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Administrative Adjudication through the Lens of Constitutional Law in India: The Genus-Species Relationship

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ABSTRACT

The 20th century witnessed a rapid growth in the affairs of the Government. The Government has modified its structure from a responsible body protecting its citizens and maintaining external interference and internal disturbance towards a more accountable entity preserving the nation at multiple fronts. This led to the development of Administrative Bodies to fulfil the larger expectations of the citizens. Consequently, it has catalysed the growth of Administrative Law and its scope. The Indian Constitution has played a key role in the development of Administrative Law. It states that Fairness, Justice, Equality, Freedom and Unity are the key principles upon which the Administrative Law is based. However, the principles would not hold much importance unless the Government actively participates in taking steps through administrative bodies. Administrative law places a limit on the authorities from using their powers in an abusive manner. It is focussed on the development of ethics and doctrines to ensure that the Administrative or public authorities work in a legal, reasonable and efficient manner. In India, the Administrative Adjudication is substantially and significantly influenced by Constitutional Law. The Indian Constitution itself provides for control of Administrative Authorities under Article 32, 136, 226, 277, 300 and 311. Moreover, there are a number of Administrative Agencies like Election Commission and Public Service Commission in the Constitution that exercise regulatory and supervisory authority over a variety of activities and endeavours in India. The Indian Constitution places fetters on the Administrative Actions of the Authorities through the provisions of Judicial Review and Fundamental Rights. It also ensures that the Constitutional Principles like equity, accountability and reasonableness are applied by the Administrative Bodies while discharging their functions. A number of Tribunals have been established to provide a forum where the aggrieved parties can raise their grievances if their Constitutional Rights are violated through Administrative Actions. The paper analyses the process of Administrative Adjudication in India through the lens of Constitutional Law. The interplay between Administrative Law and Constitutional Law has been discussed elaborately. Furthermore, the application of principles of the Indian Constitution to

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Administrative decisions by Indian Courts has been analysed. It also discusses the landmark judgments given by the Courts and Tribunals which have contributed towards the growth of Administrative Law in India. The author also provides suggestions to facilitate the growth and development of Administrative Law in India.

Keywords: *Administrative Law, Indian Constitution, Constitutional Principles, Fundamental Rights, Administrative Adjudication, Judicial Review, Administrative Accountability.*

I. INTRODUCTION

The definition of *"Administrative Law"* has and will always be ambiguous. It changes with time and the interpretation varies with different nations, judicial systems and thinkers. As per Kenneth Culp Davis, *"Administrative Law is the law concerning the powers and procedures of administrative Agencies, including the law governing judicial review of Administrative actions."* Bryan A. Garnier defines **Administrative Law** as, *"the law which governing the organization and operation of administrative agencies (including executive and independent agencies) and the relations of administrative agencies with the legislature, the executive, the judiciary and the public."'* Administrative law has been considered as the most *"outstanding legal development of twentieth century."*[2] It has aided the smooth functioning of the state, helped better governance and aided the cause of a welfare state.

The difference between Administrative Law and Constitutional Law is not clearly defined. They both form a major part of Public Law in the modern State. In a country like India, the Constitutional Law forms the basis of Administrative Law. The principles related to organisation and power of certain administrative bodies have been mentioned within the Constitution itself. As per Mait Land, *"constitutional law deals with structure and the broader rules which regulate the function while administrative law deals with the details of those functions."* The existence of Administrative Law as a distinct field of law is not disputed. However, the existence of Administrative Law without Constitutional Law would be meaningless.

II. NATURE AND SCOPE OF ADMINISTRATIVE LAW

Administrative Law is rooted in Constitutional Law. The Constitutional Law lays down the rights of the people and the principles which are to be followed while governing them. The

[2] BERNARD SCHWARTZ, FRENCH ADMINISTRATIVE LAW AND THE COMMON LAW WORLD (Lawbook Exchange 2011).

