PRINCIPLES OF ADMINISTRATIVE LAW (4th ed., 1986) by M.P. Jain and (Late) S.N. Jain, N.M. Tripathi Private Limited, Bombay. Pp. lxvi + 1072. Price Rs.200.

THERE HAS been an outstanding development of administrative law in the current century.[1] The credit for this development goes largely to the judiciary at least in the common law world. In India, in more recent years, the apex court has been responsible for the multi-dimensional growth of administrative law. The subject though ever growing, has come of age and is of abiding interest. The book[2] under review is a brilliant, comprehensive and an authoritative work on administrative law.

Though the authors have mainly confined themselves to Indian administrative law, they have incorporated, at relevant places, elements of the subject as developed in England, United States and in other countries. The reasons for this are not far to seek. Law persons in India have been trained to refer to English, U.S. and other foreign authorities while searching for solutions to Indian legal problems. Thus a work on Indian administrative law has to be comparative at places.

The book has twenty-five chapters. Chapter I[3] is introductory. It explains the nature, scope and content of administrative law. It also explains the concepts of rule of law and separation of powers *vis-a-vis* the development of administrative law in England, Australia, New Zealand and the United States. The discussion admirably builds up the argument that these concepts did not hamper the growth of administrative law but rather contributed to it. It is not understandable why the authors did not include India in the discussion especially as the rule of law is imbibed in its Constitution.

Chapter II[4] is devoted to the theme of delegated legislation. Constitutionality of delegation of legislative power in India has been intelligently compared and contrasted with two important systems of the globe, *viz.*, of England and the United States.

The discussion has been documented with a wealth of case law. The intricacies of excessive delegation raises two major questions, (1) "Should there be doctrine of excessive delegation? (2) How should such a doctrine be applied in practice?"[5] The authors have endeavoured to answer these questions with the help of pronouncements handed down by the Supreme Court of India. The Chapter ends with clearing the mist on the dichotomy of conditional and delegated legislation.[6] In *Lachmi Narain* v. *Union of India*[7] the court authoritatively stated that

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1. See Vanderbilt's Introduction to Bernard Schwartz *French Administrative Law and the Common Law World* xiii (1954).
2. M.P. Jain and (Late) S.N. Jain, *Principles of Administrative Law* (4th ed., 1986).
3. *Id.* at 1-25.
4. *Id.* at 26-59 see also Chapter XII on sub-delegation of powers at 399.
5. *Id.* at 55-57.
6. *Id.* at 57-59.

> no useful purpose is served by calling a power conferred by a statute as conditional legislation instead of delegated legislation[8]

for conditional legislation is in no way different from delegated legislation.

Chapter III[9] continues the theme of the second Chapter with a critically elaborate analysis of judicial and legislative control mechanisms over delegated legislation. Of course, the test of reasonableness is applicable to delegated legislation in India. But in one area the Supreme Court does not so far seem to be prepared to apply the test *viz.*, the area of delegated legislation laying down scales of rates at which statutory bodies seek to provide services to the public. Judicial attitude[10] is not very encouraging even though there is a logical basis to extend the test to this neglected area.

Chapter IV[11] deals with the ever increasing modern trend of issuing directions or instructions by the administration. The authors intelligently bring out the basic distinction between the two concepts. The discussion has been illustrated with reference to *State of Uttar Pradesh* v. *Kishori Lal*[12] *Virendra Kumar* v. *Union of India*,[13] *V.T. Khanzode* v. *Reserve Bank of India*[14] and a series of other cases.

Right of hearing is the subject-matter of Chapter V.[15] The discussion revolves round an important but perplexing question of modern administrative law, *viz.*, when can a right to hearing be claimed by a person against whom administrative action is proposed to be taken? The most significant development in this area is with regard to post-decisional hearing propounded by the Supreme Court in *Maneka Gandhi* v. *Union of India*[16] Right to fair hearing is essentially an inbuilt concept of natural justice. The reader, therefore, has to study Chapters VII[17] and VIII[18] on the principles of natural justice on fairness and effect of the failure of natural justice respectively together with Chapter V.

