

“Judicial Review of Administrative Actions”

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Introduction:-

Administrative law is one of the newest emerging subject of law. The concept of the administrative law is seen in the case of *Keshwananda Bharti vs. State of Kerala*¹. This newest concept of law basically deals with the administrative actions and administrative actions are neither executive nor judicial. The main purpose of the newest trend of this law to check the powers of the administrative agencies so that it could not led to arbitrariness. Basically there were many cases of violation of rights by some administrative staff using their powers and to check the powers exercised by such staffs working under respective administrative agencies, there was a need for the administrative law. It deals with all the rules and laws related to all administrative agencies.

This new emerging law has immense power and to check the power and to question the legality of the administration, judicial review plays the important part. Judicial control is often regarded as the most effective as that of executive and administrative.

Basic Principles of Judicial Review

The evolution of administrative law led to tremendous increase in the power of the administrative authorities. There is saying that “absolute powers corrupts absolutely” and with great powers come great responsibility , so there is a need to check the administrative actions of the administration agencies and the most efficient way is the judicial control as it is way more effective than that of executive and administration.

Judicial review is different from appeal and administrative review. The appeal is the creature of statue and there is no right to appeal unless there is a specific statutory provision creating that right but administrative review, the orders of inferior authorities as subjected to appeal before the superior authorities. Judicial review of administrative action is available under the law of land.

¹ AIR 1973 SC 1461

Common law system is followed in India. Although the limits are there for the judicial review that is led down in the High Court of Karnataka in *Grahaka Jagrati , Bangalore vs. State of Karnataka*², where the court held that judicial review of judicial action is permissible but there are well accepted exceptions to it.

Judicial Review in America

Basically the administrative actions in America are controlled through the injunction, writ, and declaratory judgements. The writs that are used against the administrative agencies are mandamus, certiorari, and statutory actions. If court see that statutory remedy is inadequate then the court utilise the extraordinary remedy. The federal Court of American provides the following statutory remedy-

- a) Proceedings for judicial review as provided in Sec 10. Of the Administrative Procedure Act.
- b) Statutory injunction
- c) Declaratory judgement
- d) Suits for damages under the Federal Tort Claims Act
- e) Petition to Court of Appeal for review of an administrative order

Although United States is not so expressive about the judicial review but the constitution makers are well aware of the fact. The concept of judicial review originated from the case of *Marbury vs Madison* (1803)³, the Supreme Court established its authority to review and invalidate the government actions that are the against the provisions set in the constitution. In the case of *Cohens vs. Virginia*⁴ the court led down the following statement, that federal court may also review whether state laws violate the provisions of constitution. The judicial review has the great impact in the administration and one of the main features of the American Constitution is its provisions and laws for the judicial reviews. As per the administrative discretion, it has been excluded from that of judicial interference but if there is the case of abuse of administrative discretion, the Court has been empowered to interfere. There are certain areas where the court is competent to interfere-

² AIR 1985 Karn. (NOC) 128

³ 5 U.S. (1 Cranch) 137 (1803)

⁴ 19 U.S. (6 Wheat) 264 (1821)

- a) To test the validity of the discretion on the point of law
- b) To determine whether the statutory discretion has been exercised in strict conformity with the procedure laid down by the statute or the resulting act is ultra vires or unconstitutional.
- c) To test the propriety of the administrative action by minimum standard rationality, having regard to the circumstances in each case in which the power has been exercised, apart from its power to interfere in case of clear abuse of the discretion.

There are some areas where is excluded from the administrative discretion:-

- a) If the discretionary power is vested in the President either by statute or the constitution
- b) Questions related to foreign affairs or the political questions, which require the exercise of the executive discretion
- c) Where the discretionary powers through the statute is vested in the specific officials or the agencies under Internal Security Act, 1950 , to keep the alien in custody pending final determination of his deportability, or the power of the Secretary of the Treasury as the remission of duties.

