



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS-ANALYSIS”

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Abstract

Perhaps the most significant advancement in public law over the latter half of this century has been the judicial review of administrative action. The fundamental aspect of our Constitution in India is the concept of judicial review. The most effective tool available to the judiciary for upholding the rule of law is judicial review. The cornerstone of the Constitution is judicial scrutiny. The High Courts and the Supreme Court are the last arbiters of constitutional interpretation. Therefore, it is their responsibility to ascertain the scope and bounds of the legislative and executive branches' authority and ensure that they do not exceed them. The Constitution does in fact give the judiciary this sensitive responsibility. Therefore, the cornerstone and core of the rule of law is judicial review. The word "discretion" itself suggests alertness, caution, care, and prudence. A court of law or administrative authority that receives discretion from the legislature is likewise obligated to use such discretion in an honest, appropriate, and reasonable manner. Judicial review is not a sacred process that governs all government policies. The focus of research on subjects like tribunals and enquiries is probably going to be on these organisations and the courts as other means of regulating administrative action.

KEYWORDS: judicial review, discretion, and administrative

Introduction

A legal action pertaining to the actions of a public administrative body is known as an administrative action. An authoritative figure may be forced to do anything by this type of action. Although it may have an impact on a right, it does not determine one. It is impossible to disregard natural justice considerations when using "administrative powers." Administrative action is any activity that is only focused on the examination and handling of a specific issue

and lacks generality; it is neither legislative nor judicial in nature. There is no process for gathering information or considering opposing viewpoints; instead, decisions are made primarily on expediency and policy and subjective gratification. Although it may have an impact on a right, it neither establishes a right nor wrong nor totally disregards the natural justice rules. Depending on the facts of each case, a minimum of the natural justice principles must always be followed, unless the statute specifies otherwise. Administrative actions can be either statutory, meaning they have legal effect, or non-statutory, meaning they don't. The majority of administrative actions are statutory because they are granted legal power by statutes or the Constitution. However, there are instances in which they are non-statutory, such as when subordinates are given instructions that lack legal authority but may nonetheless result in disciplinary action if they violate them. The administrative power must behave in a fair, impartial, and reasonable manner, even if most administrative activity is subjective and discretionary. The way administrative law operates in India is drawing attention due to the fact that it goes against the ideals of the Constitution, which is the supreme law of the state. According to the constitution, the State and the Union share power, which is further subdivided into three departments: the Executive, the Legislature, and the Judicial. On the other hand, the Executive can use the administrative power in any of the methods mentioned above. The idea of the 'Rule of Law' governs the executive's authority. Although the many administrative organizations were given the authority to accomplish the ultimate goal of welfare and to streamline the state's method of operation, this strategy has resulted in issues as an unforeseen consequence¹.

To combat this, administrative law was created to guarantee legal oversight of unrestricted administrative authority while simultaneously shielding individuals from any misuse of that authority. It cannot be denied that administrative power has the ability to go against an individual's interests because it has been brought with an ultimate goal. Therefore, in order to administer the administrative power, administrative law was required.

Therefore, three authorities—the legislature, the executive branch's authority over subordinate branches, and the judiciary—exercise legal oversight over these unrestricted powers.

¹ M.P Jain and S.N Jain, principle of administrative law 4th edition,1986 ,reprint 2003

Under the Indian Constitution, judicial review

Judicial review is the authority to determine whether legislative acts that fall under their regular purview are lawful and to refuse to enforce those that they deem to be unconstitutional and hence invalid. Despite the absence of a specific clause in the US Constitution, the American Supreme Court was the first to define the concept of judicial review. It was initially observed in the well-known *Marbury v. Madison* case. Judicial review serves as a safeguard against both legislative and executive lawlessness. Justice Bhagwati claims that Similar to the ideas of reasonableness and non-arbitrariness, the concept of judicial review permeates the entire constitutional framework and is a golden thread that weaves through the entire structure of the document. The concept of judicial review is expressly established by the Indian Constitution in a number of Articles, including 13, 32, 131–136, 143, 226 and 246. Thus, the concept of judicial review has a strong foundation in India and is expressly approved by the Constitution. Articles 32 and 226 assign the Supreme and High Courts the responsibility of protecting and upholding fundamental rights, while Article 13's primary goal is to safeguard those rights. According to Article 245, the provisions of the situation govern the authority of both Parliament and state legislatures. The state legislature's sole authority over issues relating to the State list is guaranteed by Article 246(3). The court may be required to interpret the constitution's provisions, and the Supreme Court's interpretation becomes the law respected by all courts across the nation. Article 131–136 gives the court the authority to decide disputes between individuals, between individuals and the state, and between states and the union.

As in *Keshvananda Bharati v. State of Kerala*²

According to Justice Khanna, judicial review has become a crucial component of our constitutional system. The Supreme Court and the High Courts have the authority to invalidate statutes if they are found to violate any of the Articles of the Constitution, which serve as the foundation for the legitimacy of all laws.

