
JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

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ABSTRACT

Administrative law is focused on judicial review of administrative decisions in several ways. It's a sensible way to see if a government entity is operating legally. Judicial review is a basic feature of our Constitution. As administrative authorities' powers have expanded significantly, judicial review has become an important area in administrative law. The primary purpose of judicial review is to protect citizens' interests from administrative authorities' abuse of authority or unlawful acts. Under the light of this area, this paper examines one pertinent question, which is whether the judicial review protects the citizens from the abuse of power by the administrative authorities. The main objective of the study is to analyze the relation between the judicial review and administrative action. The paper even aims to analyze the connection between the constitutional and administrative law. Considering the objective of the paper, the method of research is a doctrinal type of research. The information is based on secondary data such as decisions of the Supreme Court and High Court relating to the administrative law and the research journals, online articles and newspaper articles that were previously published

Key words: Administrative law, Judicial review, administrative actions, Constitution of India.

INTRODUCTION

Administrative law is a natural consequence of the government's expanded socioeconomic roles and forces. Administrative law, in a broader sense is the study of how decisions are made in areas of our government that aren't legislatures or courts. Administrative departments are commonly found in the executive branch of government and oversee the day-to-day operations of government. The legislature creates agencies and assigns them unique duties. These activities are carried out by the agencies by making different decisions and supervising the processes by which the decisions are carried out.¹ Administrative law has developed as a result of a shift in thinking about the position and function of government. The transition from a laissez-faire to a social welfare state has resulted in a shift in the state's position.

India was a 'police state' prior to 1947. The dominant international power was solely concerned with consolidating its own dominance and was unconcerned about the welfare of the people. However, the Preamble to the Constitution, which enumerates the great aims and socio-economic goals, introduced the idea of a 'social welfare state' after independence. The Indian constitutional system's economic, social, and political objectives are outlined in the Directive Principles of State Policy. Since achieving socioeconomic justice is a deliberate aim of state policy, the frequency at which ordinary people come into direct contact with state authorities is increasing dramatically and inexorably. Administrative law is a powerful tool for achieving balance between power and justice.

Administrative law often encompasses the mechanisms for keeping administrative agencies in check and ensuring that they are successful in serving individuals. The 'review method' is the technical term for this control mechanism. Courts regulate administrative acts through writs of habeas corpus, mandamus, certiorari, prohibition, and quo-warranto, as well as courts exercising ordinary judicial powers through suits, injunctions, and declaratory actions. If access to justice is simple and swift, it will discourage administrative agencies from adopting a 'fly-now, pay later' mentality². Access to Justice encompasses procedural conveniences such as fast, inexpensive, and less formal legal aid, the availability of advocates for public interest litigation, the party's intellectual capacity, and the judges' active involvement.

¹ William F. Fox, Jr., 'UNDERSTANDING ADMINISTRATIVE LAW' (LexisNexis) accessed 15th March 2022) < https://www.lexisnexis.com/documents/pdf/20090218103837_large.pdf>

² M Rama Jois and Upendra Baxi, *Services under the state* (1st, N.M. Tripathi, Bombay 1987)

ADMINISTRATIVE LAW IN INDIA

ADMINISTRATIVE LAW AND CONSTITUTIONAL LAW

As per Holland, constitutional law defines the different government organs when they are at rest, while administrative law defines them when they are in motion. As a result, according to him, the composition of the legislature and the executive is governed by constitutional law, but their operation is governed by administrative law.³ Administrative law, according to Jennings, is concerned with the structure, roles, powers, and duties of administrative authorities, while constitutional law is concerned with the general concepts relating to the organization and powers of the various institutions of the State, as well as their reciprocal relationships and relationships with individuals. The distinction between constitutional law and administrative law is not as blurred in countries with written constitutions as it is in England. In such countries, the Constitution serves as the source of civil law, while legislation, legislative instruments, precedents, and customs serve as the source of administrative law.⁴

Whatever the arguments, the truth remains that administrative law is now accepted as a distinct, autonomous branch of the legal profession, even though the fields of constitutional and administrative law occasionally overlap. The right direction appears to be that if two circles of administrative law and constitutional law are drawn together, they can overlap at some stage, and this region may be referred to as the administrative law's 'watershed.' The entire control mechanism given in the Indian Constitution for the control of administrative authorities can be included in the watershed (i.e Article 31 and 226). It may also include an examination of constitutional limits on delegation of powers to administrative authorities, as well as constitutional requirements that impose restrictions on administrative action, such as Fundamental Rights.

