THE JUDICIAL REVIEW OF ADMINISTRATIVE ACTION: AN ANALYSIS

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ABSTRACT

"Judicial review of administrative action is perhaps the most important development in the field of public law in the second half of this century. In India, the doctrine of judicial review is the basic feature of our Constitution. Judicial review is the most potent weapon in the hands of the judiciary for the maintenance of the rule of law. Judicial review is the touchstone of the Constitution. The Supreme Court and High Courts are the ultimate interpreters of the Constitution. It is, therefore, their duty to find out the extent and limits of the power of coordinate branches, viz. executive and legislature and to see that they do not transgress their limits. This is indeed a delicate task assigned to the judiciary by the Constitution. Judicial review is thus the touchstone and essence of the rule of law. The term (discretion) itself implies vigilance, care, caution and circumspection. When the legislature confers discretion on a court of law or on an administrative authority, it also imposes responsibility that such discretion is exercised honestly, properly and reasonably. Judicial Review is not a Sacro sanctum procedure to control all policies of the government.

In the study of such topics as tribunals and enquires the emphasis is likely to be between these institutions and the courts as alternative methods of controlling administrative action. These specialists rarely delve into administrative process itself to consider how government departments and other administrative agencies actually operate or how and why their procedures and structures differ from the judicial model of decision-making or how the administrative process could be made more effective and efficient by reform from within.

KEYWORDS: Administrative, Discretion, Judicial review

CHAPTER I: INTRODUCTION

The concept of Separation of Powers which is considered to be a part of the basic structure of the Indian Constitution, meets a fate of complete collapse when it comes to the powers fettered upon administrative bodies. The powers were delegated to the administrative bodies to further the interest of justice and speedy proceedings, but as the situation stands today, it is evident that an administrative body possess all the power of a state, though in a smaller quantum. It would be difficult for countries like India and U.K where there is an intensive form of government to work without discretion. It has been equally acknowledged that unfettered discretion would result in violation of public interest. As the famous saying goes, "Power Corrupts, Absolute Power Corrupts Absolutely". The need for judicial control of administrative action originated on account of the failure of the legislature to give effect to the British principles that are being followed blindly without any necessary changes as per the situation prevailing in India. Thus, the same gave rise to two-fold control by the judiciary, viz. procedural control and substantive control. The imported principles of administrative law would have been justified in the Indian scenario, if adopted after certain modifications and if not amendments then probably after a debate on its effectiveness in India, like the Constituent Assembly debates that were conducted to frame the law of the land. But, in terms of the administrative principles, neither has there been any debate nor amendments/adjustments have been made customizing the principles to be effective and to serve the purpose enshrined in the preamble of the Constitution of India.

Judicial review has served the purpose of acting as a restraint on the unfettered authority of the public officials/bodies. The concept of judicial Review has evolved manifold in India, from judiciary once considered to be the weakest wing of the state (pre-Keshvanand) to the most powerful wing of the state (post-Keshvanand). And it cannot be disputed that the judiciary has played the role the interpreter of law, implementer of law and even the originator of law at various stages of the Indian Constitutional History.

The authority of a court to examine the constitutionality of actions by other govt institutions where the question of constitutionality is relevant to the settlement of rules properly before the courts is known as judicial review.

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departments and other administrative agencies actually operate or how and why their procedures and structures differ from the judicial model of decision-making or how the administrative process could be made more effective and efficient by reform from within.

1.1 AIMS AND OBJECTIVES OF THE RESEARCH

- To understand the need the scope of JR of administrative action.
- To determine the extent of JR on administrative action.

1.2 HYPOTHESES

- Courts have proved more effective and useful than the legislative or the administrative in the matter control mechanism.
- Judicial Review is not a Sacro sanctum procedure to control all policies of the government.

1.3 RESEARCH METHODOLOGY

This research is based on information which has been already available and analyzed those facts to make an evolution of this research. Doctrinal method will be adapted in the preparation of the project. Various reports, articles, legal provisions and case laws will be used to study and prepare the present work. A uniform mode of citation is followed throughout the project.

1.4 RESEARCH QUESTIONS

- Does Judicial Review have jurisdiction over legislation that is akin to a constitutional amendment?
- When it comes to administrative actions, what is the scope of judicial review?
- What is the scope of judicial review in the case of advisory, recommendatory, investigative reports issued by administrative bodies?

1.5 LIMITATION OF THE STUDY

The Researcher is only a novice. The research will be limited to specific mentioned cases only.

1.6 SCOPE OF THE STUDY

This research paper will able to give the deep and productive knowledge of this Control of administrative actions.

