Course Wise Content Details for LL.M. Programme:

Master of Laws

Semester - II

Course Name- Administrative Actions and Judicial Review

Course Code- 2YLM - 202

Marks: 100

Course Objectives:

1. To help students develop a critical legal understanding of meaning, need and scope of administrative actions and to make them aware about legal theories and provisions used to review the administrative actions and also about the methods and procedures to ensure fairness, efficiency, transparency and accountability in public administration.
2. To help students inculcate an insightful legal approach to appraise the limits and efficacies of judicial review of administrative actions in a given situation.
3. To make the students aware about the niceties of jurisdictions of High Courts and Supreme Court to review or appeal against the impugned administrative action.

Learning Outcomes:

On successful completion of this Course, the students will be able to:

1. Apply their knowledge and critical legal understanding to seek solutions to pressing problems in the area of public administration
2. Conduct effective legal research in the subject using fundamental tools of legal research.
3. Write research papers/notes and case comments and work in research houses.
4. Practice in the matters related to exercise of administrative discretion and adjudication or in related matters in law courts/tribunals.
5. Become law teachers or effectively work as administrators.

Contents:

UNIT I : STATE AND ADMINISTRATIVE ACTIONS

Concept of Social Welfare State; Classification of Administrative Actions - Rule-making action or quasi-legislative action, Decision-making action or quasi-judicial action, Rule-application action or purely administrative action; Ministerial actions; Administrative Discretion

UNIT II : ADMINISTRATIVE DISCRETION AND JUDIC IAL REVIEW

Meaning and need of discretion; Legislative conferment of discretion on administrative authorities; limitations on conferment of discretion arising from constitutional provisions with special reference to Articles 14, 19 and 21

Doctrine of judicial review - Origin and importance, Judicial review as a part of 'basic structure of the Constitution, Exclusion of power of judicial review or 'ouster clause', Nature, scope and extent of power of judicial review, Judicial Self-restraints and Judicial Activism

UNIT III : GROUNDS OF JUDICIAL REVIEW OF EXERCISE OF DISCRETION

Doctrine of *Ultra Vires*

Abuse/Misuse of discretion- *mala fides*/ bad faith, mixed motives/colourable exercise of power, improper purpose, leaving out relevant considerations, taking into account irrelevant considerations, arbitrary exercise of discretion, unreasonable exercise of discretion or violation of *Wednesbury* principle

Non application of mind- surrender, abdication, acting mechanically, acting under dictation, imposing fetters by self-imposed rules or policy decisions

Violation of principles of natural justice

Principle of proportionality

Doctrine of legitimate expectation

Estoppel against the Government (promissory estoppel)

UNIT IV: JUDICIAL REVIEW AND POLICY DECISIONS

Limited power of judicial review of the courts over policy matters with special reference to policy of reservation, disinvestment, privatization etc.

UNIT V: ADMINISTRATIVE ADJUDICATION

Meaning and need of administrative adjudication; *Lis inter partes*, concept of fairness; Difference between administrative, judicial and quasi-judicial actions

An overview of administrative tribunals established under Article 323 A and 323B of the Constitution of India

UNIT VI : PRINCIPLES OF NATURAL JUSTICE AND JUDICIAL REVIEW

Nature, scope and importance of the principles of natural justice

Nemo judex in causa sua or rule against Bias - Components and Tests, Kinds of bias, Judicial Obstinacy, Exceptions to rule against bias

Audi Alterum Partem or rule of fair hearing – Notice, Right to cross examination, Right to counsel, Pre-decisional and Post decisional hearing; Right to inquiry report

Reasoned decision or speaking order – Rationale, Reasons by original and appellate authorities

Principles of Natural Justice: Exceptions and Failure to Comply - Exceptions will cover exclusion by statutory provisions, in public interest, emergency, confidentiality, impracticability, etc.

