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Article · June 2022

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Journal of Indian Scholar, a scholarly peer-reviewed online Journal, focusing on research theories and applications in language, management, science, technology, law, history, philosophy and Innovation in relevant fields, is published quarterly.

DECEMBER 2020

VOLUME: SIX

ISSUE: FOUR

Publication: Smile India Foundation

www.journalofindianscholar.in

Judicial Review of Administrative Actions: An Overview

Abstract

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 is an aspect of the 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 customs. The paper discusses the doctrine of ultra vires and remedies of judicial review. The power of judicial control has become an important area of administrative law because the courts have proved more effective and useful than the legislative or administrative powers.

Keywords: Administrative actions, Judicial Review, Writs, Ultra-vires, Remedies.

Introduction

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 arguments. It is based on subjective satisfaction where the 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.

Judicial Review of Administrative Action Is Part Of Enforcing Constitutional Discipline Over Administrative Agencies.

In case A.K. Kraipak v. Union of India[1] the Court was of the view that to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the

[1] A.I.R. 1970 S.C. 150

nature of the 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 English prerogative with the pattern which was issued by the court of King's Bench 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.

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. In the process of judicial review of legislative and executive action, the courts pick out the golden thread of reason and meaning in law, they shape and convert 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.

Grounds for Judicial Review of Administrative Actions

1. Illegality 2. Irrationality 3. Procedural impropriety 4. Proportionality

Judicial review means the review made by the courts of administrative actions 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.[2] It is the authority of the courts to declare void of the acts of the legislature and executive if the administrative body is

[2] Prof. I. P. Massey, Administrative Law pp.62, 8th edition 2008.

found in violation of the provisions of the Constitution.[3] The concept of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for judicial review. In Marbury v. Madison[4] the Supreme Court made it clear that the courts had the power of judicial review. Chief Justice Marshall said, "Certainly all those who have framed the written constitution contemplate them as forming the fundamental and paramount law of the nations, and the theory if every such Government must be that an act of the legislature, repugnant to the Constitution is void." In case of conflict between the Constitution and the Acts passed by the legislature, the Courts follow the Constitution and declare the acts to be Unconstitutional.[5] In review, reviewing authority does not go into the merit of the decision while in the case of appeal the appellate authority can go into the merits of the decision. Therefore, judicial review according to de Smith is "inevitably sporadic and peripheral"[6] in judicial review, the courts undertake scrutiny of administrative action on the touchstone of the doctrine of ultra vires. The superior Supreme Court at the central level and the High Courts at the state level have the power to review administrative actions through various writs like habeas corpus, mandamus, certiorari, prohibition, 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 several technicalities.[7] Indian courts usually follow the technicalities of English law. However, the constitutional provisions of the Indian Constitution are so broad in language that they indicate Indian judicial bodies are not bound to follow the technicalities of English Law of various writs. But in practice, the attitude of the Indian courts is by and large conditioned by the English approach. When we look into the historical background of doctrine of ultra-vires or excess of jurisdiction, historically, England's doctrine of the ultra-vires or excess of authority is the foundation of judicial review. The tribunal's attempts to extend this narrow concept to the modern problems of the administrative process have introduced certain technicalities and artificialities in the judicial review law. The courts take the view that written authority is supervisory in nature and cannot be equated with an appeal

[3] Kailash Rai, Administrative Law, pp.395, 5th edition 2006.

[4] U.S. 137, 1803

[5] *Ibid*

[6] S. A. de Smith, "Judicial Review of Administrative Action", Vol.8, No.4 pp, 775, Oct. 1959.

[7] Basappa v. Nagappa, A.I.R. 1954 S.C. 440: (1995) 1 S.C.R. 250.

from the body concerned to the court.[8] Thus, the ultra vires doctrine provides a half-way basis for judicial review between appeal review and no review at all.[9] In an appeal, the appealing authority may not only quash the administrative decision but may also take into account the validity of the decision of the appealing authority and substitute its judgment in its place, whereas in the case of ultra vires, the jurisdiction of the courts is restricted only to quash the administrative decision if it exceeds the authorities power. To refrain from discussing the merits of the case, or directing it to behave according to the law and the courts. Therefore, the reach of an appeal on a point of law or fact is broader and the jurisdiction of the court is greater. Therefore, the halfway analysis, the scope of which is not always apparent, creates uncertainty in administrative action involving judicial interference.