CHAPTER II: ADMINISTRATIVE ACTION AND JUDICIAL REVIEW: DEFINITION AND MEANING

2.1 ADMINISTRATIVE ACTION: AN OVERVIEW

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". Administrative action is the action which is neither legislative nor judicial in nature but only concerned with the analysis and treatment of a particular situation and is devoid of generality. It has no procedure of collecting evidence and weighing arguments but only based upon subjective satisfaction where decision is based on policy and expediency. It does not decide a right or wrong, neither it ignores the principles of natural justice completely though it may affect a right. 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.

Administrative action may be statutory, having the force of law, or non-statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but, in some cases, it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable.

The working of administrative law in India is attracting attention because of its conflict nature with the ideal principles of the Supreme law of the land i.e., Constitution. Under the constitution the power is divided among the State and union, which is further sub-categorized in three different departments (1) Executive, (2) Legislature, and (3) judiciary. Whereas, the Executive is empowered to exercise the administrative power, in any of the ways as specified above. The power of the executive is subject to the concept of 'Rule of Law'. Where, the powers were entrusted to the different administrative bodies in order to achieve the ultimate goal of welfare and to smoothen the system of functioning of the state, but there are problems that have emerged out of this approach as an unintended objective to it. In rescue to this, administrative law has been developed to ensure legal control over the unfettered administrative power and also aimed to protect individual from any abuse of such power. Since, administrative authority

has been brought with an ultimate objective, it cannot be denied that administrative power has also the capacity to contravene the interest of the individual. Therefore, administrative law was necessary to administer the administrative power. Thus, legal control over these unfettered powers is exercised by three authorities, namely, 1) legislature, 2) Executive control on subordinate executive, 3) Judiciary.

2.2 TYPES OF ADMINISTRATIVE ACTION

The administrative action can be categorized in following four categories:

1. Rule-making or Quasi-legislative action

The law-making power of the government vest specifically to the legislature, where there is a written constitution. However, in Indian constitution the combined effect of Article varying from 107 to 111 and 196 to 201 depicts that, the power of rule-making is not expressly vested in the legislature, but can be exercised by parliament for the union and by the state legislature for the State. This expresses the intention of constitution makers, that the power of law making must be exercised by those in whom it is vested. But, in the changing scenario from laissez-faire to socio-economic society, the function of government specifically the legislature has increased manifold. Thus, it was really difficult for the legislature to give quality and quantity law, which are necessary for the efficient functioning of intensive form of the government. Therefore, the delegation of law-making by the legislature became compelling necessity. This delegated power of rule-making is known as rule making action of administration or quasi legislative action. The legislative function which is performed by the executive are also termed as Delegated legislation. In England the committee on minister's power, 1928 distinguished the administrative from quasi-legislative actions. According to the committee the former deals with performing a particular act by applying the general rule to particular situation, whereas later deal with formulation of general rules with a future perspective without referring to a particular case.[1] From this it has been concluded by Wade that it is difficult to differentiate between administrative and legislative function in theory and almost impossible to distinguish both in practical.[2]

The rule-making action of the administrative authority holds same characteristic of that of legislative action. Some of characteristic as stated by Chinnappa Reddy J are: 1) Generality, 2)

[1] M.P Jain and S.N. Jain, Principles of Administrative law, 4th edition, 1986, Reprint 2003, P.317
[2] Wade, 'Administrative law', 6th edition, p. 848

prospectively, 3) Public interest, 4) Rights and obligation arising from it[3]. This administrative action of rule-making can be controlled by the parliament and the courts. The delegated legislation can be subjected to judicial control at both conferment and exercise stage, when the delegated legislative function is ultra-vires to the constitution.[4]

2. Adjudicating action or quasi-judicial action

Today, the decision-making power which can affect a private individual come not only from the court, but also from administrative agencies in which power to adjudicated has been conferred by the statue or the legislature. Thus, an authority other than judicial authority, exercising judicial function along with administrative function is said to be acting quasi-judicially. The administrative decision-making is also a result of intense form of government, as for the proper function of welfare state it is desirable that the matters are adjudicated efficiently and effectively by the department itself. For example, following functions of the administrating agencies can be said as quasi-judicial:

I. Disciplinary proceedings,
II. Permitting, rejecting or renewing of license by the licensing authority,
III. Granting Permit by Regional transport authority.
IV. Decision by taxing authority in case of default or other, Etc.

The Donoughmore Committee on Minister's power, 1932 has attempted to distinguish between judicial and quasi-judicial action. The committee was of the view that judicial decision look into following four questions:

I. Presentation of case,
II. Ascertainment of facts, by considering evidence produced by the parties,
III. Ascertainment of law to be applied based upon the arguments presented by the party,
IV. Decision

Whereas, the quasi-judicial action necessarily involves the above first two requisites, but may or may not involve the third and fourth requisites as stated above. The Lord Atkins in the case of **R. Electricity commissioners[5]** held that a body can act judicial by the conferment of legal authority in it. If the administrative body exceeds its legal authority, it would be subject to control by King's Bench Division. Similarly, Lord Reid in the case of **Ridge v. Baldwin**

[3] State of Punjab v. Tehal Singh (2002) 2 SCC 7.
[4] Hindustan Times v. Uttar Pradesh, (2003) 5 SCC 516.
[5] (1924) 1 KB 171.