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development of Administrative Bodies allows for the application of Constitutional Principles in everyday governance and provide citizens with the rights they have been guaranteed under the Constitution. Administrative Law ensures that the functions are being discharged by the Administrative Bodies in a fair and efficient manner in accordance with the principles of Constitutional Law. Therefore, Constitutional Law is the basis on which Administrative Law rests. In the case of ***A.R. Antulay* v. *R.S. Nayak***,[3] when discussing the relationship between Administrative and Constitutional law it was held that, *"Any aspect of administrative law does not differentiate between both the laws. the aspects are so broad to include various substantive aspects like public health, education etc. since, the Constitutional Law reflects such ideas for public welfare at large and hence, administrative law deals with them to further help in implementation."*

The main role of Administrative Law is the regulation of the powers wielded by the Administrative Authorities. It seeks to ensure that the powers are exercised in a fair and reasonable manner. It provides remedies if the Administrative Authorities abuse their powers or exercises them in an unfair manner. The aggrieved person can approach the Courts or Tribunals to seek the appropriate remedy.

It deals with the organisation and powers of *"administrative"* and *"quasi administrative"* agencies. Quasi administrative agencies includes corporations, firm, boards, universities, autonomous agencies and civil society institutions. Administrative law comprises of the study of the principles which already exist. It further focusses on the evolution of new principles which need to be followed by both administrative and quasi administrative agencies when they exercise their powers. These include, *"the principles of natural justice, reasonableness and fairness."*

It mainly deals with the official action which includes:

- Rulemaking or *"quasi legislative action"*.
- Rule decision or *"quasi-judicial action"*.
- Application Rule application or administrative action
- Ministerial action.
- Incidental actions like investigatory, supervisory, advisory, declaratory and prosecutory actions.

[3] *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602.

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It deals with procedure by which the official action is carried out and achieved. In addition to this, it deals with *"control mechanism"* using which the administrative agencies are controlled, managed and made more responsible towards their goals. This *"control mechanism"* is known as the *"review process"* and administrative actions may be controlled by:

- Writs jurisdiction under Articles 32 & 226 of the Indian Constitution
- Ordinary powers of the Judiciary in the form of suits, injunctions and declaratory actions
- Statutory authorities like ombudsman, Human Rights Commission and other investigation agencies.
- Higher authorities of the Administration
- Mass Media and Opinion of the Public
- Civil society and other organizations which includes Society for the Protection of Civil Liberties, Consumer Protection and Research Society and some other consultative and advisory bodies etc.
- Easy access to justice includes procedural facility like legal aid, public interest litigation and administrative tribunal etc.
- Right to know, right to reply and discretion to disobey also provide a check on administrative behavior.

The study of Administrative Law in primarily concerned with the evolution of rules and principles which provide for the maintenance a balance between the Administrative Powers and the liberty of an individual. The main purpose is the reconciliation of liberty with power. The development of Administrative Law is not an attempt to approve the executive arbitration. Its motive is to keep a check of the actions of administrative bodies and protect people from the administrative excesses.

III. DEVELOPMENT OF ADMINISTRATIVE LAW

a. Pre-Independence Era

The system of Administrative Adjudication and Legislation existed in India from early times. In the days of the Colonial Rule, the primary purpose of the Administration was to maximize efficiency to garner profit. This resulted in wide ranged powers being vested in the Executive regarding the formulation of laws and administration of justice. It was only after the Supreme Court was established in Calcutta in 1774, the era of independent judicial administration began. However, it was short lived as the Act of Settlement, 1781 provide the Governor-General and

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Council with the power of convening a Court of Record for the purpose of hearing appeals from the Provincial Courts on civil cases. This took away the independence of the Judiciary and the laws were implemented in a manner detrimental to the native population. Even before the enactment of the famous *"Code of Civil Procedure, 1908,"* the *"Criminal Procedures Cornwallis code of 1793", "Elphinstone Code of 1827"* and several other regulations operated during that time. The aim of regulations was primarily to regulate the powers of the administration and ensure that they are exercised in a control manner.

