



FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester

Subject : Administrative Law

Subject code : BAL306

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ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortious liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Administrative Law, Universal Delhi
3. I. P. Massey: Administrative law

LECTURE 33



JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

This paper deals with the broader aspects of administrative law and various methods of judicial control through writs. Administrative law has an enormous social function to perform and it is the body of the reasonable limitations and affirmative action which are developed by the legislature and the courts to maintain and sustain the rule of law. A strong, independent and impartial judiciary is a sine qua non of any system of government, excluding dictatorship. In each country the judiciary plays the key role of interpreting and applying the law and deciding the disputes between one citizen and the other and between a citizen and state.

Where there is a written constitution the courts perform the additional function of safeguarding the supremacy of the constitution by interpreting and applying its provisions and keeping all authorities within the limits of the constitution. Judicial review is a great institution and is a fundamental arch of the system of checks and balance without which no democracy worth the name can function. Judicial Review basically is an aspect of judicial power of the state which is exercised by the courts to determine the validity of a rule of law or an action of any agency of the state.

The courts through writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto control the administrative actions. The important source of Administrative law is the statutes, statutory instruments, precedents and the customs. The paper discusses the doctrine of ultra vires and remedies of judicial review. And the power of judicial control has become an important area of administrative law because the courts have proved more effective and useful than the legislative or the administrative powers.

Introduction

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.

In case **A.K. Kraipak v. Union of India, (AIR 1970 SC 150)** the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or 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.

Judicial Review of Administrative action is part of enforcing the constitutional discipline over the administrative agencies while exercising their powers. It has origin in England which was adopted in common law countries. India too inherited the idea of judicial review from England.

India had laid its structure on English prerogative with pattern which was issued by the court of King's Bench with a view to exercise general superintendence over the due observance of law by officials/ authorities while performing judicial or non-judicial functions. Judicial Review is a great weapon through which arbitrary, unjust, harassing and unconstitutional laws are checked. Judicial review is the cornerstone of constitutionalism, which implies limited Government.

Administrative action may be statutory, having the force of law, or non-statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action.

Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable. In the process of judicial review of legislative and executive action, the courts pick out the golden thread of reason and meaning in a law; they shape and mould the law, reveal its fitness and nuances, smooth the angularities, strike down the bad law or illegal action, and most essential to all, exert the strong moral forces of restraint in times when expediency is all.

MCQs

- Under which article/articles, the High Courts and the Supreme Court can issue writs?
 - Articles 44 and 45
 - Articles 123 and 213
 - Articles 32 and 226
 - Articles 53 and 153
- Given below are two statements, one labelled as Assertion(A) and the other labelled as Reason (R)
Assertion (A): The Courts follow the principle of natural justice while deciding cases. Reason(R): Justice should not only be done but should manifestly and undoubtedly be seen to be done.

Codes:
 - Both (A) and (R) are true and (R) is the correct explanation of (A).
 - Both (A) and (R) are true, but (R) is not the correct explanation of (A)
 - (A) is true, but (R) is false
 - (A) is false, but (R) is true
- Different parts of the constitution will act and react on each other and the (Supreme) court will have to decide questions arising from such a situation...discharging its duties as perhaps no other court has so far been called upon to do. Whose statement is this?
 - Justice Patanjali Sastri
 - JusticeHaarilal Kania
 - Justice P.B. Gajendragadkar
 - Dr.B.R. Ambedkar
- Which one of the following is not applicable to Public Interest Litigation?
 - Constitutional obligation of the Judiciary towards the marginalised sections of society.
 - Locus standi
 - Public spirited citizens can move the court on behalf of the poor
 - Judiciary overlooks a strict construction of procedural for malities in entertaining petitions.
- Which of the following is not within the jurisdiction of the State High Court?
 - It can hear appeals from lower courts.
 - It can issue writs for restoring Fundamental Rights.
 - It can decide the river water dispute between the two states
 - It exercises superintendence and control over courts below it.