JUDICIAL REVIEW AND ADMINISTRATIVE ACTIONS

Every organ of the governance structure is involved in decision-making and policymaking in a parliamentary democracy. Although each organ has its own set of powers and roles, it's important to remember that they all serve people's needs and wants at the end of the day. In a

³ Holland, *Constitutional Law of English* 510 (1st ed.)

⁴ Team of Law times Journal, 'Relationship between Constitutional Law and Administrative Law' (Law times Journal 2019) accessed 14th March 2022 < <https://lawtimesjournal.in/relationship-between-constitutional-law-and-administrative-law/>>

democracy, the rule of law becomes the foundation for social equality, and it can only be enforced by the judiciary. The rule of law, which is a fundamental aspect of the Indian Constitution, requires judicial review. The Judiciary is distinct and independent, with broad powers to adjudicate disputes, impose fines and penalties, and, most importantly, interpret the law. Judicial review is based on two theories: limited government theory and the theory of two laws (ordinary law and supreme law)⁵. Courts have certain rights, one of which is to declare void, or unconstitutional certain legislative or executive decisions or actions based on their constitutionality. The concept's goal is to ensure that any ordinary law act that violates the constitution is declared void, and that an institution with the power or authority to declare such an act void is required for state governance. In the case of *L. Chandra Kumar v Union Of India*⁶, the Supreme Court said that "Definition of judicial review in the American sense is equally applicable to the term as it is interpreted in Indian Constitutional Law, subject to a few modifications. In India, judicial review is divided into three categories: legislative review, judicial review of judicial decisions, and judicial review of administrative action. Judges of the inferior judiciary and tribunals established by ordinary legislation do not have access to the constitutional safeguards that guarantee the Superior Judiciary's independence."⁷ According to this, the constitutional power of judicial review over legislative decisions vested in High Courts under Art 226 and the Supreme Court under Art 32 is an integral and fundamental function of the constitution, forming part of its basic structure. The Supreme Court and the High Courts will still have the right to review laws for constitutionality.

Administrative agencies will be subject to regulatory jurisdiction, which is not a court or a legislative body, and which affects private parties' rights by adjudication, rulemaking, investigating, charging, bargaining, resolving, or behaving informally. It is to the status of an administrative agency that the President, a Governor, or a Municipal Governing body exercises adjudication or rulemaking authority. Administrative activity may be statutory, i.e., having legal force, or non-statutory, i.e., not having legal force. The majority of administrative activity is statutory since it is based on a statute or the Constitution, but in certain situations, it may be non-statutory, such as providing non-binding directives to subordinates, if violated it may result in disciplinary proceedings. Despite the fact that administrative action is generally

⁵ Abhilasha Bhatia , ' Judicial Review Of Administrative Actions And Modes' (Legalreadings.com 2021) accessed 13th March 2022 < <https://legalreadings.com/judicial-review-of-administrative-actions-and-modes/>>

⁶ L. Chandra Kumar v Union of India, AIR 1997 SC 1125

⁷ ibid

discretionary and centered on subjective satisfaction, the administrative authority must behave equally, impartially, and reasonably.⁸

In India, the courts have been granted extraordinary powers to oversee and review administrative acts. In order to preserve the growth and advancement of administrative law, the courts are taking on an innovative role. The boundaries of Judicial Review and the courts' jurisdiction are limited, with the courts looking for issues to shape the standards under which administrative functions can be controlled. In the case of *B.A.L.C.O. Employees Union (regd.) v. Union of India*⁹, the court stated that “they are not inclined to strike down a case on the basis that the petitioner feels that another policy would be better.”¹⁰ When it comes to a question like this, when the government develops a policy, judicial review is minimal. When the regulation by which or the reason for which discretion is to be exercised is explicitly stated in the legislation, it cannot be said to be unlimited discretion. Policy-relevant issues that necessitate technical knowledge the court may delegate the decision to those who are best qualified to handle the situation. The Court will not intervene unless the policy or behavior is in violation of the Constitution and rules, or is unconstitutional, unreasonable, or an abuse of power.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION:

