

How to control administrative action by Judiciary in India

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Abstract

Administration at present has played a very important role in the life of every individual. Administrative law is considered as one of the most emerging fields of law which is of recent origin. According to justice Qadri significant difference between a government which is being democratic and elected by the people and government of despots lies in the fact that in case of latter there is no restriction on the power but in case of the former the nature of power is definite and are exercised by the regulation of law. Administrative law found its way during mid of 20th century as a separate legal discipline in India. Till 19th century the role of the states were limited and were mostly been consisted of maintainability of public order, disposition of armed forces along with the involvement of the government in Foreign Affairs. The present scenario is however different the states at present is much more focused in protecting the public interest and maintenance of law and order also it is quite commonly found that the state has to intervene the life of the citizens at a considerable degree. The action that are being carried out under the domain of Administrative law are called as administrative actions. These actions are nothing but legal action which is focused towards the modalities of public administrative body. administrative actions has the power to authority for taking certain action without disrupting the principal of natural justice. In Ram Jawaya Vs. State of Panjab¹ case supreme court stated that it is not very easy to give appropriate definition of administrative action. Generally administrative action included all types of those action which are not Judicial and legislative action. After excepting the Judicial and legislative work, all the rest action are called administrative action.

Keywords: Administration, Judicial action, legislative action, administrative action, judicial control, citizen , court of law etc.

INTRODUCTION

The exercise of control over Administration by different courts judicial control. In other words judicial control is nothing but the power that the court exercises for keeping the administrative acts under the parameters of law. When the rights of a citizen gets aggrieved due to the wrongful administrative act, judicial control guarantees right to those citizens for challenging those acts in the court of law. The ultimate purpose of judicial control lies in protecting the rights and liberty of the citizens by taking necessary steps in ensuring the legal validity of Administrative acts. In India the position of Judiciary is considered as supreme and the constitution of India depicts an independent judiciary for safeguarding the citizens rights. In

democracy independent Judiciary is considered as sine qua non for effective functioning of the state. Therefore it is very important for administration to function according to the constitution. Is the Judiciary only which plays an important role for protecting the citizens against any kind of administrative exercise of power which is considered as arbitrary.

Rule of Law as Judicial Control :

The concept of rule of law have been originated England which requires that no person should be entitled to arbitrary or harsh treatment. The theory of rule of law also depicts the fact that man or society must be governed by law itself and this law is nothing but the law of the land that forms the basis of the sovereignty.

Usually the involvement of judiciary in administrative activities is restricted to the following cases...

Jurisdictional issue-

In case if any administrative agency or public officials act outside the jurisdiction or authority the courts have the power to declare such kinds of acts as ultravires for example on the basis of the administrative rules and procedures very common in most of the organisations that the competent authority plays the ultimate role in decision making process. It is also the competent authority that is engaged into taking any kind of necessary actions. If in Case if it is found that any authority other than the competent ones take any action. the court in this matter can intervene on the basis of the grounds of the lack of jurisdiction.

Error of law:

Cases concerning error of law arises when the administrative officials often misconstrues the existing laws certain obligations on the citizens found to be missing in legal provisions...

Procedural Error:

The concept of due procedure is considered as the basis of the actions of the government in democracy . when the government is considered as responsible it means that the government is doing its work by following proper procedures stop it is the procedures which ensures accountability and openness to justice . therefore the public officials should ensure activities in accordance to the procedure established by the law full stop if the procedure prescribed is not being followed by the intervention of the court can easily be bought and such actions can easily be challenged in court of law

Research Problem-

Identifying the research problem completes half the research work, so it is very important to identify the research problem, therefore, in this study, research paper writer will identify how the arbitrary actions of administrative officials affect society and how Judiciary control it. The rule of law is very important in our society, as long as the rule of law is maintained, the administrative authority will not be able to do arbitrary functions. If the rule of law is upheld then it is quite possible that the administrative authority will not be able to do arbitrary

functions, but unfortunately in our society, the violation of the rule of law keeps happening and it is more in rural areas. the main reason for this is that people are not aware of the law.

