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CHAPTER I

INTRODUCTION TO RESEARCH :

INTRODUCTION:

Administrative actions are recognized as a separate branch of legal discipline in the 20th century in India. Today, the administration plays vital role and has an impact on every aspect of an individual's life. So, this has become a key area for study and research. The concept of judicial review rests at the heart of the legal and political systems of many nations.

The following research has dealt with the with broader aspects of administrative law and various methods of judicial control through writs. A strong, independent and impartial judiciary is a sin-qua-non of any government system. However, when such administrative actions are questioned, challenged, or perceived as arbitrary or unjust, the legal process known as "judicial review" emerges as a fundamental mechanism to ensure the accountability, fairness, and legitimacy of these actions.

The concept of judicial review rests at the heart of the legal and political systems of many nations. It serves as a safeguard against potential abuses of power, ensuring that administrative decisions adhere to the rule of law and respect individual rights. This process empowers the judiciary to assess the legality, procedural regularity, and substantive validity of administrative actions, ultimately influencing the course of public policy and governance. Judicial review has been recognized as a necessary and basic requirement for the construction of an advanced civilization to safeguard the liberty and rights of the citizens. The power of judicial review in India is significantly vested upon the High Courts and the Supreme Court of India. Judicial review is the court's power to review the actions of other branches of government, especially the court's power to deem invalid actions exercised by the legislative and executive as 'unconstitutional'.

Broadly speaking, judicial review in India deals with:

1. Judicial Review of Legislative Actions
2. Judicial Review of Administrative Actions
3. Judicial review of Judicial Actions

RATIONAL AND SIGNIFICANCE:

Judicial review of administrative actions is a fundamental aspect of the legal system in every democratic country. It serves several important purposes and holds a prominent significance in ensuring the rule of law and protecting individual rights. Following are the explanations of the rationale and significance of the study of judicial review of administrative actions:

Research on the judicial review of administrative actions holds immense significance due to several key reasons:

1. **For Preservation of Rule of Law:** Judicial review ensures that administrative actions establish legal principles and statutes. This upholds the rule of law by preventing arbitrary exercises of power and maintaining consistency in decision-making.

2. **Protection of Individual Rights:** The of judicial review of Administrative Actions serves as a safeguard for individuals and organizations against potentially unfair or unlawful administrative decisions. Through review, citizens can challenge actions that infringe upon their rights, fostering a more just society.
3. **Accountability and Transparency:** Research in this area helps delineate the boundaries of administrative authority. It promotes transparency by subjecting administrative decisions to scrutiny, holding agencies accountable for their actions and policies.
4. **Balancing Powers:** It can help to maintain a balance of power among government branches. Judicial review acts as a check on administrative agencies, ensuring they act within their delegated authority and don't overstep their bounds.
5. **For Legal Precedent and Guidance:** Through the examination of past cases and legal doctrines, research on judicial review establishes precedents that guide future administrative actions. It provides a framework for decision-making and offers clarity in interpreting laws.
6. **Influence on Public Policy:** Findings from research can inform policymakers on areas needing legislative reform or administrative improvement. Understanding the challenges and successes of judicial review can lead to more effective policies.
7. **Aids Promotion of Good Governance:** A robust understanding of judicial review contributes to the promotion of good governance practices. It encourages fair, efficient, and accountable administrative processes, fostering public trust in government institutions.
8. **Global Perspective and Comparative Analysis:** Comparative studies of judicial review across different jurisdictions offer insights into diverse legal systems. This comparative analysis aids in understanding best practices and the evolution of administrative law worldwide.
9. **For Academic and Legal Advancements:** Research in this field contributes to the academic discourse, enriching legal scholarship and facilitating a deeper understanding of administrative law principles.

Hence the essence, research on the judicial review of administrative actions is instrumental in upholding legal standards, protecting individual rights, maintaining governmental accountability, and influencing the evolution of administrative law and governance practices.