Concept of Judicial Review in England:-

The existence of the concept of the judicial control in England is the way long process of historical evolution. The entire scope of the judicial control of the public authorities lies in the ambit of High Court. The High Court can issue writs in the form of mandamus, certiorari and prohibition. Although there are increasing use of declaratory relief and action for injunction. The court is not allowed to interfere in every matter of the administration as they have the power of the administrative discretion, the court although can interfere if there is corruption in the administrative discretion, or if there is any provision that is against the public will or against any statute or constitution. Judicial review in English law enables people to challenge the exercise of power, often by a public body. A person who feels that an exercise of power is unlawful may apply to the Administrative Court (a division of the High Court) for a court to decide whether a decision followed the law. If the court finds the decision unlawful it may have it set aside (quashed) and possibly award damages. A court may impose an injunction upon the public body.

When creating a public body, legislation will often define duties, limits of power, and prescribe the reasoning a body must use to make decisions. These provisions provide a means for a decision to be found unlawful. In addition, the Human Rights Act 1998 provides that law must be interpreted and public bodies must act in a manner compliant with the European Convention on Human Rights. There are also common law constraints on the decision-making process of a body. Unlike the United States and some other jurisdictions, English law does not permit judicial review of primary legislation (laws passed by Parliament), except in a few cases where primary legislation is contrary to EU law or the European Convention on Human Rights. A person wronged by an Act of Parliament therefore cannot apply for judicial review unless this is the case, but may still argue that a body did not follow the Act.

Judicial Review in India:-

Administrative action is regarded as the residuary action which is neither judicial nor legislative. It may be statutory having the legal force or can be non statutory , devoid of such legal force. The bulk of administrative actions are allotted by the constitution, thus it is considered as statutory but there are certain conditions where it can be non-statutory, for eg. Superiors giving orders to the subordinates not having the force of law. Although the administrative actions are discretionary but there is necessity that administration should be fair, impartial and reasonable.

In India , judiciary is given immense importance and thus the power of the judicial review is given t the High Courts and the Supreme Courts. The evolution of the administration over certain period of time has given the administration powers that are for the proper functioning of the administrative agencies and there are powers that are delegated t the administrative officers for the proper functioning of the state but if any of these administrative officials or the administrative agencies tends to be corrupt and if they are misusing their discretion then judicial control there can be check in their actions. There is a need that the administrative actions should be in favour of public interest and the action should be just and favour.

There are certain writs through which court could emphasis its control over the administrative actions. Although there is limitation in the way the court could interfere in the administrative discretion, the court is not competent in all the matters regarding the administrative actions.

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

There are certain grounds on which judicial review is given on the administrative control:-

- a) Illegality
- b) Irrationality
- c) Procedural impropriety
- d) Proportionality

The above stated grounds are the basis of the judicial control. The administration should work on the benefit of public and should look into matter of the public interest and should work according to the provisions of the constitution. Through the judicial review the court can declare any administrative action invalid if it infringes any statute or the constitutional provisions.

In the case of *Keshavananda Bharti*⁵ we see the presence of judicial review and this case in short introduced the early concept of the judicial review.

In the case of *State of U.P. vs. Johri Mal*⁶, the Supreme Court led that while exercising the power of the power of the judicial review the court is more concerned with the decision-making process than the merit of decision itself.

In *Delhi Development Authority vs. UEE Electricals Engg. (P). Ltd*⁷, the Supreme Court led the point that the power of judicial review should not be exercised in the absence of any irrationality or malafide, there are certain limitation led by the court for the exercise of the judicial control over the administrative action.

⁵ Supra note 1 pg no. 01

⁶ SCC 2004 Part 4, pg no. 714

⁷ SCC 2004 (1) at p. 213

The Supreme Court in *D.D.A. New Delhi vs. Joint Action Committee Allottee of S.F.S. Flats*⁸ the court led down certain points for determining the competence of the judicial review in the administrative action. The Court led down the following point on which policy-making is subject to judicial review:-

- a) If the executive policy is contrary to statutory or a larger policy
- b) If it is unconstitutional
- c) If it is de hors the provisions of act and regulations
- d) If the delegatee has acted beyond its power of regulation

There are certain modes of judicial control, they are;-

- a) Statutory
- b) Constitutional
- c) Ordinary or equitable

Constitutional Judicial Control

There is certain provision that were included in our Constitution. There are certain rights provided to the public to protect their fundamental rights and thus it gives competence to the court to look into the administrative discretion of the administrative agencies. These constitutional remedies can be dealt in the following manner:-

- a) Under Art. 32 , the Supreme court have power to enforce the fundamental rights given in Chapter 3 of the Indian Constitution, if any of these fundamental right is infringed by any administrative discretion then Supreme Court has the power to give directions and issue writs, for eg. Mandamus, Habeas Corpus, prohibition, quo warranto and certiorari.
- b) Under Art. 226, the High Court has concurrent power for the enforcement of fundamental right and any legal right, if by any chance of administrative action are corrupt in nature and has infringe the legal right of the individual or is against the public will then the High Court through the power enshrined by Art.226 of the Indian Constitution can interfere in the matter of the administrative discretion.