Objective of the research paper-

1. The main aim is to make the people aware of the discriminatory work done by the administrative authority.
- 2.To know how the Judiciary controls the actions of administrative authority.
- 3.Throw light on the effect of arbitrary completion of administrative authority and give suggestions on it.

Research Question -

- 1.Through this research paper, I want to tell that what is the result of the actions of an administrative officer in the life of a common person.
2. Is the public still facing the discrimination done by the administrative officers ?
3. Do the administrative authority do arbitrary work even in the present time and what is their faulty process ?
4. The purpose of this study is how the Judiciary exercises control over the functions of the office bearers of administrative authority and how the general public gets its benefits.

Literature review:

The related literature is reviewed in relation to the work done earlier, in which several thesis, articles,books, research papers and paragraphs are read. The literature relating to a review creates a clear-cut understanding before conducting or finding out new inquiry or research or investigations in the particular field or area. Literature review has an structural kind and mix with to the point and implications or suggestions .

Tools used for the present research paper- To collect the data the researcher has used primary and secondary Sources, which is in the form of AIR, SCC, A.D.J. etc. books of various Author. After that the Data Analysis and Interpretation analyzing the data is very important in research work. From om the data collected from primary

and secondary sources, it has been found that even today, administrative authority keep doing arbitrary action, it is very necessary to control this by the Judiciary. People living in rural areas are more likely to face abuse or misuse of powers by administrative authorities than in urban areas. People get disturbed by the work to be done by the administrative authority but do not go to the court. The main reason for this is the lack of awareness.

Abuse of Administrative authority :

If it is found that any public official is exercising the authority in vindictive manner in order to harm a person or is using its authority for personal gain, the intervention of the court can easily be sought. The methods and forms of judicial control that is very common in administration varies from country to country. It is the constitutional of that country and the system of law forms the basis of the judicial control. In broader sense two separate systems of legal remedies that can be sought against the encroachment of Administrative misfeasance concerning the rights of the citizen are the system of rule of law and administrative law system. According to the rule of law prospective of cultural and social differences whether it is a private citizen or an official is made subject to the law of the land. The officials are not being allowed for taking shelter behind the sovereignty of the state in case if a mistake is being committed by them on the basis of the official capacity. According to AV dicey concept of rule of law is applicable equally in terms of the rule to all. The administrative legal system forms the basis of separate law on the basis of the assumption and it is the courts which deals with the scrutinisation of Administrative actions wherever necessary.

Given below are some of the forms of the judicial control which is being exercised over administration special in India under the purview of rule of law system.

Judicial review:

Judicial review is nothing but an authority that is being used by the courts for declaring the the arbitrary acts of the executive and legislature void. If they found to be in violation of constitutional provisions. Judicial review is considered as the highest power of the courts for invalidating arbitrary acts on the basis of constitutional grounds. This particular Doctrine

was originated and developed by the supreme court of America however no express provision related to Judicial review is found on their constitution. The power of Judicial review has been discussed by the supreme court in a landmark judgement of Marbury vs Madison² Unlike the United States of America Indian constitution has Express provisions related to Judicial review an act that is been passed by the Legislature must have to be in conformity with the constitution and the role of Judiciary is to analyse whether it is in conformity with the constitution or not. If it is found to be in violation of the constitutional provision the court has the power to declare such act as unconstitutional reason being the court is considered as the ultimate protective authority for the constitutional law of a country.

The Express provisions related to the Judicial review in the constitution of India is found under article 13, 245 and 246.

Article 13(1) state that the laws that are in force in the country immediately prior to the enactment of the constitution is found to be inconsistent with the provision mentioned under part III will be void upto such extent of inconsistency. On the other hand article 13(2) states that the state is not allowed to make any kind of laws that abridges the fundamental rights.