LITRETURE REVIEW:

Case Laws:

- A. *Golaknath v. State of Punjab (1967):* In this case, the Supreme Court held that the Parliament did not have the power to amend the Fundamental Rights enshrined in the Constitution. This decision was later overturned by the 24th Amendment to the Constitution, which allowed the Parliament to amend any part of the Constitution, including the Fundamental Rights.¹
- B. *Kesavananda Bharati v. State of Kerala (1973):* This case is considered to be one of the most significant cases in the history of judicial review in India. In this case, the Supreme Court held that there were limitations on the amending power of the Parliament and that the basic structure of the Constitution could not be altered.²
- C. *Maneka Gandhi v. Union of India (1978):* In this case, the Supreme Court held that the right to travel abroad was a part of the right to personal liberty under Article 21 of the Constitution. This decision expanded the scope of the right to personal liberty and protected it from arbitrary restrictions by the government.³

Books:

Grounds of Judicial Review of Administrative Action in India. The grounds for judicial review of administrative action in India are primarily based on the principles of natural justice, reasonableness, non-arbitrariness, and the violation of fundamental rights. Some common grounds include:

1. **Procedural Impropriety:** This refers to instances where an administrative authority fails to follow the prescribed procedures or acts in a biased manner during decision-making.
2. **Irrationality and Unreasonableness:** The courts assess whether the decision is based on rational grounds and whether a reasonable person would have reached the same conclusion.
3. **Illegality:** Judicial review is exercised when an administrative action exceeds the authority granted by law or contravenes statutory provisions.
4. **Proportionality:** The court examines whether the administrative action is proportionate to the objective it seeks to achieve and whether it infringes on fundamental rights.⁴

Constitutional provisions in India:

The India parliament has adopted this system of judicial review system from US Constitution and the powers of the parliament are not supreme and the power is divided between Centre and the states. The supreme courts also have powers of reviewing the enactments of both the parliament and state legislatures. This makes the courts more powerful and grants an instrument of the judicial review. The various provisions of the system of judicial review have been granted by our Constitution in various articles such as

Article 32 provides the right to constitutional remedies which means that a person has the right to move to the supreme court for getting his fundamental rights protected.

¹ *Golaknath v. State of Punjab, 1967 AIR 1643, 1967 SCR (2) 762*

² *Kesavananda Bharati v. State of Kerala, Writ Petition (Civil) 135 of 1970*

³ *Maneka Gandhi v Union of India AIR 1978 SC 597*

⁴ *M P Jain, Indian Constitutional Law-Volume 2, 1952 (7th ed., 2018) last seen on 20.11.2023*

Article 226 empowers the high court to issue directions, orders or writs in the nature of habeas corpus, mandamus, quo warranto and certiorari. Such directions, orders or writs may be issued for the enforcement of fundamental rights or any other purpose.

Article 245 states that the powers of both parliament and states legislature are subject to the provisions of the constitutions. Any legitimacy of any legislation can be challenged before the court of law on that particular subject matter or if the law infringes any of the fundamental right⁵.

RESEARCH PROBLEM:

The following research has included a comprehensive examination of the legal grounds upon which administrative actions are commonly challenged in court. It includes exploring aspects such as procedural impropriety, illegality, irrationality, proportionality, and breaches of natural justice. And weather a comprehensive understanding of the grounds for challenging administrative actions, the responses of the judiciary, the effectiveness of remedies, administrative law and governance seeks to improve the judicial review process. And weather judicial decisions, considering the approaches taken by courts in assessing and adjudicating cases involving administrative actions.

By addressing these components and questions, in this research has contributed to a deeper understanding of the specific context of judicial review in India, its impact on the balance of powers, the development of laws governing judicial review, and the protection of individual rights within the Indian legal framework. While identifying the challenges faced by the judicial review system in India, the research has also included the issues related to judicial activism, judicial independence, and the backlog of cases.

AIMS AND OBJECTIVES OF STUDY:

Understanding legal mechanisms:

To provide a comprehensive understanding of the legal mechanisms that enable individuals and organizations to challenge administrative decisions in court, focusing on the grounds and remedies available for such challenges.

Analysing grounds for review:

To identify and analyse the various legal grounds upon which administrative actions can be subjected to judicial review, such as issues related to legality, procedural fairness, irrationality, and proportionality.

Exploring remedies available:

To examine the range of remedies that courts can provide to individuals or entities seeking redress through judicial review, including quashing orders, declarations of incompatibility, injunctions, and damages.

Comparative analysis:

To compare and contrast the judicial review systems and practices across different legal jurisdictions, highlighting similarities and differences in grounds and remedies, thus offering a global perspective on the subject.

Policy Implications:

To discuss the policy implications of judicial review decisions, including their impact on public administration, governance, and the protection of citizens' rights.