The concept of natural justice entails two ideas, *viz., nemo judex in re sua* and *audi alteram partem*. The varied components, of these two rules are not fixed but are flexible as well as available in their scope, ambit and

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7. A.I.R. 1976 S.C. 714.
8. *Id.* at 722.
9. *Supra* note 2 at 60-111.
10. See *Trustees, Port of Madras* v. *Amrnchand Pyarelal* A.I.R. 1975 S.C. 1935; *Narayan* v. *Union of India* A.I.R. 1976 S.C. 1986.
11. *Supra* note 2 at 112-139.
12. A.I.R. 1980 S.C. 680.
13. A I.R. 1981 S.C. 947.
14. A.I.R. 1982 S.C. 917.
15. *Supra* note 2 at 140-78.
16. A I.R. 1978 S.C. 597 *Cf. Union of India* v. *Tulsi Ram Patel*, A.I.R. 1985 S.C. 1416. Is the decision not a retrogression of *Maneka*? Does article 311(2)(b) give wide discretion to the authority to refuse hearing after recording reasons?
17. *Supra* note 2 at 219-24.
18. *Id.* at 295-314.

applicability.[19] An indepth and comparative study of the various components of the concept are argued and examined in this Chapter, and the arguments are build up with wealth of case law on the points. In the United States there is a federal law - The Federal Administrative Procedure Act 1946, providing the procedure to be followed by the administrative adjudicatory bodies. Likewise, in the United Kingdom there is a watchdog body (council on tribunals) set up under the Tribunals and Enquiries Act, 1958 (now Act of 1971) to keep a watch, *inter alia*, on the procedures and working of adjudicatory bodies, and to suggest improvements therein from time to time. Unfortunately, in India there is no statute providing the procedure to be followed by adjudicatory bodies. Some purposive steps in this direction are required.

Chapter VI concentrates on administrative adjudication by administrative authorities[20] and critically examines the reasons responsible for the emergence of administrative adjudication outside the courts. Structure and procedure of adjudicatory bodies such as tax assessment authorities, customs adjudication, compensation tribunals under nationalization laws, labour tribunals under labour enactments,[21] has been examined. No reference to the working of the Monopolies and Restrictive Trade Practices Act and the consumer protection legislation has been made. A thorough probing and exposition of these two legislations from an administrative law angle is required.

The 42nd Amendment to the Constitution of India inserted a Part XIVA (arts. 323A and 323B) in the Constitution for the establishment of tribunals for service matters, and for some other matters by a parliamentary law. The philosophy is to have a system of administrative tribunals to systematise administrative law in India. Parliament of India enacted the Administrative Tribunals Act in 1985, perhaps, as an experiment in this direction. A skeletal exposition of the legislation is incorporated in the book under review.[22] The judicial attitude towards the improvement of this legislation is encouraging.[23] One may presume that the healthy and efficient working of this law may be a green signal for the policy makers to establish other tribunals as avowed in article 323B.[24]

Chapters IX and XI concentrate on the themes of Administrative Powers

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19. See S.N. Jain, *Administrative Tribunals in India* (Indian Law Institute, 1977); M.P. Jain, *Changing Faces of Administrative Law in India and Abroad* (Indian Law Institute, 1982); M.P. Jain, *The Hutchesson, Administrative Tribunals* (1973); S.A. de Smith, *Judicial Review of Administrative Action*, (1980); K.C. Davis, *Administrative Law Text* (1972); Bernard Schwartz, *Administrative Law--A Case Book* (1977).

20. *Supra* note 2 at 179-218.

21. See, also K.L. Bhatia, *Administration of Workmen's Compensation Law: A Socio-Legal Study* (1986).

22. See addenda, at lvii-lx.

23. See particularly, *S.P. Sampath Kumar* v. *Union of India* A.I.R. 1987 S.C. 34.

24. See, also in particular, the Law Commission of India, Working Paper on Central Education Tribunals, (1987).

and Discretionary Powers,[25] and Fundamental Rights and Conferment of Administrative Discretion.[26] Paradoxically, extensive discretionary powers are conferred on the administrative organs assuming more and more functions. Consequently, this nature of affairs exceedingly impinges on the rights of the citizens. Vesting of discretion is no wrong provided it is exercised purposively, judicially and without prejudice. But, broader the discretion, the greater the chance of its abuse... Absolute discretion is more destructive of freedom than any of man's other inventions'.[27] Moreover "absolute discretion marks the beginning of the end of liberty".[28] The authors admirably pen down the necessity to devise ways and means to minimise the danger of absolute discretion.[29] Today, the essential need is to devise mechanisms to control discretionary powers as it is a crucial problem haunting modern administrative law.[30] In this connection, the courts have to play a significant role within the contours of the Fundamental Rights. Chapter XI critically analyses and examines this proposition.

"Judicial Control of Administrative Action: [through] Writs" and Judicial Control of Administrative Action through Writs: Grounds" have been exhaustively, and critically analysed in Chapters XIII and XIV of the book.[31] These are the masterpieces of the authors.

