BOOK REVIEWS

ADMINISTRATIVE LAW (5th ed. 1991). By S.P. Sathe. N.M. Tripathi Pvt. Ltd., Bombay. Pp. ix+504. Price Rs. 120.

THE RISE of administrative power in the twentieth century is the direct result of advent of the welfare state charged with the promotion of social and economic policies of far-reaching consequences. This, in turn, posed a threat to individual rights and interests. Hence the rapid growth of administrative law as well, the central theme of which is twofold : to control governmental power so as to protect the individual against its abuse, and to compel a public authority to perform its duty in case of default.[1] Over the years, in progressive democracies such as UK and USA, the judiciary has played a significant and major role in the evolution and articulation of a distinct and coherent body of administrative law, although the role of political and other institutions such as the legislature and the ombudsman respectively has its own distinguished place.[2] Scholars have responded to this development by writing treatises on the subject.[3]

India, which has ushered in a welfare state a few decades back, has also witnessed a similar phenomenon and its scholars have also produced some learned works on the subject.[4] The book[5] under review is also a scholarly, authentic and concise presentation of Indian administrative law in a comparative perspective, now running into its fifth edition. The publication of five editions within a period of two decades is ample testimony to its being a widely accepted work.

In comparision to former editions, the fifth has some distinguished features. As the author himself says, a meaningful revision entails substantial rewriting in response to the emergence of new concepts, institutions and law during the intervening period, especially in the case of a fast growing subject like administrative law. This is evident from the incorporation in the present edition of an up-to-date statement and analysis of enacted and decisional law as emerged since the publication of the fourth edition in 1984; and also from meticulous editing done by the author to make the presentation

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1. See, H.W.R. Wade, *Administrative Law* 4-5 (6th ed. 1988).

2. See, generally, S.A. de Smith, *Judicial Review of Administrative Action*. See also *Id.* at 3 and 5 (4th ed. 1980 by J.M. Evans).

3. See, *e.g.*, *ibid*; Wade, *supra* note 1 (first published in 1961). Kenneth Culp Davis, *Administrative Law Treatise*, vol. I-IV (1958).

4. See, *e.g.*, A.T. Markose, *Judicial Control of Administrative Action in India : A Study in Methods* (1956); M.P. Jain and (Late) S.N. Jain, *Principles of Administrative Law* (4th ed. 1986 by M.P. Jain) (first published in 1971).

5. S.P. Sathe, *Administrative Law* (5th ed. 1991).

much more cohesive and meaningful.[6] Besides, some of the prominent additions[7] are as follows :

(*i*) The tribunal system has picked up especially since it was mandated by a constitutional amendment in 1976.[8] Apart from a systematic study of several tribunals, the author has explained in chapter 6 on tribunals, commissions, *etc.*, "the new thrusts in tribunalisation typified by grievance redressal systems" under some recent Acts such as the Family Courts Act 1984, Administrative Tribunals Act 1985 and Consumer Protection Act 1986. His suggestion to establish a body like the Council on Tribunals in Britain to review the working of tribunals merits serious thought.[9] Mention may also be made of a special section on administrative agencies and also of a detailed description of the frameworks of several agencies such as the Election Commission, Monopolies and Restrictive Trade Practices Commission, Press Council and National Commission for Women. There is also a new section on the commissions of inquiries.

(*ii*) In chapter 7 on judicial review of administrative discretion which is obviously a sensitive area, the author has now covered almost the entire case law and highlighted situations in which the judiciary intervened.

(*iii*) A critical examination of public interest litigation (PIL) and that of the judicial policy on admission of writ petitions are, in a way, fresh entries in chapter 8 on reliefs and remedies against administration. The author, in his concluding paragraph, has hailed PIL as a positive development in Indian public law for it "facilitates access to courts and helps deprofessionalisation of the legal process," but, at the same time, he has issued caution against its frequent and unwary use for most of the PIL cases did not progress beyond interim orders or reliefs. He has pointed out the lack of resources on the part of the judiciary as a major impediment in the follow up of its disposals. In the view of the author, and rightly so, "PIL can be meaningful and effective only when the normal judicial process becomes less technical, dilatory and expensive." Otherwise "the PIL is bound to remain a mere tokenism." And "[e]ven as tokenism its value very much depends upon the stature and sincerity of the Judges who operationalise it."[10] Apart from strengthening the judiciary as regards the follow up and reforming the procedure, the state may desist from behaving as an adversary and agree to the relief prayed for in genuine PIL cases. Thus, it would only promote welfare, which it is obliged to under the Constitution and its own laws.

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6. See, "Preface to the Fifth Edition", *id.* at ix.

7. See, *id.* at ix-x.

8. Constitution (Forty-second Amendment) Act 1976.

9. See, also J.K. Mittal, "Plea for Establishment of a Council on Tribunals in India", *Allahabad Law Review* (1969).

10. *Supra* note 5 at 389-90.

(*iv*) In chapter 9 on state liability, the recent trends of awarding compensation for administrative wrongs, and also in the area of promissory estoppel have been analysed. The author has rightly remarked that there is *ad hocism* in the matter of awarding compensation as the same has been limited to a few cases only and reiterated the long pending demand for a legislation on the pattern of the Crown Proceedings Act 1947.[11]

(*v*) A critique of the Prasar Bharati (Broadcasting Corporation of India) Act 1990 and that of the lapsed Lokpal Bill 1989 have been included respectively in chapter 10 on public enterprises and chapter 11 on ombudsman. The author has made a pertinent comment that the bill had a limited scope without providing a proper grievance redressal mechanism to the common man. His suggestion to strengthen the Prevention of Corruption Act 1988 in matters of corruption deserves serious consideration.[12] There is no discussion on *Lokayukta* (the ombudsman in a state). The next edition may supply this omission.[13]

There is always scope for improvement. The author may think of elaborating further the case law in the next edition. However, in the present edition, he has been able to show with clarity the evolution of judicial norms right from an analysis of earlier decisions based on the rule fetichism[14] of procedural due process, in which the courts did not make substantive law inquiries, to an analysis of the vast extensions under the fundamental rights part of the Constitution, as influenced by social realities. It is obvious that he has kept pace with the growth and maturing process of administrative law in India.

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11. *Id.* at 426.

12. *Id.* at 499-500.

13. See, for studies on *Lokayukta*, K.S. Shukla and S.S. Singh, *Lokayukta (Ombudsman in India : A Socio-Legal Study)* (1988) ; Balram K. Gupta, "A Balance-Sheet of State Lokayuktas", 26 *J.I.L.I.* 122-44 (1984); Mary Parmar, "Ombudsman (Lokayukta) in Indian States", 35 *I.j.P.A.* 114-24 (1989); S.N. Sangita and Suvarchala, "The Lokayukta Institution in Karnataka· A Trend Setter for Three Tier Structure Ombudsman in India", *id.* at 904-21.

14. See, Jerome Frank, "Notes on Rule-Fetichism and Realism" (app. II), *Law and the Modern Mind* 264-84 (6th impression 1949).

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