



Research Paper

The Scope and Extent of Judicial Review in Administrative Action

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Abstract: “If judicial review means anything, it is that judicial restraint does not allow everything.”
~ Don Willett

Administrative law has an enormous social function to perform and it is the body of the reasonable limitations and affirmative action which are developed by the legislature and the courts to maintain and sustain the rule of law. A strong, independent and impartial judiciary is a sine qua non of any system of government, excluding dictatorship. In each country the judiciary plays the key role of interpreting and applying the law and deciding the disputes between one citizen and the other and between a citizen and state. Where there is a written constitution, the courts perform the additional function of safeguarding the supremacy of the constitution by interpreting and applying its provisions and keeping all authorities within the limits of the constitution. Judicial review is a great institution and is a fundamental arch of the system of checks and balance without which no democracy worth the name can function. Judicial Review basically is an aspect of judicial power of the state which is exercised by the courts to determine the validity of a rule of law or an action of any agency of the state. The courts through writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto control the administrative actions. The important source of administrative law is the statutes, statutory instruments, precedents and the customs. In the process of judicial review of legislative and executive action, the courts pick out the golden thread of reason and meaning in a law; they shape and mold the law, reveal its fitness and nuances, smooth the angularities, strike down the bad law or illegal action, and most essential to all, exert the strong moral forces of restraint in times when expediency is all. The first part of this paper deals with the concept of administrative action under administrative law and judicial review. Further, the author will put some light on the grounds of judicial review along with remedies available as judicial review against administrative action. Thus, to conclude that to provide safeguards to the general public as well as the administrative official, judicial review is very important.

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I. THE BACKDROP

Administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction where decision is based on policy and expediency. It does not decide a right though it may affect a right. However, it does not mean that the principles of natural justice can be ignored completely when the authority is exercising administrative powers. Unless the statute provides otherwise, a minimum of the principles of natural justice must always be observed depending on the fact situation of each case.

In case *A.K. Kraipak v. Union of India*², the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Judicial Review of Administrative action is part of enforcing the constitutional discipline over the administrative agencies while exercising their powers. It has origin in England which was adopted in common law countries. India too inherited the idea of judicial review from England. India had laid its structure on

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² *A.K. Kraipak v. Union of India*, AIR 1970 SC 150.

English prerogative with pattern which was issued by the court of King's Bench with a view to exercise general superintendence over the due observance of law by officials/ authorities while performing judicial or non-judicial functions. Judicial Review is a great weapon through which arbitrary, unjust, harassing and unconstitutional laws are checked. Judicial review is the cornerstone of constitutionalism, which implies limited Government.

Though administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable. In the process of judicial review of legislative and executive action, the courts pick out the golden thread of reason and meaning in a law; they shape and mold the law, reveal its fitness and nuances, smooth the angularities, strike down the bad law or illegal action, and most essential to all, exert the strong moral forces of restraint in times when expediency is all. The evolution of administrative law led to tremendous increase in the power of the administrative authorities. There is saying that "absolute power corrupts absolutely" and with great powers come great responsibility, so there is a need to check the administrative actions of the administration agencies and the most efficient way is the judicial control as it is way more effective than that of executive and administration.

ADMINISTRATIVE ACTION UNDER ADMINISTRATIVE LAW

Administrative law was recognized as a separate branch of legal discipline in the mid-20th century in India. Until well into the nineteenth century, the responsibilities of the state were few and limited, consisting of the maintenance of public order, the conduct of foreign affairs and the disposition of the armed forces. Nowadays, it's far different.

In the interests of protecting the public and maintaining law and order, the state intervenes into the lives of its citizens to a very considerable degree. The actions which are carried out under the administrative law are called administrative actions.

An administrative action is a legal action which is concerned with the conduct of a public administrative body. This kind of action can compel an authority to take a certain action. It does not decide a right though it might affect a right. The principles of natural justice cannot be ignored while exercising "administrative powers".

