

JUDICIAL REVIEW AND ADMINISTRATIVE ACTION: AN ANALYSIS

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INTRODUCTION

Administrative law was recognised as a separate branch in the 20th century in India. In the 19th century, the duties of the state were limited, in which they had to only maintain public order and the conduct of the authorities. But in the recent times, it is quite different. To maintain the public order, the authorities have to also dwell into the lives of the citizens and observe the difference in their conduct clearly. The actions carried out under the administrative law by the administrative authorities is known as administrative action. The administrative action carried out by a certain administrative authority appointed by the state.

Administrative action comes neither under judicial action nor legislative action. Administrative action has no procedural obligations. Administrative action is based on subjectivity. Administrative action is something that does not confer a right, instead it affects a right. The legislative might create a body to administer its duties, and that's where administrative action comes into picture. However, it does not mean that administrative action cannot be questioned by the judiciary. The principles of natural justice also apply to administrative action and these principles would apply on the basis of the situation at hand.

The court in the case of A.K. Kraipak vs, Union of India¹⁴¹¹ said that whether administrative action is quasi-judicial or administrative should be decided by the type of power given, to whom it is given and the limits and boundaries within which such power is given.

Judicial review of administrative action is extremely important to keep the actions of the administrative authorities in check. The origin of judicial review was from England which was later adopted by India as well. Judicial review is a tool to ensure that any arbitrary, unjust action

is not being taken by the administrative authorities and also to keep their actions in check.

Even though administrative actions might be subjective, the authorities must act fairly and not arbitrarily. It is necessary that the actions are kept in check and it is made sure at all times that there is no arbitrariness in their decision.

RESEARCH QUESTIONS

1. How does the judicial review of administrative actions work?
2. What kind of administrative actions attract judicial review?

PRESENT SCENARIO OF ADMINISTRATIVE ACTION IN INDIA

Judicial review of a right guaranteed by the constitution to all the citizens of India. However, the court has said that the judicial review of administrative action would happen only when there is any mala fide or unfair action committed by them. Otherwise, the court would not involve in the administrative actions. The court in the case of Sidheshwar Shahakari Sakhar vs Union of India, has said that the court should not interfere in the matters of the administrative actions unless it sees that there is something unfair or mala fide going on, or

¹⁴¹¹ A.K. Kraipak vs. Union Of india, 173 to 175 of 1967

unless such a practice is reported. This concept was named as 'judicial self-restraint'.

In the case of Jayanti Lal Amritlal Shodhan vs. F.N Rana¹⁴¹², the court bifurcated the administrative actions into three categories:

1. Quasi-legislative action or Rule making: It includes delegated legislation. Delegated legislation is basically when the legislative gives some of its duties to the administrative authorities. It is mainly done by the legislative in areas where it cannot function and make rules. It gives the rule making power to the administration itself.

2. Quasi-Judicial action or Rule decision action: The administration takes on the role of the judiciary and has the power of taking decisions in cases where the rights of the individuals are affected. Quasi-judicial action is basically the judicial actions taken by non-judicial entities.

3. Purely administrative action: This involves the application of the rule given by the legislative, which is the basic function of the administrative authorities.

Administrative law in the current times, also includes the mechanism used by the administration to control the administrative authorities and to keep their actions within check. This mechanism is called the review process.

JUDICIAL REVIEW AND ADMINISTRATIVE ACTION

Judicial review is a vital aspect of the rule of law. It means the basic structure of constitution. The judiciary is independent and separate with immense powers to adjudicate and interpret the disputes. The court has the authority to review the actions of the other organs of the government. The court has the power and authority to declare any legislations null and void, unconstitutional etc. In the L. Chandra Kumar vs Union of India¹⁴¹³ case, the interpretation of the definition of judicial review by the Supreme Court outlines that the term in