[6]established that the duty to act judicially must arise from the function, which it is intended to be performed. Therefore, the quasi-judicial function by administrative authority is subjected to control by higher executive and the courts.

3. Executive or rule-application action

I. The power and responsibility of government is distributed between the three organs. In which the executive is being responsible for the act of administration and it is subjected to general control of parliament or the legislature. The administrative functions of executive include:
II. Formation and/or implementation of a policy Implementation of the laws which might be further bifurcated into adjudication or rule making, which is derived from statue.

As decided by Supreme court of India in case of **A.K Kripak v. Union of India**[7] the action of the administrative authority can be determined and distinguished by seeing the nature of power conferred, to whom and the framework within which it is conferred and the result thereof. Administrative action is statutory, having the force of law.

4. Ministerial action or pure administrative action

Ministerial actions are those duties of the administrative authority which are directly directed from the statue or law and are devoid to any discretion. It talks of definite duty without any choice. For example: duty to collect revenue, duty to prepare annual report, etc is purely ministerial functions. In ministerial action there is no discretionary or subject element.

2.3 JUDICIAL REVIEW UNDER INDIAN CONSTITUTION

Judicial Review is the power to pronounce upon the constitutionality of the legislative acts which fall within their normal jurisdiction to enforce and the power to refuse to enforce such as they find it to be unconstitutional and so void. The doctrine of judicial review was first developed by the American Supreme Court though there is no express provision in the American Constitution. It was first seen in the famous case of Marbury v. Madison. Judicial review is an armour to check two lawlessness i.e., of legislative as well as executive. According to Justice Bhagwati The concept of judicial review is more akin to the concept of

[6] 1964 AC 40.
[7] (1969) 2 SCC 262.

reasonableness and nor arbitrariness and pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.

The Constitution of India explicitly establishes the doctrine of judicial review in several Articles, such as, 13, 32, 131-136, 143, 226 and 246. The doctrine of judicial review is thus firmly rooted in India, and has the explicit sanction of the Constitution. The main object of Article 13 is to secure the Fundamental Rights, Article 32 and 226 entrusts the roles of the protector and guarantor of fundamental rights to the Supreme and High Courts. Article 245 states that the powers of both Parliament and State legislatures are subject to the provisions of the situation. Article 246 (3) ensures the state legislature's exclusive powers on matters pertaining to the State list. Article 131-136 entrusts the court with the power to adjudicate disputes between individuals, between individuals and the state between the states and the union but the court may be required to interpret the provisions of the constitution and the interpretation given by the Supreme Court becomes the law honoured by all courts of the land.

As in **Keshvanand Bharati v. State of Kerala**[8], Justice Khanna said that Judicial Review has become an integral part of our Constitutional system and if the provisions of the Statutes are to be found violative of any of the Articles of the Constitution which is the touchstone for the validity of all the laws, the Supreme Court and the High Courts are empowered to strike down the said provisions of the Statutes.

Further in **Kihoto Hollohan v. Zachillhu**[9] paragraph 7 of the 10h Schedule to the Constitution unconstitutional, which barred the jurisdiction of the courts in matters relating to the disqualification of a member of a House under the 10th Schedule, as the amendment had not been passed in compliance with the proviso to clause (2) of Article 368, i.e., ratification by the half of the States.

Again, in **L Chandra Kumar v. Union of India**[10], exercising the power of judicial review. the Supreme Court declared Articles 323-A and 323-B to be unconstitutional, so far as by them the jurisdiction of the Supreme Court under Article 32, and that of the High Court under Articles 226 and 227, had been excluded.

[8] AIR 1973 SC 1461.
[9] AIR 1993 SC 412.
[10] (1997) 3 SCC 261.

In **Minerva Mills Ltd. v. Union of India**, the constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of administrative action and validity of legislation. It is the solemn duty of the judiciary under the constitution to keep different organs of the State within the limits of the power conferred upon them by the constitution by exercising power of Judicial Review as sentinel on the qui vive. Thus, judicial review aims to protect citizens from abuse or misuse of power by any branch of the Sta

CHAPTER III: EVOLUTION OF ADMINISTRATIVE CONTROL VIS- A-VIS JUDICIAL REVIEW

Judicial review of administrative action in India has been developed in order to regulate every action of the administrative authorities. In the process of judicial review of administrative decision, the writ court does not sit as an appellate court. Again, it is not for the writ court to replace its own decision against the decision of the administrative authorities. The court scrutinises the whole administrative action, and sees how the whole action was reached. If the court finds an administrative action as arbitrary or irrational, the court sets aside the whole action and sends back the matter to the administrative authority for re-examination Over the period of time, the courts have evolved many principles or doctrines and grounds for judicial review of administrative action. In Delhi Development Authority v M/s UEE Electricals Engg. Pvt Ltd.,[11] the Supreme Court said that illegality, irrationality, and procedural impropriety[12] are grounds for judicial review of administrative action. Courts do not interfere in an administrative decision unless the decision is an outcome of an unfair procedure. Mere suspicion of unfairness would not be sufficient. The claimant has to prove the unfairness in the administrative action in any of its form including abuse or a misuse by the authority of its powers.