Grounds Of Review Through Writs (Jurisdictional Principle)

The doctrine of ultra-vires:

An analysis of judicial power centres around the question of how far the courts can go in reviewing the administrative authority's decisions or acts as distinct from those of appeal in review proceedings. To seek an answer to this question, it is important to examine the topic in the sense of the historical facts and power that influenced and shaped it; the atmosphere of values and opinions that nurtured it; the scope of circumstances in which it must operate; and the state of progress that it has achieved. The law relating to judicial review of administrative action in India was traditionally derived from common law, the prevailing aspect of which was the regulation by the ordinary court of law of restrictions over the powers of the public authorities. Therefore, the cases instituted before borough tribunals were removed from the earliest times into the king's court at Westminster.[10] The superior courts used to maintain very tight control over the peace judges, who exercised a wide range of duties, including highway repairs, bridges, and other administrative matters. When, in 1888, most of the administrative powers of the peace justices were transferred to local authorities, the courts maintained similar control over the latter. Although maintaining power over the lower courts and tribunals, the courts had a right to determine the former's proper jurisdiction and maintain it within their jurisdiction. In this review process, the concept of jurisdiction originated, otherwise known as 'ultra-vires' that marked off an area where the lower tribunals

[8] Gerard W. Hogan, Discretion and Judicial Review of Administrative Action, Vol. 15, No.1, (1998).

[9] Matthew, D. Zinn, Ultra vires taking, Vol.97, No.1 (Oct.1998).

[10] Holdsworth, A History of English Law, Vol. 2 (1936) pp. 395-405.

are absolute judges but are not allowed to cross the wall. The theory of jurisdiction embodies a dichotomy-those case in which, within its jurisdiction, a tribunal determines and those in which it rules outside its jurisdiction, judicial power is only applicable in the latter type. The principle of jurisdiction that determines the reviewability of administrative action is often expressed as want or excess jurisdiction; the underlying doctrine is referred to as 'ultra vires'. The ultra-vires doctrine, as explained by Lord Selbourne L.C. In one case,[11] it should be rational, and not unreasonably interpreted and enforced, and whatever may be fairly regarded as incidental to, or consequential to, the items approved by the Legislature should not (unless expressly prohibited) be deemed ultra-vires. An obvious example of the ultra-vires principle was the ranking of omnibuses by the London Country Council with statutory authority to buy and work trams. The House of Lords held that there was no jurisdiction for the London Country Council to run omnibuses that were not incidental to tramway operation.[12] Similarly, a local authority with authority to acquire land other than 'park, garden or pleasure ground' acts outside its jurisdiction to acquire land that is part of a park.[13] Therefore, the likelihood of judicial review depends on whether an excess of authority can be said to occur. The decision in Anisminic Ltd. v. Foreign Compensation Commission[14] that any mistake of law (intra-vires or ultra vires) may impact the jurisdiction has somewhat altered the situation. Therefore, the distinction between jurisdictional errors and non-jurisdictional errors was abandoned as far as errors of law (as distinct from the error of fact) are concerned. That was not established though. In Pari man v. Harrow School's Keepers[15] and Governors Lord Denning M.R., This claimed that there was no longer any distinction, following Anisminic, between intra-vires errors and ultra-vires errors. Finally, the Privy Council rejected, in S.E Asia Fire Bricks v. Non-Metallic Union,[16] the view that the distinction between intra-vires errors and ultra-vires errors had been abandoned.

[11] Attorney – General v. Great Eastern Railway Co. (1880) 5 A.C. 473.

[12] London Country Council v. Attorney-General (1902) A.C. 165.

[13] White and Collins v. Min. of Health (1939)2 K.B. 838.

[14] (1969) A.C. 147.

[15] (1979) Q.B. 56.

[16] (1981) A.C. 363.

Scope of the Doctrine

In theory, the principle of jurisdiction allows the courts merely to avoid acting more than powers, but in reality, by interfering on grounds of unreason ability, bad faith, extraneous consideration, unfairness, manifest injustice, and fair play, etc., they have increasingly entered the core of the subject matter. All those challenge heads were grouped under the ultra-vires single principle. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power. Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power. Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. To give an example, in R. v. Hill University Visitors exparte,[17] Lord Brown Wilkinson has embraced the conventional ultra-vires script. When outside the authority granted, the decision-maker exercises his powers in a way that is procedurally unconstitutional or unfair to Wednesbury, he acts ultra-vires his powers and is therefore unlawful. The theory of ultra-vires is consistent with the principle of rule of law to some degree, thus, the definition of ultra-vires is now viewed by many as an insufficient excuse for judicial review. The alternative view, therefore, is that the courts do not need to resort to speculation such as the Parliament's purpose or the technicalities of jurisdictional evidence and error of law but rather that the courts must interfere whenever an unconstitutional exercise of power has occurred. As Dawn Oliver puts it, the question of judicial review has changed from the ultra-vires law to a concern for the security of rights and regulation of powers.

