ADMINISTRATIVE LAW. By I.P. MASSEY, (2nd Edition). [Lucknow: Eastern Book Company. 1985. L+489 pp. Softcover: Rs. 60.00]

THE book was first published in 1980. Because of subsequent developments in the field of Administrative Law and a number of decisions of the Indian courts, it was revised in 1985. Veritably, there has been

a plethora of cases relating to Administrative Law decided by the Indian courts and particularly the Supreme Court.[1] Yet, barring a handful of cases, most of those referred to were decided prior to 1980. Even a case reported as early as 1983 is referred to in a newspaper. Probably it was the reliance on the newspaper report that resulted in the misrepresentation of the case of *Punjab Engineering College, Chandigarh* v. *Sanjay Gulati.*[2]

The Punjab Engineering College had admitted among others, eight candidates because, by chance, they were present in the campus, seven candidates for being the wards of its employees and one candidate for reasons not given in the judgment. The High Court of Punjab and Haryana annulled all these admissions because they were contrary to the rules of admissions. On appeal, the Supreme Court, however, held that their removal after studying for two semesters was "unjust" and as such ordered that they be allowed to continue their education. Since sixteen desirable candidates were not given admission, the Supreme Court directed the creation of sixteen supernumerary seats in the next academic year, so that they could be filled in order of merit by the candidates who were not admitted. The Supreme Court did not affirm the decision of the High Court but actually reversed it. The decision is cited as an authority for the judicial control of arbitrary administrative action. Yet the decision is inimical to the maxim *Jus ex injuria non oritur* and a poor precedent for judicial redress for administrative arbitrariness as the exercise of arbitrary discretion was upheld.

In his research, the author did not proceed empirically but relied on secondary sources. Dealing with the rule of Law he suggests that a survey of Indian decisions would lead to a conclusion that the concept has imposed "an affirmative duty of fairness on the government".[3] The decisions, and their *ratio decidendi,* should have been cited for justifying such a conclusion. Instead a passage from the work of Professor Upendra Baxi, who contributed an introduction to the book, is cited. Similarly, instead of explaining the passages from the judgment in *A.D.M. Jabalpur* v. *Shivkant Shukla*,[4] which suggests that a detention order in an emergency violates the principles of rule of law, Professor Baxi is cited.

While encomia are extended to the apex judiciary for extending the reach of the doctrine of rule of law to "the poor and down trodden",[5] the decision in *Ram Jawaya Kapur* v. *State of Punjab* [6] is not even referred to, in which case unlike the American *Steel Seizure Case,*[7] the Supreme Court of India recognized the inherent power of the executive to embark upon the enterprise of textbook publication without statutory or constitutional authorization.

In considering the doctrine of separation of powers no reference is made to the *Delhi Laws Case.*[8] Justice Mukherjea had emphasised

[1] These cases may be found in the annual index in the All India Reporter as well as the *Supreme Court Yearly Digest,* S. Malik, ed.
[2] A.I.R. 1983 S.C. 580.
[3] At p. 29.
[4] A.I.R. 1976 S.C. 1207.
[5] At p. 37.
[6] A.I.R. 1955 S.C. 549.
[7] *Youngstown Sheet and Tube Company* v. *Sawyer,* 343 U.S. 579. (1952).
[8] A.I.R. 1951 S.C. 332.

that the doctrine of separation of powers has no place in the system of government that India has. Patanjali Sastri, J. unequivocally explained that the historical background and political environment that influenced the making of the American Constitution were absent in India and that there is nothing to indicate that the framers of the Indian Constitution have made the American doctrine an integral part of the Indian constitution.

Regarding the authorities amenable to the writ jurisdiction of the Supreme Court under Article 32 an issue is raised as to whether courts are amenable to such jurisdiction. While "courts of law" are not included in the definition of "state" in Article 12, (the first article in the part dealing with Fundamental Rights), neither are they excluded. Indeed the Judiciary is a part of the "state". Under Article 13 any law, ordinance, order, by-law, rule, regulation, notification and the like which violates fundamental rights is void. Article 145 gives the Supreme Court the rule making power, and if it were not encompassed by the term "state" for the purposes of fundamental rights, the rules could not be impugned as contravening the fundamental rights. Yet, the Supreme Court struck down its own rules as being violative of the fundamental rights in *Prem Chand Garg* v. *Excise Commissioner.*[9] Only a passing reference is made to such an important case.