the Indian context is as applicable to the American context with few modifications. The three areas of judicial review in Indian scenario are Judicial review of Legislations, judicial review of court decisions and judicial review of administrative actions. In the above case, the safeguards prescribed are for the higher-level judiciary which are not applicable to the subordinates or other bodies created by any legislations. It means that the judges of the subordinate judiciary are not effective in discharging the function of the constitutional interpretation. Therefore, the high courts under Article 226 and the Supreme Court under Article 32 of the Constitution have the power for judicial review of the legislative's actions which is the basic structure of the constitution. Judicial review is the basic structure of the constitution. Therefore, it implies that the vested powers of the Supreme court and the High courts to check the validity of legislations are not excluded. The administrative tribunals and the other tribunals are subjected under Article 136 for the review of the decisions through a Special Leave Petition. The review of actions like legislation, adjudication, investigation, prosecution etc., which affect the rights of private parties by any administrative agency are reviewed by the governmental authorities. The administrative agency can be a commission, an authority, a bureau, corporation etc. The president or a state governor or a municipal governing authority exercises the authority of review, adjudication or rule making as an administrative agency. In a welfare country, the socio-economic order is maintained by the administration by laying down policies and influencing the society. The scope of authorities in administrative actions may result in maladministration and in turn corruption. By reason of the power, the administration or the administrative agencies exploit, misuse and disrespect the dignity of the individuals' rights and freedom. It may not be appropriate to conclude that the more administrative actions may lead to maladministration. With the increase in administrative irregularities and illegalities, the

¹⁴¹² Jayanti Lal Amritlal Shodhan vs. F.N Rana, 1964 AIR 648

¹⁴¹³ L. Chandra Kumar vs. Union of India, Appeal (Civil) 481 of 1980

demand on the courts is increasing and calls for judicial review. In a democratic country like India, the courts are vested with extraordinary powers to check, review and control the administrative actions. Courts have a dynamic role in protecting the administrative law and nurturing its growth and development. The judicial review has a scope which is important with respect to the specific issues relating to the administrative functions which can be regulated. Under the Directive Principles of State Policy, the central and State governments have the power to enact policies, affecting the socio-economic order, public health and safety etc., but these are always subjected to judicial review when the fundamental rights of the citizens are challenged or are inconsistent with the provisions of the constitution. The court has the power to interfere when such situations arise.

The judicial review can be effective if it is flexible to the demands of the situations at hand. Judicial review should be the last resort when all the other appellate provisions are not effective.

GROUNDINGS FOR JUDICIAL REVIEW

1. DOCTRINE OF LEGITIMATE EXPECTATION

This doctrine mainly belonged to public law. But in India, this doctrine was used to check the arbitrariness and unfairness that sometimes might be committed by the administrative authorities. In private law, you can approach the court only when a right has been violated, but in public law, you can also approach the court when there is a legitimate expectation from, he authorities in the same way, I India, you can approach the court also when there is a legitimate expectation from the administrative authorities. For exam-ple if the government has made a scheme to receive free rice to everyone who lives in villages, and later excludes some villages from the purview of the scheme, then the people of that village can approach the court because they had a legitimate expectation that they would receive free rice. To

activate this doctrine, the most important thing is that there should be an expectation and such expectation should be legitimate. The expectation should not arise out of thin air and should actually arise due to legitimate reasons.

In India, this doctrine was used for the first time in the case of State of Kerala vs. K.G Madhavan Pillai¹⁴¹⁴. IN this case, a grant was provided to the schools to upgrade the new ones and also build unaided school. However later, through another order, the grant was kept in hold. The citizens approached the court saying that it was against the principles of natural justice. The court held that it was against the principles of natural justice as it created a legitimate expectation in the citizens that there would be schools.

The court in the case of Union of India vs. Hindustan Development Corporation¹⁴¹⁵, the scope and meaning of this doctrine was outlined. The court defining the scope aid that the expectation creates a sufficient locus standi for the case for judicial review. The court also held that the court will not interfere unless and until the removal of the administrative authority is arbitrary or unfair. However, this does not mean that the administrative authority cannot change its decision. It can change its decision but has to provide a legitimate reason for doing so not to attar t any judicial review of the same.

2. DOCTRINE OF PUBLIC ACCOUNTABILITY

This doctrine is one of the most emerging features of administrative law. The doctrine basically says that the administrative authorities have a power in hand, and also the trust of the public. The misuse of this trust can result in judicial action to be taken against them.

In the case of State of Bihar vs. Subash Singh¹⁴¹⁶, the court applied this doctrine and said that the Head of the Department is responsible for every action taken in the college, unless he has been

¹⁴¹⁴ State of Kerala vs. K.G Madhavan Pillai, 1989 AIR 49

¹⁴¹⁵ Union of India vs. Hindustan development Corporation 1994 AIR 968

¹⁴¹⁶ State of Bihar vs. Subash Singh, ..AIR 1991 SC 420.

removed from the accountability for every action taken in the college, unless he has been removed from the accountability. The Supreme court further held that if he is removed from the accountability, it should be brought to the notice of the court. Also, even if there are other decision-making authorities before him, he is the ultimate decision-making authority, and hence will be liable. The doctrine basically says that every authority is responsible for his own actions and should exercise his statutory duty properly.

