

## REVIEWS

ADMINISTRATIVE LAW. By S. Rajagopalan. Second Edition (1970). N.M. Tripathi Private Ltd. Bombay. Pp. xxxiv+427. Rs. 25.

THE BAR COUNCIL of India deserves to be congratulated for prescribing administrative law as a compulsory subject for the LL.B. course. The action of the Bar Council has stimulated many authors to capture the neglected field. While before 1960 there was not a single text-book on the subject, now we find at least half a dozen books in the market. Three new text-books have appeared within last one year, and two authors have brought out their second editions.

As the author states in the preface of the book, this book is the result of the lectures which the author had delivered to the students studying for diploma in administrative law in the Madras University.

The first edition of this book was published in 1965. The book is divided into twelve chapters. The first four chapters deal with the introductory material, namely, definition, boundaries and the history of administrative law, the rule of law and the doctrine of separation of powers. The following eight chapters deal with delegated legislation, judicial review, crown liability, writs, statutory tribunals and enquiries and legislative investigation commissions, domestic tribunals, estoppel, *stare decisis* and *res judicata* and public corporations.

In four hundred pages the author has presented substantial material concerning administrative law which will certainly benefit the students and others who wish to go through it. However, the reviewer would like to point out some defects which affect the merit of the book.

We can begin with the arrangement of the material. In this connection chapter V, dealing with the delegated legislation, and chapter VI, dealing with the judicial review, can be referred. These two chapters cover almost 275 pages of the book. The arrangement of chapter V is as follows : (a) Introductory, (b) General, (c) English, (d) America, (e) India, (f) Stages of Delegation, (g) General Principles, (h) Publication, (i) Procedural Requirements, (j) Parliamentary Control, (k) Statutory Rules and Constitutional Law, (l) Sub-delegation, (m) Principles of Delegated Legislation, (n) Types of Delegated Legislation, (o) Delegation and Taxation, (p) Tax and License Fee, (q) Grounds of Invalidity, (r) Validity of Delegated Legislation, and (s) Method of Review. This method of arrangement suffers from two defects : first, it results in the repetition of the material. For example, the author has discussed the topic of conditional legislation first on pages 82-83 and then on pages 90-94. This could have been avoided. Second, the discussion becomes incoherent. For example, the discussion of principles of delegated legislation and types of delegated legislation after discussing

procedural requirements and parliamentary control is not appropriate. Particularly, from the point of view of students it is desirable that the topics should be discussed in the logical order. According to the reviewer, it would have been much better if the author had put the material in sub-sections (a), (b) and (g) into one sub-section and then had discussed (m) and (n). Further, the material in sub-sections (q), (r) and (s) could have been discussed in one sub-section.

Similarly, the first four sub-sections of chapter VI, which deals with the Judicial Review, are as follows : (a) Introductory, (b) Historical Retrospect, (c) General and (d) History. The reviewer is unable to understand, first of all, why the author has discussed the historical retrospect separately from the history, and second, why he has devoted almost forty four pages to these two sub-sections when he has only referred one after another the leading, earlier and recent, decisions of the American, English and Indian courts. This was also unnecessary as the author has referred these decisions again and again in other sub-sections of the chapter. There is not much of history in these two sub-sections. Further, the material on pages 196-199 concerns with the general principles of judicial review, and should have been shifted to the appropriate place. The last sub-section (p), which deals with the procedural safeguards in the case of administrative tribunals, should also have been discussed earlier in the chapter.

Apart from the arrangement of the material, the method of discussion adopted by the author, at many places, is confusing. For example, while discussing the definition of administrative law, the author first of all cites the definition of law as given by Salmond, Austin, *Sathapatha Brahmana*, Jenks, Vyshinsky, Golunski, and Reisner, and then makes the following observation :

Administrative law has not been and could not be defined precisely and scientifically, because like martial law, which permits anyone to be shot down at sight, there is generally no law in the administration. . . . It would therefore be a chase in darkness to attempt to define administrative law.<sup>1</sup>

And then after citing the definition of administrative law as given by Robson, Forkosch, Maitland, K.C. Davis, Bernard Schwartz, Goodnow, Paul Freund and Gangadhara Ghosh, and without providing critical assessment of the observations of the above mentioned authors, he comes forward with his own suggestion that :

Administrative law may therefore be taken to imply the efforts of the ordinary courts of the land to keep up individual rights whilst at the same time maintaining individual liberty and public good.<sup>2</sup>

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1. Rajagopalan, *Administrative Law*, 3 (1970) .

