

## **Specialisation Course-IV: Administrative Law**

### **Objectives:**

The shift in the philosophy of state from laissez faire to modern welfare came with the concomitant increase and concentration of power in the state. The functions of the state require it to have discretion. As a conferrer of government largess, opportunities for abuse of power increased on the part of the state. Myriad doctrines and principles are tried by the mankind to prevent the abuse of administrative power as also to protect the common man. It is required of every student to have awareness of the organization, structure, powers and functions of the governmental departments and agencies; their relationship with the power addressees; rights available against the administration; channels available for enforcement and the remedies available. In addition the student is exposed to administrative control of administrative action and judicial control of administrative action.

### **Course Content:**

#### **UNIT I**

Administrative Law: Evolution of Administrative Law nature, scope and meaning, Constitutional Law and Administrative Law- Conceptual Objections against the Growth of Administrative Law. Administrative Process: Regulation to De-regulation and Control to Decontrol -Globalization and Liberalization. The role of administrative agencies, Tripartite Functions of Administration, Difficulties in Characterisation – Administrative, Legislative and Quasi – judicial, Inter Relations between the Agencies – Principles and procedures – Liability of Authorities – Control of Authorities - Limitations and Rights of People. Rule of Law – Dicey's orthodox view, how for maintainable today - Changing dimensions – Developments in Britain, USA, Australia, New Zealand and India – Doctrine of Separation of powers: From Rigidity to Flexibility – Droit Administratif - Administrative Direction and Discretion.

#### **UNIT II**

Legislative Powers of Administration - concept, Factors Leading to the Growth of Delegated Legislation, Restraints on Delegation of Legislative Power – Position in UK, USA India Comparative analysis; Doctrine of Excessive Delegation, Types of Delegated Legislations, Control over Delegated Legislations – Legislative, Judicial - Doctrine of Ultra Virus and procedural control – Sub – Delegation of Legislative Power.

#### **UNIT III**

Principles of Natural Justice – Basis of the application of the principles of natural justice - 'Nemo debet, esse iudex in propria causa', - Rule against Bias –types of bias - Audi Alteram Partem or the Rule of fair hearing Reasoned decisions or speaking orders - Right to counsel- Institutional decision or one who decides must hear - Rule against dictation. Exceptions to the Principles of Natural Justice – Post – Decisional Hearing – Effect of Breach of the Rules of Natural Justice: Action Void or Voidable - Doctrine of Legitimate expectation: Scope, nature and character. The doctrine of legislative expectation. Comparative analysis in U.K. U.S.A. and India.

## UNIT IV

Judicial Control of Administrative Action: Introduction – Need, scope of Judicial review of Administrative action – Methods of Judicial Review - Statutory appeals, Public Interest Litigation. Writs – Practice and Procedure in writ Petitions. Remedies under the ordinary Law – Injunction, Declaration – Suit for Damages, Affirmative action for the enforcement of public duties. Exclusion of Judicial review – Finality Clause - clauses that put acts outside judicial review Doctrine of Legitimate Expectation – Doctrine of Public Accountability - Doctrine of Proportionality. Ombudsman and Central Vigilance Commission Comparative analysis in U.K. U.S.A. and India.

## UNIT V

Liability for Wrongs - Tortious and Contractual liability of government – evolution of the principle – latest developments – Evolution of personal accountability principle - Liability of the private individual to the State for committing tort against its servants. Government privilege in legal proceedings-State Secrets - public interest, etc., Right to information and open government - Estoppel and Waiver - Corporations and Public Undertakings - State Monopoly - Remedies against arbitrary action - Liability of public and private corporations and Departmental undertakings - Legal Remedies – Accountability - Committee on Public Undertakings, Estimates Committee, etc. - Control of Statutory Corporations - Parliamentary Control - Governmental Control - Judicial Control - Public Control.

### Select bibliography:

Friedman, *The State and the Rule of Law in a Mixed Economy*

Dicey, *Introduction to the Law of the Constitution,*

Davis, *Discretionary Justice*

Jain & Jain, *Principles of Administrative Law,* (Tripathi, 1986).

De Smith, *Judicial Review of Administrative Action,* (1995).

M.P. Jain, *Cases and Materials on Administrative Law,* Vol.I, (Wadha, Nagpur.Law 399, 1996).

Bagawati Prosad Banerjee, *Writ Remedies,* (Wadhwa, Nagpur, 1999).

Donald C. Rowat, *The Ombudsman,* (George Allan and Unwin Ltd., Toronto, 1966).