The administrative powers were expanded keeping in mind the need to increase the control of the Colonial Administration. This is evidenced by the Regulation 10 of 1822. The regulation resulted in the codification of the law related to excise on salt, opium and general customs. It enhanced the power of the Administrative Agencies. The provisions included the powers granted to Administration regarding *"powers of confiscation, procedure in the proceeding of confiscation and the control to be exercised by the courts."* The administrative remedies needed to be exhausted before availing of judicial relief. The Courts were empowered to set aside the decisions taken by the Administration. However, they still respect the administrative decisions while deciding the case. The Government was focussed on only performing its primary duties during the Colonial Rule in India. It did not discharge the functions of a welfare state.

The growth of Administrative Law in the 20th and the 21st century is the outcome of an intensive form of Government. The role of the Governments around the globe has undergone a major change where it now plays the capacity of the provider, enabler, facilitator and regulator. Its role is not merely limited in protecting the citizens from external aggression only. It has the ginormous responsibility of providing good living conditions, efficient administration and social security of the citizens. The Governments are looked upon to solve the problems faced by the citizens. This catalysed the development of Administrative Institutions for better governance and discharge of functions. Consequently, it led to the development of Administrative Law.

The existing legal structure did not possess the capability to resolve different types of conflicts which emerged with the changing times. It was obsolete, expensive and lackadaisical to deal with modern day problems. Moreover, there was need for specialised adjudication in certain areas which prompted the development of Tribunals which were better equipped to handle the complicated situations that arose. It also eased the pressure on the Judiciary which is already overburdened with the large number of pending cases. The experts associated with the particular sphere were appointed to the Tribunal that makes the process more efficient and technically sound.

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b. Post-Independence Era

The First attempt at the academic level for formulation of a symbolic structure of administrative law was made by *Shri N.N. Ghosh* in his *Tagore Lectures* delivered in 1919, in his book titled, Comparative Administrative Law. The work may be said to be a collection of the comparative politics, constitutional law and administrative law, in the manner in which they were understood in India at that time. A major portion of this book was devoted to the organisation of the governmental system and the public administration. However, it can still be viewed as a precursor of administrative law in the modern sense to the extent where it emphasised the need to provide a legal control mechanism over public officials and the remedies available with citizens against the public authorities.

Then, the subject found a place in the curriculum of the Lucknow University under the inspiration of *Dr. R.U. Singh*, the Dean of the faculty of law, under whose care Dr. A.T. Markose wrote his thesis on Control of Administration Action in India. A study of the case of the Supreme Court cases during the years of 1953, 1954 and 1955 was conducted by Markose. He discovered that nearly half of the cases dealt with matters which related to Administrative Law. Out of 250 reported cases, 119 belonged to administrative law category. The administrative process had grown so much that we may claim to be administered rather than governed.

The Law Commission of India in the *14th law Commission Report* rightly observed that,

"The rule of Law and judicial review require greater significance in a Welfare State…the vast amount of legislation which has been enacted during the last three years by the Union and the States, a great deal of which impinges in a variety of ways on our lives and occupations. Much of it's also confers large powers on the Executive. The greater therefore is the need for ceaseless enforcement of the rule of law, so that the executive may not, in a belief in its monopoly of wisdom and in its Zeal for administrative efficiency, overstep the bounds of its power and spread its tentacles into the domains where the citizens should be free to enjoy the liberty guaranteed to him by the constitution."

The observation of Law Commission is of great relevance in the present times since India has adopted the policy of liberalization, privatization and globalization in which administrative law has found its place in the International Sphere. Lately, there has been reduced involvement of the Government in running of businesses which is evidenced by its measures of disinvestment and sale of Public Sector Units. The Government is now primarily focused on its function as a facilitator, enabler and regulator are bound to increases. It may, thus, be stated that change in the philosophy as regards the role and function of the State, has attributed to the growth of

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Administrative Law in India.