Further in *Kihoto Hollohan v. Zachillhu*³

Because the amendment had not been passed in accordance with the proviso to clause (2) of Article 368, i.e., ratification by the half of the States, paragraph 7 of the 10th Schedule to the Constitution was declared unconstitutional, barring the courts' jurisdiction in matters pertaining

² AIR 1973 SC 1461

³ AIR 1993 SC 412

to a member of a House's disqualification under the 10th Schedule.

Again, in L Chandra Kumar v. Union of India⁴

Utilizing the judicial review authority. The Supreme Court ruled that Articles 323-A and 323-B were unconstitutional because they precluded the High Court's jurisdiction under Articles 226 and 227 and the Supreme Court's jurisdiction under Article 32.

In Minerva Mills Ltd. v. Union of India⁵

The constitution established an independent judiciary with the authority to conduct judicial reviews in order to assess the legitimacy of laws and the legality of administrative actions. By using the power of judicial review as a sentinel on the qui vive, the judiciary has a serious responsibility under the constitution to keep various state entities within the bounds of the authority granted to them. Therefore, the goal of judicial review is to shield citizens from any branch of the government abusing or misusing its authority.

An analysis of the foundations of judicial review

The role of judicial control over administrative action is supervisory. It guarantees that every other branch of government stays within its bounds. Because of the legislature's and administrative authorities' outsourcing role, judicial control has become increasingly important. Judge-made legislation is essentially the premise that governs judicial control over administrative action. One of the fundamental elements of the Indian constitution that cannot be divided or eliminated by change is the authority of judicial review. Nonetheless, the court has granted the administration more latitude following the economic policy. It has been established that unless an administrative action is capricious, dishonest, or unconstitutional, the court cannot intervene in the name of judicial review. Judicial review focuses on the jurisdictional part of natural justice or method employed, and it is essentially more concerned with how and not what decisions are made.

In general, the following justifications have been found to support judicial review of administrative action: 1) Illicity 2) The lack of reason 3) Improper Procedure Additionally, the judiciary has adopted non-statutory standards to regulate administrative action.

I. The Wednesbury rule of reasonableness is one of them.

⁴ (1997)3 SCC 261

⁵ AIR 1980 SC

- II. Natural justice rule
- III. Equitable Treatment
- IV. Estoppel Promissory
- V. Reasonable Expectations In the case of *Union of India v. Tata Cellular*⁶, the Supreme Court determined.

The following terms to describe the grounds for judicial review of administrative action. The court's responsibility is to limit its discussion to the legality issue. Its concerns should be

- I. if a decision-making body overreached its authority,
- II. made a legal error,
- III. violated the natural justice principles,
- IV. made a decision that no reasonable tribunal would have made, or
- V. misused its authority.

Therefore, the court has no authority to decide whether a specific policy or decision made in carrying out that policy is fair. It is simply interested in how those decisions were made. From case to case, the scope of the obligation to act fairly will change.

In ***Council of Civil Service Union v. Minister of Civil***⁷, Lord Diplock established and logicalized grounds for judicial review under three main headings: procedural impropriety, irrationality, and illegality. Illegality indicates that the decision-maker's authority is within the parameters set forth by the statute. Ultra vires, limiting discretion, unauthorized delegation, legal or factual errors, etc. are additional causes that may be included within the category of illegality. Failure to follow the protocol is referred to as procedural impropriety as a basis for judicial review. Procedural impropriety include natural justice, good faith, failure to provide justification, fair expectations, and more.

Wiseness (Wednesbury) In the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*, judicial review was formed, and this is one of its bases. They introduced the Wednesbury principle of reasonableness. This principle states that if a judgment is irrational and would not have been taken by a reasonable man or decision maker, the court may intervene. The Wednesbury unreasonableness principle was regarded by Lord Greece MR as a "umbrella concept" that encompasses the main areas of judicial scrutiny of a decision. However, in the

⁶ 1994 6SCC 651

⁷ 1948 1KB 223

GCHQ⁸ case, Lord Diplock reinterpreted the concept of unreasonableness as follows and used the term "irrationality": "By irrationality, he means to refer to the Wednesbury unreasonableness principle, which states that a court can intervene in a decision if it is irrational and would not have been made by a reasonable man or decision maker."

This concept states that an administrative authority's decision is unreasonable if:

- I. It is founded on irrelevant information or considerations.
 - II. It lacks proof or has disregarded pertinent information that it ought to have taken into account.
 - III. Such a choice would never have been made by any sane or normal person.
- Impropriety in Procedure. It is an infraction of the established protocols.

The two categories of procedural impropriety are disregard for the fundamental common-law rule of justice and disregard for the regulations specified in the statute.