Consequences of Non-Compliance with Principles of Natural Justice – Action taken whether Void or Voidable, Test of prejudice or useless formality, Test of substantial compliance

UNIT VII : WRIT JURISDICTION AND APPELLANT JURISDICTION OF THE SUPREME COURT AND HIGH COURTS: SCOPE AND EXTENT

Difference between judicial review, revision and appeal; Power of Judicial Review of the Supreme Court and the High Courts– Articles 32 and 226 of the Constitution of India; Writs– *Certiorari*, *Mandamus*, Prohibition, *Habeas Corpus*, *Quo Warranto*; Ouster clauses (constitutional and statutory exclusion); Curative Petition

Supervisory and Appellate Jurisdiction of the Supreme Court and High Courts– Articles 227 and 136 of the Constitution of India

Suggested Readings:

1. Harry Woolf, Jeffery Jowell and Andew Le Sueur, *De Smith's Judicial Review* (6th ed., 2007)
2. H.W.R. Wade & C.F. Forsyth, *Administrative Law* (11th ed., 2014)
3. Beatson, Matthews and Ellitto's *Administrative Law: Text and Materials* (4th ed., 2011)

4. J. Schwarze, *European Administrative Law* (1992)
5. David Foulkes, Administrative Law (8th ed. 1995)
6. P.P. Craig, *Administrative Law* (6th ed., 2008)
7. B.L. Jones & J.F. Garner, Garner's *Administrative Law* (8th ed., 1996)
8. K.C. Davis, *Administrative Law Treatise* (2nd ed., 1980)
9. M.P. Jain and S.N. Jain, *Principles of Administrative Law* (7th ed. revised, 2017)
10. M.P. Jain, *Cases and Materials on Indian Administrative Law* (1994)

Reading Material:

1. 108th Report of the Law Commission of India on Promissory Estoppel (Excerpts)
2. M. P. Singh, "The Constitutional Principle of Reasonableness", 3 *SCC (Jour.)* 31 (1987)
3. Stephen G. Breyer & Richard B. Stewart, The Problem of Administrative Discretion in *Administrative Law and Regulatory Policy* (2006) 103 – 135
4. Constantine Stephanou, "Good Governance and Administrative Discretion", Department of International & European Studies Panteion University, Athens Available at https://www.unece.org/fileadmin/DAM/trade/workshop/OSCE.../Stephanou.doc.
5. Tim Searchinger, "The Procedural Due Process Approach to Administrative Discretion: The Court's Inverted Analysis", Vol. 95 *The Yale Law Journal* 1017 (1986)
6. Justice A. M. Ahmadi, "Judicial Process: Social Legitimacy and Institutional Liability", 4 *SCC (Jour)* 1 (1996)
7. "Judicial Review of Facts – Efficacy of Wednesbury's Principles and Contemporary Developments" (28 July 2007) available at http://www.supremecourtofindia.nic.in/speeches/speeches_2007/wednesday-%5B1%5D.28.7.07.pdf
8. Sudish Pai, "Is Wednesbury on the Terminal Decline?" 2 *SCC (Jour)* 15 (2008)
9. Sarbjit Kaur, "Principle of Proportionality- A Ground of Judicial Review", 2 *Journal of Law Teachers of India* 36 (2011)
10. Justice Sunil Ambwani, *I R Coelho* v. *State of Tamil Nadu and others* – A Case Study (Lecture delivered at the 'Advocates Association' on 9 February 2007)
11. Sarbjit Kaur, "Judicial Review and the Ninth Schedule of the Constitution", Vol. 40, Nos. 3-4 *Journal of Constitutional and Parliamentary Studies* 315 (2006)
12. S.N. Jain, "New Trends of Judicial Control of Administrative Discretion" 11 *Journal of Indian Law Institute* (1969) 544
13. Alice Jacob, "Requirement to Findings of Fact in Administrative Determinations- Judicial Experience in India and United States", 8 *Journal of Indian Law Institute* 54 (1966)
14. S.N. Jain, "Is an Individual Bound by an Illegal Executive Order? Distinction between 'Void' and 'Voidable'" Order, 16 *Journal of Indian Law Institute* 322 (1974)
15. S.N. Jain, "Administrative Law Aspects of *Maneka Gandhi*", 21 *Journal of Indian Law Institute* 382 (1979)
16. M.P. Singh, "Administrative Action in Violation of Natural Justice Affecting Fundamental Rights: Void or Voidable?", 2 *SCC (J)* 1(1979)
17. M.P. Singh, "Duty to Give Reasons for Quasi-Judicial Decisions and administrative Decisions", 21 *Journal of Indian Law Institute* 45 (1979)
18. C.K. Thakker, "From Duty to Act Judicially to Duty to Act Fairly", 4 *SCC (J)* 1(2003)