The main object of the research was to examine weather judicial review of administrative action provide a fundamental safeguard against the abuse of power and to see that the functioning of the various 'agencies and instrumentalities of the state' should demonstrate a clear commitment to fairness, impartiality and proportionality while maintaining effective checks against arbitrariness and discrimination.

HYPOTHESIS:

“The implementation of judicial review concerning administrative actions functions as a crucial mechanism to prevent the misuse of authority by state agencies and entities. This study demonstrates that the regular application of principles centered on fairness, impartiality, and proportionality within these agencies serves as a robust safeguard against arbitrary decision-making and discriminatory practices. Instances of judicial review, evaluating the adherence of state agencies to these principles, contribute significantly to preventing abuse of power and instances of arbitrariness and discrimination.”

⁵ Ibid

RESEARCH METHODOLOGY:

For a comprehensive study on "Judicial Review of Administrative Actions: Grounds and Remedies," a mixed-methods approach integrating qualitative and quantitative methodologies are used:

7.1 Doctrinal Research Methodology:

Legal Analysis and Interpretation:

Study and analysis of existing laws, statutes, regulations, and judicial precedents related to administrative law and judicial review. Examine how legal principles have evolved through case law and statutory interpretation in determining the grounds for challenging administrative actions.

Case Law Analysis:

Conducting an in-depth analysis of relevant court judgments involving judicial review of administrative actions. Identify and categorize different grounds used by courts to challenge administrative decisions, examining how these grounds have been applied and interpreted.

7.2 Sources of Data Collection:

The sources useful for primary data are constitution of India, Cases published by courts, articles, , books and websites.

7.3 Tools of Data Collection:

The data is collected mainly through Secondary Sources such as articles, books, & data available on various websites.

7.4 Research Models:

While doing research the researcher will use the following models:

Explicative - Explicative process tries to ascertain the nature, scope and sources of law in order to explain what law is. This model is used to ascertain the nature, scope, source of law in order to explain what law is and also to spell out the several provisions, parts, facts of law and legal system.⁶

Analytical Model: Analytical research deals with what the present law is. In order to get the knowledge of law-making institutions and the distribution of the subjects amongst them and have sound knowledge about the legislative competency of different governments⁷, the above-mentioned methodology is used by the researcher to have a better understanding of ideologies in our constitution from many aspects.

CHAPTER II

The following chapter will be giving a brief introduction about Administrative Actions under Administrative Law. It would be covering its meaning, nature, scope and significance. Later on it will also include an overview of Judicial review which consists of the history, importance and features and judicial review.

CHAPTER III:

This chapter scrutinizes the legal foundations that empower courts to review and potentially overturn administrative decisions. It explores various grounds of judicial review such as Jurisdictional Error, Irrationality; Procedural Impropriety; Proportionality; Legitimate Expectation which form the basis for courts to assess and potentially invalidate administrative actions if they fall outside established legal boundaries or principles of fairness.

CHAPTER IV:

This chapter outlines the legal options available to challenge or rectify administrative decisions. In short in gives a brief explanation of the grounds available against Administrative Actions. It discusses avenues such as judicial review, compensation, and injunctions, offering concise insights into seeking redress for unfair or unlawful administrative actions.

CHAPTER V:

The concluding chapter examines the overall impact and significance of judicial review on administrative actions. It summarizes the key grounds for review and available remedies, highlighting their role in ensuring fairness, legality, and accountability within administrative processes.

⁶ Dr. S.R. Myneni, *Legal Research Methodology*, 14 (4th ed., 2009). last seen on 20.11.2023

⁷ Dr. H.N Tewari, *Legal Research Methodology*, 5 (1st ed., 1997 last seen on 20.11.2023

CHAPTER II

BRIFE EXLANATION OF ADMINISTRATIVE ACTION UNDER ADMINISTRATIVE LAW AND AN OVERVIEW ON JUDICIAL REVIEW :

This chapter on provides an overview of the fundamental concepts and principles governing actions taken by administrative bodies. It outlines the scope and significance of administrative law in regulating the decisions, powers, and conduct of administrative agencies. This section aims to set the foundation for understanding how administrative actions are governed, their legal framework, and the implications of these actions on individuals and society.

Meaning of Administrative Actions:

Administrative actions are those actions which are carried out in the administrative law and an administrative law deals with the powers and functions of the administrative authorities. The administrative actions are those legal action which are related to the public administrative body.

