ISSN: 2581-8503

WHITE BLACK LEGAL

LEGAL

VOLUME 1: ISSUE 8

||January 2020 ||

Email: editor@whiteblacklegal.co.in

Website: www.whiteblacklegal.co.in

 ISSN: 2581-8503

DISCLAIMER

EDITORIAL TEAM

 ISSN: 2581-8503

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide 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

WHITE BLACK LEGAL: THE LAW JOURAL

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION THROUGH WRIT OF CERTIORARI

By : **ADITYA CHAUDHARI**

ABSTRACT

In modern democratic societies, the administration has acquired an immense accession of power and has come to discharge functions which are varied and multifarious in scope, nature and ambit. At this moment the state is responsible for not only survival, but also legislation, policy making, economic, social and cultural progress, growth and development, etc. Its functions are multi-dimensional and multi-faceted. There are whole new genres of functions cropping up, like quasi-judicial, delegated, ministerial, quasi-administrative, administrative, etc. these functions are not performed by the legislative, judiciary or the political executive. They are, more often than not, performed by the permanent executive, i.e. the bureaucrats. Hence, one of the crucial area of the study of the administrative law is the „"Judicial Control of Administrative Action. Today the power of the administrative authorities become very strong and thus it resulted different complications and repercussions in the socio-economic field in India. Therefore, considering the day to day increasing power of the administrative bodies judicial control has become an important area of the administrative law as because the judicial department i.e. Courts have proved to be the more effective and beneficiary branch than any other Parliamentary or executive method. Hence it has become imperative to keep check on such powers of Administrative authorities as well as the power of court to keep interference at bay.

INTRODUCTION

In the words of Robson [1], the hegemony of the executive is now an accomplished fact. Extension in functions and powers of the administration has become a desideratum as most of the contemporary complex socio-economic problems could be tackled best from a practical point of view, only by administrative process instead of normal legislative or judicial process and therefore **H**on'ble judges exercise judicial power with the power and authority of judicial review i.e. a court's power to review the actions of other branches of government, especially the court's power to invalidate legislative and executive actions as being unconstitutional.[2]

India is lucky enough to have a Constitution in which the fundamental rights are enshrined and which has appointed an independent judiciary as the bulwark of the citizen's liberties

[1] Robson, Justice and Administrative Law (1951) p. 34.
[2] Black's Law Dictionary, 8th Ed. p.864

against the forces of authoritarianism.[3]The Supreme Court and the High Courts have power to review administrative actions through writs in the nature of mandamus, certiorari, prohibition etc. under Article 32 and 226 of Constitution respectively. In India, these writs have been borrowed from England where they have had a long and chequered history of development and consequently, have gathered a number of technicalities.[4]

This research lays emphasis on the writ of certiorari as an effective means of judicial control of administrative action. Certiorari may be defined as a judicial order operating in personam and made in the original legal proceedings, directed by the Supreme Court or High Court to any constitutional statutory or non-statutory body or person, requiring the records of any action to be certified by the court and dealt with according to law. It is a remedy operating in personam, therefore writ can be issued even where the authority has become functus officio, to the keeper of the records.

It is necessary to distinguish between 'judicial review' and 'judicial control'. The term judicial review has a restrictive connotation as compared to judicial control. It is supervisory, while judicial control is more corrective in nature. Judicial review is a subset of judicial control. Though, for the purposes of this particular topic, the terms have been used interchangeably. This study compares the writ of certiorari in India and England and ascertains whether it is an effective means of judicial control of administrative Action.

CONCEPTUAL ANALYSIS OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

ADMINISTRATIVE ACTION:

Administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the treatment of a particular situation and is devoid of generality. It has no procedural obligations of collecting evidence and weighing argument. It is based on subjective satisfaction where decision is based on policy and expediency. It does not decide a right though it may affect a right. However, it does not mean that the principles of natural justice can be ignored completely when the authority is exercising "administrative powers". Unless the statute provides otherwise, a minimum of the principles of natural justice must always be observed depending on the fact situation of each case. The Court is of the view that in order to determine whether the action of the administrative authority is quasi-judicial or

[3] Dr. C.D.Jha's Judicial Review of Legislative Acts, Second Edition, 2009 p. VII
[4] -*Basappa* V.*Nagappa*, A.I.R. 1954 S.C.440.

administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.[5]

However, there is a general agreement among the writers or administrative law lawyers that any attempt of classifying administrative action on any conceptual basis is not only impossible but also futile. Hence term 'quasi' has accordingly been invented to distinguish these acts of the administrative authorities from the acts of the legislature and the judiciary. Thus, 'quasi' is a smooth cover which we draw over our confusion as we might use a counterpane to conceal a disordered bed.[6]

Thus an administrative action, can be classified into three categories:

1. Quasi-legislative action or rule-making action
2. Quasi-judicial action or Rule-decision action; and
3. Purely Administrative action or Rule application action.

DOCTRINE OF JUDICIAL REVIEW IN INDIA

JUDICIAL REVIEW: THE CONCEPT

Judicial review is the power of the courts to determine the constitutionality of legislative acts. It determines the ultravires or intravires of the act s challenged before it. In the words of smith & zurcher, "the examination or review by the courts in cases actually before them, of legislative statutes and executive or administrative acts to determine whether or not they are prohibited by a written constitution or are in excess of powers granted by it and if so, to declare them void and of no effect."[7] e.s.corwin opines that judicial review is the power and duty of the courts to disallow all legislative or executive acts of either the central or the state government, which in the court's opinion transgresses the constitution.[8]

In indian context the interpretative function of the courts is referred to as 'judicial review' which can be direct as well as indirect.[9] the direct judicial review involves the court to declare a legislative enactment or an executive act as null and void because it is unconstitutional. Whereas in indirect judicial review, the court attempts to give such interpretation to the impugned statute so that it may be held constitutional. Such a situation can arise only in those cases where a statute is susceptible of double meaning- one which

[5] *A.K. Kraipak* v. *Union of India*
[6] *Federal Trade Commission* v. *Ruberoid Co*. (1952) 343 US 470/488
[7] E.C Smith & Arnold John Zurcher, Dictionary of American Politics, Barnes & Noble,New York, 1959, p.212.
[8] E.S. Corwin, A Constitution of Powers in a Secular State. The Michie Company, US, 1951, pp.3-4.
[9] M.P. Jain, Indian Constitutional Law, 1974, p.755

would make the statute unconstitutional and the other which would steer clear the element of unconstitutionality and in such a situation the court would be prove to adopt that construction of the statute which would save it from being held unconstitutional.

Judicial review has however, a more technical significance in public law, particularly in countries having a written constitution where the courts perform the role of expounding the constitution and exercise power of declaring any law or administrative action which may be inconsistent with the constitution as unconstitutional and hence void. This judicial function stems from a feeling that a system based on a written constitution can hardly be effective in practice without an authoritative, independent and impartial arbiter of constitutional issues and also to restrain governmental organs from exercising powers which may not be sanctioned by the constitution.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

The most significant, fascinating but complex segment of administrative law is that pertaining to judicial control of administrative actions. The modern administration impinges more and more on individual; it has assumed a tremendous capacity to effect the rights and liberties of the people. There thus arises the need for constantly adjusting the relationship between the government and the governed so that a proper balance may be evolved between private interest and public interest. It is the demand of the prudence that when sweeping powers are conferred on administrative organ, effective control mechanism be also evolved so as to ensure that the officers do not use their powers in an undue manner or for an unwarranted purpose.

An important question thus, which needs to be discussed is, what are the techniques available to the individual to bring his complaint or grievance against an administrative action within the cognizance of the courts, and what tools, subject to what conditions and on what basis will the courts employ to afford relief to the complainant. In what cases do the courts feel that redress to a complaint is called for.

In India, where the codified statute laws govern most fields of law, judicial control of the administrative authorities has been least affected by legislation. As a result, the remedies of English common law have found their way into the Indian legal system. Private law remedies, viz actions for damages, injunctions and declarations, played a predominant role during British rule, when the public law remedies i.e. prerogative writs, had for historic

reasons a very limited application. In England the availability of the writs rendered the ordinary law remedies less useful than in British India, where the writs were confined to three presidency towns. Due to the restricted use of the writs the courts used much more frequent use of the private law remedies during British rule. After the adoption of the republican constitution incorporating the provisions of the prerogative remedies, the writs have become more popular than other remedies in India.

