

FACULTY OF LAW
UNIVERSITY OF DELHI
COURSE WISE CONTENT DETAILS OF LL.M. PROGRAMME (2022)
COURSE NAME - ADMINISTRATIVE LAW AND REGULATORY MECHANISMS
SEMESTER I
Course Code- 2YLM-117/ 3YLM-117

Important Note

1. The following course content should not be treated as exhaustive. The questions may be set from any topic which the examiner feels relevant to the subject.
2. There shall be one written examination of three hours' duration in each subject at the end of each Term. One question paper shall be set in each of the subjects prescribed for study and examination. Each paper shall carry 100 marks. The minimum pass marks in each subject shall be 50%.
3. Every student of this course is required to present a paper in the class for discussion on a topic assigned by the concerned teacher. No student shall be permitted to appear in the examination unless a certificate is issued by the teacher that the paper presented by the student was to his/her satisfaction.
4. 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.

Course Objectives

1. To focus on theoretical and analytical study of various aspects of administrative law in comparative manner and to discuss the impact of globalization and liberalization on the growth of administrative law.
2. To familiarize the students with the need, source and permissible limit of administrative rule making power and the rights and opportunities to the people to participate in administrative rule making
3. To discuss various practiced techniques and remedies to neutralize these challenges and to encourage students to critically analyze the efficacies of these techniques and remedies.
4. To endow the students with the critical and analytical understanding of the procedures followed by the government and its numerous instrumentalities and agencies in exercising their powers and functions, the mechanisms by which they are controlled and the remedies that are available to persons whose rights may have been infringed by the exercise of such powers and functions by administrative agencies.

Learning Outcomes

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

1. Exhibit conceptual understanding of many aspects of administrative law to solve factual situations and support them with logical arguments.
2. Conduct effective legal *vis-a-vis* interdisciplinary research in the subject by using fundamental tools of legal research.
3. Write research papers/notes and case comments and work in research houses.
4. Practice in this area in the law courts/tribunals.
5. Help needy persons to obtain required information and relief from the government establishments and courts

6. Become law teachers, policy makers/reformers or effectively work as administrators.

Course Contents:

UNIT I : ADMINISTRATIVE LAW– MEANING AND SCOPE (2 Weeks)

Meaning and Definition of Administrative Law; Sociological Aspects of Administrative Law; Development and Scope of Administrative Law; Red Light, Green Light and Amber Light theories of Administrative Law; Classification of Administrative Actions; Global Administrative Law

UNIT II : BASIC CONSTITUTIONAL CONCEPTS INFLUENCING GROWTH OF ADMINISTRATIVE LAW (3 Weeks)

- A. RULE OF LAW** - Dicey's formulation of Rule of Law; Fallacy of Dicey's aspect of the Welfare State and the Rule of Law; Rule of Law in mixed economy; formal and Ideological concepts of Rule of Law; Constitutional provisions embodying the idea of Rule of Law
- B. SEPARATION OF POWERS** - Doctrine as propagated by Montesquieu; Rationale of this doctrine in theory and practice; Separation of Powers under different Constitutions; Judicial Pronouncements on Separation of Powers

UNIT III : RULE-MAKING POWER OF THE ADMINISTRATION (3 Weeks)

Nature, Necessity and Source of administrative rule-making power; Limits on delegation of rule-making power to the administrative authority; categories of administrative rule-making power; Control mechanisms of administrative rule-making power- procedural control, legislative control and Judicial control

UNIT IV : REDRESSAL OF COMPLAINTS AGAINST THE ADMINISTRATION:THE INSTITUTION OF OMBUDSMAN (2 Weeks)

Meaning, Origin and Development of the Institution of Ombudsman; Need of Ombudsman-Limitations in redress through Courts, Twin problems of mal-administration and Corruption; Matters usually included or excluded from Ombudsman's Jurisdiction; Various legislative proposals for appointment of Lokpal at the Centre; Legal and Constitutional Position of the Lokpal under the successive Lokpal Bills of 1968, 1971, 1977, 1985, 1989 and 1996, 2001; Working of Lokayuktas and other Institutions in some States; Critical Analysis of the Lokpal and Lokayukta Act, 2014.