These actions protect the public and maintain law and order in the society. It is an action which is not a legislative and not a judicial action. While exercising administrative powers, principles of **natural justice** must always follow but depending on the situation of each case. These action forces an authority to do or not to do a thing.

Administrative Actions can be of:

1. quasi-legislative
2. quasi-judicial
3. Fully administrative action

2.2 Scope:

The scope of Administrative Actions is not restricted only to the executive functions like administrative, quasi-judicial and quasi-legislative. Many other tasks fall within the scope of administrative actions. An act that is neither legislative nor judicial in character is administrative action. If these measures are contrary to the principles of natural law or violate the rights of citizens, the courts can set aside these measures.

The Indian judicial system is very much overloaded with many cases pending in court. It is therefore not possible for the judiciary to solve the problems of the administration at the same time. For this reason, quasi-judicial and quasi-legislative bodies have the power to reduce the existing burden on the judiciary. In emergency situations like war, administrative action is the best possible remedy because the executive has the power to deal with the situation.

2.3 Nature:

2.3.1 Executive Function: Administrative actions are primarily concerned with executing laws, policies, and regulations set by the legislative branch. They involve the day-to-day operations of government agencies, managing public services, and implementing governmental functions.

2.3.2 Discretionary Powers: Administrative bodies often wield discretionary powers, allowing them flexibility in decision-making within the framework of established laws. This discretion enables them to adapt to specific circumstances while applying regulations.

2.3.3 Application of Policies: These actions involve the application and enforcement of governmental policies, regulations, and directives. They can range from licensing procedures, permit approvals, enforcement actions, to welfare programs and public services.

2.4 Significance:

2.4.1 Service Delivery: They play a crucial role in delivering public services efficiently and effectively, impacting citizens' daily lives in areas like healthcare, education, transportation, and public safety.

2.4.2 Policy Implementation: Administrative actions are instrumental in translating legislative intentions into practical applications. They bridge the gap between laws formulated by legislators and their implementation in society.

2.4.3 Accountability and Governance: They are subject to judicial review to ensure adherence to legal standards and constitutional principles. This oversight maintains accountability, prevents abuse of power, and ensures fairness in decision-making.

2.4.4 Impact on Society and Economy: Decisions made through administrative actions influence economic activities, business regulations, investment, and societal welfare, shaping the socio-economic landscape.

Conclusion:

By understanding the nature, scope, and significance of administrative actions it becomes easy to ensure efficient governance, safeguarding individual rights, promoting accountability, and fostering a fair and just society. It forms the basis for legal oversight, policy formulation, and effective delivery of public services, thereby shaping the functioning of governments and institutions.

2.5 JUDICIAL REVIEW AN OVERVIEW:

An Overview of Judicial Review offers a comprehensive look into the critical mechanism of judicial oversight over governmental actions. It introduces the concept of judicial review, highlighting its significance in holding administrative bodies accountable, ensuring adherence to legal standards, and safeguarding individual rights. This section aims to outline the foundational principles, scope, and implications of judicial review within the broader framework of law and governance.

History

The history of judicial review can be traced through various legal systems, but its modern development is closely associated with the evolution of the concept in English common law and its subsequent adoption and adaptation in different jurisdictions.

The foundations of judicial review can be traced back to English common law principles. This concept emerged over centuries through the process of judges reviewing the lawfulness of governmental actions. In one of the landmark case of *Prohibitions Del Roy* established the principle that the King's courts could review and control the legality of lower courts' actions. This case marked a significant step in the development of judicial review in England.

In *Marbury v. Madison*⁸ (1803) one of the most famous case establishing judicial review in the United States. Chief Justice John Marshall's opinion declared that the Supreme Court had the authority to review the constitutionality of laws was passed by Congress.

In Europe, the concept of judicial review has also evolved, albeit differently across various legal traditions. Some European countries have empowered constitutional courts or specialized judicial bodies to review legislation's constitutionality. Many countries with written constitutions, influenced by the U.S. model, have adopted judicial review as a means of ensuring that legislative and executive actions conform to constitutional provisions. This is observed in countries like India, Germany, Canada, and South Africa.

Over time, the scope of judicial review has expanded to encompass not only constitutional matters but also administrative actions. Courts in many jurisdictions now review the legality and fairness of administrative decisions and actions, ensuring they adhere to statutory provisions and principles of fairness.

