RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : BALLB , 3rd Semester
Subject : Administrative Law
Subject code : BAL306
Faculty Name : Ms Taruna Reni Singh

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, tortuous 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 Adminstrative Law, Universal Delhi
3. I. P. Massey: Administrative law

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LECTURE 34

Grounds for Judicial Review of Administrative Actions

1. Illegality
2. Irrationality
3. Procedural impropriety
4. Proportionality

Judicial review means the review made by the courts of administrative actions with a view to ensure their legality. Administrative authorities are given powers by statutes and such powers must be exercised within the limits of the power drawn by such statutes.[1]

It is the authority of the courts to declare void of the acts of the legislature and executive, if administrative body are found in the violation of the provisions of the Constitution.[2] The concept of judicial review has been originated and developed by the American Supreme Court, although there is no express provision in the American Constitution for the judicial review. In Marbury v. Madison[3] the Supreme Court made it clear that the courts had the power of judicial review.

Chief Justice Marshall said, Certainly all those who have framed the written constitution contemplate them as forming the fundamental and paramount law of the nations, and the theory if every such Government must be that an act of legislature, repugnant to the Constitution is void.

[1] Prof. I. P. Massey, Administrative Law pp.62, 8th edition.

[2] Kailash Rai, Administrative Law, pp.395, 5th edition 2006

[3] U.S. 137, 1803

In case of conflict between the Constitution and the Acts passed by the legislature, the Courts follow the Constitution and declare the acts to be Unconstitutional.[4]

In review, reviewing authority does not go into the merit of the decision while in the case of appeal the appellate authority can go into the merits of the decision. Therefore, judicial review according to de Smith is inevitably sporadic and peripheral[5] in judicial review, the courts undertake scrutiny of administrative action on the touchstone of the doctrine of ultra vires.

The superior Supreme Court at the central level and the High Courts at the states level have the power to review administrative actions through various writs in the nature of habeas corpus, mandamus, certiorari, prohibition and quo warranto under Article 32 and 226 of the Indian Constitution respectively. The writs which we follow in India have been borrowed from England where they have a long history of development; consequently they have gathered a number of technicalities.[6]

Indian courts usually follow the technicalities of English law. However, the constitutional provisions of Indian Constitution are so broad in language that they indicate Indian judicial bodies are not bound to follow the technicalities of English Law of various writs. But in practice, the attitude of the Indian courts is by and large conditioned by the English approach. When we

[4] U.S. 137, 1803

[5] S. A. de Smith, Judicial Review of Administrative Action, Vol.8, No.4 pp, 775, Oct., 1959

[6] Basappa v. Nagappa, AIR 1954 SC 440: (1995) 1 SCR 250.

look into the historical background of doctrine of ultra- vires or excess of jurisdiction, historically, England's doctrine of the ultra-vires or excess of authority is the foundation of judicial review.[7]

The tribunal's attempts to extend this narrow concept to the modern problems of the administrative process have introduced certain technicalities and artificialities in the judicial review law. The courts take the view that written authority is supervisory in nature and cannot be equated with an appeal from the body concerned to the court.[8]

Thus, the ultra vires doctrine provides a half-way basis for judicial review between appeal review and no review at all.{9} In an appeal, the appealing authority may not only quash the administrative decision, but may also take into account the validity of the decision of the appealing authority and substitute its own judgment in its place, whereas in the case of ultra vires, the jurisdiction of the courts is restricted only to quash the administrative decision if it exceeds the authorities power.

To refrain from discussing the merits of the case, or directing it to behave according to the law and the courts. Therefore, the reach of an appeal on a point of law or fact is broader and the jurisdiction of the court is greater. Therefore, the halfway analysis, the scope of which is not always apparent, creates uncertainty in administrative action involving judicial interference. Sometimes the courts may believe they are willing to intervene because they feel strongly about

[7] Supra note.2

[8] Gerard W. Hogan, Discretion and Judicial Review of Administrative Action, Vol. 15, No.1, (1998)

the injustice of the case before them; sometimes they are not sure of the injustice and they follow the decisions of the administration. [9]

Courts lack frankness in clearly admitting this which leads them to state their conclusion in terms of artificial conceptualism and vague formulae. The consequence also manifests itself in incoherent judgments and confusion in the judiciary. In general, the judicial review of administrative action is conducted with a view to ensuring that administrative agencies act in accordance with their assigned authority and natural justice standards.