The question whether the judiciary was "the state" as defined in Article 12 was considered by a bench of nine judges of the Supreme Court in *Naresh Sridhar Mirajkar* v. *The State of Maharashtra.*[10] Tarkunde, J., a judge of the Bombay High Court, issued an oral order that the testimony of a witness should not be published. A writ and petition to quash that order were dismissed by the Bombay High Court because a writ could not issue from a bench of the High Court to another bench. The petition filed by journalists who were affected by the order before the Supreme Court was considered by a bench of nine judges and dismissed by 8 to 1. Hidayatullah, J.. though in the dissent, formulated the question: "(i) Can a court, which is holding a public trial from which the public is not excluded, suppress the publication of the deposition of a witness, heard not *in camera* but in open court, on the request of the witness that (otherwise) his business will suffer; (ii) does such an order breach (the) fundamental right of freedom of speech and expression entitling persons affected to invoke Article 32; and (iii) if so, can this court issue a writ to a High Court?"[11] This case has not even been considered.

The suggestion that every individual person who imperils another's fundamental rights should be amenable to the writ jurisdiction of the Supreme Court is too sweeping. The significance of fundamental rights only as constraints against state action and the difference between fundamental rights and ordinary rights in the Indian constitutional context are not appreciated. Indeed, the very basis of judicial review in India is Article 13 which in unequivocal terms postulates that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void." The first provision to regard an action as unconstitutional as being violative of fundamental

[9] A.I.R. 1963 S.C. 996.
[10] A.I.R. 1967 S.C. 1.
[11] At p. 25.

rights is the definition of the action as "law" in Article 13(3)(a). A private individual does not possess the authority to promulgate the law.

In dealing with social action litigation, the case of *Fertilizer Corporation Kamgar Union* v. *Union of India*,[12] is cited as the basis for the proposition that the *locus standi* doctrine is "being gradually widened".[13] In that case the employees' union sought to prevent a government corporation from selling certain plants and equipment belonging to the factory. Speaking for the majority, Chandrachud, C.J., held: "The workers … can no more complain of the infringement of their fundamental rights under Article 19(l)(g)[14] than can a Government servant complain of the terminaiton of his employment on the abolition of his post. The choice and freedom of the workers to work as industrial workers is not affected by the sale. The sale may at the highest affect their locum, but it does not affect their locus, to work as industrial workers".[15] Krishna Iyer, J.'s observations which are paraphrased are in a separate judgment. The startling resemblance in the summary of Krishna Iyer J.'s observations in this book and the article on "Public Interest Litigation" by Professor M.P. Jain[16] cannot escape the attention of a meticulous observer.

The book under review is not free from editorial infirmities either: At pages 37 and 38 the contribution of the International Commission of Jurists to the rule of law is suddenly intercepted without basis by a judgment of the Supreme Court. Further, the bottom line on page 282 ought to have been the top line of the page.

It is difficult to see the relevance of "Finality of Administrative Action" (including the ouster clauses) in the Chapter on "Doctrine of Locus Standi and Social Action Litigation." The same comment can be made about the texts of the American Administrative Procedure Act, the Federal Tort Claims Act, the Tribunals and Enquiries Act, the Crown Proceedings Act, the Statutory Instruments Act, the Freedom of Information Act and the Lokpal Bill, all of which cover more than fifty pages in the appendices and to which only occasional references are made in the text.

In spite of such shortcomings it is a good introductory book on Administrative Law with particular significance to India. It has all the chapters of a textbook. At the end of each chapter there are points for discussion and suggested readings. The materials however require updating. For example, De Smith's 3rd edition and Wade's 1967 edition are cited whereas much more recent editions are available. There is an interesting introduction dealing mainly with social action litigation by Professor Upendra Baxi. A foreward by the Chief Justice of India, P.N. Bhagwati adds to the prestige of the book.

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[12] A.I.R. 1981 S.C. 344.
[13] At p. 276.
[14] Freedom of occupation. Footnote is not in the judgment.
[15] At p. 348.
[16] (1984) 1 M.L.J. cvi. Compare p. cxxii with pp. 276-277 of the book under review.