UNIT V : RIGHT TO INFORMATION (1^{1/2} Weeks)

Importance of the Right to Information- openness, transparency and accountability of the administration; Right to information under the Constitution of India; the Judicial approach towards right to know; Object and the salient features of the Right to Information Act, 2005; Scope of the Right to Information Act- obligation of public authorities to supply information; Grounds of refusal to disclose information

UNIT VI : INQUIRIES & INVESTIGATIONS (1^{1/2} Weeks)

The Commission of Inquiry Act, 1952- Object and Scope of the Act; Power of Central/State

Government to appoint a Commission of Inquiry- discretionary and mandatory nature of power; Power and Procedure of the Commission of Inquiry; Compliance with the Principles of Natural Justice; Effectiveness- submission of report and follow up action; The Central Vigilance Commission Act, 2003- Constitution, Powers and procedure

UNIT VII : REGULATORY AGENCIES (2 Weeks)

Need of Regulatory Bodies; Composition, Structure, Powers And Procedures of these Regulatory Bodies, including, the Electricity Regulatory Commission under the Electricity Act, 2003; the Competition Commission under the Competition Act, 2002; the Telecom Regulatory Authority of India under the Telecom Regulatory Authority of India Act, 1997; the Insurance Regulatory and Development Authority under the Insurance Regulatory and Development Authority Act, 1999; the Pension Fund Regulatory and Development Authority under the Pension Fund Regulatory and Development Authority Act, 2013, the Securities and Exchange Board of India under the Securities and Exchange Board of India Act, 1992, the Prasar Bharati under the Prasar Bharati (Broadcasting Corporation of India) Act, 1990, the Petroleum and Natural Gas Regulatory Board under Petroleum and Natural Gas Regulatory Board Act, 2006

Suggested Readings:

1. Beatson, Matthews and Ellitto's *Administrative Law: Text and Materials* (4th ed., 2011)
2. H.W.R. Wade & C.F. Forsyth, *Administrative Law* (11th ed., 2014)
3. Indian Law Institute, *Cases and Materials on Administrative Law in India* (1996)
4. P.P. Craig, *Administrative Law* (6th ed., 2008)
5. B.L. Jones & J.F. Garner, *Garner's Administrative Law* (8th ed., 1996)
6. K.C. Davis, *Administrative Law Treatise* (2nd ed., 1980)
7. W. Friedmann, *Law in a Changing Society* (1959)
8. Amita Dhanda, *M.P. Jain & S.N. Jain Principles of Administrative Law* (7th ed., 2017)
9. M.P. Jain, *Cases and Materials on Indian Administrative Law* (1994)
10. C. Harlow & R. Rawlings, R. *Law and Administration* (4th ed., Law in Context). Cambridge: Cambridge University Press, 2021.
11. Peter Cane, *Administrative Law (Clarendon Law Series)*, Oxford University Press, 2011.
12. Rohit De., *A People's Constitution: The Everyday Life of Law in the Indian Republic*. Princeton: Princeton University Press, 2018.
13. Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (ed.) *The Oxford Handbook of the Indian Constitution*, Oxford University Press, 2015.
14. M. Elliott & D. Feldman (Eds.), *The Cambridge Companion to Public Law*, Cambridge: Cambridge University Press, 2015.
15. Joanna Bell, *The Anatomy of Administrative Law*, Hart Publishing, 2020.
16. P. Craig, *UK, EU and Global Administrative Law: Foundations and Challenges* (The Hamlyn Lectures). Cambridge: Cambridge University Press, 2015.
17. Tom Bingham, *The Rule of Law*, Penguin, 2011.

18. Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory*, Cambridge: Cambridge University Press, 2004.
19. Rajeev Dhavan, *The Lokpal Idea, 1963-2010 - Vol. 1*, Orient BlackSwan, 2019.
20. Rajeev Dhavan, *Anna and the Lokpal Bill : 2010-2018*, Orient BlackSwan, 2019.
21. A G Noorani, *Ministers Misconduct*, Vikas Publications, 1974.
22. Devesh Kapur and Madhav Khosla, *Regulation in India: Design, Capacity, Performance* Oxford,: Hart Publishing, 2019.
23. Navroz K Dubash and Bronwen Morgan (ed.), *The Rise of the Regulatory State of the South: Infrastructure and Development in Emerging Economies*, Oxford University Press, 2013.