Article 245 empowers the parliament and state legislature with the legislative power along with the Legislature of States. Parliament is empowered to make laws related to any part of the territory of India and state legislature is empowered to make laws related to any part of the state. It further states that in case the Parliament makes law that have extra territorial operation the same shall not be treated as invalid.

But in case the state legislature makes any laws that have its operation outside of the particular state that will be treated as beyond competence and will be declared as void.

The doctrine of Ultra Vires is found to be very effective for controlling the the delegatory power of the legislation and helps to apply those laws in a more rigid manner. Sometimes it is very common that the court takes liberal approach in this regard the Supreme Court has held that while delivering the legislative power the legislature must first laid down the particular

policies and regulations regarding the exercise of legislative functions. If in case the delegation takes place without formulating proper standards in terms of Legislative policies such delegatory authority will be treated as excessive in nature and will be declared unconstitutional.

The power considering the Judicial review not only controls the legislative but administrative and executive act as well. It is the code that Scooty nice the act performed by the executive in order to determine issues whether the scope related to those of authority is proper or not. In this regard the doctrine of Ultra virus provides great assistance to the court wherein the administrative and executive act can be declared unconstitutional based on this doctrine. In most of the cases it is found that in a situation where there is invited and uncontrolled discretion related to the power of Executive the court interferes as it relates to the abuse of discretionary power of the executive or administrative authorities . The doctrine of Judicial review who is not considered as an appeal that arises from a particular decision but it is a type of review in a particular manner related to the decision that is being made. In other words judicial review is not concerned with the decision that is being given rather it is not focused on the decision making process. While determining the exercise of the power of Judicial review as observed from time to time that the question of legal ET must be dependent on certain parameters they are

Whether the the manner in which the decision is been provided by the authority is exceeding its power or not

Whether any error related to the law has been committed or not

Whether there is a breach of rule in terms of the principle of natural justice

Where were the administrative authorities have taken a decision that no reasonable Tribunal would normally have been reached

Whether the administrative authority has abused its power

The role of the court is not to decide or to determine any particular decision or policy has been fairly determined or not whether the court is only focused with the manner the decision making have been made or not. Based on some

of the supreme court rulings the act of fairness related to the extent of the duty differs from case to case which may be classified as

Illegality

procedural impriority

irrationality

Mala fides can be considered to be as certain dishonest intention or any kind of corrupt motive while exercising the statutory power sometimes dishonesty and malice can be found fraudulent exercise of power takes place if the repository intends for achieving certain objects other than the ones which according to him has been conferred in terms of the power. The intention can be in terms of of promoting the public interest or maybe the private interest the burden of proving the malafide activities especially on the person who wants to quash the order on the basis of malafide.

Statutory appeal:

The parliaments are engaged into making different statutes and it is the state assemblies which provide that in case of a particular administrative action right to appeal will be provided to the aggrieved party the higher Administrative Tribunal all to the quotes concerning judicial administration. Sometimes it is quite common that it is a legislative enactment only that provides ground for intervention of judiciary in certain matters.

Suits against government:

Several limitations can be found which varying from country to country regarding filing of Suits against governmental authority arising out of contractual liability. The union as well as the state governments is empowered with certain contract liability which is similar to that of the individual citizens that is there under the ordinary laws concerning contract but the only difference in case of contractual liability of the government is that it is the Parliament which regulate the conditions of the limit of those liability in case of the government. The state can be held liable in case of any tortious acts which is being performed by its officials in fulfilling the non sovereign functions only.

Civil suits as well as criminal matters against public officials.