The above said grounds were recognised for the first time in famous decision of Lord Greene in Associated Provincial Picture Houses Ltd. v Wednesbury Corpn[13]. The court said that the administrative action is unreasonable if the action is based on wholly irrelevant material or on wholly irrelevant considerations or if the action is irrational. In India, there is no uniform code which directs the administrative authorities to adopt minimum procedure for taking any of its action. But Indian courts have recognised the principles of natural justice i.e., rule of fair hearing and rule against bias, as a precondition for administrative adjudication Indian judiciary has also widened the scope of these principles by making the authorities more accountable and answerable in their actions. The courts emphasise on its application in all cases irrespective of the fact that whether it is compulsory under some statute or not.[14] Moreover, the principles of natural justice are very wide in scope and, include various modes of fairness. Similarly, the observance of principles of natural justice is necessary not only in cases of quasi-judicial

[11] (2004) 11 SCC 213
[12] Associated Provincial Picture Houses Ltd. v Wednesbury Corp. (1947) 2 All ER 680
[13] Associated Provincial Picture Houses Ltd. v Wednesbury Corp. (1947) 2 All ER 680.
[14] State Bank of India v K.P.N Kutty (2003) 2 SCC 449.

functions but also in other kinds of administrative action.[15] With the development in administrative law, principles of natural justice have also undergone change. Earlier, the notion was that the enquiries were administrative in nature, therefore it attracts no principles of natural justice. But now, the time has changed. Currently, administrative authorities are supposed to conduct enquires in good faith and without any kind of biasness. In the modern welfare state, it is no more significant to classify any of public authority's action while applying principles of natural justice. Under the Indian Constitution, every organ of the State is regulated and controlled by the rule of law. The concept of rule of law requires the State to discharge their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. [16]

The doctrine of judicial review is firmly rooted in India, and has the explicit sanction of the Constitution. Several Articles in the Constitution, such as articles 13,32,131-136,141,143,144, 226,227,228,245,246,367,372 and 395 guarantee judicial review of legislation and administrative action. The main source of judicial review is the Supreme Court's competence to declare the Constitutionality or otherwise of a legislative act on the anvil of the Constitution. It is well known that the Constitution of India adopted the principle of the Government being responsible to the Parliament from English System, but it also subordinated all the three organs of the state namely, Parliament, The President and the Judiciary to the Constitution. For, all of them have only such powers as are given to them by the Constitution.

Judicial review of legislation this power is given to the Judiciary both by the political theory and the text of the Constitution. In political theory the Constitution was the result of an expression of the general will of the Indian community as a whole. It is the law which governs the State established by the Constitution in India. The power of the Court to declare legislative enactments invalid is expressly provided for in the Constitution under Article 13 which declares that every law in force or every future law inconsistent with or in derogation of the Fundamental Rights shall be void; and Art 32 place in the Supreme Court power to enforce these rights. Articles 131 to 136, which deal with the jurisdiction of the Court, also expressly vest in the Supreme Court the power to review the legislative enactments of the Union and the States. Article 246, which deals with the nature of division of legislative powers between the Union

[15] Ridge v Baldwin 1964 AC 40.
[16] A.K. Kraipak v Union of India AIR 1970 SC 150.

and the States, is also equally relevant in this context, But even in the absence of some of these express provisions, the Court would have had the power of review.