⁸ AIR 2008 SC 1343

- c) Under Art. 136, through the Special Leave Petition, Supreme Court is empowered to review all the administrative action which is taken by the administrative authority in the course of quasi-judicial capacity.
- d) Under Art. 300 the courts are empowered to look into the matter of tortuous act against the government towards its servants.

Statutory Judicial Control:-

Statutory review is divided into two sub categories:-

- i. Statutory appeals: - there are some acts and provisions for an appeal from statutory tribunal to the High Court on the point of law. For eg. Sec 30 of Workmen and Compensation Act.
- ii. Reference to the High Court or statement of case:- there are several provision or statue which suggests the reference of statement of High Court. Under Sec.258of the Income-tax Act of 1961, where an application is made to the tribunals by the assessee and the tribunals refuses to state the case the assessee may apply to High Court and if the High Court is not satisfied about the correctness of decision by the tribunals, it can require the tribunal to state the case and refer it to court.
- iii. Ordinary or Equitable Judicial Control:- Ordinary or Equitable Judicial Control includes the following :-
 - Declaratory judgement
 - Injunction
 - Action for damages

In some cases where there is fault in administrative discretion or any order given may be malafide then declaratory judgment and injunction is most suitable remedies.

Judicial Review of Quasi-Judicial Action:

Judicial review of quasi-judicial action is important as through the quasi-judicial action, the administrative body is subjected to give decision and there may be the chance that the

decision is not fair. Therefore there is a need of judicial review of quasi-judicial action of the administrative body. There are certain grounds on which the acts can be reviewed:

- Ultravires
- Excess of jurisdiction
- Absence of jurisdiction
- refusal to exercise jurisdiction
- violations of the principles of natural justice
- violating the constitutional provision

Apart from the ground of ultra vires which is common to all statutory body, the above stated grounds are there where the court has the competence of judicial review. There is a necessity the administrative agencies practice their quasi-judicial on the basis of constitutional provision. The court is also competent to judicial review on the ground of imposition of punishment on government servant.

Scope of Judicial Review of administrative action and decision:-

To know the scope of judicial review, the types of administrative action is needed to be known. Although there is limitation of the judicial review and the court is competent to interfere in certain conditions only, but if it seems that any of administrative agencies is working beyond its jurisdiction or power that may rise arbitrariness of that particular administration, as in Pakistan, due to excessive administration discretion of army, it gave rise to dictator rule i.e. rule of army chief. Thus to avoid such situation in India the concept of judicial review is there for the protection of rights of public and to check on the administrative discretion and to keep an eye on the quasi-judicial action of the administrative agencies. There are certain safeguard that is provided to the administrative agencies so that court would not interfere much without reasonable cause.

In the case of Noble Resources Ltd. vs. State of Orissa⁹, the court stated that it can interfere in the contract given by government to avoid any malafide intention and to avoid the favouritism of government towards some influential people.

⁹ AIR 2007 SC 119

In the case of Union of India vs.S.S.Ahluwalia¹⁰, the court stated that in the case of penalty that are imposed on the basis of disciplinary action are limited , the court could only interfere when the punishment given for the charges alleged may be not suitable.

Conclusion

In India, the concept of judicial review is quite broad .Although there are certain safeguards that are provided to the administration with regards to their discretion. But due to the immense power that is given to the administrative agencies and the concept of the delegated legislation make the point of judicial review quite valid and important as well. The concept of judicial review stands equally important to the scenario of America, the judicial review is quite important for the American constitution as well. In our country, judicial review has been updated through various case law but one concept is clear for the Finality Clause that our constitution empowers the powers to the hands of the President in the case of conflict the decision of the President will be regarded as final. Thus to provide safeguards to the general public as well as the administrative official, judicial review is very important.

¹⁰ AIR 2007 SC 2952