In order to secure citizens' liberty and rights, judicial review has been recognized as a necessary and essential prerequisite for the creation of an advanced society. The Supreme Court and the High Courts in India have significant judicial review power. Judicial review refers to the court's ability to examine the activities of other branches of government, especially the power to declare invalid actions taken by the legislative and executive branches as ‘unconstitutional.’ In the case of *Council of civil service union v. Minister of civil service*, Lord Diplock had given few grounds for judicial review, they are:

- Jurisdictional Error/ Illegality
- Irrationality
- Procedural Impropriety
- Proportionality

⁸ Mayank Shekhar, 'Judicial Review Of Administrative Actions ' (legalbites.in 2019) accessed 14th March 2022 < <https://www.legalbites.in/law-notes-administrative-law-judicial-review-of-administrative-action>>

⁹ of *B.A.L.C.O. Employees Union (regd.) v. Union of India*, T.C. (C) Nos. 9 and 10 of 2001 and W.P. (C) No. 194 of 2001.

¹⁰ *ibid*

- Legitimate Expectation

In this paper, few of these grounds are analysed.

DOCTRINE OF PROPORTIONALITY

Proportionality means that a course of action should not be more extreme than necessary to achieve the desired outcome. Proportionality refers to a course of action that should have been taken in a reasonable manner and should not be too harsh or serious. The court is concerned with the manner in which the administrator has ordered his preferences, the very nature of decision-making consists, surely, in the assigning of relative value to the variables in the case, according to proportionality. This can be further described as the ‘willingness to hold that a judgment that supersedes a fundamental right without adequate rational reason would, as a matter of law, be disproportionate to the goals in view; the application of proportionality brings the true nature of the exercise into focus; the development of a rule about permissible priorities.’ A balance test and a necessity test are used in the sense of fundamental rights theory.¹¹

In the case of *Union of India v. G. Ganayutham*¹², the court did not address this issue because it was not relevant to the case’s outcome because the party had not alleged a breach of constitutional rights. The penalty levied should not be disproportionate to the severity of the crime proven, according to a fundamental principle of criminal law. In the case of *Hind Construction Co. v. Workmen*¹³, some employees requested a holiday and did not return to work. They were eventually discharged from the military. According to the court, instead of being fired permanently, the staff should have been warned and fined. It was impossible to believe that any fair employer would have imposed such harsh punishment. The court also stated that the penalty meted out to the workers was not only harsh, but also unfair.

This shows us that while the doctrine of proportionality is well-established as a principle in constitutional law, its implementation in administrative law is still developing.

DOCTRINE OF LEGITIMATE EXPECTATION

¹¹ J.A.L. Sterling, *De Smith's Judicial Review*, 601 (6th, Sweet & Maxwell, 2007)

¹² *Union of India v. G. Ganayutham*, (1997) 7 SCC 463

¹³ *Construction Co. v. Workmen*, 1965 AIR 917

Where a public authority rescinds from a representation made to an individual, this doctrine serves as a basis for judicial review to protect the interest. A rational presumption exists in the mind of the claimant who has been led to believe that certain protocols will be followed in making a decision, either explicitly or implicitly. The word 'legitimate expectation' was coined by Lord Denning in 1969, and it has since become a major doctrine of public law in almost every jurisdiction. This doctrine was introduced by the Indian judiciary to prevent administrative authorities from exercising power arbitrarily. In private law, a person can only go to court if his right under a statute or contract has been violated, but in public law, this rule of locus standi is relaxed to allow standing even when a valid expectation from a public authority has not been met. This theory creates a middle ground between 'no argument' and 'legal claim,' allowing a public authority to be held responsible based on a reasonable expectation.

As a result, this doctrine becomes a part of the natural justice principles, and no one can be denied this reasonable expectation without abiding by the natural justice principles. The theory of legitimate expectation, which is used extensively in administrative law, is also an excellent example of judicial ingenuity.