Indian Supreme Court is maybe the sole court in the history of human kind to have asserted the ability of review over amendments to the Constitution Judicial review of Constitutional amendments isn't generally permissible except on procedural grounds or to present the violation of the express limitations mentioned in the Constitution itself. Before 1967 even the Indian Supreme court had held that it had no power to strike down Constitutional amendments on substantive grounds and thus could not exercise power of review. It absolutely was only after the Golak Nath case in 1967 that the Supreme Court assumed the power of judicial reviews of Constitutional amendments. The doctrine of Judicial review has been taken to its pinnacle of glory in the famous Keshvanand Bharati v. State of Kerala. In this historic and momentous judgment, the court held that while amending power under Article 368 is comprehensive enough to hide the amendment of any a part of the Constitution including the fundamental rights, the ability couldn't be exercised so on destroy those features of the Constitution which constitute its basic structure. While different judges identified different features as constituting the essential feature of the Constitution, its remarkable that the doctrine of judicial review wasn't as such mentioned as one of the fundamental features of the Constitution. Of course, the doctrine of judicial review has been declared to be a basic feature of the Constitution in Minerva Mills v. Union of India. During this case Bhagwati., J. has observed: "The power of judicial review is an integral a part of our Constitutional system and without it, there'll be no Government of Laws and also the Rule of Law would become a teasing illusion and a promise of unreality .Bench of nine judges of the Supreme Court in **I R. Coelho v. State of Tamil Nadu**[17] authoritatively laid down the ambit of basic structure doctrine through a unanimous judgment, The court has established the pre-eminence of judicial review of each part of the Constitution. The study shows that there can't be and there's no judicial activism in and of itself. Judiciary always remained active. It cannot afford to be passive. While other two wings of the govt, i.e., executive and legislature, sometimes remain passive and sometimes become overactive, but judiciary functions within its framework and is bound to work within its parameter thanks constitutional device of division of powers. The main and prior function of the judiciary is delivered justice to all or any without concern or favour. The judiciary endeavours to safeguard pressed, powerless, poor and helpless people against the injustice committed by omnipotent pons, authority or body. Judiciary protects the weakest persons from

[17] AIR 2007 SC 861.

the oppressive acts of either executive or legislatures. When judiciary protects and provides justice to the poorest people against oppressive acts of a non-public persons, authority or body, there's no hue and ay but when it protects against tyranny of the govt.., everyone is concerned about interpretation.

During the primary twenty years after the commencement of the Indian constitution the Supreme Court demonstrated a judicial self-restraint super imposed by Austinian positivist philosophy on the scope of the ability of judicial review. there's a discernible trend in Supreme Court's attitude from an attitude of judicial hands off to it of judicial usurpation of essentially executive function, there's a marked transformation in the judicial restrainvist policy of the Supreme Court during the letter half 1970s.

The constitutional court has enormously expanded its power of review under an activist philosophy and orientation. The scope of judicial review in India should be understood in light of its constitutional scheme work, because the Indian judiciary derives its strength from the constitution like other organs, that's why Dr. A.S. Anand has stated that the judicial whistle has to be blown for a limited purpose and with caution. It has to be remembered that courts cannot run the govt, nor the administration cherish abuse or non-use of power and get away with it. The courts have the duty of implementing the constitutional safeguards that protect individual rights but they can't ward off the boundaries of the constitution to accommodate the challenged violation.

CHAPTER IV: GROUNDS OF JUDICIAL REVIEW: AN ANALYSIS

The judicial Control has a supervisory role over administrative action. It ensures that all other branches of government are within their limits. The Judicial control has gained prime importance because of the outsourcing role of the legislature and administrative authorities. The principle governing judicial control over administrative action are basically judge made law.

The power of judicial review is one of the basic features of Indian constitution, which cannot be bifurcated or taken away by any amendment. However, after the economic policy** the court has given wider flexibility to the administration. It has been established that the court could not interfere in the name of Judicial review unless an administrative action is arbitrary, malafide or contrary to the constitution. Judicial review is basically concerned about how a decision is taken rather than what decision is taken, judicial review laid emphasis on the jurisdictional aspect or Natural justice or procedure adopted. Generally, following grounds have been identified for exercising judicial review of administrative action namely;

1) Illegality

2) Irrationality

3) Procedural Impropriety

There are also non-statutory rules, which has been developed by the judiciary to keep check over administrative action. They are;

I. Wednesbury rule of reasonableness
II. Rule of Natural justice
III. Proportionality
IV. Promissory Estoppel
V. Legitimate Expectation

In Tata Cellular v Union of India[18], the Supreme Court identified the grounds of judicial review of administrative action in the following words:

The duty of the court is to confine itself to the question of legality. Its concern should be:

I. Whether a decision-making authority exceeded its powers,

[18] (1994) 6 SCC 651.

II. committed an error of law,
III. committed a breach of the rules of natural justice, \
IV. reached a decision which no reasonable tribunal would have reached or,
V. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case.

Lord Diplock in **Council of Civil Service Union v. Minster of Civil**[19], the House of load ruled and rationalized grounds of judicial review under three distinct principal heads, namely, illegality, irrationality and procedural impropriety. Illegality means the power exercised by the decision maker is within the power conferred to it by the statue. Other grounds which can fall within the head of illegality are ultra vires, fettering discretion, unauthorized delegation, error of law or fact, Etc. The procedural impropriety as a ground of judicial review means failure to comply with the procedure. Natural justice, good faith, failure to give reasons, legitimate expectation, etc. falls within the domain of procedural impropriety.

