RESEARCH PROPOSAL

ADMINISTRATIVE LAW

JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION

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Abstract

Judicial review of administrative action means a process whereby the courts examine the action of legislature or executive.

At times administrative authority functions or acts beyond the scope of Constitution. Or sometimes the public authorities in the course of performing their duty do not function according to the procedure prescribed by law, such failure to act within the scope of power adversely affect individuals' rights, which necessitates judicial control over such powers or actions of Administrative authorities.

This paper is an attempt to understand the concept of Judicial control over discretionary powers from its growth in United States to present day application in India and discuss the intricacies, trends and unfolded aspects especially in Indian context.

Whether Judicial Review works as a check and has proven to be an effective tool against administrative action which enables administrative authorities to function within the scope of given powers?

- ***Key words***

  Administrative authorities, Discretionary power, non-statutory, Sovereignty , administrative functions .

• ***Introduction***:

In the late Victorian era, A.V. Dicey, whom some continue to regard as the foremost authority on English constitutional law of his time, believed that administrative law should have no place in British Constitution. Indeed, M. Barthelemy, Dean of the law faculty Paris University, recounts that, while spending weekend with Dicey, He ask him about status of administrative law in England. Dicey retorted that In England we know nothing of administrative law, and we wish to know nothing. To the contrary buddy it is generally acknowledged that administrative law not only exist but also in growth enormously in scope and significance.

Modern civilized States confer more power upon the Administrative authorities because the Discretionary power enables the State to achieve Social Welfare objectives. Discretion enables an administrator to understand the needs of the society and be creative in his own sphere for implementing the policies. Having said that, there needs an effective control mechanism to skeptically analyze the administrative actions especially those which are acted at their own discretion as the saying goes "Power corrupts" and the more power also invites arbitrary actions.

• ***LITERATURE REVIEW***

The main source of administrative law has been the judges of the Courts. And with the changing times the presiding judges have passed orders regarding the actions of the administrative authorities. Such orders included the directions and comments which forms a part of literature on Administrative Law. Apart from this the jurists have tried to interpret administrative law as a separate branch of Law and hence their interpretation too forms a part of literature and is a subject matter to study for a researcher.

Some important remarks of Honourable Judges and the Jurists regarding Discretionary Power and the Judicial Control:

Sharp v. Wakefield [1891 AC 173][4]

Discretion means doing of action according to rules of reasons and justice, not according to private opinion… according to Law and not humour. It is to be, not arbitrary, vague and not fanciful but legal and regular.

Jha, Chakradhar in their "Judicial review of Administrative Acts"

The Cardinal Principles of Indian Constitution that the Judicial Review is one of them. The equality and justice to all citizens of India, the Preamble of the Indian Constitution has promised… That some impartial body is essential for the maintenance of democracy that should in the existence because, to be addicted to tyranny, the majority rules though the best rule is found generally.

• *RESEARCH METHODOLOGY*

In this Research Paper, the researchers have adopted the Doctrinal Method of research, to find out the answers to the proposed research question. This doctrinal research methodology deals with the information such as statutes, judgments, books, journals, newspapers, articles etc. This paper is descriptive and analytical comprising the recent trends with the help of case laws.

O *Administrative law*

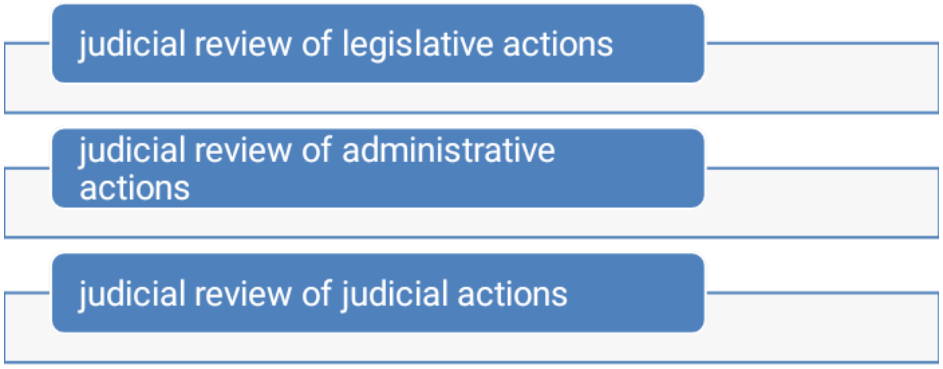
Normally administrative no is the guide aid and the area of la concerned with the control of governmental powers, power which originally primary legislation are in the prerogative. Are the same subordinate powers exercised by individuals and bodies acting under the power given by primary leisure station. It may then operate in the respect of controlling the prerogative powers of ministers. But it might equally well apply do the minute e avenue station in central and local government embodies general principle which can be applied to the exercise the powers and duties of authority in order to ensure that myriad of rules on and discretionary powers available

to executive. In so far as it is possible to identify a common body principal and procedures that apply in this area, such principles taken together, from the basis of what we call administrative law.

Judicial Review

Judicial review' may be defined as a "Court's power to review the actions of others branches of government, especially the Court's power to invalidate legislative and executive actions as being unconstitutional."

Broadly speaking, judicial review in India deals with these aspects:



We are dealing with second aspects, namely Judicial Review of Administrative Actions.

WHAT ARE ADMINISTRATIVE ACTIONS?

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.

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 nonstatutory, such as issuing directions to subordinates not having the force ~~of law, but its viol~~ation 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.

COMPARATIVE STUDY OF USA, UK AND INDIA.