Reading Material

1. Benedict Kingsbury and *et al.*, “The Emergence of Global Administrative Law.” vol. 68, no. 3/4 *Law and Contemporary Problems* 15–61 (2005).
2. B.S. Chimni, “Co-option and Resistance: Two Faces of Global Administrative Law” Vol. 37 *NYU Journal of International Law and Politics* 799-827 (2005).
3. Upendra Baxi, "The Rule of Law in India", Vol. 6 *SUR* 7-25 (2007).
4. Cameron Stewart, “The Rule of Law and the Tinkerbelle Effect: Theoretical Considerations, Criticisms and Justifications for the Rule of Law”, 4 *Macquarie Law Journal* 135-164 (2004)
5. Bruce Bartlett, “A Conservative Case of or the Welfare State”, 2015 available at : https://www.dissentmagazine.org/online_articles/bruce-bartlett-conservative-case-for-welfare-state
6. Eugene V. Rostow, “The State and the Rule of Law in a Mixed Economy” Yale Law School: Faculty Scholarship Series Paper 2142 (1972)
7. Welfare State and Rule of Law - W. Friedmann
8. J.S. Verma, “50 years of Freedom under Rule of Law: Indian Experience” speech delivered on 9th September, 1997 (2000 Edn., Universal Law Publishing Co. P vt. Ltd., Delhi) 37
9. M.N. Venkatachaliah, “Rule of Law : Contemporary Challenges”, 45 *Indian Journal of Public Administration* 321 (1999)
10. H.M. Seervai, “Rule of Law” in *The Position of the Indian Judiciary under the Constitution of India* 83-96 (1970)
11. Separation of Executive and Judicial Functions [Extracts from Law Commission of India, 14th Report on Judicial Administration, 1958]
12. Bruce Ackerman, “The New Separation of Powers.” Vol. 113(no. 3) *Harvard Law Review* 633–729(2000).
13. A.K. Thiruvengadam and P. Joshi, “Judiciaries as crucial actors in Southern regulatory systems: A case study of Indian telecom regulation” 6 *Regulation & Governance* 327-343 (2012).
14. The General Clauses Act, 1897, Sections 20–24
15. M.P. Jain, "Parliamentary Control of Delegated Legislation in India", *Public Law* 176 (Summer 1964),
16. Garner, “Consultation in. Subordinate Legislation”, *P.L.* (1964) 105-124
17. Sarbjit Kaur, “ Doctrine of Judicial Review and the Decisions of the Administrative Tribunals” Vol. 6 (1) *Journal of Law Teachers of India* (2015) 1
18. From *S.P. Sampath Kumarto L. Chandra Kumar* and the Implications [Extracts from 215th Report of Law Commission of India on *L. Chandra Kumar* be Revisited by the Larger Bench of Supreme Court, December 2008]

19. Citizen, Administration and Ombudsman in Norman Lewis, S .S. Singh (eds.), *Ombudsman: India and the world Community* (Indian Institute of Public Administration) Chapter 1, 1-32
20. Madam Justice Florence N. Mumba, The Ombudsman: The Need for Protection and Control in Norman Lewis, S .S. Singh (eds.), *Ombudsman: India and the world Community* (Indian Institute of Public Administration) Chapter 2, 33-40
21. Sarbjit Kaur, “Desirability of the Institution of Ombudsman in a Modern Democratic Set Up”, X-XI *National Capital Law Journal* (2005-2006) 135
22. Sarojini Sharan, “Ombudsman in India”, Vol.32. No. 2 *Indian Journal of Political Science Association* 158-174 (April –June .1971)
23. Amrita Johri, Anjali Bhardwaj et.al. (eds), “The Lokpal Act of 2014: An Assessment” (2014) 49 (5) *Economic and Political Weekly* 10
24. S.L. Rao, *Governing Power: A New Institution of Governance: the Experience with Independent Regulation of Electricity* 35-71 TERI Press, New Delhi (2004)
25. O.P. Agarwal and P . Paul, *Framework for Independent Regulation in India: An Overview*, 3-15TERI Press, New Delhi (2004)
26. Pratip Kar, *Role of Independent Regulation in Economic Reforms*, 17-26 TERI Press, New Delhi
27. S.K. Sarkar and Leena Srivastava, *The Regulatory Framework: Experiences and Issues*, 27-44 TERI Press, New Delhi