GROUNDS OF JUDICIAL REVIEW

Law dealing with judicial review of administrative action is largely judge-induced and judge-led; consequently, thickets of technicalities and inconsistencies surround it. Anyone who surveys judicial review finds that the fundamentals on which courts base their decisions include Rule of law, administrative efficiency, fairness and accountability. These fundamentals are necessary for making administrative action 'people-centric'. Courts have generally exhibited a sense of self-restraint where judicially manageable standards do not exist for judicial intervention. However, "self-restraint" is not the absence or lack of power of judicial review. Courts have not hesitated, in exceptional situations, even to review policy matters and subjective satisfaction of the executive.

Generally, judicial review of any administrative action can be exercised on four grounds:

Illegality

Irrationality

Procedural Impropriety/ Fairness

Proportionality.

These grounds of judicial review were developed by the Lord Diplock in *Council of Civil Services Union* v. *Minister of Civil Services*. Though these grounds of judicial review are not exhaustive and cannot be put in water tight compartments yet these provide sufficient base for the courts to exercise their review jurisdiction over administrative action in the interest of efficiency, fairness and accountability.

JUDICIAL CONTROL OF ADMINISTRATIVE ACTION IN ENGLAND WITH BY WRIT OF CERTITORARI

CERTIORARI IN ENGLAND

The writ of certiorari is an order of a High Court or the Supreme Court issued to inferior courts, tribunals or the authorities to transmit to it the record of the proceeding pending with

them for scrutiny and, if necessary, for quashing the same. In *R.* v. *Electricity Commr.*[10] Atkin L.J. said the certiorari may issue "wherever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority." Thus if there are two parties who are opposed to each other and there is a dispute or contest ordinarily the deciding authority shall be held to be under a duty to act judicially and the decision of that authority to be a judicial or quasi-judicial act.

The second proposition contemplates the situation where there are no two contesting parties but the contest is between the authority proposing to do the act and the citizen opposing it. The absence of lis does not necessarily negative the order being judicial, and in such cases, the authority will be bound to act judicially only if it is required by the statute to act judicially. In R. v. Manchester Legal Aid Committee, it was observed that an administrative act is one in which can be made on the subjective opinion or discretion of the authority after giving an opportunity to the affected parties to put their cases.

Here, there is no duty to act judicially in arriving at a decision and accordingly such acts are not subject to certiorari. Generally, such words as "is of opinion", "if it appears to", "considers…. likely to be secured", "reasonable grounds to believe" are indicative that the authority is to arrive at a decision administratively, that is there is no duty to act judicially.

In determining the jurisdiction of writ of certiorari, the courts in England have for some time been mainly guided by the principles laid down in *R.* v. *Electricity Commissioners*, R. v. *Legislative Assembly of the Church Assembly* and *Nakudda Ali* v. *Jayaratne*[11]. Accordingly, in order that a body may satisfy the required test, it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to the characteristic, the further characteristic that the body has the "duty to act judicially". The House of Lords in the decision of *Ridge* v. *Baldwin*[12], has dissented from the view that no writ could be issued unless the duty to act judicially was laid down by statute either expressly or impliedly. The Lords held that the judicial character of the duty has to be inferred from the nature of the duty itself and is not required to be superadded by any provisions of the law granting the power. There may be exceptions such as the terms of a statute may exclude the

[10] [1988] AC 958.
[11] [1951] AC 66.
[12] [1964] AC 40

duty to act judicially or no such duty may be inferred in wartime legislation or emergency legislation.

GROUNDS FOR WRIT OF CERTIORARI IN ENGLAND

WANT OR EXCESS OF JURISDICTION

The writ of certiorari goes to a body performing judicial or quasi-judicial functions for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it or fails to exercise it. In all these cases, there is defect of jurisdiction or power and the writ of certiorari lies. The want of jurisdiction may arise from the nature of the subject matter of the proceeding, so that the inferior court had no authority to enter on the enquiry or upon some part of it. The want may arise from the absence of some preliminary proceedings, for example, omission to serve notice when required by the law, or the court may not itself be legally constituted or suffer from certain disability by reason of extraneous circumstances, or where the law which purported to give jurisdiction is unconstitutional. Similarly, where a tribunal wrongfully declines to exercise the jurisdiction vested in it, a certiorari will issue to quash the decision.

VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

A writ of certiorari will lie to set aside the decisions in violation of the principles of natural justice. A detailed discussion regarding the principles of natural justice and the judicial review has been made above in this paper while dealing with the issue of the principles of natural justice and the same may be referred to.

LACUNAE IN LAW

An error of law in the decision or determination itself may be amenable to a writ of certiorari, but it must be a “manifest error apparent on the face of the proceedings, e.g. when it is based on the clear ignorance or disregard of the provisions of law”. In other words, it is a patent or self-evident error of law which can be corrected by the certiorari but not a mere wrong decision. An error of fact, however grave it may appear, cannot be corrected by a writ of certiorari. The reason for this rule is that the jurisdiction of the court to issue the writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. The courts issuing a writ of certiorari, acts in exercise of a supervisory and not appellate jurisdiction. Thus, the court will not review the findings of fact reached by the

inferior court or tribunal even if they are erroneous. The function of certiorari is to quash the offending order and not to substitute a new order in its place.

JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS THROUGH WRIT OF CERTIORARI IN INDIA

CERTIORARI

Certiorari is a command or order to an inferior Court or tribunal to transmit the records of a cause or matter pending before them to the superior Court to be dealt with there and if the order of inferior Court is found to be without jurisdiction or against the principles of natural justice, it is quashed:

"Certiorari is historically an extraordinary legal remedy and is corrective in nature. It is issued in the form of an order by a superior Court to an inferior civil tribunal which deals with the civil rights of persons and which is public authority to certify the records of any proceeding of the latter to review the same for defects of jurisdiction, fundamental irregularities of procedure and for errors of law apparent on the proceedings."

The root of *Certiorari* lies in *Certiorare* meaning 'to inform'. It may be defined as judicial order operating in personam and made in the original legal proceedings directed by the Supreme Court or High Court to any constitutional, statutory or non-statutory body or person, requiring the record of any action to be certified by the Court and dealt with according to law[13] , therefore writ can be issued even where the authority has become functus officio, to the keeper of the records.

"The ancient writ of certiorari in England is an original writ which may issue out of a superior court requiring that the record of the proceedings in some cause or matter pending before an inferior court should be transmitted into the superior court to be there dealt with. The writ is so named because in its original Latin form it was meant to inform the King by certifying record of any matter. In India it may be defined as a judicial order issued by the Supreme Court under Article 32 or by a High Court under Article 226 of the Constitution to an inferior court or any authority exercising judicial or quasi-judicial[14] or administrative[15] functions to the Court of records of proceedings pending therein for scrutiny and decide the

[13] I.P. Massey, Administrative Law, 7th ed. 2008 p. 404.
[14] *Prabodh Verma* v. *State of U.P.* A.I.R. 1985 S.C. 767.
[15] *A.K. Kraipak* v. *Union of India* A.I.R. 1970 S.C. 150.

legality or validity of the orders passed by them. If the decision is bad it is quashed.[16] It is to be noted, however, that though we have an additional ground in India, namely, the enforcement of Fundamental Rights, the use of the writ has so far been confused to the purpose of quashing a decision and not to remove a case from an inferior tribunal to be tried by the Supreme Court or a High Court itself, for which there are statutory provisions

GROUNDS FOR WRIT OF CERTIORARI

LACK OF JURISDICTION:

It goes to the root of the decision of deciding authority rendering invalid. It may arise in five ways:

1) If the deciding authority is illegally constituted.[17]
2) If the authority commits an error in its decision on jurisdictional facts and thereby assumes jurisdiction which never belonged to it.[18]
3) If the authority is incompetent to take action in respect of a locality, party or subject matter.[19]
4) If law which provides jurisdiction is itself unconstitutional.
5) If basic requirements like giving notice has been disregarded.[20]

EXCESS OF JURISDICTION:

It covers those cases where deciding authority possesses jurisdiction but he has exceeded jurisdiction. The decision of the University's Executive Committee was quashed for exceeding jurisdiction. Under relevant Act only teachers could be reinstated but the Committee had exercised power with respect to the Principal.

ABUSE OF JURISDICTION:

The decision of the deciding authority can be quashed if it has jurisdiction but has abused it. It can be said to be abused it when he exercises power for an improper purpose, or extraneous considerations, or in bad faith or leaves out a relevant consideration.

VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE:

There are two main rules of natural justice-first rule against bias including in itself personal bias, pecuniary bias, subject matter bias, departmental bias, preconceived notion bias and rule

[16] *Hari Vishnu Kamath* v. *Ahmad Ishaque* A.I.R. 1955 S.C. 233.
[17] *Rafiq Khan* v. *State of U.P.* A.I.R. 1954 All. 3;
[18] *Budh Prakash Jai Prakash* v. *S.T.O.* A.I.R. 1952 All. 764.
[19] *Nalini Ranjan* v. *Ananda Shankar* A.I.R. 1952 Cal. 112.
[20] I.P. Massey, Administrative Law, 2008, p.405.

of audi alteram partem i.e. let the other party be heard – it includes the right to know adverse evidence, right to present case, right to rebut evidence, right to cross – examination and legal representation, right to reasoned decision.

ERROR OF LAW APPARENT ON THE FACE OF RECORD:

Error of law may attract certiorari but it must be a "manifest error apparent on the face of the proceedings, e.g. when it is based on the clear ignorance or disregard of the provisions of law".21 Thus, it is not wrong decision but patent or self-evident error of law which will attract certiorari.22 In Syed Yakoob V. K.S. Radhakrishnan23, Gajendragadkar J. speaking for majority of the Court observed that, "An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however, grave it may appear to be." Such cases may fall (i) erroneously refusing to admit admissible and material evidence; (ii) erroneously admitting inadmissible evidence which influenced the finding, and (iii) a finding of fact based on no evidence."

FRAUD:

Fraudulent proceedings of decision may form ground for certiorari. There are no cases in India where certiorari has been asked on account of fraud. The cases are found in British Administrative law where on the ground of fraud the Court has granted the writ of certiorari. The superior Courts have an inherent jurisdiction to set aside orders of convictions made by inferior tribunals if they have been procured by fraud or collusion a jurisdiction that now exercised by the issue of certiorari to quash Where fraud is alleged, the Court will decline to quash unless it is satisfied that the fraud was clear and manifest and was instrumental in procuring the order impugned

LIMITATIONS ON WRIT OF CERTIORARI

There are certain limitations on the issue of writ of certiorari: Writ of certiorari requires exercise of supervisory jurisdiction and an appellate jurisdiction. It means that the courts will not review the finding of facts reached by inferior courts or tribunals even if they cannot substitute a new order in its place. In *Hari Bishnu Kamath V. Ahmad Ishaque*[24]the Supreme Court explained: "The court issuing certiorari to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work

[21] *Hari Vishnu Kamath* v. *Ahmad Ishaque* A.I.R. 1955 S.C. 233.
[22] *Dr. Chetkar Jha* v. *Dr. D.P. Verma*, A.I.R. 1970 S.C. 1832
[23] AIR 1964 SC 477
[24] A.I.R. 1955 S.C. 233.

was destructive, it simply wiped out the order passed without jurisdiction, and left the matter there."[25]High Court's judicial orders are open to be corrected by **certiorari**; a writ is not available against the High Court.[26]

A writ of **certiorari** is available for issuance of declaring an Act or ordinance i.e. legislative enactment unconstitutional or void.[27]Certiorari is always available against inferior courts and not against equal or higher court i.e. it cannot be issued by a High Court against any High Court or benches, much less to the Supreme Court and any of its benches.[28]

Certiorari cannot also operate against purely administrative order but is only applicable in case of a judicial or a Quasi-judicial body. In *D.F.O. South Kheri* v. *Ram Sanehi singh* Supreme Court

said that "Granting that the order was administrative and not quasi-judicial the order had still to be made in a manner consonance with rules of natural justice when it affected the respondent; right to property." The writ of certiorari is issued to a judicial or quasi-judicial body where there is want or excess of jurisdiction and where there is violation of procedure or disregards of principles of natural justice and hence not applicable to purely administrative orders.

AMALGAMATION OF BRITISH PRINCIPLE INTO INDIAN JUDICIAL TRENDS.