JUDICIAL REVIEW IN UNITED KINGDOM

*The Doctrine of Judicial Review was prevalent in England also**. Dr. Bonham vs. Cambridge University**[15]** was decided **by** Lord Coke was the foundation of judicial review in England. But in the case of **City London vs. Wood**[16]** Chief Justice Holt remarked that "An Act of Parliament can do no wrong, though it may do several things that look pretty odd". This remark establishes the Doctrine of Parliamentary Sovereignty which means that the court has no power to determine the legality of Parliamentary enactments. In UK there is a system which is based on Legislative Supremacy and Parliamentary Sovereignty. Earlier, there was no scope of judicial review in UK, but after the formation European Convention of Human Rights, the scope of judicial review become wider. The enactment of Human Rights Act 1998 also requires domestic Courts to protect the rights of individuals. In UK, there is no written Constitution and Parliamentary Supremacy is the foundation in UK. Principle of "Parliamentary Sovereignty" dominates the constitutional democracy in UK.*

JUDICIAL REVIEW IN USA

The Doctrine of separation of power has been recognized by the framers of the American Constitution. The Legislative power are vested in the Congress, the

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executive power in the President and the judicial power in the Supreme court and the courts subordinate thereto. Under the power of judicial review, the Supreme Court can

set aside any order passed or action taken by administrative authority or agency if it is not in consonance with law.

In the historic case, of Marbury v. Madison, the supreme court observed that the Constitution is Supreme and it is duty of the court to declare what the law is. "This is of very essence of judicial duty. Why otherwise does it (Constitution) direct the judges to take an oath to support it?" At the same time, while exercising power of judicial review, courts do not sit in appeal over the decision of administrative bodies. They will not undertake functions of the government nor will they substitute their decision and judgments for that of the government and executive authorities.

After Marbury's judgment their expansion of judicial review was tremendously. The process of Judicial Review expanded the powers of the Federal. It increases the protection to civil liberties and personal freedom.

JUDICIAL REVIEW IN INDIA *judicial review is the most potent weapon in the hands of the judiciary for the maintenance of the rule of law. Judicial review is in the touchstone of the constitution. The Supreme Court and High Court are the ultimate interpreters of the constitution. It is, therefore, their duty to find out the extent and limits of the power of co-ordinate branches, viz. executive and legislature and to see that they do not transgress their limits. However, the court is not concerned with the merits or correctness of the decision, but with the manner in which the decision is taken or order is made. A court of law is not exercising appellate power and it cannot substitute its opinion for the opinion of the authority deciding the matter.*

In ***Minerva mills Ltd. V. Union of India[19]****, Supreme court has held that the constitution has created an independent judiciary which is vested with the power of judicial review to determine the legality of administrative action and the validity of legislation. It is the solemn duty of the judiciary under the constitution to keep different organ so the state within the limits of the power conferred upon them by the constitution by exercising power of judicial review was sentinel on the qui vive. Thus, Judicial review aims to protect citizens from abuse or misuse of power by any branch of the state.*

The power of judicial review is an integral part of our constitutional system and without it, there will be no government of law and the, rule of law would become a essential feature of the constitution and it cannot be abrogated without affecting the basic structure of the constitution.

Analysis

The doctrine of judicial review has acquired different nuances during the course of its evolution in UK, USA, and India. Its origins can be traced to UK which has no written Constitution. It has become firmly established in USA with a written Constitution establishing a federal polity. However, the doctrine reached its culmination under the Indian Constitution when the Supreme Court of India bestowed on judicial review the widest ambit and amplitude in the casus célèbre ***Kesavananda Bharti v. State of Kerala***[29]*. The very old case on judicial review in*

England in case Dr. Bonham's Chief Justice Coke stated that when an Act of Parliament was against common right or reason, repugnant or impossible to perform, the Common Law would control it and adjudge such Act to be void. In the Historic case ***Marbury v. Madison***[30] *the Supreme Court of America made it clears that Court had the power of judicial review, Chief Justice George*

Marshall observed: "Certainly all those who have framed the written Constitution contemplate them as forming the fundamental and paramount law of the nations and theory of every such government must be that the legislature, repugnant to the

Constitution is void".

Grounds for Judicial Review of Administrative Actions

1. *Illegality*
2. *Irrationality*
3. *Procedural*
4. *Impropriety*
5. *Proportionalit*

Remedies of Judicial Review/ Public Interest Litigation

Here five types of writs are available for judicial review of administrative actions under Article of 32 and Article of 226 of Constitution of India. Habeas Corpus writ literally means "Have the body" this writ is issue to secure the release of person from illegal detention or without legal justification, its deals with person right of freedom. In simple words Court direct the person and even authority who has detained individual to bring such person before Court so that Court may decide the validity, justification, jurisdiction of such detention.

It is to be filed by any person.

Habeas Corpus case
Mandamus
Quo Warranto
Prohibition *Certiorari*

• ***CONCLUSION***

In India, judicial review of administrative action is inherent in our Constitutional scheme which is based on rule of law and separation of powers. It is considered to be the basic features of our Constitution, which cannot be abrogated even by exercising the Constituent power of parliament. It is the most effective remedy available against the administrative excesses. Well, it is positive sense among the masses that if the administration undertakes any work or acting under discretion power conferred upon it either by statutory rules or under the provisions of the Constitution of India. If it is failure to exercise discretion or abuse of discretion power to settle its score or gain any private profit due to this discretion power, then only option before the public is to go to judiciary under Article 32, 136 or Article 226 of the Constitution of India. The main purpose of judicial review is to ensure that the laws enacted by the legislature conform to the rule of law. Judicial review has certain inherent limitations. It is more suited for adjudication of disputes than for performing administrative functions. It is for the executive to administer the law and function of judiciary is to ensure that government carries out its duty in accordance with the provision of the

Constitution of India.

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