The administrative action means power of taking an action being administratively discreet.³ It implies authority to do an act, or to decide a matter of discretion. The administrative authority vested with discretion is suffered with an option, and thus is free to act in its discretion. Legally he cannot be compelled to pass an order, if he is under no compelling duty to do so. He is free to act, if he deems necessary or if he is satisfied of the immediacy of the official action on his part. For what he does he is neither obliged to give reason, nor can be required to answer for it in a law court. His responsibility lies only to his superiors and the Government.⁴

II. JUDICIAL REVIEW

Judicial review has been recognized as a necessary and basic requirement for the construction of an advanced civilization to safeguard the liberty and rights of the citizens. The power of judicial review in India is significantly vested upon the High Courts and the Supreme Court of India. Judicial review is the court's power to review the actions of other branches of government, especially the court's power to deem invalid actions exercised by the legislative and executive as 'unconstitutional'.

Judicial review means the review made by the courts of administrative actions with a view to ensure their legality. Administrative authorities are given powers by statutes and such powers must be exercised within the limits of the power drawn by such statutes.⁵

Judicial Review is the power of Courts to pronounce upon the constitutionality of legislative and executive acts of the government which fall within their normal jurisdiction. When the Legislature, Executive and Judiciary have harmed the constitutional values and deny the rights, which have been definite under the Indian Constitution to the Indian inhabitants. In such circumstances the judicial review plays very important role as protector for safeguarding the rights of people.

Under the statutory and constitutional provisions, the courts have the wide range of powers of judicial review in India. It is to state that the constitutional and statutory provisions of judicial review are totally different. The courts must exercise these powers with self-control and great caution. It is not expected from the courts that they phase out from the boundary of their appropriate influences of judicial assessment. The constitution of India provides an express provision for judicial review in the shape of Article 13.

The superior Supreme Court at the central level and the High Courts at the states level have the power to review administrative actions through various writs in the nature of habeas corpus, mandamus, certiorari, prohibition

³ *Union of India v. Kuldeep Singh*, (2004) 2 SCC 590.

⁴ M.C. Jain Kagzi, *The Indian Administrative Law*, (2002) 98.

⁵ Prof. I. P. Massey, *Administrative Law*, pp.62, 8th edition.

and quo warranto under Article 32 and 226 of the Indian Constitution respectively. The writs which we follow in India have been borrowed from England where they have a long history of development; consequently, they have gathered a number of technicalities.⁶

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Judicial review of administration is, in a sense, the heart of administrative law. It is certainly the most appropriate method of inquiring into the legal competence of a public authority. The aspects of an official decision or an administrative act that may be scrutinized by the judicial process are the competence of the public authority, the extent of a public authority's legal powers, the adequacy and fairness of the procedure, the evidence considered in arriving at the administrative decision and the motives underlying it, and the nature and scope of the discretionary power.

The judicial control of administrative action provides fundamental safeguards against the abuse of power. Since our Constitution was built upon the deep foundations of rule of law, the framers of the Constitution made sincere efforts to incorporate certain article in the Constitution to enable the courts to exercise effective control over administrative action. Pure administrative action involves both Statutory and non-statutory functions which can be covered subjected to judicial review through various modes for which the proper remedy may be to issue an appropriate writ.

In *State of Bihar v. Subhash Singh*⁷, the Court held that, judicial review of administrative action under Arts. 32 and 226 of the Indian Constitution is valid, judicial review of administrative actions is an essential part of the rule of law.⁸

In *Federation of Railway officers Association & others v. Union of India*⁹, the Supreme Court observed that, where a policy evolved is inconsistent with the Indian Constitution and the law is arbitrary or irrational or its leads to abuse of power, the court will interfere with such matters because judicial review of administrative actions is an essential part of rule of law.