Irrationality (Wednesbury)

This is one of the grounds of Judicial review, which was developed in the case of Associated provincial picture Houses Ltd. v. Wednesbury Corp. The Wednesbury principle of reasonable was propounded. According to this principle, court has the power to interfere in a decision if it is absurd and no reasonable man or decision maker would have made it. Lord Greece MR considered the principle of Wednesbury unreasonableness as an 'umbrella concept' which cover major ground of judicial review of a decision. Whereas, in the case of GCHQ[20] Lord Diplock used the term 'Irrationality' and refashioned the principle of Unreasonableness as follows: "By irrationality he intends to refer principle of Wednesbury unreasonableness according to which court has the power to interfere in a decision if it is absurd and no reasonable man or decision maker would have made it".

According to this principle a decision made by administrative authority would be considered as irrational if:

I. It is based on irrelevant material or irrelevant consideration.

[19] (1948) 1 KB 223.
[20] (1991) 1 AC 532.

II. It is based on no evidence, or has ignored relevant material which it should have considered.
III. No reasonable or sensible person would have ever made such decision.

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 Baldwin[21] 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.

[21] (1964) AC 40

In **Hind Construction Co. v. Workmen**[22], 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 Expectations

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-

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

[22] 1965 SCR (2) 85.

CHAPTER V: MODE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

The principle of Judicial review is to enforce Constitutionalism. The Judicial review plays an important role not only in enforcement of private right, but also ensuring where the administrative authority is exercising their power within the statutory framework. The power of judicial review or public law review is exercised by the High Court and Supreme Court under the above stated jurisdiction and following writs:

Writ of Habeas Corpus

The term ‘Habeas corpus’ is a Latin term, which means 'Produce the Body'. According to Halsbury law of England the term has been defined as "The writ of Habeas Corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention and is available against the executive. The writ of Habeas Corpus has an important part to play in administrative law. There are certain authorities, which has been assisted by the power of detention, the writ is to control such power from being misused or abused. The writ challenges the validity of the administrative order by challenging the validity of detention made under authority of administration. The object of this writ is personal liberty and to ensure this, the petition could be bought by anyone on his behalf. The writ may be brought against anyone who has detained someone. Thus, the writ is not discretionary.

The writ of Habeas Corpus is one of the modes of judicial review of administrative action, subjected to special rules. The writ of Habeas Corpus cannot be used only for review and not for an appeal. The writ of habeas Corpus can be granted if the order of detention is ultra vires.

Writ of Mandamus

A writ of mandamus is a command issued against the authority or state under Article 226 and Article 32 by the High Court or Supreme Court to perform a particular duty as specified in law or by operation of law. This writ is to ensure that a public duty is being performed by judicial enforcement. The writ of mandamus is of extensive remedial nature available in respect of public law remedy. The writ of mandamus can be issued on all grounds on which Certiorari and prohibition can be issued.

The Conditions on which writ of mandamus can be granted are;

1. The mandamus can lie only to enforce public or common law duty. Thus, any duty arising out of contract cannot be issued by this writ. The public duty must be created either from any statute or rule of common law. The duty must be mandatory, i.e., an absolute duty and not discretionary. In the case of **Manjula Manjari Dei v. Director of Public Instruction**,[23] the court refused to issue mandamus to compel authority on the matter of complete discretion. But mandamus would lie if the authority is obliged under law to exercise discretion.

2. There must be specific demand for performance of duty, which has been subsequently denied or refused by the authority. The court might infer the same from the circumstance if it deems fit. [24]

3. There must be right to compel the authority to perform a duty which is cast on him/her. As in the case of S.P. Manocha v. State of M. P[25] the court refused to issue mandamus for admission of an applicant because the applicant has failed to establish his right to be admitted.

4. The Right must be existing on the date of petition.

Writ of Prohibition

The writ of prohibition belongs to ancient origin or similar to that of common law. There are three conditions, which need to be satisfied before granting writ of prohibition namely; a) the action must be brought against judicial or quasi-judicial body, b) the exercise of power by the authority must be enshrined by law, c) this may result in injury for which there is no adequate alternative remedy. The object of this writ is more in the nature of preventive rather than corrective. The proper function of this writ is to ensure that the inferior tribunal and authority are working within the prescribed limits of the law. In India the writ of prohibition has mainly gained importance in protecting individuals from the arbitrary administrative action.

The writ of prohibition is known for keeping check on inferior authorities either judicial or not and ensure that they are working within their jurisdictional limits. This writ grant power to the superior court to exercise jurisdiction over inferior courts and administrative authority exercising quasi-judicial function. It ensures that the inferior court or tribunal do not exceed or abuse their jurisdiction, do not violate the principle of Natural justice and does not contravene

[23] AIR 1952 Ori 344
[24] AIR 1953 Punj 137
[25] AIR 1973 MP 84

the provision of the constitution.[26] The writ of prohibition seems to be similar to a writ of Certiorari, but the difference lies on stage in which these writs are issued. The writ of prohibition is issued when the matter is pending before any court and the writ prevents them from proceeding with it. Whereas, the writ of Certiorari is issued when the act is complete to declare that a particular act is ultra vires on any of the above stated grounds.

