# Judicial Review of Administrative Action

AMITA DHANDA

NALSAR UNIVERSITY OF LAW

HYDERABAD

#### Scheme of the lecture

- Administrative law and various model to realise its goals
- Significance of the Green Light Model
- What is meant by the Red Light Model
- What is administrative action and judicial review
- Review of conferral and exercise
- Fundamental rights touchstone for both conferral and action
- Principles guiding the exercise of administrative action
- Procedures guiding the exercise of administrative action
- Relevance of this information to your job

# What is Administrative law and what are the various approaches to realise its goals

- Administrative law is concerned with the rightful exercise of power
- Administrative Law is generically codified
- -How a power is to be exercised is laid down in a legislation and across statutes and sectors the conferred power is to be exercised in accordance with
- Requirements of Administrative law are woven into each statute
- Administrative Law has no fixed terrain
  - Grievances are addressed
    - -through a green light model
    - Or a red light model

# Significance of the Green Light Model

#### In the Green Light Model

- -the administrators have anticipated the fact of conflict, disagreement grievance
  - and have woven a way of addressing it within the system
- The effort here is to act in such manner that
  - as far as be let a dispute not arise
  - if it does let it be resolved within the system
  - watch the fire
  - instead of fire-fighting

## The Red Light Model

- When power is wrongfully exercised
- The aggrieved person goes to an external system like the courts and asks for reprieve
- We do not have a Code so the demands of Administrative Law are spelled by the Courts
- It is this articulation of judge made law is what we study when we look at judicial review of Administrative Action

#### What is administrative action?

 Those powers that need to be exercised to perform generic role responsibilities

Exercise of discretion

No set answer for every situation

Principles not rules guide the exercise of the power

# What is meant by judicial review?

- Distinction between review and appeal?
- Why review?
- Oversight not substitution
- Limitation of judicial review
- Judgement of the person on the spot is critical

#### **Judicial Review**

- Happens at two junctures
  - in the manner in which power has been conferred on an authority
  - -in the manner in which a power is exercised
- One way of testing these powers in courts by examining if they breach fundamental rights
  - any law in breach of fundamental rights is bad in law
  - fundamental right place the limitations of the rights on the exercise of power
- The other is the principles and procedures set out by the Courts

### Principles Guiding the Exercise of Power

Based on relevant not irrelevant considerations

- For proper purpose
- Not malafide
- Using your own judgement, not acting under dictation
- Discretion must be exercised not fettered

# Procedure Informing the Exercise of Power

• The question of bias

The obligation to providing hearing

Duty to provide reasons

# Relevance of Information to your job

This is what the law requires and expects you to do

Whether to do it or not always remains your choice

- There will be a lot of structural constraints in acting according to the law
- At the same time singular choices are possible
- Those singular choices can be self-serving or serving the most powerless.