Ridge v. Baldwin is a unique instance where procedural justice demonstrates its insistence on judicial review regardless of the kind of body making the decision. Ridge was suspended as Brighton's Chief Constable after being charged with conspiring to obstruct the administration of justice. The judge's remarks chastised Ridge's behavior even though the charges against him were dismissed.

Ridge was later fired from the force, but he was not given the opportunity to attend the meeting that made the decision. He was later granted a chance to address the committee that had rejected his appeal. Ridge then made an appeal to the House of Lords, arguing that the committee had completely broken natural justice principles. This case has been significant because it highlights the connection between an individual's right to know the case against him and his right to be heard

The principle of proportionality

According to proportionality, the relevant administrative action shouldn't be more severe than necessary. According to the proportionality principle, the court must inevitably consider the benefits and drawbacks of the activity in question. The so-called administrative action cannot be supported unless it is beneficial and in the public interest. This theory attempts to strike a

⁸ 1991 1AC 532

balance between goals and means. Although Indian courts have long upheld this theory, English courts only began to do so when the Human Rights Act of 1998 was passed. The court invalidates the use of discretionary powers when there is no rational connection between the goal to be accomplished and the methods to do so, according to the proportionality test. The administrative action will be revoked if it is out of proportion to the offense.

In Hind Construction Co. v. Workmen⁹

Some employees stayed away from work and called in sick. Later on, their service was terminated. According to the court, the employees ought to have received warnings and fines rather than being fired without cause and permanently. The idea that any sensible employer would have imposed such a severe penalty was absurd. The workers' penalty was deemed by the court to be both excessive and out of proportion.

Reasonable Expectations

When a public entity retracts a representation they made to an individual, this theory acts as a basis for judicial review to safeguard the interest. The complainant has a right to expect that specific processes will be followed in order to achieve a decision, whether this expectation is stated explicitly or impliedly. The expectation is well-founded. This theory was developed to provide relief to those who have been harmed due to a breach of their reasonable expectations and are unable to support their claims with legal evidence. Legislative expectations are determined by two factors.

- I. When a person or group has been given the impression that a particular process would be followed, either explicitly or implicitly.
- II. When a person or organization depends on a certain rule or regulation that has formerly controlled a field of executive activity.

Administrative Action Judicial Review Mode

Enforcing constitutionalism is the goal of judicial review. In addition to ensuring that private rights are upheld, judicial review also helps to make sure that administrative authorities are acting within the bounds of the law. The High Court and Supreme Court use their judicial review or public law review authority under the aforementioned jurisdiction and the following writs:

⁹ 1965 SCR(2) 85

Habeas Corpus Writ

"Habeas corpus" is a Latin phrase that translates to "Produce the Body." "The writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention and is available against the executive," states the definition of the phrase in Halsbury law of England. In administrative law, the writ of habeas corpus is a crucial tool. The purpose of the writ is to prevent the abuse or misuse of the power that has been granted to particular authorities through the power of detention. By contesting the legality of the imprisonment carried out under administrative power, the writ calls into question the legitimacy of the administrative order. Personal liberty is the goal of this writ, and anyone could purchase the petition on his behalf to guarantee it. Anyone who has detained someone could be the target of the writ. The writ is therefore not optional. One kind of judicial review of administrative action that is subject to particular regulations is the writ of habeas corpus. It is not possible to use the writ of habeas corpus for an appeal and only for review. If the detention order is excessive, the writ of habeas corpus may be obtained.

Mandamus Writ

A writ of mandamus is an order from the High Court or Supreme Court against the state or authority under Articles 226 and 32 to carry out a specific task that is mandated by law or by operation of law. This writ is intended to make sure that court enforcement is carrying out a public responsibility. When it comes to public law remedies, the writ of mandamus provides a comprehensive remedial tool. All grounds that permit the issuance of Certiorari and prohibition can also be used to issue the writ of mandamus. The following criteria must be met in order for a writ of mandamus to be granted:

1. Only in order to enforce a public or common law duty may the mandamus lie. Therefore, this writ cannot be used to issue any responsibility resulting from a contract. The public responsibility must be established by a common law rule or by a statute. The Obligation must be obligatory, meaning it must be total and not optional. The court declined to issue mandamus to compel authority on the subject of complete discretion in the case of **Manjula Manjari Dei v. Director of Public Instruction**¹⁰. However, if the authority is legally required to use discretion, Mandamus would be lying.

¹⁰ AIR 1952 Ori 344

2. There must be a clear demand for duty performance that the authority has later rejected or denied. If the court thinks it appropriate, it may draw the same conclusion from the facts.
3. The authorities must have the right to enforce a responsibility imposed upon them. Similar to *S.P. Manocha v. State of M. P.* 25, the court denied a mandamus for an applicant's admission since the applicant had not proven his eligibility.
4. The right must have existed on the petition date.