It is, however, not extra-legal or extra-constitutional. In the case of *Food Corporation of India V. Kamdhenu Cattle Feed Industries*¹⁴, this doctrine finds a natural home in Article 14 of the Constitution, which condemns arbitrariness and demands justice in all administrative dealings. Article 14's protection is now well defined, not just in event of arbitrary 'class legislation,' but also in the event of arbitrary 'State action.' As a result, the doctrine is being praised as a fine administrative jurisprudence concept for balancing power and liberty.

The doctrine is first stated in India in the case of *State of Kerala v. K.G. Madhavan Pillai*¹⁵. The government had given the respondents permission to launch a new unaided school and enhance the existing ones in this case. After fifteen days, however, a directive was given to hold the sanction in place. This order was contested on the grounds that it violated natural justice values. The court determined that the sanction order established reasonable expectations in the respondents, which were breached by the second order, which did not obey natural justice standards, which is sufficient to void an administrative order.

¹⁴ Food Corporation of India V. Kamdhenu Cattle Feed Industries, AIR 1993 SC 1601

¹⁵ State of Kerala v. K.G. Madhavan Pillai, AIR 1989 SC 49

The Development Authority had changed the order of priority for the allotment of land to cooperative societies from 'serial number of registrations' to 'date of approval of list of members' without notice or hearing in *Navjyoti Coop. Group Housing Society v. Union of India*¹⁶. The court quashed the order on the grounds of violation of legitimate expectation, holding that where persons enjoying such benefits under old government policy derive a legitimate expectation, even though they do not have any legal right under private law in regard to its continuation, the aggrieved persons are entitled to a hearing until the policy is changed adversely affecting that benefit or advantage.

The principle of legitimate expectation has become a significant doctrine in recent years. It is reported that it is the newest addition to the court's long list of principles for reviewing administrative actions. It exists in the public domain and, in some circumstances, may be used to create a substantive and enforceable right.

DOCTRINE OF PUBLIC ACCOUNTABILITY

The term 'public accountability' refers to the duty to respond publicly—to report on the discharge of obligations that have a significant impact on the public. It is the duty to respond for a responsibility that has been entrusted to you. When officials plan to do something that will have a significant impact on the public, the duty to answer publicly emerges as a fairness obligation. As a result, the duty goes beyond answering for formal or legal obligations. This doctrine's primary goal is to curb the administration's growing abuse of power and to provide prompt relief to those who have been victims of such abuse. The doctrine is founded on the principle that administrative authority is a public trust that must be exercised in the people's best interests. As a result, a trustee who enriches himself by deception retains the property he acquires as a constructive trustee.

In the case of *State of Bihar v. Subash Singh*¹⁷, the court held that the Head of Department is essentially liable and accountable unless there are exceptional circumstances that absolve him of responsibility. The Supreme Court went on to say that, regardless of whether decision-making is delegated hierarchically, the Head of Department or appointed officer is ultimately liable and accountable for the outcome of the action or decision taken. Even, if there are any

¹⁶ *Navjyoti Coop. Group Housing Society v. Union of India*, (1992) 4 SCC 477

¹⁷ *State of Bihar v. Subash Singh*, (1997) 4 SCC 430

extenuating circumstances absolving him of responsibility or if someone else is responsible for the action, he must inform the court.

In the case of *Suresh Kalmadi v. The CBI*¹⁸, the court held, because of the misdeeds of such public servants, the government was forced to pay expenses that were 1000 times greater than they would have been otherwise. The citizens have been cheated and will be held responsible for the lack of responsibility. The Judiciary must ensure that such criminals are held accountable for their acts.

CONCLUSION

Administrative law is, in a way, based on judicial review of administration. It is, without a doubt, the most appropriate way of determining a public authority's legal competence. It is the only viable tool or process for ensuring public authority transparency and legal competence. The administrative bodies have been granted vastly increased discretionary authority. As a result, it requires a check and balance on them by giving the judiciary the right to review their acts and decisions. The competence of the public authority is an element of an official decision or administrative act that can be scrutinized by the judicial process.

As administrative authorities' powers have expanded significantly, judicial review has become an important area in administrative law. The primary purpose of judicial review is to protect citizens interests from relevant agencies who misuse their power or engage in illegal actions.

Hence with the help of the case laws discussed above, it means that Judicial review protects the citizen's rights and interests when the public authority abuses their power or does something illegal.

¹⁸ Suresh Kalmadi v. The CBI, 2012

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