The case of Ridge v. Baldwin is slowly permeating into the Indian Administrative Law. In Associated Cement Companies v. P.N. Sharma[29], the observations of Lord Reid in the Ridge case was approved in the following words: “In other words, according to Lord Reid’s judgment, the necessity to follow judicial procedure and observe the principles of natural justice, flows from the nature of the decision which the watch committee had been authorized to reach under Section 191(4). It would this be seen that the area where the principles of natural justice have to be followed and judicial approach has to be adopted, has become wider and consequently, the horizon of the writ jurisdiction has far been extended in a corresponding measure. In dealing with questions as to whether any impugned orders could be revised under Article 226, the test prescribed by Lord Reid in this judgment may afford considerable assistance.” The aforesaid view has been further affirmed by the Apex Court in

[25] Ibid AIR 240
[26] *Naresh S. Mirajkar* v. *State of Maharashtra* A.I.R. 1967 S.C.1
[27] *Prabodh Verma* v. *State of U.P.* (1984) 4 SCC 251.
[28] *Surya Dev Rai* v. *Ram Chandra Rai* (2003) 6 SCC 675.
[29] 1965 2 SCR 366

the cases of *Shri Bhagwan* v. *Ram Chand*, *D.L. Board* v. *Zaffer Imamand P.L. Lakahanpal* v. *Union of India*.[30]

The short period of disapproval of the Ridge's case by the Supreme Court, after the case of *Sadhu Singh* v. *Delhi Administration*[31] was set right in the case of *State of Orissa* v. *Binapani*.[32] The Court in this case held that if there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. The line of distinction between 'administrative' and 'quasi-judicial' functions is getting blurred and gradually obliterated so that the application of the principles of natural justice is being extended to administrative proceedings as well.

In *A.K. Kraipak* v. *Union of India*[33], the Supreme Court extended the application of the principles of natural justice to administrative proceedings as well. After review of the relevant English and Indian case laws, in *Maneka Gandhi* v. *Union of India*[34], Bhagwati J., enunciated the principle that the duty to act judicially need not be superadded in the statutory provision, but may be spelt out from the nature of the power conferred, the manner of exercising it and the impact on the rights of the person affected and where it is found to exist, the rules of the natural justice would be attracted. A writ of certiorari is discretionary. It is not issued merely because it is lawful to do so and is generally not issued where the petitioner has an adequate alternative remedy. A petition for the writ of certiorari may lie to the higher judiciary, where the order on the face of it erroneous or raises questions of jurisdiction or of infringement of fundamental rights of the petitioner.

In *Bharat Bank* v. *Employees of Bharat Bank,* [35]the Supreme Court has held that the object of the writ of certiorari is to keep the exercise of powers by judicial and quasi-judicial tribunals within the limits of the jurisdiction assigned to them by law and to restrain them from acting in excess of authority. But a writ of certiorari can never be raised to call for the record or papers and proceedings of an 11Q Act or Ordinance and for quashing such Act or Ordinance.[36] all the above mentioned principles have percolated from British cases into Indian judicial trends.

[30] 1965 AIR 1767, 1966 AIR 282, 1967 AIR 1507
[31] 1966 SCR (1) 243
[32] 1967 SCR (2) 625
[33] *Supra* note 18
[34] 1978 AIR 597
[35] 1950 SCR 459
[36] Prabodh Verma v. State of U.P. (1984) 4 SCC 251: AIR 1985 SC 167, paras 31, 32, 50

CONCLUSION AND SUGGESTIONS

CONCLUSION

The researcher concludes that though uncodified, there are sufficient guidelines levied by the courts as well as sufficient power conferred on court to declare any administrative action not bound or hedged by policy, standards, guidelines and procedural safeguards to be declared invalid under present scheme of constitution. It is revealed from the foregoing study that although the Constitution of India does not directly talk about judicial review of administrative action but the same has been given a remedy by way of interpretation of Article 14, Article 13, Article 226 and Article 32 of the Constitution of India.

The study also concludes that Judicial review is a highly Complex and developing subject. It has its roots long back and its scope and extent varies from case to case. It is considered to be the basic features of the constitution. The court in its exercise of its power of judicial review would zealously guard the human rights, fundamental rights and the citizens' rights of life and liberty. 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.