Required Readings:

Books

1. Peter Cane, *An Introduction to Administrative Law* (1987)
2. W. Friedmann, *Law in a Changing Society* (1959)
3. David Pollard, Neil Parpworth and David Hughes, *Constitutional and Administrative Law* (4th ed. 2007).
4. Peter Leyland & Gordon Anthong, *Textbook on Administrative Law* (5th ed. 2005)

5. Paul Jackson, O. Hood Phillips, *Leading Cases in Constitutional and Administrative Law*(6th ed. 1988).
6. Bernard Schwartz, Roberto L. Corrada, J. Robert Broun, *Administrative Law : A Case Book*(6th ed. 2006)
7. D.J. Galligan, *Discretion Powers*(1990)
8. K.C. Davis, *Discretionary Justice*(1969)
9. Aharon Barak, *Proportionality Constitutional Rights and their Limitations*(2012)
10. Ellis Evelyn, *The principle of Proportionality in the Laws of Europe*(1999)
11. Hon. Lord R.T. Hoffmann, *The Influence of the European Principle of Proportionality upon U.K. Law* (1999)
12. Grahamme Aldous and John Alder, *Application for Judicial Review, Law and Practice*(1985)

Articles

- Aharan Barak, "The Supreme Court - Foreword: A Judge on Judging: The Role of a Supreme Court in a Democracy" Vol. 116:16 *Harvard Law Review* 16 (2002)
- D. Oliver, "Is the ultra vires rule the basis of judicial review?" *Public Law* 543 (1987)
- R. Williams, "When is an error not an error? Reform of jurisdictional review of error of law and fact", *Public Law* 793 (2007)
- P Joseph, "The Demise of Ultra Vires – Judicial review in New Zealand Courts", *Public Law* 354 (2001)
- Lord Diplock, "Administrative Law: Judicial Review Reviewed" 33 *Cambridge Law Journal* 233 (1974)
- H.F. Rawlings, "Judicial Review and Control of Government', 64 *Public Administration* 135-145 (1986)
- T.R. Hickman, "The reasonableness Principle: Reassessing its place in Public Sphere" 63 *Cambridge Law Journal* 166 (2004)
- Le Sueur, A., "The Rise and Ruin of Unreasonableness?" 10 (1) *Judicial Review* 32 (2005)
- M.P. Singh, "The Constitutional principle of reasonableness" 3 *SCC (Journal)* 31 (1987)
- Markanday Katju, "Administrative Law and Judicial Review of Administrative Action" 8 *SCC (Journal)* 25 (2005)
- J. Black, "Constitutionalising Self-Regulation" 59 *MLR* 24 (1996)
- P.P. Craig, "Proportionality, Rationality and Review" *New Zealand Law Review* 265 (2010) Oxford Legal Studies Research Paper No. 5/2011
- G. Burca, "Proportionality and "Wednesbury" Unreasonableness: The Influence of European Legal Concepts on U.K. Law" Vol. 3, No. 4 *European public law* 561 (1997)
- Jowell, Jeffrey, "Is proportionality an alien concept?" 2 *European Public Law* 410 (2006)
- Jeffrey Jowell & Anthony Lester QC, "Beyond Wednesbury: Substantive principles of administrative law", 14:2 *Commonwealth Law Bulletin* 858 (1988)
- Julian Rivers, "Proportionality and Variable Intensity of Review" 65 *Cambridge Law Journal* 174 (2006)
- Mark Elliot "The Human Rights Act 1998 and the Standard of Substantive Review", 60 *Cambridge Law Journal* 301 (2001)
- Stone Sweet and J Matthews, "Proportionality by Balancing and Global Constitutionalism", 47 *Columbia Journal of Transnational Law* 68 (2008)
- Tom Hickman, "The Substance and Structure of Proportionality", *Public Law* 694 (2008)
- H.W.R. Wade, "Bias- A Question of Appearance or Reality", (1969) 85 *LQR* 23
- S.N. Singh, "Adequacy of Ex-Post Hearing", 2 *Corporate Law Adviser* 226 (July 1989)

List of Cases:

