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## JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS THROUGH WRITS

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### ABSTRACT

Article 32 is the heart and soul of the Indian Constitution. As such, judicial review is the heart of administrative law. It provides a fundamental safeguard from the abuse of power. The Courts declare void when it feels that the act of the bodies which were given a legal duty or power are found to be in violation of the Constitution or any other statutory provisions. Judicial review is a very effective way to control executive or administrative actions. However, the judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. There are many judicial control methods to provide remedies and the WRITS are one such method to render remedy. This article deals by lightening the nature and scope of judicial review, article 32 & 226 of the Indian Constitution and dives deep into the details of Writs.

### INTRODUCTION

An action taken by the government authorities refers to administrative actions that are neither legislative and no judicial in nature. It is dealing with the treatment of a particular situation and thus lacks generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction wherein the decision is decided upon the policy and expediency. It does not declare any right though it may affect a right. This, however, does not mean that principles of natural justice can be applied not at all when the authority is exercising its administrative powers. Except where the statues otherwise provide, a minimum of the principles of natural justice must always be observed depending on the fact situation of each case.

### JUDICIAL REVIEW

Judicial review is the power of the judiciary to examine the act done by executive authorities and law made by the legislative authority. Judiciary has the power to refuse the act of both legislative and judiciary if the act is unconstitutional and void. The power of judicial review has been vested in the high courts and

the supreme court to decide whether the act is constitutionally valid of the provisions of statutes. If the provisions of statutes violate any articles of the constitution, the supreme court and high courts have the power to remove the said provision. Judicial review is the interference of the judiciary on the legislative and executive. The concept of judicial review is evolved in the court of America. Basically, there is no express provision for the doctrine of judicial review in the constitution of America. The concept was evolved in the case of *MARBURY V. MADISON*.

But in Indian constitution there is an express provision for the doctrine of judicial review. In *Kesavananda Bharati's* case the court held that judicial review is the basic structure of the Indian constitution, the basic structure can't change or destroy by amending the constitution under Article 368.

### GROUND FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

Judicial review of administrative actions can be done on following grounds.

1. **ILLEGALITY:** The law which is made with mala fide intentions or the power vested for wrong purpose.
2. **IRRATIONALITY:** The decision is given or made under an unreasonable condition.
3. **PROCEDURAL IMPROPRIETY:** As the word speaks itself, the decision is made under improper way which fails to follow the particular law or violates the principle of natural justice.
4. **PROPORTIONALITY:** In case the judgement is against judicial integrity to extend that shocks it then the court would interfere in it.

#### SCOPE FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

##### a. **Minerva Mills Vs. Union of India, 1980**

Minerva Mills was a private company. The government had a special committee to review the administrative actions on the working of these Mills. After the submission of the report, the production of the company had declined a lot. The central government asked the national textile corporation Ltd. To take over the Minerva Mills. It was held that the amending power of the parliament under Article 368 contravenes the restriction and hence it is unconstitutional.

##### b. **Reliance Energy Limited & Another Vs Maharashtra State Road.**

In this case the division bench held that the judicial review is only for scrutinize, if any infirmity in the process of decision making and it has no right to make the decision itself. This means the law and procedure is to be followed by the person to take a decision, otherwise it may be illegality.

##### c. **Council of Civil Service Unions V. Minister of the Civil Service, 1984**

In this case the court explained irrationality as follow: By irrationality I refer to what can be concisely termed

Unreasonableness. The decision is given or made under an unreasonable condition.

#### JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS BY WRITS

Article 32 (1) clearly states that if any violation of the fundamental right this article guarantees the right to move to supreme court for the imposition of the fundamental right grant by part 3 of the Indian constitution. Article 32 (2) grants the power to the supreme court to issue orders or writs, including [Habeas Corpus, Mandamus, Certiorari, Prohibition, Quo Warranto] for the imposition of fundamental rights. Article 32 gives a quick reasonable remedy for the violation of fundamental rights from the interference of legislative and executive.