Chapter XVI narrates High Court's superintendence over Tribunal[32] under article 227 of the Constitution of India. Chapter XVII discusses appeal to Supreme Court by special leave[33] under article 136 of the Constitution of India. Many knotty problems remain unredressed by administrative adjudication. Therefore, the role of the apex court of the country under article 136 is of great interest in the arena of administrative law. It is worth noting that besides the writ jurisdiction of the High Courts and the Supreme Court, special leave to appeal jurisdiction of the Supreme Court under article 136 constitutes a comprehensive scheme of juridical control over administrative bodies in India. Besides constitutional remedies against administrative actions, certain statutes also provide mechanism for seeking remedies through courts by aggrieved persons against administration, such as injunctions, damages, declaration, which form the subject-matter of discussion of Chapter XVIII.[34] The statutory remedies mentioned are essentially private law remedies but have been pressed into service in the area of public law. With the introduction of writ system by the Constitution

25. *Supra* note 2 at 315-330.
26. *Id.* pp. 363-398.
27. *Id.* at 328.
28. *Ibid.*
29. *Ibid.*
30. *Id.* at 33; See also, Chapter XV, *Id* at 550-611 relating to Judicial Control of Discretionary Powers.
31. *Id.* at 425-512 and 513-549.
32. *Id.* at 612-614.
33. *Id.* at 615-629.
34. *Id.* at 630-683.

of India, civil law remedies are less sought for. However, they have not lost their sanctity, and may have to be taken recourse to by a person affected by an administrative action if he desires a relief which he may not possibly get by invoking the writ jurisdiction. For instance, through declaration "inconvenience and the prolongation of uncertainty are avoided".[35]

Chapter XIX on Government Privileges in Legal Proceedings critically evaluates the question: How far is the state bound by a statute? How far can the state claim the privilege that the obligations and liabilities imposed by a statute on individuals do not apply to it.[36] The position in India on this issue has been compared and contrasted indepth with those of the United Kingdom and the United States. The movement has hitherto been from "crown privilege" to "public interest". Public interest strives to promoting an open government. In India, the Supreme Court, too, has made major contributions towards the promotion of the concept of open government.[37] The principle of open government has been given new orientation by Bhagwati, J.:

> Where a society has chosen to accept democracy as its credal faith, it is elementary that the citizen ought to know what their government is doing.... No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government....The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic state. And that is why the demand for openness in the government is increasingly growing in different parts of the world.[38]

The notions of estoppel and waiver have been elucidated in Chapter XX.[39] The narration of the notion of government promise and estoppel outlined in this chapter is informative. The law in India is still evolving, but the present day judicial attitude, rightly penned down by the authors, appears to be more towards applying the doctrine to the administration. There are four distinct phases in the development of the doctrine of estoppel, *viz., Phase I*: the position before *Anglo-Afghan; Phase II*; the position in *Anglo-Afgan* and after; *Phase III*: the position in *Motilal Padampat*; and *Phase IV*: the position in *Union of India* v. *Godfrey Philips India Ltd.*[40] *Godfrey* seems to have settled the law by emphasising that the doctrine of promissory estoppel would be applicable against the government. And, it is echoed that the

35. S.A. de Smith, *Judicial Review of Administrative Action* at 475 (1980)

36. *Supra* note 2, pp. 684-706.

37. *State of Punjab* v. *Sodhi Sukhdev Singh*, A.I.R. 1961 S.C. 493; *State of Uttar Pradesh* v. *Raj Narain*, A.I.R. 1975 S.C. 865; *S.P. Gupta* v. *President of India*, A.I.R. 1982 S.C. 149.

38. *S.P. Gupta, supra* note 37 at 232.

39. *Supra* note 2 pp. 707-761.

40. (1985) 4 S.C.C. 369. See addenda to the book under review at pp. lx-lxi.

pronouncement will certainly now establish the doctrine of promissory estoppel on a firm pedestal in India and dispel any doubt.