Importance

Judicial review is important for the following reasons:

- a) It averts the tyranny of executives.
- b) It safeguards the fundamental rights of the citizens.
- c) It is crucial for shielding the independence of the judiciary.
- d) It is an absolute necessity for maintaining the supremacy of the Constitution.
- e) It also helps in intercepting the misuse of power by the legislature and the executive.
- f) It aids in maintaining the equilibrium between the centre and the state, thus keeping a federal balance.

Scope:

The judicial control of administrative action provides fundamental safeguards against the abuse of power. Since our Constitution was built upon the deep foundations of rule of law, the framers of the Constitution made sincere efforts to incorporate certain article in the Constitution to enables the courts to exercise effective control over administrative action. Pure administrative action involves both Statutory and non-statutory functions which can be covered subjected to judicial review through various modes for which the proper remedy may be to issue an appropriate writ. In *State of Bihar v. Subhash Singh*⁹, the Court held that, judicial review of administrative action under Arts. 32 and 226 of the Indian Constitution is valid, judicial review of administrative actions is an essential part of the rule of law.

In *Federation of Railway Officers Association & others v. Union of India*¹⁰ the Supreme Court observed that, where a policy evolved is inconsistent with the Indian Constitution and the law is arbitrary or irrational or its leads to abuse of power, the court will interfere with such matters because judicial review of administrative actions is an essential part of rule of law.

Features

- a) Power of judicial review can be exercised by both the Supreme Court and high courts:
Under Article 226 a person can approach the high court for violation of any fundamental right or for any legal right. Also, under Article 32 a person can move to the Supreme Court for any violation of a fundamental right or for a question of law. But the final power to interpret the constitution lies with the apex court that is Supreme Court. The Supreme Court is the highest court of the land and its decisions are binding all over the country.
- b) Judicial Review of both state and central laws:

⁸ US case laws Volume 5 available at <https://supreme.justia.com/cases/federal/us/5/137/> last seen on last seen on 20.11.2023

⁹ AIR 1997 SC 1390

¹⁰ AIR 2003 SC 1344

Laws made by centre and state both are the subject to the judicial review. All the laws, order, bye-laws, ordinance and constitutional amendments and all other notifications are subject to judicial review which are included in Article 13(3) of the constitution of India.

c) **Judicial review is not automatically applied:**

The concept of judicial review needs to be attracted and applied. The Supreme Court cannot itself apply for judicial review. It can be used only when a question of law or rule is challenged before the Hon'ble court.

Judicial review is not *suo motu*

The Supreme Court or the high court for that matter do not use their authority to conduct a judicial review by a *suo motu* action. However, such power is utilised when there is a question of law that comes before the courts or during the court proceedings when any such incident occurs or such conditions arise as to where the law is in question.

d) **Principle of Procedure established by law:**

Judicial Review is governed by the principle of "Procedure established by law" as given in Article 21 of the Indian Constitution. The law has to pass the test of constitutionality if it qualifies it can be made a law. On the contrary, the court can declare it null and void.

In conclusion, the chapter on "Judicial Review: An Overview" underscores the pivotal role of judicial review in upholding the rule of law and maintaining a check on administrative power. It reiterates the significance of this mechanism in ensuring fairness, legality, and accountability within governance. By examining the scope, principles, and historical evolution of judicial review, this chapter emphasizes its enduring importance in safeguarding individual rights and maintaining the balance of powers in a democratic society.

CHAPTER III

GORUNDS OF JUDIAL REVIEW

Judicial review means review by courts of administrative actions with a view to ensuring their legality. An administrative action is legal if it is according to law, within the powers given to the authority by law, and in conformity with the principles of natural justice where such principles are applicable. Judicial review means review by courts of administrative actions with a view to ensuring their legality. An administrative action is legal if it is according to law, within the powers given to the authority by law, and in conformity with the principles of natural justice where such principles are applicable. Judicial review is a protection and not a weapon. The following are the main ground of judicial review of administrative action:

Doctrine of Ultra Vires:

The juristic basis of judicial review is the doctrine of ultra vires. It was first introduced in relation to the statutory companies. However, the doctrine was not paid due attention till 1855. The doctrine of ultra vires was first established by House of Lords in *Ashbury Railway Carriage and Iron Company Ltd vs. Riche*¹¹. The Literal interpretation of the phrase ultra vires is beyond the powers or lack of power. This means that it is an act which is for any reason in excess of power is often described as being 'outside the jurisdiction'. 'Jurisdiction' in this context, means simply 'power' though sometimes it bears the slightly narrower sense of 'power to decide'.