In the case of *Noble Resources Ltd. v. State of Orissa*¹⁰, the court stated that it can interfere in the contract given by government to avoid any malafide intention and to avoid the favoritism of government towards some influential people.

In the case of *Union of India v. S.S. Ahluwalia*¹¹, the court stated that in the case of penalty that are imposed on the basis of disciplinary action are limited, the court could only interfere when the punishment given for the charges alleged may be not suitable.

GROUND OF JUDICIAL REVIEW

The doctrine-ultra-vires is the basic structure of administrative law. It is considered as the foundation of judicial review to control actions of the administration. Ultra-vires refers to the action which is made in an excessive manner or outside the ambit of the acting party.

The grounds of judicial review were given by Lord Diplock of England in the case of *Council of Civil Service Union v. Minister of Civil Service*¹². Though these grounds of judicial review are not exhaustive, yet these provide an apt base for the courts to exercise their jurisdiction.

Generally, there are five grounds for judicial review in India and are as follows-

- **Jurisdictional Error:** The term 'jurisdiction' means the power to decide. There might be a 'lack of jurisdiction', 'excess of jurisdiction' or 'abuse of jurisdiction'. The court may reject an administrative action on the ground of ultra vires in all these three situations.

A case of 'lack of jurisdiction' is where the tribunal or authority holds no power or jurisdiction at all to pass an order. The court may review this administrative action on the ground that the authority exercised jurisdiction which it was not supposed to.

A case of 'excess of jurisdiction' covers a situation wherein though the authority initially had the jurisdiction over a matter but then it exceeded and afterwards its actions become illegal.

All administrative powers must be exercised bona fide and fairly. If the powers are abused, it will give rise to a ground of judicial review.

⁶ *Basappa v. Nagappa*, AIR 1954 SC 440; (1951) 1 SCR 250.

⁷ *State of Bihar v. Subhash Singh*, AIR 1997 SC 1390 and *N.R. Nair v. Union of India*, AIR 2001 SC 2337.

⁸ *Minerva Mills v. Union of India*, (1980) 3 SCC 625.

⁹ *Federation of Railway officers Association & others v. Union of India*, AIR 2003 SC 1344.

¹⁰ *Noble Resources Ltd. vs. State of Orissa*, AIR 2007 SC 119.

¹¹ *Union of India v. S.S. Ahluwalia*, AIR 2007 SC 2952.

¹² *Council of Civil Service Union v. Minister of Civil Service* (1984).

- **Irrationality:** A general established principle is that the discretionary power conferred on an administrative authority should be exercised reasonably. A decision of an administrative authority can be held to be unreasonable if it is so outrageous in its defiance of logic or prevalent moral standards that no reasonable person who had applied his mind to the subject could have arrived at it.

‘Irrationality’ was developed as a ground of judicial review in the *Associated Provincial Picture House v. Wednesbury*¹³ case which later came to be known as the ‘Wednesbury test’.

The court laid out three conditions in order to conclude the right to intervene-

- i. In arriving at the decision, the defendant took into consideration the factors that ought not to have been taken into, or
 - ii. The defendant failed to take into consideration the factors that ought to have been taken into, or
 - iii. The decision was so unreasonable that any reasonable authority would never consider imposing it.
- The court held that it could not intervene to change the decision of the defendant simply because it disagreed with it.

- **Procedural Impropriety:** It is a failure to comply with the laid down procedures. Procedural Impropriety is to cover two areas which are failure to observe rules given in statute and to observe the basic common-law rule of justice.

Ridge v Baldwin¹⁴ is an exclusive case where procedural fairness shows its insistence on the judicial review irrespective of the type of body determining the matter. Ridge, the Chief Constable of Brighton was suspended on the charges of conspiracy to obstruct the course of justice. Despite the clearance of allegations against Ridge, the Judge made comments which criticized Ridge’s conduct. Following that, Ridge was dismissed from the force but he was not invited to attend the meeting which had decided his dismissal. Later, he was given an opportunity to be heard before the committee which had dismissed his appeal. Ridge then appealed to the House of Lords that the committee had totally violated the rules of natural justice. This case has been important because of the emphasis on the link existing between the right of a person to be heard and the right to know the case brought against him.