1. *Hirday Narain* v. *ITO*, AIR 1971 SC 33
2. *State of W.B.* v. *Anwar Ali Sarkar*, AIR 1952 SC 75
3. *State of Punjab* v. *Khem Chand*, AIR 1974 SC 543
4. *Air India* v. *Nargesh Meerza*, AIR 1981 SC 1829
5. *Dwarka Prasad Laxmi Narain* v. *State of U.P.*, AIR 1954 SC 224
6. *A.N. Parsuraman* v. *State of Tamil Nadu*, AIR 1990 SC 40
7. *Dr. Bonham's* case, 8 Co. Rep. 114a,118a (1610)
8. *Marbury* v. *Madison*, 1 Cranch 137 (1803)
9. *Anisminic Ltd.* v. *Foreign Compensation Commission*, (1969) 1 All ER 208
10. *Padfield* v. *Minister of Agriculture, Fisheries & Food*, (1968) AC 997
11. *Associated Provincial Picture Houses Ltd.* v. *Wednesbury Corp.*, (1947) 2 All ER 680
12. *Council of Civil Service Union* v. *Minister for Civil Service*, (1985) AC 374
13. *Kesavananda Bharati* v. *State of Kerala*, AIR 1973 SC 1461
14. *Minerva Mills* v. *Union of India*, (1980) 3 SCC 625
15. *Indira Nehru Gandhi* v. *Raj Narain*, AIR 1975 SC 2299
16. *I.R. Coelho* v. *State of Tamil Nadu*, (2007) 2 SCC 1
17. *T.N. Rangarajan* v. *Govt. of Tamil Nadu*, AIR 2003 SC 3032
18. *L. Chandra Kumar* v. *Union of India*, (1997) 3 SCC 261
19. *Vice-Chancellor, Utkal University* v. *S.K. Ghosh*, AIR 1965 SC 217
20. *Mehboob Sheriff and Sons* v. *Mysore State Transport Authority*, AIR 1960 SC 321
21. *J.R. Raghupathi* v. *State of A.P.*, AIR 1988 SC 1681
22. *Asif Hameed* v. *State of Jammu and Kashmir*, AIR 1989 SC 1899
23. *Syed Yakoob* v. *Radha Krishanan*, AIR 1974 SC 477
24. *M. Nagaraj* v. *Union of India*, (2006) 8 SCC 212
25. *BALCO Employee's Union* v. *Union of India*, (2002) 2 SCCC 333
26. *Centre for Public Interest Litigation and Ors* v. *Union of India and Ors.* (*2G* case) (2012) 3 SCC 1
27. *Natural Resources, In Re Special Ref. No. 1 of 2012 decided on 27 September 2012*
28. *Divisional Manager, Aravali Golf Club & Anr.* v. *Chander Hass & Anr.*, Appeal (Civil) 5732 of 2007
29. *Jagdambika Pal* v. *Union of India & Ors.*, AIR 1998 SC 998
30. *G. Sadanandan* v. *State of Kerala*, AIR 1966 SC 1925
31. *State of Punjab* v. *Gurdial Singh*, AIR 1980 SC 319
32. *State of Punjab* v. *V.R. Khanna*, AIR 2001 SC 343
33. *Express Newspaper (Pvt) Ltd.* v. *Union of India*, AIR 1986 SC 872
34. *State of Bombay* v. *K.P. Krishnan*, AIR 1960 SC 1223
35. *ACC Store* v. *R.K. Mehra*, AIR 1993 P&H 342
36. *Ranjit Singh* v. *Union of India*, AIR 1981 SC 461
37. *Nand Lal K. Barot* v. *Bar Council of Gujarat*, AIR 1981 SC 477
38. *Commr. of Police* v. *Gordhandas Bhanji*, AIR 1952 SC 16
39. *Shri Ram Sugar Industries Ltd.* v. *State of A.P.*, AIR 1974 SC 1745
40. *Shrilekha Vidyarthi* v. *State of U.P.*, AIR 1991 SC 537
41. *Manohar Lal Sharma* v. *Narendra Damodardas Modi & Ors.* decided on 14.12.2018
42. *Om Kumar and Ors.* v. *Union of India*, AIR 2000 SC 3689
43. *Coimbatore District Central Cooperative Bank* v. *Coimbatore District Central Cooperative Bank Employees' Association*, (2007) 4 SCC 669
44. *Chairman, All India Railway Recruitment Board and Anr.* v. *Shyam Kumar and Ors.*, (2010) 6 SCC 614
45. *R.* v. *Secy of State for Home Dept, Ex Parte Daly*, (2001) UKHL 26
46. *R.* v. *Secy of State for Home Dept, Ex Parte Brind*, (1991) AC 696
47. *R.* v. *Secy of State for Home Dept, Ex Parte Smith*, (1996) QB 517
48. *Justice K.S. Puttaswamy (Retd.)* v. *Union of India* decided on 26 September 2018
49. *Union of India* v. *Indo- Afgan Agencies Ltd.*, AIR 1968 SC 718
50. *Motilal Padampat Sugar Mills* v. *State of U.P.*, AIR 1979 SC 621
51. *Jit Ram Shiv Kumar* v. *State of Haryana*, AIR 1980 SC 1285
52. *Union of India* v. *Godfrey Philips India Ltd.*, AIR 1986 SC 806
53. *Sales Tax Officer* v. *Shree Durga Oil Mills*, (1998) 1 SCC 572
54. *Ridge* v. *Baldwin*, (1964) AC 40
55. *Jeejeebhoy* v. *Asst Collector, Thane*, AIR 1965 SC 1096