3. DOCTRINE OF PROPORTIONALITY

This doctrine is a contestable and not a final and fully settled law. The word proportionality means the proposed action should not be more severe than it should be for obtaining justice. For example, a severe imprisonment for a petty crime is against the principles of this doctrine. The actions should be proportional and should not be neither excessive nor unreasonable. Proportionality is a principle which the court looks into while making a decision. The factors in the case are considered in deciding the proportionality. The above statement can be inferred as the infringement of fundamental right without objective and reasonable justification is a subject of disproportionate action. In the context of fundamental rights, to decide the proportionality, the two tests namely Balancing test and Necessity Test are conducted. The Balancing test means the balancing of excessive arbitrary penalties and the relevant facts and considerations of the case. For example, one cannot shoot a person just for trespassing. The Necessity Test is the encroachment of fundamental rights in discussion must be by the least restrictive alternative. For example, if a person is arrested without a warrant by a police officer who believes that an offence is committed or being committed on suspicion. Here, the police must believe that the arrest is necessary to prevent the offence. =

4. JURISDICTIONAL ERROR- If there is a lack of jurisdiction, or abuse of jurisdiction or excess jurisdiction, the court can hold the administrative authority liable. For example, if the authority performed a function which does not come under the jurisdiction of the particular authority, then the authority can be held liable. Or if its exercises improper jurisdiction or excess jurisdiction, then also the authority can be held for judicial review.

5. IRRATIONALITY- If the administrative authority has entered into an irrational decision, based on the facts and the case and the situation at hand, which an ordinary person might not have entered into, then also the action of the administrative authority can be questioned and put up for judicial review.

REMEDIES AVAILABLE UPON JUDICIAL REVIEW

The constitution under Article 32 and 226 guarantees certain writs available to the citizens upon approaching the court. These writs are-

1. Habeas Corpus- It means have the body. If the court feels that the detainment of person has been illegal, then it will call upon the detainee and will order for the release of the detainee.

2. Mandamus- It basically means to order an authority to perform the duty it has failed to perform. The main purpose of this writ is to keep a check on the performance of the administration.

3. Quo Warranto- The writ is filed against a person who holds a certain public office. The person has to show by what authority he is holding that office, If the person is holding the office illegally, then he would be removed from the office.

4. Prohibition- This writ is given by a higher court to a lower court to prevent them from exceeding their jurisdiction.

5. Certiorari- This writ is issued by the higher court to the lower court if they failed to exercise their jurisdiction. Or there was an error while exercising their jurisdiction. The

grounds to issue this writ are excess or failure of jurisdiction, violating principles of natural justice or authority has failed to correct an error made by him while exercising he jurisdiction.

CONCLUSION

The administrative law speaks about the duties, functions and responsibilities of the state which are required to maintain the socio, economic and public order. The administrative actions of the authorities like central and state governments, municipalities are governed by the administrative law. Administrative actions have no procedural obligations and are based on subjectivity which may be excessive, arbitrary or discretionary. In view of above, they attract judiciary intervention or review. The principles of natural justice play a vital role in the administrative law. The power vested with the authorities is subjected to scrutiny to assess the limits and boundaries, check and balances prescribed.

The judicial review has an objective to ensure that arbitrary and unjust actions are not taken. It also has the onus to keep the actions under check so that the decisions do not affect the basic features of the constitution.

Judicial review and remedies are the rights guaranteed under the constitution to all the citizens of India. The judicial intervention or review takes place only when mala fide or unfair actions are committed and it is brought to the notice of the court. The court in normal situations, does not interfere with the administrative actions unless such ill intentions are brought to its notice. This means the court exert Judicial 'self-restraint'. The administrative law prima-facie contains provisions for redressal of the grievances through a proper mechanism called review process.

The judicial review is the basic structure of the constitution with independent and separate stature and powers to interpret and adjudicate the disputes. The courts have the power to review the actions of the executive and

legislature and declare any as null and void or unconstitutional.

The three areas of judicial review in Indian context are judicial review of legislations, judicial review of court decisions and judicial review of administrative actions.

To conclude, the courts are vested with extraordinary powers to check, review and control administrative actions. Thus, courts play a dynamic role in protecting the administrative law, nurturing its growth and development for a welfare state like India.

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