- **Proportionality:** Proportionality means that the concerned administrative action should not be more forceful than it requires to be. The principle of proportionality implies that the court has to necessarily go into the advantages and disadvantages of the action called into question. Unless the so-called administrative action is advantageous and in the public interest, such an action cannot be upheld. This doctrine tries to balance means with ends.

Courts in India have been adhering to this doctrine for a long time but Courts in England started using it after the passing of the Human Rights Act, 1998. In the test of proportionality, the court quashes the exercise of discretionary powers in which there is no reasonable relation between the objective to be achieved and the means of achieving it. If the administrative action is disproportionate to the mischief, it will be quashed.

In **Hind Construction Co. v. Workmen**¹⁵, some workers called for a holiday and remained absent. They were later dismissed from service. The court held that the workers should have been warned and fined instead of abruptly being dismissed in a permanent manner. It was out of the question to think that any reasonable employer would have given such extreme punishment. The court held that the punishment imposed on the workmen was not only severe but also disproportionate.

- **Legitimate Expectation:** This doctrine serves as a ground of judicial review to protect the interest when a public authority rescinds from a representation made to a person. A legitimate expectation arises in the mind of the complainant who has been led to understand expressly or impliedly that certain procedures will be followed in reaching a decision. The expectation has a reasonable basis. This doctrine has evolved to give relief to the persons who have been wronged because of the violation of their legitimate expectation and have not been able to justify their claims on the basis of law.

Two considerations determine legislative expectations-

¹³ *Associated Provincial Picture House v. Wednesbury* (1947).

¹⁴ *Ridge v Baldwin* (1963).

¹⁵ *Hind Construction Co. v. Workmen* (1965).

i. Where an individual or group has been led to believe impliedly or expressly that a certain procedure will apply.

ii. Where an individual or group relies upon a particular policy or guideline which has previously governed an area of executive action.

In *Regina v. Liverpool Corporation ex parte Liverpool Taxi Fleet Operators Association*¹⁶, the Corporation had given undertakings to the effect that the taxi drivers' licenses would not be revoked without their prior consultation. But the corporation acted in the breach of its undertaking. The court ruled that the taxi drivers had a right to be consulted.

REMEDIES AGAINST ADMINISTRATIVE ACTIONS

In modern democratic countries like India, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence the need for a control of the discretionary powers is essential to ensure that 'rule of law' exist in all governmental actions. Lord Dyson said that "there is no principle more basic to our system of law than the maintenance of rule of law itself and the constitutional protection afforded by judicial review." The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable.

Article 32 and 226 of the constitution of India has designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action to the notice of the court. The importance of remedies generally is reflected in the maxim *ubi jus ibi remedium* - where there is a right, there is a remedy.

Under Articles 32 and 226, the Supreme Court and High Courts have power to issue prerogative writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the protection of fundamental right enshrined in part III of the Indian Constitution.¹⁷

Five types of writs are available for judicial review of administrative actions.