2. *Id.* at 5.

Even though one may not agree with the definition as suggested by the author, as the administrative law is not confined to the study of the efforts of the ordinary courts regarding protection of individual rights, though it is a very important topic, but one fails to understand why the author started with the definition of law which led him to conclude that there was not much difference between the martial law and the administrative law and it was merely "a chase in darkness" to make any attempt to define administrative law. It may not be possible to define administrative law "precisely and scientifically", and even assuming that it is possible to define any term or phrase in a precise and scientific manner, the definition suggested by the author itself proves that the attempt was not "a chase in darkness."

The book also contains a few incorrect statements. For example, while dealing with the doctrine of separation of powers in the United States the author makes the following observation, "Article I vests all executive powers in the President, Article II, all legislative powers in the House of Representatives and Article III, the judicial power in the courts."<sup>3</sup> Had the author taken some trouble to see the text of the U.S. Constitution, he would have found that it is not article I but article II which vests the executive power in the President, and it is not article II but article I which vests all legislative powers in the Congress and that also not in the House of Representatives.

In the preface the author has stated that "on practically every topic of importance discussed (in this book), the author had to make trans-Atlantic and Pacific excursions".<sup>4</sup> The book under review fully justifies the claim of the author as almost fifty per cent of the material relates to the development of administrative law in other countries, with particular emphasis on England and the U.S.A. While reading the book, however, the reviewer felt at many places, particularly when reading the chapter dealing with judicial review, that the author has given more emphasis to the foreign material than what he has given to the Indian material. For example, while discussing exceptions to the *audi alteram partem* rule, the author has referred about fifteen English cases but only one Indian case.<sup>5</sup> The foreign material should be used for the purposes of indicating similarities or differences but it should not be allowed to dominate the discussion, particularly in an area where there is no dearth of Indian material. It may also be noted that the worth of the book is not enhanced if the author goes on mentioning one case after another and briefly stating the facts and the decision of the cases. This gives the impression that the book is more or less of a digest type rather than a treatise on administrative law.<sup>6</sup> It would have been much better if the

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3. *Id.* at 72.

4. *Id.* at viii.

5. *Id.* at 236-242.

6. *Id.* at 183-193.

author had selected some leading foreign cases on the topic concerned and had discussed them in detail. Further, when the author has presented so much material regarding other countries, he should have made some attempt to show the relevance of the material to Indian readers.

A reader of the book can also feel sometimes irritated as the author has adopted the strange practice of quoting authors without disclosing their identity. Throughout the book one reads what eminent judges, distinguished jurists and outstanding or illustrious authors have said about the various topics of administrative law, but he is never told who are those eminent persons.<sup>7</sup> And, even where the names of the authors have been given, one does not find the citations.<sup>8</sup> Even if the author has some dislike for the footnotes, as is apparent from the absence of footnotes in the book, he could have given the citations in the text itself as he has done regarding the case law.

It is also difficult to understand why the author has not followed a uniform mode of citations. For example, cases reported in the A.I.R. have been cited in the following ways : (1960) S.C. 1355;<sup>9</sup> (1964) S.C. 669 A.;<sup>10</sup> A.I.R. 1965 S.C. 1153;<sup>11</sup> (1964) A.I.R. 72 (S.C.).<sup>12</sup> Further, it is interesting to read a citation, mentioned in the text, which runs as follows : 1947 P.C. 34, *ibid.*<sup>13</sup> And also, when it is specifically mentioned in the Journal of the Indian Law Institute that it should be cited as *J.I.L.I.*, it is surprising why the author has cited it as *J.I.I.L.*

The publishers and printers of the book must be congratulated for their excellent performance as there are very few printing mistakes in the book, though it is quite interesting to read a citation on page 393 which reads as follows: "R.S. Arora v. State Liability and Public Corporation in India".

While concluding the review, the reviewer would like to mention that his purpose in mentioning the shortcomings of the book is not to underrate the contribution of the author. As stated in the very beginning, the reader will benefit considerably from the perusal of the substantial material presented in this book. The reviewer fully agrees with some of the suggestions of the author, namely, that the delegation of the legislative power in the sphere of taxation should be confined within the strict limits and that the non-liability of the state for the torts of its servants should be given up.

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7. *Id.* at vii, 5, 63, 69, 87, 259, 294, 305.

8. *Id.* at 57-58, 107, 302, 317.

9. *Id.* at 310.

10. *Id.* at 311.

11. *Id.* at 377.

12. *Id.* at 105.

13. *Id.* at 309.

14. *Id.* at 402.

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