#### ARTICLE 32 & 226

Articles 32 and 226 provide most important remedies. The Supreme court and High courts issue writs under these articles. Article 32 of the Indian constitution empowers the right of the citizens to seek constitutional remedies from the Supreme court if the fundamental rights are violated. Article 226 of the Indian constitution gives the power to the High courts to issue writs to enforce the fundamental rights and also for the other purposes.

#### WRIT JURISDICTION OF THE SUPREME COURT AND HIGH COURTS

There are five major writs, which grants the citizens to seek remedies in case their fundamental rights are being violated. The five types of writs and the distinct circumstances when the writs are issued is mentioned below.

1. **Habeas corpus:** It is a Latin term, which means "to have a body of"
2. **Mandamus** : It is a Latin term, which means "to command"
3. **Certiorari** : It is a Latin term, which means "by what authority"
4. **Prohibition** : It is an English term, which means "to stop or to forbid"

5. Quo warranto : It is a Latin term, which means “by what authority”

### I.HABEAS CORPUS

The full term of the habeas corpus is “Habeas corpus coram nobis ad subjiciendum” which means “you must have the body before us for submitting”. The writ of Habeas corpus is issued to release of an unlawfully detained person. Any person who is either in the custody of police or judiciary or in private custody is presented before the court of law if such custody or detention is found to be illegal the person should be released under this writ. The burden of the proof must be submitted by the public official or private official who is taking a person into his custody.

### Fundamental Safeguards

Article 20 of the Indian constitution states that a person can't be forced to be a witness, and that person can't be convicted again for the same offence; also a person can only liable for an offence, if the law exists which is being violated at the time of commission of such offence.

The unlawfully detention is the violation of the fundamental right of personal liberty which states under the Article 21. This writ is used to empowers the fundamental right of personal liberty.

### Condition for the issue of writ of Habeas Corpus

1. If the detention is prima facie illegal. When the detention is in contravention to Article 22 of the Indian Constitution, then it is an illegal detention.
2. If the authority had exceeded or exercised maliciously the power of detention.<sup>1</sup>

### Refusal for the issue of writ of Habeas Corpus

1. If the detention is not illegal.<sup>2</sup>
2. When a foreigner secretly enters into India and if he is detained in the intention of expelling him from India, then such detention is not illegal.<sup>3</sup>

### Who may apply?

The writ petition of habeas corpus can be filed by the detained person himself/herself, or any of a person his/her behalf.

### Against whom it will lie

The petition can be filed against both the public and private authorities.

### II. MANDAMUS

The writ of mandamus is a court order issued by the Supreme court or High court ordering the government, inferior court, tribunal, public authority, corporation or any other person having public duty to perform a public duty or to refrain from doing an illegal act.

In the case of *Lakhranj v. Dy. Custodian, Bombay*<sup>4</sup>, the court emphasized the following as the object of the writ of Mandamus;

- To compel the performance of public duties prescribed by the Statute
- To keep the subordinate tribunals & officers within the limit of its jurisdiction while exercising its public functions.

### Condition for the issue of writ of Mandamus

#### 1. PUBLIC DUTY

A duty is said to be a public duty when it is created by the Constitution, Statute, common law, rules or orders.<sup>5</sup> When there is a failure in the performance of public duty, mandamus is issued. It may be issued even against the private body when the duty is in public nature.<sup>6</sup>

#### 2. DUTY TO BE MANDATORY

The Mandamus is issued, when there is a failure on the part of public authority in performing his duty, such duty should be mandatory and not discretionary in nature. In *State of Maharashtra v. Manubhai Pragaji Vashi*<sup>7</sup>, the court held that the petitioner shall not base his relief on DPSP of the Indian Constitution as a ground for the writ of Mandamus.