- *Habeas Corpus*: It means "have the body". This writ is issued as an order calling upon the person who has detained another person to produce the detainee before the court of law. If the court finds out that the detention has been illegal or without legal justification, it will order for the immediate release of the detainee. The main objective of this writ is not to punish the detainer but to release the detainee from wrongful detention.
- *Mandamus*: It means 'to command the public authority' to perform its duty. It is a command given by the higher courts (High Courts and Supreme Court) to the Government, Inferior courts, tribunals, corporations, authorities or any other person to do any act or refrain from doing an illegal act. The purpose of this writ is to compel the performance of public duties and to keep control over the activities of the administration.
- *Quo warranto*: The word 'quo warranto' means by what authority. Such writ is issued against a person who usurps a public office. The court directs the concerned person to show by what authority he holds that office. The unauthorized or illegal usurper would be removed by judicial order and the right person belonging to it would be entitled to it.
- *Prohibition*: Prohibition is issued by a superior court to an inferior court or tribunal or body exercising judicial or quasi-judicial functions to prevent them from exceeding their jurisdiction. It is based upon the maxim 'Prevention is better than cure'.
- *Certiorari*: This writ is issued by the Superior Courts (High Courts and the Supreme Court) to the inferior court or tribunal or body which may exercise judicial or quasi-judicial functions, for the correction of jurisdiction or error of law committed by them. If any order passed by them is illegal, then the Superior Court may quash or demolish it. Grounds of this writ are excess or failure to exercise the jurisdiction, violation of the principles of natural justice, authority has failed to correct an error which has been apparent on the face of the record.

BALANCING THE SCENARIO

Judicial review of administrative action is one of the important components of Administrative Law. It is inherent in our constitutional scheme which is based on rule of law and separation of power. It is considered to be the basic feature of our Constitution, which cannot be abrogated even by exercising the constituent power of parliament.¹⁸ It is the most effective remedy available against the administrative excesses. The main object is

¹⁶ *Regina v. Liverpool Corporation ex parte Liverpool Taxi Fleet Operators Association* (1972).

¹⁷ Article 32(2) of the Indian Constitution.

¹⁸ *Keshavananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

to keep the administration within the limits of law and to protect the rights and safeguards interests of citizens. It is, thus, the very heart and soul of administrative law.¹⁹

It is suggested that:

- There should be one uniform definition of administrative law which defined the administrative law in a more precise and accurate form which should take into account the contemporary trend of the administrative law and can also be helpful for the times to come.
- To establish sound administrative laws and procedures for public welfare, the active participation of people is very essential.
- To provide cheap and speedy justice, it should be ensured through legislation that tribunals should work properly and effectively.
- Administrative law should be codified for transparent and effective administrative working.
- Administrative authorities should use discretionary powers in good faith and for a proper, intended and authorized purpose. They need to act in a reasonable and impartial manner.
- Judiciary has to evolve continuously new principles, standards, guidelines and parameters so that discretionary powers conferred on the administration may not misuse.

III. CONCLUSION

In India, the concept of judicial review is quite broad. Although, there are certain safeguards that are provided to the administration with regards to their discretion. But due to the immense power that is given to the administrative agencies and the concept of the delegated legislation make the point of judicial review quite valid and important as well. The concept of judicial review stands equally important to the scenario of America, the judicial review is quite important for the American constitution as well. In our country, judicial review has been updated through various case law but one concept is clear for the Finality Clause that our constitution empowers the powers to the hands of the President in the case of conflict the decision of the President will be regarded as final. Thus, to provide safeguards to the general public as well as the administrative official, judicial review is very important.

Judicial review of administrative action is, in a sense, the heart of administrative law. It is an excellent way of inquiring into the legal competence of a public authority. Judicial review is considered to be the basic feature of our Constitution. With the tremendous increase in powers of the administrative authorities, judicial review has become an important area of administrative law. The main purpose of judicial review is to protect the interest of its citizens from the excessive powers or illegal actions of the administrative authorities.

Since our Constitution was built upon the deep foundations of rule of law, the framers of the Constitution made sincere efforts to incorporate certain article in the Constitution to enables the courts to exercise effective control over administrative action. Pure administrative action involves both Statutory and non-statutory functions which can be covered subjected to judicial review through various modes for which the proper remedy may be to issue an appropriate writ under Articles 32 and 226 of the Indian Constitution.

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¹⁹ *T.K.Rangarajan v. Government of T.N.*, AIR 2003 SC 3032; *L.Chandra Kumar v. Union of India*, AIR 1997 SC 112.