Ultra vires is the primary reason an administrative decision is invalidated. Unlike the American Constitution, the Constitution of India expressly allows for judicial review. Article 13(1) state that, to the degree of such inconsistency, all laws in effect in the territory of India immediately before the start of the Constitution of India shall be null and void in so far as they are compatible with the provisions of Part III on fundamental rights. Over the years, however, the courts have developed various grounds for intervening, yet the law relating to judicial review of administrative action through writs is complicated, involved and deficient.[10] This point will become clear after discussing the grounds on which to issue them.

Jurisdictional Principle

Doctrine of ultra-vires:

An analysis of judicial power centres around the question of how far the courts can go in

[9] Matthew, D. Zinn, Ultra vires taking, Vol.97, No.1 (Oct.1998)

[10] Holdsworth, A History of English Law, Vol. 2 (1936) pp. 395-405

reviewing the administrative authority's decisions or acts as distinct from those of appeal in review proceedings. To seek an answer to this question, it is important to examine the topic in the sense of the historical facts and power that influenced and shaped it; the atmosphere of values and opinions that nurtured it; the scope of circumstances in which it must operate; and the state of progress that it has achieved.

The law relating to judicial review of administrative action in India was traditionally derived from common law, the prevailing aspect of which was the regulation by the ordinary court of law of restrictions over the powers of the public authorities.

Therefore, the cases instituted before borough tribunals were removed from the earliest times into the king's court at Westminster.[11] The superior courts used to maintain very tight control over the peace judges, who exercised a wide range of duties, including highway repairs, bridges, and other administrative matters. When, in 1888, most of the administrative powers of the peace justices were transferred to local authorities, the courts maintained similar control over the latter. Although maintaining power over the lower courts and tribunals, the courts had a right to determine the former's proper jurisdiction and maintain it within their jurisdiction.

In this review process, the concept of jurisdiction originated, otherwise known as â€˜ultra-vires' that marked off an area where the lower tribunals are absolute judges, but are not allowed to cross the wall. The theory of jurisdiction embodies a dichotomy-those cases in which, within its jurisdiction, a tribunal determines and those in which it rules outside its jurisdiction, judicial power is only applicable in the latter type. The principle of jurisdiction that determines the reviewability of an administrative action is often expressed as want or excess jurisdiction; the underlying doctrine is referred to as ultra-vires.

The ultra-vires doctrine, as explained by Lord Selbourne L.C. In one case[12], it should be rational, and not unreasonably interpreted and enforced, and whatever may be fairly regarded as

[11] Holdsworth, A History of English Law, Vol. 2 (1936) pp. 395-405

[12] Attorney â€“ General v. Great Eastern Railway Co. (1880) 5 AC 473

incidental to, or consequential to, the items approved by the Legislature should not (unless expressly prohibited) be deemed ultra-vires. An obvious example of the ultra-vires principle was the ranking of omnibuses by the London Country Council with statutory authority to buy and work trams. The House of Lords held that there was no jurisdiction for the London Country Council to run omnibuses that was not incidental to tramway operation.[13]

Similarly, a local authority with authority to acquire land other than â€˜park, garden or pleasure ground' acts outside its jurisdiction to acquire land that is part of a park. {15} Therefore, the likelihood of judicial review depends on whether an excess of authority can be said to occur. The decision in Anisminic Ltd. v. Foreign Compensation Commission {16} that any mistake of law (intra-vires or ultravires) may impact the jurisdiction has somewhat altered the situation. Therefore, the distinction between jurisdictional errors and non-jurisdictional errors was abandoned as far as errors of law (as distinct from error of fact) are concerned.

That was not clearly established though. In Pari man v. Harrow School's Keepers and Governors Lord Denning M.R. This claimed that there was no longer any distinction, following Anisminic, between intra-vires errors and ultra-vires errors. Finally, the Privy Council finally rejected, in S E Asia Fire Bricks v. Non-Metallic Union , the view that the distinction between intra-vires errors and ultra-vires errors had been abandoned.

[13] London Country Council v. Attorney-General (1902) AC 165

MCQs

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1. **When did The Lokpal and Lokayuktas Act, 2013 came into force?**

   a) January 2013

   b) May 2013

   c) December 2013

   d) January 2013

2. **Who appoints the Lokayukta and Upalokayukta?**

   a) Governor

   b) Chief Minister

   c) Speaker of Lok Sabha

   d) Judge of High Court

3. **Which one of the following is true about High courts?**
   a) . It has original and appellate jurisdiction
   b) It enjoys the power of judicial review
   c) It acts as the court of law
   d) All the above

4. **High courts issue writs under article-……**

   a) 220

   b) 221

   c) 213

   d) 226

5. **Which is the oldest known system designed for the redressal of citizen's grievance?**

   a) Ombudsman System

   b) Lokpal

   c) Lokayukta

   d) None of the above