3. LEGAL RIGHT OF THE PETITIONER TO COMPEL THE PERFORMANCE OF THE DUTY<sup>8</sup>
4. DEMAND FOR THE DUTY AND IT'S REFUSAL<sup>9</sup>

#### Refusal for the issue of writ of Mandamus

1. If the right or duty is of private nature or arises out of a contract, Mandamus will not lie.<sup>10</sup>
2. It cannot be issued against a private body.<sup>11</sup>
3. It cannot be issued for the duty which is of discretionary in nature. But if such discretion is malicious<sup>12</sup> or without applying the mind<sup>13</sup>
4. Misstatement or suppression of material facts by the petitioner.<sup>14</sup>

#### Who may apply?

Any person whose right has been violated.

Any person who is affected by the violation or abuse of statutory duty or power.<sup>15</sup>

#### Against whom it will lie

- Administrative bodies
- Legislative bodies
- Quasi Judicial bodies
- Judicial bodies

#### Against whom it will not lie

- President of India & Governor of a state.<sup>16</sup>
- Private individual or private body.
- Company incorporated under Indian Companies Act which has no statutory or public duty.
- Mandamus shall not be issued to legislature to enact/ competent to enact/ prevent it to enact a particular law.<sup>17</sup>

### III.CERTIORARI

The writ of Certiorari is issued by the Supreme court or High court to the body exercising judicial or quasi – judicial functions to remove

the proceedings of such body for examining the legality of the proceedings.

#### Object of the writ of Certiorari

To keep the body exercising judicial or quasi – judicial functions within the limits of their jurisdiction, and to prevent these bodies from acting in excess of their jurisdiction.<sup>18</sup>

#### Condition for the issue of writ of Certiorari

1. When the body exercising judicial or quasi – judicial functions act without jurisdiction, excess of jurisdiction, abused its jurisdiction or failed to exercise its jurisdiction.<sup>19</sup>
2. In case of violation of principles of natural justice.<sup>20</sup>
3. When the quasi – judicial decision violates the fundamental rights.<sup>21</sup>
4. When there is an error of law or error apparent on the face of record.

#### Refusal for the issue of writ of Certiorari

It shall not be issued to quash an ordinance on the ground that it is constitutionally invalid.

#### Who may apply?

- The person aggrieved by the impugned order.<sup>22</sup>
- Any person who has not disentitled may draw the attention of the Superior court to an order passed by the lower courts which is being manifested to be illegal or ultra vires.<sup>23</sup>

#### Against whom it will lie

- Inferior court
- Tribunal
- Other body exercising judicial or quasi – judicial functions.

### IV.PROHIBITION

The Prohibition is an order issued by the superior court to direct an inferior court which forbids such court to continue proceedings in excess of its jurisdiction or in contravention of the law of land.<sup>24</sup>

The writ of Prohibition shall be issued against the civil court in rarest of rare cases.<sup>25</sup>

### Condition for the issue of writ of Prohibition

Certiorari is issued for making good the loss; but Prohibition is issued to prevent the inferior court from further proceedings, when

- It acts without<sup>26</sup> or in excess of jurisdiction.<sup>27</sup>
- It acts in violation of the principles of natural justice.<sup>28</sup>
- When the lower court's decision is ultra vires or unconstitutional.<sup>29</sup>
- When the lower court's decision violates the fundamental rights.<sup>30</sup>

### Refusal for the issue of writ of Prohibition

Prohibition is not against the exercise of legislative or executive functions<sup>32</sup> or against private persons or associations.<sup>31</sup>

Prohibition will not lie where the inferior court has jurisdiction but exercised it irregularly or erroneously.<sup>33</sup>

### Against whom it will lie

- Administrative bodies
- Judicial bodies
- Quasi – judicial bodies

### Against whom it will not lie

- Legislative bodies
- Executive bodies
- Private body or individual

### V. QUO – WARRANTO

A person who holds a public office is questioned under what authority he holds or usurps such right to hold the office by issuing the writ of Quo – warranto.

A “Public Office” is not defined in the Constitution. But it is said to be public office if – It has a duty of public nature; or public have interest in it.