56. *Anamalai* v. *State of Madras*, AIR 1951 AP
57. *Metropolitan Properties Co.* v. *Lannon*, (1968) WLR 815
58. *Gullapali Nageswara Rao* v. *AP State Road Transport Committee*, AIR 1959 SC 308
59. *A.K. Kraipak* v. *Union of India*, AIR 1950 SC 150
60. *Ashok Kumar Yadav* v. *State of Haryana*, AIR 1987 SC 454
61. *R.L. Sharma* v. *Managing Committee, Dr. Hari Ram (Co edu) H.S. School*, AIR 1993 SC 2155
62. *Amar Nath Chowdhry* v. *Braith Waite & Co. Ltd.*, AIR 2002 SC 678
63. *G.N. Nayak* v. *Goa University*, AIR 2002 SC 790
64. *State of W.B.* v. *Shivananda Pathak*, AIR 1998 SC 2050
65. *State Bank of Patiala* v. *S.K. Sharma*, AIR 1996 SC 1669
66. *Charan Lal Sahu* v. *Union of India*, AIR 1990 SC 1480
67. *Hira Nath Misra* v. *Rajendra Medical College*, AIR 1973 SC 1260
68. *A.K. Roy* v. *Union of India*, AIR 1982 SC 710
69. *J.K. Aggarwal* v. *Haryana Seeds Dev. Corp. Ltd.*, AIR 1991 SC 1221
70. *Bharat Petroleum Corp. Ltd.* v. *Maharashtra Gen. Kamgar Union*, (1991) 1 SCC 626
71. *Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248
72. *Swadeshi Cotton Mills* v. *Union of India*, AIR 1981 SC 818
73. *H.L. Trehan* v. *Union of India*, AIR 1989 SC 568
74. *K.I. Shepherd* v. *Union of India*, AIR 1988 SC 686
75. *S.N. Mukherjee* v. *Union of India*, AIR 1990 SC 1984
76. *Managing Director, ECIL, Hyderabad* v. *B. Karunakar*, (1993) 4 SCC 727
77. *Chevron USA Inc.* v. Natural Resources Defence Council 467 US 837 (1984)
78. *Justice K.S. Puttaswamy (Retd.)* v. *Union of India*, 26.09.2018
79. *Indian Young Lawyers Association* v. *State of Kerala*, 28.09.2018
80. *Navtej Singh Johar* v. *Union of India*, 06.09.2018
81. *Joseph Shrine* v. *Union of India*, 27.09.2018
82. *Manohar Lal Sharma* v. *Narendra Damodardas Modi*, December 2018

IMPORTANT NOTE:

1. The topics, cases and suggested readings given above are not exhaustive. The Committee of teachers teaching the Course shall be at liberty to revise the topics/cases/suggested readings.

2. Students are required to study/refer to the legislations as amended from time to time, latest judicial decisions and consult the latest editions of books.