Prohibition Writ

The prohibition writ has ancient roots or is comparable to common law. Before granting a writ of prohibition, three requirements must be met: a) the action must be taken against a judicial or quasi-judicial body; b) the authority's use of power must be legally recognized; and c) the action must cause harm for which there is no suitable alternative remedy. Instead of being corrective, the goal of this writ is more preventive. This writ's appropriate purpose is to make sure the lower court and authorities are operating within the legal parameters. The primary purpose of the writ of prohibition in India is to shield people from capricious administrative action. The purpose of the writ of prohibition is to ensure that subordinate authorities, whether judicial or not, are operating within their designated jurisdiction. This writ gives the superior court the authority to have jurisdiction over subordinate courts and administrative bodies that perform quasi-judicial functions. It guarantees that the lower court or tribunal does not overreach or misuse its authority, do not go against the natural justice principle, and do not infringe any constitutional provisions.

Although the writ of prohibition and a writ of certiorari appear to be similar, they differ at the stage at which they are issued. When a matter is pending before a court, a writ of prohibition is issued to stop them from moving forward with it. On the other hand, when the act is finished, the writ of certiorari is granted to declare that a specific conduct is beyond the bounds of the law for any of the reasons mentioned above.

Certiorari Writ

The Latin word certiorari means "inform." The idea has evolved over time, but at first it was a royal demand in which the king ordered that the required information be sent to him. The Supreme Court and the High Court in *Personam* issued the writ of certiorari in the initial case. The primary purpose of this writ is to overturn the administrative order. The writ of prohibition

and the writ of certiorari are similar¹¹. The distinction between the two lies in the fact that a writ of certiorari is granted following a decision and disposition made by a specific subordinate court or quasi-judicial body. On the other hand, the writ of prohibition is started when a case is still pending before a certain administrative body or tribunal. It was decided in the Hari Vishnu Kamath v. Ahmad Ishaque case that the purpose of both the writ of prohibition and the writ of certiorari is to prevent subordinate judicial or quasi-judicial bodies from going beyond their authority. Under Article 32 and Article 226 of the Constitution, respectively, the Supreme Court and the High Court of India may issue an order of certiorari and a prohibition¹².

Quo-Warranto Writ

'Quo warranto' means 'by what authority'. The Supreme Court and High Courts issue writs of quo warranto to ascertain the rights of individuals or authorities holding specific positions. The purpose of the writ is to determine whether someone has legitimately held a public position or has usurped it. This writ's goal is to establish that only the authorized individual occupies a specific position. Any anyone may file a quo warranto petition. Given that the writ is focused on a non-applicant's right to hold public office, the petitioner need not feel wronged. Only to challenge the legitimacy of public office may a Writ of Quo warranto be issued.

One in which the whole public is directly interested. Public offices are those established by the constitution, a particular statute, or a court order. The Anand Behari v. Ram Sahai case

Conclusion

Emerging Indian laws and principles are gaining attention since they pose risks and problems in addition to benefiting society. Over time, the "State"s role in India has evolved from one of negative action to one of positive approach. In one way or another, administration is all around us. Therefore, having a check on these administrative responsibilities has become vital. Since there are opportunities and evidence that these administrative authorities have abused or exploited their position in this emerging era, Being the law of the land, the Constitution stepped in and gave the Supreme Court and High Court the authority to monitor this administrative action. Enforcing constitutionalism is the goal of judicial review.

¹¹ M.P Jain and S.N Jain, principle of administrative law 4th edition,1986 ,reprint 2003

¹² A.K Kripak v. UOI (1969) 2 SCC 262

In addition to ensuring that private rights are upheld, judicial review also helps to make sure that administrative authorities are acting within the bounds of the law.

The "doctrine of proportionality" and the "doctrine of Wednesbury unreasonableness" are the two main tenets that the Indian court has employed to conduct judicial oversight. In a number of decisions, the court has ruled that the proportionality doctrine is a methodical and deadly kind of scrutiny that has been in place in India since the country's founding¹³. However, it has become clear that the idea of proportionality is really a rewording of Indian instances involving the Wednesbury principle. The Indian judiciary has not been able to distinguish and draw a line between the "Wednesbury" and "proportionality" standards. 'Proportionality' has distinct meanings in different contexts. Unquestionably, the constitutionally granted prerogative powers of writ jurisdiction for judicial review of administrative action are discretionary, but they also have no restrictions. However, the discretion ought to be used in accordance with good legal principles. In this regard, it is crucial to emphasize that the basic requirement of the rule of law, which forms the foundation of the entire constitutional system, is the absence of arbitrary power. When discretion is granted to the executive authorities under a rule of law system, it must be founded on boundaries that have been flagrantly broken.

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¹³ M.P Jain and S.N Jain, principle of administrative law 4th edition, 1986 ,reprint 2003