Writ of Certiorari

Certiorari is a Latin word, which means 'Inform'. Initially, it was a royal demand in which king's order that the necessary information must be provided to him, but over the period the concept has been molded. The writ of Certiorari directed by the Supreme Court and the High court in Personam in the original legal proceeding. This writ is used mainly to quash the administrative order. The writ of Certiorari is parallel to the writ of prohibition. The difference between two is the writ of Certiorari is issued, when a matter has been decided and disposed by a particular inferior court or quasi-judicial body, Whereas the writ of prohibition is initiated when a matter is still pending before a particular tribunal or administrative authority.

In the case of Hari Vishnu Kamath v. Ahmad Ishaque, it was held that the writ of prohibition and writ of Certiorari has a common object to restrain inferior judicial or quasi-judicial body to exceed from their jurisdiction. The order of Certiorari and prohibition may be issued by the Supreme Court and the High Court in India under Article 32 and Article 226 of the Constitution respectively. [27]

In the case of T.C. Basppa v. T. Nagappa,[28] it was held that the Certiorari can be issued only against a judicial or quasi-judicial body, but not administrative authority exercising purely administrative or ministerial function. The purpose of Certiorari is not only negative, but has also affirmative action in certain case like reinstatement and payment of back wages.

For the ascertainment of judicial act, the English committee on minister's power in 1932 has laid down a test, which was subsequently adopted by the Supreme court. A true judicial decision involves the following requisites:[29]

I. Existing dispute between two or more parties

[26]Hari Vishnu Kamath v, Ahmad Ishaque, AIR 1955 SC 233
[27] A.K.Kripak v. UOI, (1969) 2 SCC 262.
[28] AIR 1954 SC 440
[29] Bharar Bank Ltd v. Khushaldas S. Advani, AIR 1950 SC 222.

II. Presentation of the case, ascertainment of fact, with the help of evidence, when the dispute is on question of fact
III. Submission of legal argument, where the dispute is on question of law
IV. Decision by finding of facts and application of law.

Writ of Quo-Warranto

The term "Quo warranto' means 'by what authority'. The writ of Quo warranto is issued by the Supreme Court and High Court to determine a right of a person or authority under which he/she is holding a particular office. The writ is to ascertain whether a person has occupied a public office genuinely or has usurped such an office. The object of this writ is to determine that a particular office is occupied only by the authorized person. The petition of Quo warranto can be brought by any person. It is not necessary that the petitioner must be aggrieved because the writ is oriented toward right of a non-applicant to hold the public office. The Writ of Quo warranto can be issued only to question the authority of public office. One in which public has a direct Interest. The Public office are those which are created under the constitution or under a specific statute or one which is declared by the court. In the case of **Anand Behari v. Ram Sahai**,[30] the court held that a public office is one, which is created by statute or under any constitution in which general public has an interest. The office of speaker of legislative assembly was declared public office in this case. The writ of Quo warranto cannot be issued against private office like committee of private school or member of the Arya Samaj because the same is not created under the law. The public office must be substantive, i.e., permanent in character. The Writ of Quo warranto will not be issued ON condition, where there is mere irregularity and not a clear violation of law as held in the case of **State of Assam v. Ranga Muhammad**.[31] The writ is also issued in condition where the person was qualified when he acquires the office, but was subsequently disqualified.

Public Interest Litigation

One of the new concepts governing locus standi and of making petition under Article 32 and Article 226 of the constitution has been bought to ensure justice, which must be reached to the

[30] AIR 1952 Mad 31.
[31] AIR 1967 SC 903.

poor population. The concept has been completely different from the traditional kind of litigation and is known as PIL i.e., Public interest litigation.

The public interest litigation has been bought to ensure that the constitutional benefits and privileges reaches to the vulnerable section of the society, which are not in the condition to approach the court because of multiple reasons. This is basically to reach social justice to them. The public interest litigation is basically made by the public-spirited person and has no personal or legal right, but is to provide justice to a large number of people who are suffering from any legal law and are unable to reach court because of several reasons like; poverty, socially/ economically backward, helplessness, etc.

As in the case of **Akhil Bhartiya Soshit Karmachari Sangh v. Union of India**[32] a petition was made under Article 32 of the constitution. In which the Supreme Court observed that

"Our current Processual jurisprudence is not of individualistic Anglo-Indian Mould. It is broad based and people oriented, and envision access to justice through Class action', 'Public interest litigation and representative proceeding'. Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigation, is an affirmation of participative justice in our democracy".