The positions considering the personal liability of the public officials in terms of the acts performed by them in official capacity differs from country to country. Civil proceedings in India can be instituted for any act which is being done in the official capacity against public official after providing two months of notice. In case of the criminal proceedings must have to be instituted against a public official the acts that he has performed in his official capacity, must have to be instituted after taking permission from the head of the state that is the president of the Governor. Various functionaries like the Governor as well as the President are immune from any legal proceedings even if such act is of personal in nature. However the ministers fails to enjoy such kind of immunity

Extraordinary remedies

Other than judicial control that are already been discussed certain remedies are extraordinary in nature like the writs of mandamus, habeas corpus, certiorari, quo warranto etc. These remedies are termed as extraordinary remedies due to the fact that except habeas corpus it is the courts which grant these writs as a matter of right on the basis of their discretion and that too in situations when any other adequate remedy found to be missing. Writ is considered as an order for enforcing compliance by the court on the part of those individual against whom the writ is found to be issued. In India provisions writs are available under the purview of Indian Constitution. Supreme courts are empowered for issuing the writs or directives or orders only for enforcing the fundamental rights the high courts are empowered that is not solely on the basis of the violation of fundamental rights but in case of violation of other rights as well. The detailed discussion regarding the writs are as follows

Habeas Corpus- the term habeas corpus literal sense indicates to have the body. This kind of writ is an order that is being issued by the court against someone who has willfully detained another person. It operates as an order of the court to produce the latter to make the detained person appear before the court. In other words in case if it is found that a person is being detained illegally and unlawfully he will be set free. A relative or a friend of the returned person is also allowed to apply this particular writ on behalf of the person who has been detained. Is particular it is considered as great bulk work in case of individual freedom and in other words can be

described as the basis of personal liberty. Prima facie this particular writ is been allowed as matter of right in case it is established that the person is being detained unlawfully. Why were the utilisation of this act is only being restricted in case of the provisions concerning preventive detention act.

Mandamus:

The literal meaning of mandamus means command. In case if it is found that any public official has failed to perform particular act sold part of his public duty and thereby ends up into violating the rights of individual he or she will be subject to the command of the court performance of the act timings of this writ. In India this particular writ can also be utilised for compelling a judicial Tribunal or a court for exercising its jurisdiction.

Prohibition:

It is a kind of judicial writ that is being issued by a court which is superior to the court at inferior level the purpose of this writ is to prevent the usurping of jurisdiction that is not vested with the court at inferior level. While the purpose of mandamus is to provide commands for Activity the ultimate purpose of prohibition is two commands for inactivity. This writ can only be issued against any question judicial authorities or judicial authorities for preventing the exercise of excess nature of Jurisdiction in case of a subordinate Court as a result significance as a mode of judicial control is limited over administration.

Certiorari :

The nature of prohibition considered as preventive in nature certiorari acts both in curative as well as in preventive manner. It is considered as the writ that is being issued by the Superior Court in order to transfer the record proceedings of a case of from a court of inferior in nature all in case of the Quasi judicial authority to the Superior Court in order to determine the legal validity of the proceedings.

Quo warranto :

In literal sense quo warranto indicates on what authority. In a situation when any person holding a particular public office which he or she is not entitled to, in that case the court after issuing this writ enquires the legal validity of the claims related to the person in that office

Besides these writs, the role of injunction is also very important. It is of two kinds which is mandatory and preventive. The nature of mandatory injunction is quite similar to that of the writ of mandamus whereas in case of the preventive injunction It bears resemblance with prohibition. By means of this writ can be put to restraint from doing something which is causing irreparable damage to the individual rights. Whereas prohibition is such a writ which is frequently being made available against the judicial authorities.

Limitations :

The effective nature of judicial control over administration is limited in nature due to certain factors. The first and the foremost factor is that the suo moto power of the courts in taking up a matter related to administrative activities doesn't become possible even if such acts are arbitrary in nature. The nature of judicial intervention is restrictive and is only limited to when the intervention of the court is being sought. Following are some of the limitations of judicial control

Issues related to Pending Cases:

The judiciary fails to cope up with the huge volume of work.. In a particular year only a fraction of cases becomes possible for the Judiciary to take into consideration. Lots of cases are found to be pending before the high court supreme courts and the lower courts since years for shortage of time. The famous saying justice delayed is justice denied still found to be in force nowadays this kind of accept release discourage many common people to approach the court which leads to denial of Justice to a lot of people

Nature of judicial control in most of the scenario is often been found that the intervention of Judiciary comes forward when enough of the damage is already done due to administrative actions. The role of the court in setting aside such kind of arbitraty of Administrative actions are being done in a proper manner in the absence of proper redressal mechanism the citizens face trouble related to the process of Justice.

