



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 36



Scope of The Doctrine of Ultra- Vires In India

Historically, England's doctrine of the ultra-vires or excess of authority is the foundation of judicial review. The ultravires doctrine is the fundamental tool for judicial supervision of administrative authorities; as it has its implications through the length and breadth of administrative law; it has been called the core rule of administrative law. As in England, so in India, the doctrine of ultra-vires has reached a high degree of complexity, allowing the courts to investigate not only acts that are clearly outside of jurisdiction, but the reasonableness, intentions and validity of considerations.

The courts have exercised restrictions on different aspects of the discretionary powers. Procedural errors are also considered to be jurisdictional if the procedural provision is as distinguished from the directory as mandatory. In India, administrative actions are subject to judicial review in cases of unlawfulness, irrationality or procedural impropriety. In condition of A.P. v. Me Dowell & Co., while dealing with administrative actions and judicial review,

established that, in the case of administrative action, the scope of judicial review was limited to three reasons:

1. Unreasonableness which is more appropriately called irrationality.
2. Unlawfulness.
3. Unfairness of action.

Consequently, judicial review of administrative action is only necessary when conduct suffers from sin of arbitrariness, unreasonableness or injustice. If there are malafides, prejudice, arbitrariness, bordering on perversity or such unreasonableness as no reasonable man can conceive, it is appropriate to strike down an action. Therefore, the doctrine of ultra-vires is not limited to cases of simple misuse of authority, but it also regulates abuse of power, as in situations where something is done unjustifiably, for wrong reasons or through incorrect procedures.

Therefore, the doctrine of ultra-vires is not limited to cases of simple misuse of authority, but it also regulates abuse of power, as in situations where something is done unjustifiably, for wrong reasons or through incorrect procedures. The ultra-vires doctrine is the principal instrument of regulatory authority's judicial power. This covers all manner of regulatory acts done in excess of authority. Also known as the principle of jurisdiction. However, in court of judicial review, it is not sitting as an appeal court but merely reviewing the way the decision was made.

In **Tata Cellular v. Union of India**, the Supreme Court stipulated that judicial review is concerned with reviewing not the merits of the decision but the decision-making process itself. If an administrative decision is allowed to be reviewed, it will replace its own decision which could

be fallible by itself. The court's duty is to confine itself to the question of legality. The court's duty is to confine itself to the issue of legality. The aim should be:

1. Whether the decision-making authority exceeds its power.
2. Committed an error of law.
3. Committed a breach of the rules of natural justice.
4. Reached a decision which no reasonable tribunal would have reached.
5. Abuse its power.

There is no desirability for untrammelled judicial review. Arbitrariness based on proportionality theory is still without foundation. There is also no basis for not justifying the administrative action on merit. Court must confine itself to the manner in which it made a decision or issued an order. It is not about the merits of the decision at all.

Present Scenario in India over Administrative Actions

Judicial review is central in dealing with the malignancy in the exercise of power. However, in the changed circumstances of socio-economic development in the country the Court is emphasizing 'self restraint'. Unless the administrative action is violative of law or the Constitution or is arbitrary or mala fide, Courts should not interfere in administrative decisions.

Remedies of Judicial Review/ Public Interest Litigation

Here five types of writs are available for judicial review of administrative actions under Article 226, and Article of 226 of Constitution of India.

1) Habeas Corpus

The writ literally means "Have the body" • this writ is issued to secure the release of a person from illegal detention or without legal justification, it deals with a person's right of freedom. In simple words, the Court directs the person and even the authority who has detained an individual to bring such person before the Court so that the Court may decide the validity, justification, and jurisdiction of such detention. It is to be filed by any person.

Ground for the issue of this writ:

This writ is basically issued by the court when the person detained is not presented in front of the magistrate within 24 hours of his/her detention. Failure to do so would entitle the arrested person to be released.

In *Gopalan v. Government of India*, the Supreme Court ruled that the earliest date with reference to which the legality of detention may be examined is the date on which the application for the same is made to the court.

Writ invoked against:

Writ of habeas corpus can be invoked not only against the state but also against any individual who is holding any person in unlawful custody or detention. In such circumstances, it is the duty of the police to make necessary efforts to see that the detention is got released but, if despite such

efforts if a person is not found, the police cannot be put under undue pressure to do impossible.

2) Mandamus writ

It means that "To command the public authority" to perform its public duty in India. It is discretionary remedy even as all five writs are discretionary remedy in nature. Court has full power to refuse to entertain a writ petition. This writ is not lie on president, governor, state legislatures, private individuals or any registered body.

Grounds for issuing this writ:

Mandamus can be issued when the Government denies to itself a jurisdiction which it undoubtedly has under the law, or where an authority vested with a power improperly refuses to exercise it. The function of mandamus is to keep the public authorities within the limits of their jurisdiction while exercising public functions.

The writ can be issued against:

Mandamus can be issued to any kind of authority in respect of any type of function "administrative, legislative, quasi-judicial, judicial Mandamus is used to enforce the performance of public duties by public authorities. Mandamus is not issued when Government is under no duty under the law.

3) Quo Warranto

It is ancient common law remedy. It is used against an intruder or usurper of public office.

Literally means "What is your authority". Court directs the concerned person that by what authority he holds the office. The Court may oust a person from the office if he finds that he is not entitled to obtain such office.

Quo warranto prevents illegal usurpation of public office by an individual. The necessary ingredients to be satisfied by the court before issuing a writ is that the office in question must be public, created by the constitution or a law and the person holding the office is not legally qualified to hold the office in clear infringements of provisions of the constitution or the law.

Writ issued against

It is the person against whom a writ of quo warranto is directed; who is required to show by what authority the person is entitled to hold the office. While issuing such a writ, the High court merely makes a public declaration of the illegality of the appointment and will not consider other factors, which may be relevant for the issuance of a writ of certiorari.

4) Prohibition

Prohibition is an extraordinary prerogative writ of prevention; it seeks to prevent Courts, Tribunals, Quasi-judicial authorities and officers from exceeding their jurisdiction. Main object of this writ is to prevent the encroachment of jurisdiction. It is based upon "Prevention is better than cure".

Grounds for issuing this writ

A writ of prohibition is normally issued when inferior court or tribunal:

1. Proceeds to act without jurisdiction or in excess of jurisdiction
2. Proceeds to act in violation of rules of natural justice or
3. Proceeds to act under a law which is itself ultra vires or unconstitutional or
4. Proceeds to act in contravention of fundamental rights.

5) Certiorari

It deals with a method to bring the record of subordinate Court before the superior Court for correction of jurisdiction or error of law committed by them. In simple word if any inferior Court decided the case beyond its powers than Apex Court and High Courts correct the error by issuing this writ. Earlier it was used for criminal matters but later on it was started to use in civil cases too.

MCQs

1. . which of the section of right to information act was challenged under Namit sharma v union of India
 - a) 12(5) and 12(6)
 - b) 15(5) and 15(6)
 - c) both A and B
 - d) none of the above
2. legislative competence of central government for enacting the right to information act 2005 can be found in entry numberin the union list
 - a) 90
 - b) 93
 - c)95
 - d)97
3. which of the following functions are carried out by the information commission ?
 - a) supervisory
 - b) penal
 - c) adjudicatory
 - d) all of the above
4. Who is the First Law Officer of the Government of India?
 - a) Chief Justice of India
 - b) Law Secretary
 - c) Solicitor – General of India
 - d) Attorney – General of India
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