Basis Of The Doctrine Of Ultra- Vires

Administrative action for judicial review, using concepts of intra-ultra vires and the rules of natural justice ensures that the executive acts within the law. Following the granting of a request for judicial review, it is for the court to determine whether the body in question has acted intra-vires or ultra-vires (i.e., within or outside of its power). The main classes of action may be pursued; those alleging infringement of statutory requirements and those alleging that a decision was reached in an unreasonable manner or disregard of natural justice rules. Traditionally, these broad headings have been broken down into a variety of subheadings. By

[17] (1993) 2 A.C. 237.

way of illustration, a body can act ultra-vires if it uses its powers for the wrong purpose,[18] or if it abuses its powers,[19] or if it adopts such a rigid policy that it does not exercise its discretion with which it has been invested.[20] The law imposes requirements of reasonableness on administrative bodies and failure to act reasonably cause an individual to act ultra-vires, an entity can act ultra-vires if delegated powers are vested but transferred to another. The statute may require administrators to adopt specific procedures in the exercise of those powers if they do not do so, and the proceedings are judged to be 'mandatory'(compulsory) rather than a directory (advisory) for an entity to act ultra-vires. If a public body that is under an obligation to act fails to act at all court can order it to do so. In decision-making, too, the laws of natural justice must be observed; where a person has a right or interest at stake due to an administrative decision, he is entitled to fair treatment.[21] The House of Lords rationalized all these grounds for a review into three main categories: illegality, irrationality, and procedural impropriety.[22] Lord Diplock noted today, "One can conveniently classify the grounds on which administrative action is subject to judicial review under the three headings". First ground 'illegality,' the second 'irrationality,' and the third 'procedural impropriety,' which is not to imply that further progress may not occur on a case-by-case basis. Over time, further grounds were added. Lord Diplock further elucidated the concepts. By illegality as a ground for judicial review, I mean that the decision-maker must correctly understand the law which governs and gives effect to his decision-making powers. Whether or not he had been, par excellence, a justifiable issue to be resolved, in case of disagreement, by those people, the judges, by whom the State's judiciary is exercisable. Through irrationality, I mean what can now be considered the unreasonableness of Wednesbury[23] in short. This refers to a judgment so absurd in its violation of logic or accepted moral standards that it could not have been made by any sensible person who had applied his mind to the issue to be determined. Whether a decision falls within this category is a question which judges should be well equipped to answer through their training and experience. Instead of failing to follow basic rules of natural justice or failing to act with procedural fairness towards the person affected by the decision, I have described the third head as 'procedural

[18] Attorney-General v. Fulham Corporation (1921).

[19] Westminster Bank v. Minister of Housing and Local Government (1971) A.C. 508.

[20] Padfield v. Minister of Agriculture Fisheries and Food (1968) A.C. 997.

[21] Wheeler v. Leicester City Council (1985) A.C. 1054.

[22] Council of Civil Service Unions v. Minister for the Civil Service (GCHQ Case), (1985) A.C. 374.

[23] Associated Provincial Picture Houses Ltd. Wednesbury Corporation (1948) 1 K.B. 223.

impropriety.' This is because, under this heading, susceptibility to judicial review often entails failure by an administrative tribunal to comply with the procedural rules specifically laid down in the statutory instrument by which its authority is granted, even if such failure does not entail any violation of natural justice.

Scope of the Doctrine Of Ultra- Vires In India

Historically, England's doctrine of the ultra-vires or excess of authority is the foundation of judicial review. The ultra vires doctrine is the fundamental tool for judicial supervision of administrative authorities; as it has its implications through the length and breadth of administrative law; it has been called "the core rule of administrative law."[24] As in England, so in India, the doctrine of ultra-vires has reached a high degree of complexity, allowing the courts to investigate not only acts that are outside of the jurisdiction but the reasonableness, intentions, and validity of considerations. The courts have exercised restrictions on different aspects of the discretionary powers. Procedural errors are also considered to be jurisdictional if the procedural provision is as distinguished from the directory as mandatory. In India, administrative actions are subject to judicial review in cases of unlawfulness, irrationality, or procedural impropriety.[25] In the condition of A.P. v. Me Dowell & Co.,[26] while dealing with administrative actions and judicial review, established that, in the case of administrative action, the scope of judicial review was limited to three reasons;

(i) Unreasonableness which is more appropriately called irrationality.