The study recognizes judicial review of administrative action is one of the important components of Administrative Law. It is inherent in our constitutional scheme which is based on rule of law and separation of power. It is considered to be the basic feature of our Constitution, which cannot be abrogated even by exercising the constituent power of parliament. It is the most effective remedy available against the administrative excesses. The main object is to keep the administration within the limits of law and to protect the rights and safeguards interests of citizens. It is, thus, the very heart and soul of administrative law. Administrative law in India is uncodified and mostly judge made law and hence subjects of this kind of law are largely fluid and directions issued are case specific.

The researcher concludes that Certiorari is an extraordinary common law remedy of ancient origin. It is not a writ of right but one of discretion. It is in a form of judicial order issued to the lower judicial authority by the High Court or Supreme Court to show the record of proceeding 'pending with' such lower judicial authority for scrutiny and if necessary for quashing the same. The main object of the writ of certiorari is to keep the exercise of powers by judicial and quasi-judicial tribunals within the limits of the jurisdiction assigned to them by law and to restrain them from acting in excess of authority.

The jurisdiction of the High Court to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. It can be issued when a subordinate court is found to have acted without jurisdiction or by assuming jurisdiction where there exist none, or in excess of its jurisdiction by over stepping or crossing the limits of jurisdiction or acting in flagrant disregard of law or rules of procedure or acting in violation of principles of natural justice where there is no procedure specified and thereby occasioning failure of justice.

The researcher concludes that administrative law in India and its Control is based on the doctrine of res-judicata and is amongst the principles of judicial review of administrative action which is founded on considerations of public policy as it envisages that finality should attach to the binding decisions pronounced by courts of competent jurisdiction and that individuals should not be made to face the same litigation twice. This rule has been extended to writ jurisdiction as well through the process of judicial interpretation. Once, therefore, a writ petition has been moved in a High Court or the Supreme Court and is rejected there on merit, then a subsequent writ petition cannot be moved in the same Court on the same cause of action. It is also known as "estoppel by record", i.e., estoppel per rem judicatem. In order to sustain the plea of res judicata it is not necessary that all the parties to two litigations must be common. All that is necessary is that issue should be between same parties or between parties under whom they or any of them claim. In England, res judicata plays a restricted role in the field of Administrative Law. The rule it is said must yield to two fundamental principle of public law, i.e., that jurisdiction cannot be exceeded and that statutory powers and duties cannot be fettered. Within these limits, the principle of res judicata, can extend to a variety of statutory tribunals and authorities which have power to give binding decisions.

The researcher concludes that the judicial review of administrative action w.r.t writ of certiorari is almost the same in India as well as England. Though the court acknowledges the trickledown effect of changes in British law, it does not verbatim follow such changes in the Indian scenario as seen in the case of *Radhe shyam and and* v. *Chabi Nath*[37]when it over ruled the doctrine as laid down in *Surya Dev Rai* vs *Ram Chander Rai* & *Ors*.[38]

SUGGESTIONS

- There should be one uniform definition of administrative law which defined the administrative law in a more precise and accurate form which should take into account

[37] [(2015) 5 SCC 423
[38] 2003 (6) SCC 675

the contemporary trend of the administrative law and can also be helpful for the times to come.

- To establish sound administrative laws and procedures for public welfare, the active participation of people is very essential and Administrative law should be codified for transparent and effective administrative working
- It is of utmost importance that reasons should be given for discretionary administrative decisions especially where people's lawful rights or interests are likely to be affected. For this administrative authorities should also have the duty to communicate their reasons to the individuals concerned.
- In India, doctrine of proportionality should be applied only in cases where policy decisions are challenged as disproportionate as opposed to arbitrary powers. For this courts have to play active role to check whether the relevant considerations are followed against arbitrariness
- For oppressive, arbitrary and unconstitutional actions of public servants, they should also be liable to fine and punishment
- Alternative dispute resolution mechanisms should be followed in each department ofthe government. For this, appropriate training should be provided in this regard. In order to facilitate resolution of dispute, the Vigilance Branch should also be associated at this stage of mediation/conciliation. The judicial discipline, decorum and propriety must be strictly adhered to while adjudicating disputes.
- Right to information Act, 2005 is good step of the government of India. It is second important check on the administrative working but for proper implementation of it, some hard penalties should be incorporated in it. It is further suggested that time bound services should be provided to the citizens whenever possible with the help of computer or internet.

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