

THE EVOLVING INDIAN ADMINISTRATIVE LAW. By M.P. JAIN.  
[Bombay: Tripathi 1983. 293 pp.]

DEVELOPMENTS in Indian administrative law are not so well-known outside India as are the original, and sometimes complex constitutional doctrines that have emanated from the hard-working Supreme Court of India. The contributions made by that court to the growth of administrative law have now been recognised by both Indian scholars like Professor Jain and others like Professor Wade. For many years after independence Indian Judges were content to follow English cases, but in the 1970s their decisions showed they had clearly grown in confidence in dealing with the realities and problems faced by both the civil administration and the individual citizen of India. Considering that almost every public law issue there partakes of some of the complexity of a large democracy, one in which Judge's activist role seems almost inevitable and is not frowned upon politically, administrative law decisions are much more than exigesis on theory.

In the Public Law area as a whole Indian Judges have assumed a role of benign paternalism. In administrative law it is manifested in their willingness to identify political interference in administrative decisions—interference that falls outside of any legislative policy lawfully sanctioned—and secondly, in their activism in showing the relevance of the high ideals of the Constitution of India to actions of the administration thought to be just 'routine'. The variety of administrative law cases decided by Indian courts, as Professor Jain's work shows, have included cases brought by students seeking admission to Universities, civil servants seeking to protect their seniority in service, business firms aggrieved over import/export licences and contractors 'black-listed' by government agencies, to name only a few.

Professor Jain seeks to substantiate in detail the nature and extent of the contribution made by the Indian Supreme Court to this area. Appropriately, he starts with a section on 'Judicial creativity' and covers, besides the traditional topics like 'delegated legislation' and 'natural justice', less familiar ones like 'promissory estoppel', 'conferment of benefits' (by public institutions upon selected members of the Public) and 'government contracts'. In view of the extensive Public sector undertakings in India, Professor Jain has included a section on 'government undertakings'. In the introductory section and in the 'Epilogue' at the end of the book, the author offers a number of interesting comments.

While clearly acknowledging the admirable role played by the Supreme Court ("If Indian Administrative Law has been transformed from a colonial to a modern democratic system, then the credit for the same goes to the judiciary." p. 3), he says that often the Courts pay too much deference to 'administrative judgment'. I have heard senior civil servants in India complain that Indian court decisions tend to be indifferent to the paucity of options open to the government authorities and that the decisions have been responsible for inordinate delays in implementing vital policies of the government. These comments show the extent of fine tuning that the Supreme Court has to undertake, bearing in mind the interests of the individual as well as the Public's interest at large. After all, in every country where Rule of Law prevails this poses a challenge for administrative law.

In section II of his work, the author lists a number of trends that he is able to glean from recent decisions of the Indian Supreme Court. I found it useful but I felt the author could have indicated some of the important questions the Court had to consider under each of the trends. I felt that some sort of elaboration, however brief, might whet the readers' appetite even more.

Professor Jain, who is the author of a standard work on Indian Administrative Law, has managed to describe the evolving trends within the short compass of this book, most of which can be followed even by a relative beginner in the subject. I enjoyed, in particular, the clear analysis and comment in the sections on 'Delegated Legislation' and 'Promissory Estoppel'. In India the notion of excessive delegation and the resultant invalidity are based on two grounds: 1) There are essential legislative functions which the Constitution has charged the legislature with the duty of performing and 2) No executive official may exercise such wide powers under a statute that it amounts to laying down afresh, or completely altering, the legislative direction on which the statute is based. The position, however, has been controversial in Indian law ever since the long and diffused judgments in the early case of *Re Delhi Laws Act* (A.I.R. 1951 S.C. 332). The uncertainties remain partly due to the strong attempts by Mathew J. of the Supreme Court to cast serious doubts on the very principle of excessive delegation of powers. It is true that the notion is not part of English law and has periodically waxed and waned in the U.S. But the author contends that even though it turns out to be a weak device for judicial review of administrative actions, the notion is nonetheless necessary in a country such as India with an elaborate written constitution. Another area where

Indian law is awaiting a clear pronouncement of the Supreme Court relates to 'promissory estoppel' invoked and applied against government authorities. As the author says there is a conflict of values here:

- (1) it is clearly unfair that a person should suffer as a result of his reliance on official advice; but
- (2) should an authority be prevented from discharging its legitimate duty because of a promise or representation made by it earlier? (p. 135).

Again the position in English Law that there could be no estoppel against exercise of official discretion has been radically departed from by the Indian Supreme Court though there is a recognition that no principle of estoppel would apply against the legislative process.

Professor Jain analyses good many cases in which there has been active pronouncements of principles applicable to India. Many of these decisions are recent and they largely reflect the thinking of Bhagwati and Krishna Iyer JJ. of India's Supreme Court. It is clear from the author's analysis that Bhagwati J. sees the need to clarify and consolidate many of the crucial areas of administrative law in India.

The sections on 'locus standi' and 'privative clauses' were, I felt, brief. Considering their importance and interest they deserve a more detailed analysis and evaluation. This may be a matter for a future edition.

There is no doubt that this timely publication would be read carefully by lawyers and judges in India, for, it raises many issues vital to further evolution of administrative law in that country.

The book is poorly produced by a firm of publishers who are the premier publishing house in India, Tripathis. Apart from the poor get up of the book, a number of printing mistakes have generated words hitherto unknown to the English language, *e.g.* *cjudiary* and *approisedand* both of which can be found in the Preface. Professor Jain's works deserve much closer attention from the publishers.

I do hope there would be further editions of this work.

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