Cost :

The very nature of judicial process is itself very costly and it is a very common that only the rich people can afford it. There are some criticism

related to the pro rich biasness of judiciary in India although such kind of criticism are subject to certain circumstances. Such kind of nature of a lot of common people in our country is that only rich people can seek the justice from the court from arbitrary administrative actions. The poor people in most of the scenarios can be found to be the helpless victim due to judicial inaction and administrative arbitrariness.

The legislative intent in relation to certain laws have been made beyond the level of understanding by the common man due to which it becomes difficult for the common man to get proper access to the law and necessary steps that are required to be taken in case of getting a legal remedy

Limitations prescribed by the statutes :

courts in some cases are being found that they are being statutorily prevented from jurisdictional access in certain instances. There are certain administrative actions that doesn't become possible for the courts to be reviewed.

Nature of Administrative actions :

There are certain administrative action that are highly technical in nature as a result it creates certain kinds of limitations in terms of judicial control. Sometimes it is found that the judges who are mainly the Legal Experts fails to appreciate the technical implication related to the nature of the administrative actions as a result sometimes the judgements are found to be not authentic.

Lack of proper awareness :

The societies that are developing in nature consists of people who are mainly illiterate and poor and they are not at all aware of the judicial remedies that they are entitled to and not even the role of the courts in providing justice to them which day fail to approach the court for redressal their grievances. In this manner even if the courts wants to interfere they fail to do so and remain helpless in this situation. Therefore in other words deprivation of of the people results into deprivation of Justice.

Excessive interference :

The very nature of the interference of the executive in the domain of judiciary has played a great role in providing limitation to the judicial control. It is very important to note tha judicial

standard is mainly dependent on the quality of judges. In several instances we can find that the law commission has made certain recommendations related to the judicial standards. Various suggestions for established the judicial Commission along with the responsibility related to judicial appointments need serious consideration

Certain steps already been taken to overcome the limitations related to to the judicial control that had already mentioned above.

Conclusion:

Judicial control related to administrative actions that are inherent in the scheme of constitution based on the doctrine of rule of law and separation of power are considered as the basic feature of constitution .The scheme of judicial control is considered as the one of the most effective remedies against any kind of administrative actions that are arbitrary in nature and this power of judiciary cannot be abolished in any manner. It is considered as a positive feeling that in case if administration is carrying out any function due to the nature of its discretionary power that must have to be subjected to judicial review on the basis of legislative norms and provisions based on Indian constitution. The ultimate purpose of the regulation of judiciary by controlling the actions on the basis of rule of law. There are certain drawbacks related to the judicial regulations which is more focused towards resolution of disputes in comparison to the administrative function. It is the duty of the executive to ensure proper administration of law and the function of judiciary is to analyse those actions on the grounds of the provisions of constitution. It is a basic rule of law that every power should be exercised within the boundary of law and in It is a basic rule of law that every power should be exercised within the boundary of law and must be used within legal limits. The exercise of administrative power is also no exception to this fundamental rule. The principles by which these boundaries are determined and changed are the real essence is of administrative law. Where there is rule of law, there cannot be unlimited discretion. According to the traditional doctrine, the judiciary controlled the presence and extent of the supreme authority but not the methods of its use,yet the power of judicial review is not

unlimited. If the judiciary, by exercising the power of judicial review, encroaches upon the administrative discretion, it will endanger the validity of the judiciary itself.³. in this relation According to justice frankfurter said in the case Trump Vs. Dales ⁴ All powers are of nature of encroachment, and judicial power is also not free from this type of human weakness. Despite all this, judiciary will still need to be vigilant and no less vigilance because the only restriction on it is self-restraint.⁵

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