Any administrative act or order which is ultra vires or outside the jurisdiction is avoid in any law. This doctrine contemplates that an authority can exercise only so much power as it conferred by it according to the law. Therefore, one can say that the doctrine of ultra vires is the basic doctrine in administrative law. The Doctrine of Ultra Vires is classified into two categories.

Substantive Ultra Vires:

Substantive Ultra vires means where a decision has been reached outside the powers conferred on the decision taker. If an administrative authority acts outside the substance of the power conferred, then it is doing the wrong thing. This is the concept of substantive ultra vires.

Procedural Ultra Vires:

Procedural ultra vires means where the prescribed procedures have not been properly complied with. An administrative authority may be exercising a power for an authorized purpose but, if it fails to follow a required procedure, its actions will be open to challenge. The authority here may be doing the right thing but it is doing it in a wrong way. This is the concept of procedural ultra vires.

Jurisdictional Error

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

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

- a) That the law under which the administrative authority is constituted and exercising jurisdiction is itself unconstitutional,

¹¹ (1875) L.R. 7 H.L.653.

- b) That the authority is not properly constituted as the law requires, and
- c) That the authority has mistakenly decided a jurisdictional fact and henceforth assumed jurisdiction which did not belong to it first.
- A. case of **'excess of jurisdiction'** covers a situation wherein though the authority initially had the jurisdiction over a matter but then it exceeded and afterwards its actions become illegal. This can happen in the following situations when –
 - B. An administrative body continues to exercise jurisdiction despite the occurrence of an event ousting the jurisdiction, and
 - C. When it is entertaining matters outside its jurisdiction.

All administrative powers must be exercised fairly. If the powers are abused, it will give rise to a ground of judicial review. An **'abuse of power'** may arise under the following conditions-

- a) Improper purpose- When an authority uses its power for a different purpose
- b) Error apparent on the face of record- When it can be ascertained by examining the record without having to recourse to other evidence.
- c) In bad faith- Where an administrative authority has acted dishonestly by stating to have acted for a particular motive when in reality the decision was taken with some other motive in mind.
- d) Fettering discretion- When an authority adopts a policy in the exercise of its powers, which means that it is not actually exercising its discretion at all.
- e) Non-consideration of relevant material- When a decision-maker does not look at the relevant matter.

Irrationality

If the administrative authority is given some powers where it can exercise discretion to make decisions. The decision taken must be reasonable and based on logic. The power should be exercised in a way that a reasonable person would in the same circumstances. Every decision should be based on valid reasons. The action not be discriminatory or mala fide.

The decision taken should not go against the logic and should not fail to uphold the moral standards. The authority while making the decision took all the relevant considerations. In the Associated Provincial Picture House v. Wednesbury (1947) case¹², a test to determine irrationality was developed. The test is now known as the "Wednesbury test,". in case court recognised irrationality as ground for judicial review and listed three requirements to prove irrationality.

- a) if no person acting reasonably would have made the same decision.
- b) if the authority was not taking relevant factors into consideration while making the decision.
- c) if authority took into consideration factors that were irrelevant.

Procedural Impropriety

If the decision was taken without following the proper procedure, then Procedural impropriety forms the basis for judicial review and declaring the action null and void. Every decision made by administrative authority must be made after following the fair and reasonable procedure. The court will not look into the substance of the decision but also to the procedure that was followed while arriving at that particular decision.

The authority follows the procedure as mentioned in the legislation if any and if not then every decision must follow the two principles of natural justice. The two principles are:

“Audi alteram partem”- no one should be left unheard

“Nemo judex causa sua”- no one should judge her own cause.

Two factors can lead to procedural impropriety-

- a) Failure to follow the procedure as laid down by a statute if any
- b) Failure to uphold the basic principle of natural justice stated above.

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.

Legitimate Expectation

This doctrine serves as a ground of judicial review to protect the interest when a public authority rescinds from a representation made to a person. A legitimate expectation arises in the mind of the complainant who has been led to understand expressly or impliedly that certain procedures will be followed in reaching a decision. The expectation has a reasonable basis. This doctrine has evolved to give relief to the persons who have been wronged

¹² Associated Provincial Picture Houses v. Wednesbury Corporation [1947] EWCA Civ 1, [(England and Wales) available at <https://www.casemine.com/> seen on 02/12/2023

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-

- a) Where an individual or group has been led to believe impliedly or expressly that a certain procedure will apply.
- b) Where an individual or group relies upon a particular policy or guideline which has previously governed an area of executive action.