Curative Petition

One of the other innovative steps of Supreme court is reflected in the concept of Curative Petition. The concept was invented in the case of **Rupa Ashok Hurra v. Ashok Hurra**[33] in which the Supreme court held that a petitioner is entitled to get relief, even after a final review petition is dismissed as ex debito justitiate, if he establishes the following

I. Where, there is a violation of natural justice, because of adjudication in a case where he was not a party or which adversely affected his interest.
II. Where, the Ld. Judge fails to disclose his connection and which has consequently affected the concerned party.

Apart from this the Supreme court has held that it would not be possible to enumerate all the possible condition on curative petition may lie.

[32] (1981) 1 SCC 246.
[33] (2002) 4 SCC 338.

CHAPTER VI: LIMITATIONS OR RESTRICTIONS ON JUDICIAL REVIEW

The Judicial review in the administrative process is only restricted to the procedure established by the law. That means judicial review over the administrative process which are not following under Jurisdictional Error, Irrationality, Procedural Impropriety, Proportionality, Legitimate Expectation leads to the judicial overreach. In case, it was concluded that though these grounds of judicial review are not exhaustive, yet these provide an apt base for the courts to exercise their jurisdiction.

It is clear from the Doctrine of "Strict Necessity" that Court has to decide constitutional issues only if strict necessity compels it to do so. Thus, constitutional questions will not be decided in broader terms than are required by the precise state of facts to which the ruling is to be applied, nor if the record presents some other ground upon which to decide the case, nor at the instance of one who has availed himself of the benefit of a statute or who fails to show case that the injury is due to its operation, nor if a construction of the statute is fairly possible by which the question may be fairly avoided.

In one of such case on PIL filed where a policy decision, by the Telangana governments on proposal to demolish existing Secretariat building and construct a new one, was not against any law, hence one cannot say it was arbitrary and unreasonable.

The judicial review through the PIL should clearly demark the petition as public interest or Private interest through the Doctrine of "Strict Necessity". The PIL are now days being the tool for the Private interest can be miss used to delay the public good administrative actions or legislative laws.

In case of any flaw in the legislative action, the judicial review is limited to the The Doctrine of Clear Mistake. Any judicial review on the legislative laws beyond the Art.13 and not being testified with the Doctrine of "Strict Necessity" or The Doctrine of Clear Mistake is judicial overreach on the subject matter.

The scope of judicial review varies from case to case. The court in exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' right of life and liberty as also many non-statutory powers of governmental bodies as regards their control over property and assets of various kind. Decision making process is amenable to judicial review. Court will only see whether the process in reaching the decision has been correctly observed. The decision itself cannot be subjected to judicial review. Court cannot act

as an appellate authority unless the exercise of power is shown to violate any provision of the Constitution or any existing statutory rules the matter is not justiciable.[34]. Similarly judicial review is impermissible in proceedings and decisions taken in administrative matters. Judicial review is confined to the decision-making process. Court cannot examine the merits of the decision.[35]

CHAPTER VII: CRITICISIM, CONCLUSION AND SUGGESTIONS

In the emerging Indian law and principle is attracting attention because more than doing good to the society it has its own threats and pitfalls. The role of the "State" in India has developed and changed over a period of time from negative action to positive approach. We all are surrounded by administration in some or the other aspect. Thus, it has become absolutely necessary to have a check over these administrative functions. As, in this developing era there are chances and has been evident that these administrative authorities have either abused or misused their power.

The Constitution, being to the law of land came to rescue and has enshrined the power to High court and Supreme court to keep a check over this administrative action. The principle of Judicial review is to enforce Constitutionalism. The Judicial review plays an important role not only in enforcement of private right, but also ensuring where the administrative authority is exercising their power within the statutory framework.

The major principle, which the Indian court has used to exercise judicial control are the 'doctrine of proportionality and the 'Doctrine of Wednesbury unreasonableness'. The court has held in list of cases that the doctrine of proportionality' is a structured and fatal form of review, which exists in India from the very beginning. But it has been evident that the concept of proportionality is nothing but a reformulation of Wednesbury principle Indian cases. As the Indian judiciary has failed to differentiate and make demarcation between the standard of the principles of 'Wednesbury' and 'Proportionality. The term 'Proportionality' signifies different meaning at different place. The prerogative powers of writ jurisdiction conferred by the constitution for judicial review of administrative action is undoubtedly discretionary and yet unbounded in its limits. The discretion however should be exercised on sound legal principles. In this respect it is important to emphasise that the absence of arbitrary power is the first

[34] Syed T. A. Naqshbandi v State, (2003) 9 SCC 592
[35] K. Vinod Kumar v S. Palanisamy, AIR 2003 SC 3171

essential of the rule of law upon which the whole constitution system is based. In a system governed by rule of law when discretion is conferred upon the executive authorities it must be based on clearly defied limits.

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