Recommended Readings:

1. Stephen G. Breyer and Richard B. Stewart, *Administrative Law and Regulatory Policy* (1979) Chapters 1-3
2. K.C. Davis, *Administrative Law Text* (1971) 1-15
3. W. Friedman, *Law in a Changing Society* (1959) Chapter 11
4. Mike Taggart, “The Impact of Corporatisation and Privatisation on Administrative Law”, 51 *Australian Journal of Public Administration* 368-373 (1992)
5. Peter Bayne, “ Administrative Law and the New Managerialism in Public Administration”, 62 *The Australian Law Journal* 1040-1045 (1988)
6. A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (9th ed.) Chapters IV and XII
7. A.V. Dicey, “The Development of Administrative Law in England”, 31 *LQR* 148 (1915)
8. Ramaswamy, “Rule of Law in a Planned Society”, 1 *JILI* 31 (1959)
9. Upendra Baxi “Developments in Indian Administrative Law” in *Public Law in India* (A.G. Noorani ed.) (1982) 136
10. B. Bhardwaj, “Delegated Legislation in India”, 1963 *SCJ (J)* 26
11. J.A.G. Griffith, “ The Constitutional Significance of Delegated Legislation in England”, 48 *Mich L. Rev* 1079 (1950)
12. *Report of Committee on Ministers’ Powers* (1932), Cmd. 4060 (Reprinted 1972)
13. Alan W harm, “Judicial Control of Delegated Legislation – The Test of Reasonableness”, 36 *Mod. LR* 611 (1973)
14. R.M. Jackson, “Judicial Review of Legislative Policy”, 18 *Mod. L. Rev.* 571 (1955)
15. S.N. Jain, “ Validity of Retrospective Delegated Legislation - The Court Develops a New Principle”, 23 *JILI* 102 (1981)
16. *Report of the Committee on Administrative Tribunals and Enquiries* (Franks Committee) Comd. 218 (1957)
17. Law Commission of India, *14th Report on Judicial Administration* (1958) 675-695

18. Sarbjit Kaur, *Service Tribunals- An Introduction* (2015)
19. Administrative Reforms Commission, *Interim Report on the Problems of Redress of Citizens' Grievance* (1966)
20. P.K. Tripathi, "Lokpal: The Proposed Indian Ombudsman", 9 *JILI* 175 (1967)
21. Rajeev Dhavan, "Engrafting the Ombudsman Idea on a Parliamentary Democracy – A Comment on the Lokpal Bill, 1977", 19 *JILI* 257 (1977)
22. Balram K. Gupta, "A Balance-Sheet of State Lokayuktas", 26 *JILI* 122 (1984)
23. K.S. Shukla & S.S. Singh, *Lokayukta : A Socio Legal Study* (1988) IIPA, New Delhi
24. Estimates Committee, *System of Redressal of Grievances* (1991-92) First Report, Tenth Lok Sabha
25. Normal Lewis and S.S. Singh, *Ombudsman: India and the World Community* (1995) IIPA and British Council
26. S.L. Rao "Policy and Legal Framework for Regulation" in *Transition to a Liberalized Environment – Experiences and issues in Regulation* (Leena Srivastava and S .K. Sarkar ed.) (1999) 27-32
27. S. S under and S .K. Sarkar "Framework for Regulation: The Indian Experience" in *Transition to a Liberalized Environment – Experiences and issues in Regulation* (Leena Srivastava and S.K. Sarkar ed.) (1999) 39-53
28. Robert Baldwin, *et. al. The Oxford Handbook of Regulation*, Chapter 1 Introduction: Regulation - the Field and the Developing Agenda (2010) 1-12
29. Robert Baldwin, *et. al. The Oxford Handbook of Regulation*, Chapter 3 Regulatory Rationales Beyond the Economic: In Search of the Public Interest by Mike Feintuck (2010) 39-61