(ii) Unlawfulness.

(iii) Unfairness of action.

Consequently, judicial review of administrative action is only necessary when conduct suffers from the sin of arbitrariness, unreasonableness, or injustice. If there are malafides, prejudice, arbitrariness, bordering on perversity or such unreasonableness as no reasonable man can conceive, it is appropriate to strike down an action. Therefore, the doctrine of ultra-vires is not limited to cases of simple misuse of authority, but it also regulates abuse of power, as in situations where something is done unjustifiably, for wrong reasons, or through incorrect

[24] Wade, Administrative Law (1977) p. 40.

[25] Tata Cellular v. Union of India (1994) 6 S.C.C. 651.

[26] A.I.R. 1996 S.C. 1627.

procedures. Therefore, the doctrine of ultra-vires is not limited to cases of simple misuse of authority, but it also regulates abuse of power, as in situations where something is done unjustifiably, for wrong reasons, or through incorrect procedures. The ultra-vires doctrine is the principal instrument of regulatory authority's judicial power. This covers all manner of regulatory acts done more than authority. Also known as the principle of jurisdiction. However, in a court of judicial review, it is not sitting as an appeal court but merely reviewing the way the decision was made. In Tata Cellular v. Union of India,[27] the Supreme Court stipulated that judicial review is concerned with reviewing not the merits of the decision but the decision-making process itself. If an administrative decision is allowed to be reviewed, it will replace its own decision which could be fallible by itself. The court has to confine itself to the question of legality. The court has to confine itself to the issue of legality.[28] The aim should be

1) Whether the decision-making authority exceeds its power.

2) Committed an error of law.

3) Committed a breach of the rules of natural justice.

4) Reached a decision which no reasonable tribunal would have reached.

5) Abuse its power.

There is no desirability for untrammeled judicial review.[29] Arbitrariness based on proportionality theory is still without foundation. There is also no basis for not justifying the administrative action on merit.[30] Court must confine itself to how it made a decision or issued an order. It is not about the merits of the decision at all.[31]

Present Scenario in India over Administrative Actions

Judicial review is central in dealing with the malignancy in the exercise of power. However, in the changed circumstances of socio-economic development in the country, the Court is

[27] (1994) 6 S.C.C. 651.

[28] Mansukhlal v. State (1997) 7 S.C.C. 622.

[29] Paharpur Cooling Tower Ltd. v. Bongaigaon Refinery and Petrochemicals Ltd., A.I.R. 1994 Del. 322.

[30] K.L. Trading Co. Pvt. Ltd. v. State, A.I.R. 1996.

[31] S.R Bommai v. Union of India, A.I.R. 1994 S.C. 1919.

emphasizing ‘self-restraint’. Unless the administrative action is violative of law or the Constitution or is arbitrary or mala fide, Courts should not interfere in administrative decisions.

Remedies of Judicial Review/ Public Interest Litigation

Here five types of writs are available for judicial review of administrative actions under Article 32, and Article 226 of the Constitution of India.

1) Habeas Corpus 2) Mandamus writ 3) Quo Warranto 4) Prohibition 5) Certiorari

Conclusion

Judicial review of the administrative action inherent in our constitutional scheme based on the rule of law and separation of power. It is regarded as the basic feature of our Constitution, which cannot be abolished even by the exercise of parliamentary constitutive power. It’s the most effective remedy against administrative excesses available. It is a positive feeling among the people that if the administration carries out any function or acts at the discretion of the power given to it, either by legislative norms or following the provisions of the Indian constitution. Unless, because of that discretionary power, it is a failure to exercise discretion or misuse of discretionary power to satisfy its gain or any private gain, the only choice before the public is to go to court under Article 32, Article 136, or Article 226 of the Indian Constitution. The main purpose of judicial regulation is to ensure compliance with the laws enacted by the government with the rule of law. Judicial regulation has certain drawbacks inherent in this. It is better suited to dispute resolution than to administrative functions. It is the executive who administers the law and the judicial system function to ensure that the government fulfils its duty following the provisions of India’s constitution.

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