CHAPTER IV

REMEDIES AVAILABLE AGAINST ADMINISTRATIVE ACTIONS

In modern democratic countries like India, the administrative authorities are vested with vast discretionary powers. The exercise of those powers often becomes subjective in the absence of specific guidelines etc. Hence the need for a control of the discretionary powers is essential to ensure that 'rule of law' exist in all governmental actions. Lord Dyson said that "there is no principle more basic to our system of law than the maintenance of rule of law itself and the constitutional protection afforded by judicial review."¹³

The judicial review of administrative actions in the form of writ jurisdiction is to ensure that the decisions taken by the authorities are legal, rational, proper, fair and reasonable. Article 32 and 226 of the constitution of India has designed for the enforcement of fundamental rights and for a judicial review of administrative actions, in the form of writs. It is a constitutional remedy available to a person to bring his complaint or grievance against any administrative action to the notice of the court.

The importance of remedies generally is reflected in the maxim *ubi jus ibi remedium* where there is a right, there is a remedy. Under Articles 32 and 226, the Supreme Court and High Courts have power to issue prerogative writs in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto for the protection of fundamental right enshrined in part III of the Indian Constitution. Five types of writs are available for judicial review of administrative actions are as follows:

Habeas Corpus

The writ of habeas corpus is the legal procedure which acts as a remedial measure for the person who is illegally detained. It means "have the body". The term habeas corpus is the Latin word which means to bring or present the body before the court. It is the most important right available to the person detained unlawfully. The basic purpose for which this writ is used is to release a person from unlawful detention or imprisonment. This writ is of great importance as it determines a person his right to freedom and personal liberty.

Mandamus

It means 'to command the public authority' to perform its duty. It is a command given by the higher courts that is the High Courts and Supreme Court to the Government, inferior courts, tribunals, corporations, authorities or any other person to do any act or refrain from doing an illegal act. The purpose of this writ is to compel the performance of public duties and to keep control over the activities of the administration.

Grounds of the writ of mandamus

Mandamus is remedial in nature and cannot be expressed as a writ of right as it is issued only at the discretion of the court after the applicant of the same is able to prove to the Court that some utilitarian or just question would be answered by the writ. The essential grounds necessary for the issuance of Mandamus are as follows:

- There exists a legally sanctioned right of the petitioner or the applicant of the writ and a violation or compromise of this right has been committed.
- The writ should be applied for in good faith, without any ulterior motive or intent on the part of the applicant.
- Lastly, the writ of mandamus can only be issued when no other recourse, redressal mechanism or legal alternatives have been left at the disposal of the applicant.

Framework of law in relation to mandamus

The Supreme Court of India has been authorised with the power of issuing writs under Article 32 of the Constitution. Out of the five categories of writs that are a part of the Indian legal framework, the most appropriate for the enforcement of the rights of the claimant shall be applied by the court. Right to Constitutional Remedies or Article 32 states that there must be a clear breach of fundamental rights not incorporating contentious factual questions. Under Article 32, the writ cannot be issued for the enforcement of governmental policy and a statute violating a fundamental right can be contended against by mandamus. Any executive or statutory order can be enforced by Mandamus following due process of law. Over the course of years, it has been found that continuous mandamus or the writ of mandamus issued against a prolonged failure to act on the part of state agencies. Thus, it has become a significant question of law in the modern-day legal system of India.

¹³ Diminishing judicial review will reserve 50 years of legal process, By Jeffery Jowell available at <https://www.theguardian.com/> last seen on 01/12/2023

Quo warranto

The word 'quo warranto' means by what authority. Such writ is issued against a person who usurps a public office. The court directs the concerned person to show by what authority he holds that office. The unauthorized or illegal usurper would be removed by judicial order and the right person belonging to it would be entitled to it.

The writ can be issued only when the following conditions are fulfilled:

- a) The public office is wrongfully assumed by the private person.
- b) The office was created by the constitution or law and the person holding the office is not qualified to hold the office under the constitution or law.
- c) The term of the public office must be of a permanent nature.
- d) The nature of duties arising from the office must be public.

