arbitrary choice
- There are rules guiding that choice
- Can a discretion be converted into a rule ?
- And is there discretion in the implementation/ interpretation/ application of Rules
- We do this part on Wednesday

Principles of Natural Justice

- This part of administrative law is to tell you how to undertake your job
- Don't decide without hearing
- Don't be judge in your own cause
- Provide reasons for your decisions
- Effort to prevent arbitrariness in the exercise of power and thereby promote rule of law

When are these principles to be observed : the clash between fairness and efficiency

- Is it at all times and for all powers?
- Is there a relationship between the nature of decision and the components of the principle?
- Can some decisions be made without an obligation to follow the principles
- Can there be explicit exclusion of principles of natural justice