Chapter XXI analyses the subject-matter of Compensation[41] *viz.*, governmental tortious liability; and Chapter XXII focuses attention on the contractual liability of the government.[42] The law in the area of tortious liability of the government is still evolving. Traversing from *P & O* case through *Vidhayawati* to *Kasturilal* one finds that the judicial attitude has not been encouraging but hanging on to the classical distinction of sovereign functions. However, there seems to be tiny transformation in the judicial behaviour. Thus, by restricting the concept of sovereign functions, the courts have been, a *fortiorari*, expanding the area of governmental tortious liability. The cases of *Shyam Sunder* v. *State of Rajasthan*,[43] *Union of India* v. *Savita Sharma*,[44] *Khatri* v. *State of Bihar*,[45] *Rudul Shah* v. *State of Bihar*,[46] *Sebastian M. Hongray* v. *Union of India*[47] are illustrative. Be that as it may, the present day law in this area is not attuned to the philosophy of a social-welfare state. Unfortunately, in spite of the recommendations of the Law Commission of India[48] to eliminate the distinction between sovereign and non-sovereign functions, for reasons best known to the policy-makers there has been no parliamentary response. The chapter on government contracts discusses and describes the characteristics and incidents of government contracts. The distinctive features of government contracts in French jurisprudence (*Contracts administratif*), English and American law have been discussed indepth perhaps in order to further the development of this law in India. *Ramana Dayaram Shetty* v. *International Airport Authority*,[49] *Kasturilal* v. *State of Jammu and Kashmir*,[50] *Fertilizer Corporation Kamgar Union* v. *Union of India*,[51] *State of Uttar Pradesh* v. *Shri Charan Sharma*[52] are some of the trend setting pronouncements of the apex court in this area.

Right to information (Chapter XXIII)[53] is a topic of vital interest. This right furthers the concept of an open government. The enunciation of this right would require a balance between secrecy and openness. A scant reference to literature of USA, Australia and New Zealand on this topic in this book is an eye opener for the growth of Administrative Law in India.

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41. *Supra* note 2 pp. 762-807.
42. *Id.*, pp. 809-889.
43. A.I.R. 1974 S.C. 890.
44. A.I.R. 1979 J&K 6.
45. A.I.R. 1981 S.C. 928.
46. A.I.R. 1983 S.C. 1086.
47. A.I.R. 1984 S.C. 1026.
48. Law Commission of India, First Report: Liability of the State in Tort (1956).
49. A.I.R. 1979 S.C. 1628.
50. A.I.R. 1980 S.C. 1992.
51. A.I.R. 1981 S.C. 344.
52. A.I.R. 1981 S.C. 1722; and see Supreme Court's judgment pertaining to Karnataka Government granting contracts for bottling arrack: *Chaitanya Kumar* v. *State of Karnataka*, A.I.R. 1986 S.C. 325.
53. *Supra* note 2, pp. 890-911.

Conscientious advice of Justice Bhagwati, in *S.P. Gupta*[54] is penetrating:

> (Open government) is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception.[55]

The institution of Ombudsman is the subject-matter of discussion of Chapter XXIV.[56] The experiences of Sweden, Finland, Denmark, Norway, New Zealand, England, Australia provide pointers to India in this direction. Needless to say that there is an urgent need to establish an Ombudsman in India in order to further notions of accountability. In 1985, the Central Government introduced the *Lokpal* Bill in the *Lok Sabha*. A succinct discussion of the Bill can be found in the book.[57] The question of exclusion of the office of Prime-Minister from the purview of *Lokpal* requires consideration by the policy-makers. In the view of this reviewer in order to protect its integrity and dignity the office of the Prime Minister should not be excluded. In order to assess the feasibility of this institution in India, empirical studies are required. Empirical findings should aid legislators and administrators.

Chapter XXV of the book is devoted in discussing the significance of public undertakings.[58] Besides their economic importance, public undertakings are also important administrative instrumentalities whose functioning gives rise to a number of administrative law problems. It is this aspect which is dealt with in the last chapter. The endeavours of the courts in recent years have been to bring public enterprises within the purview of: (i) the High Courts' and Supreme Court's writ jurisdiction; (ii) Fundamental Rights guaranteed by the Indian Constitution and (iii) the general principles of administrative law. *Ramana Dayaram Shetty*,[59] *Fertilizer Corporation Kamgar Union*,[60] *Sukhdev Singh* v. *Bhagatram*,[61] *Ajay Hasia* v. *Khalid Mujib*,[62] *Rohtas Industries Ltd.* v. *Chairman, Bihar State Electricity Board*[63] are illustrative of this trend. The most striking point of this chapter is the discussion relating to consumers and public enterprises.

The book is remarkable for its accuracy. It is a brilliant piece of research work. It is compulsory reading for law-persons, administrators, policy-makers, and all those closely interested with administrative law. Unfortunately, the co-author S.N. Jain has been snatched away by the hands

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354. *Supra* note 13.
55. *Id.* at 234.
56. *Supra* note 2 at 912-963.
57. *Id.* lxii-lxvi.
58. *Id.* pp. 964-1055.
59. *Supra* note 49.
60. *Supra* note 51.
61. A.I.R. 1975 S.C. 1331.
62. A.I.R. 1981 S.C. 487.
63. A.I.R. 1984 S.C. 657.

of death. Academics will always miss him. M.P. Jain's personal note in the cherished memory of the departed academician is shared by all those who had been intimately associated with S.N. Jain.

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