Prohibition

Prohibition is a legal term that implies 'to prohibit, restrain, prevent, or forbid.' A higher court issues a writ of prohibition against the lower court to prevent it from exceeding its authority or going beyond its required jurisdiction. It cannot be enforced against administrative agencies, statutory authorities, or private persons or enterprises. It is exclusively applicable to judicial and quasi-judicial bodies.

A writ of prohibition is issued under particular conditions when the lower or subordinate court or tribunal-

1. Acts without its jurisdiction or exceeds its jurisdiction, i.e., jurisdictional error;
2. Goes against its powers, i.e., acted as invalid law;
3. Violates natural justice standards, i.e., failure of natural justice which is equity and equality;
4. Acts ultra vires or unconstitutionally;
5. Acts in violation of basic rights;
6. Behaves as an error on the basis of the record;
7. Truthful judgments are not supported by evidence.

Certiorari

This writ is issued by the Superior Courts (High Courts and the Supreme Court) to the inferior court or tribunal or body which may exercise judicial or quasi-judicial functions, for the correction of jurisdiction or error of law committed by them. If any order passed by them is illegal, then the Superior Court may quash or demolish it. Grounds of this writ are as follows

- a) excess or failure to exercise the jurisdiction.
- b) violation of the principles of natural justice.
- c) authority has failed to correct an error which has been apparent on the face of the record.

Landmarks case laws relating to Judicial Review
1. Shankari Prasad v. Union of India (1951)¹⁴

What was challenged: The constitutionality of the Constitution (First Amendment) Act of 1951 was challenged.

Court's decision: It was constitutionally valid as the amendments made under Art. 368 cannot fall under the scope of law under Art. 13 (3) of the constitution.

2. A.K. Gopalan v. State of Madras (1950)¹⁵

Court's decision: It was held that the judicial review must follow the procedure established by law.

3. I.C. Golaknath and Ors. v. State of Punjab and Anr. (1967)¹⁶

What was challenged: 3 constitutional amendments were challenged

1. First (1951)
2. Fourth (1955)
3. Seventeenth (1964)

Court's decision: The court overruled Shankari Prasad and Sajjan Singh's cases. It was held that the amendments made under Art. 368 falls under the scope of law under Art.13 of the Constitution.

4. Minerva Mills v. Union of India (1976)¹⁷

What was challenged: 42nd amendment, which inserted (4) (5) in Art. 368 was challenged

Court's decision: The court struck down the act and held that Judicial review is a part of the basic structure of the Constitution.

¹⁴ Case analysis available at <https://articles.manupatra.com/article-details/A-Case-Analysis-Shankari-Prasad-v-Union-of-India-Supreme-Court> last seen at 18/12/2023

¹⁵ AIR 1950 SC 27

¹⁶ 1967 AIR 1643, 1967 SCR (2) 762

¹⁷ 1980 AIR 1789, 1981 SCR (1) 206

CHAPTER V

CONCLUSION

The comprehensive examination of legal grounds of administrative actions, encompassing procedural impropriety, illegality, irrationality, proportionality, and breaches of natural justice, forms the foundation of this research. The primary inquiry of whether a comprehensive understanding of these grounds, judicial responses, remedies' effectiveness, and their influence on administrative law and governance can enhance the judicial review process is the core of this study. The research suggests that a profound comprehension of these elements significantly impacts the evolution and efficacy of judicial review mechanisms.

The findings reveal that the judiciary's responses and decisions play a pivotal role in shaping the outline of administrative action's legality. Examining the approaches courts take in assessing and adjudicating cases involving administrative actions underscores the significance of consistency, fairness, and adherence to legal principles in the judicial review process.

Furthermore, the study implies that an enhanced understanding of the grounds for challenge and the responses of the judiciary could lead to substantial improvements in administrative law and governance practices. By refining these aspects, it is possible to foster a more just, accountable, and legally robust system within administrative actions.

In conclusion, the research indicates that a comprehensive understanding of the legal grounds for challenging administrative actions, coupled with the judiciary's responses and the effectiveness of remedies, holds immense potential to advance the judicial review process. Such advancements could contribute to the evolution of administrative law, ensuring adherence to legal standards, and fostering fairness and accountability within administrative actions. Hence the hypothesis is proved.

CHAPTER 6

REFERENCES :**Books :**

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