### Condition for the issue of writ of Quo – warranto

1. The office should have the substantive public character.

The writ of Quo – warranto has a jurisdiction to question an independent substantive

public office or franchise or liberty under what authority he holds such said office.<sup>34</sup>

2. The public office must be held illegally by violating the mandatory provisions of the statute or Constitution.

### Refusal for the issue of writ of Quo – warranto

When the person who holds the office irregularly but not illegally.<sup>35</sup>

When the office has private character.<sup>36</sup>

If the petitioner is barred by Res Judicata.<sup>37</sup>

when the petitioner has alternative remedy under the statute.<sup>38</sup>

### Who may apply?

A person whose personal interest whether or not has been violated.<sup>39</sup>

### CONCLUSION

Judicial review is a wide concept as there are various ways of getting remedies in the cannon of law and it is to be known that the remedies through writ shall be lastly used by the court to provide remedy.

1. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 40
2. Batul Chand v. State of W.B., AIR 1974 SC 2285
3. Anwar v. State of J & K, AIR 1971 SC 337
4. AIR 1966 SC 334
5. Guruswamy v. State of Mysore, AIR 1954 SC 592
6. Praga Tools Corporation v. Imanual, AIR 1969 SC 1306; Vaish College Society v. Lakshmi Narain, AIR 1974 All. 1.
7. AIR 1996 SC 1
8. Director of Settlements, A.P v. M.R. Apparao, AIR 2002 SC 1598
9. Ramesh Thapper v. State of Madras, AIR 1950 SC 124
10. Kulchhinder Singh v. Hardayal Singh, AIR 1976 SC 2216
11. Barada Kanta v. State of West Bengal, AIR 1963 Cal. 161

12. Jiwat Bai & Sons v. G.C. Batra, AIR 1976 Delhi 310
13. State of Punjab v. Hari Kishan, AIR 1966 SC 1081
14. Ibrahim v. High Commr, AIR 1951 Nag. 38.
15. Guruswamy v. State of Mysore, AIR 1954 SC 592
16. Article 361
17. Chhote Lal v. State of UP, AIR 1951 All. 28
18. Bharat Bank v. Employees of Bharat Bank, (1950) SCR 459.
19. State of UP v. Mohd. Nooh, AIR 1958 SC 86
20. Maneka Gandhi v. Union of India, AIR 1978 SC 597
21. Ujjain Bai v. State of UP, AIR 1962 SC 1621
22. Jasbai v. Roshan, AIR 1976 SC 578
23. Assistant Collector v. Sooranjannath (1952) 56 C.W.N. 453
24. East India Commercial Co v. Collector of Customs, AIR 1962 SC 1893
25. Thirumala Tirupati Devasthanam v. Thallappaka Anantha Charyulu, AIR 2003 SC 3290
26. Hari Vishnu v. Syed, (1995) 1 S.C.R 1104 (1117)
27. Sewpujanrai v. Collector of Customs, AIR 1958 SC 845 (855)
28. Manak Lal v. Prem Chand, AIR 1957 SC 425 (431)
29. Carl Still v. State of Bihar, AIR 1961 SC 1615 (1621)
30. Bidi Supply Co. v. Union of India, (1956) SCR 267 (277 – 78)
31. Radheshyam v. State of MP, AIR 1959 SC 107 (115)
32. Article 226(1)(c) of the Indian Constitution
33. Narayana v. I.T.O, AIR 1959 SC 213 (219)
34. University of Mysore v. Govind Rao, AIR 1965 SC 491
35. State of Assam v. Ranga Muhammad, AIR 1967 Mad. 207
36. Jamalpur Arya Samaj Sabha v. D. Ram, AIR 1954 Pat 297
37. Niranjana v. Bihar University, AIR 1973 Pat 85
38. Chaturvedi v. Chatterjee, AIR 1959 Raj. 260
39. G. Venkateshwara Rao v. Government of AP, AIR 1966 SC 828