The ***"Administrative Reforms Commission"*** in its interim reports in 1966 has emphasized for the redressal of the grievances of the citizens against the Public Administration. This commission was appointed on 5th January, 1966 by the President of India for giving recommendations for reviewing the public administration system in India. A partial action has been taken, on the institution of Lokpal. The office of Lokayuktas have been incorporated at the State level and attempts are being made to incorporate the Lokpal at centre. In the 2005, the Parliament has passed the Right to Information Act, 2005 with the object to bring *"transparency & accountability in the working of every public authority"*. All these factors have contributed to the growth and development of Administrative Law in India.

IV. INTERACTION BETWEEN ADMINISTRATIVE AND CONSTITUTIONAL LAW

The main role of the Administrative and Constitutional Law is to provide a mechanism to the Government for discharging its functions fairly and efficiently. A lot of scholarly debate has taken place regarding the difference between both the laws. The majority of the scholars have concluded with the view that there is no noticeable difference between both the branches of law and they complement each other. Keith has stated that:

"it is logically impossible to distinguish administrative from constitutional law and all attempts to do so are artificial." As per Ivor Jennings, *"Administrative Law deals with the organisation, functions, powers and duties of administrative authorities while general principles dealing with organisation, powers of various organs and their mutual relationship is dealt with by constitutional law."*

Holland has stated that, *"the Constitutional Law describes the various organs of the Government at rest while the Administrative Law describes them in motion."* As per this view the Constitutional Law regulates the structure of the Legislature and Executive. The functioning of these laws comes under the ambit of Administrative Law. India is a nation where the Constitution is in the written form and it includes detailed provisions for the purpose of avoiding any sort of conflicts between the Centre and the States in the Administrative domain. It also imposes certain limitations on the organs of the Administrative Bodies. Therefore, the separation of Administrative Law from Constitutional Law as a whole is impossible.

In the case of ***Suk Das* v. *Union Territory of Arunachal Pradesh***,[4] the Supreme Court of India held that, *"in the relationship between Constitutional Law and Administrative Law, there lies a*

[4] *Suk Das* v. *Union Territory of Arunachal Pradesh*, (1986) 2 SCC 401.

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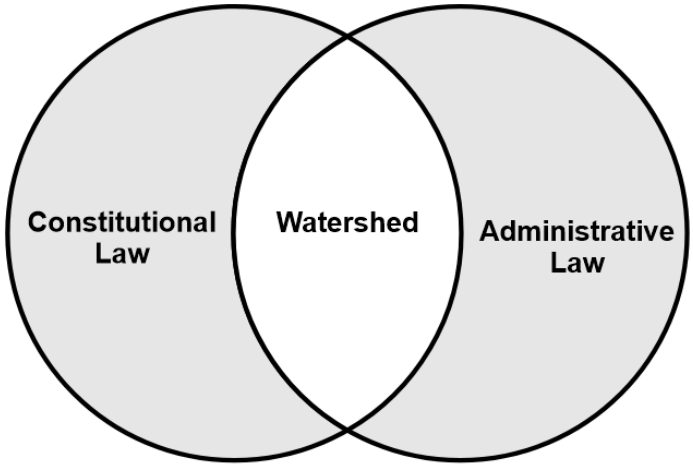
rational nexus between both the laws as Administrative Law functions to preserve the sanctity of principles, duties, rights, obligations etc. laid down by Constitutional Law." Further, in the case of ***Chandrakant Krishnarao Pradhan* v. *Jasjit Singh***,[5] it was held that, *"A subordinate legislation which is considered within the meaning of Article 13 which includes bye-laws, regulations and guidelines can be struck down if it is Ultra Vires of the Constitution."* The Supreme Court in the case of ***Rashid Ahmed* v. *Municipal Board, Kairana***[6] held that, *"Any administrative action with no statutory basis can be held void and therefore, court has power to declare it void if any administrative policy or action violates Constitution."* This shows how Administrative Law is largely governed by the principles of Constitutional Law. The Administrative actions will always be subjected to intense scrutiny to ensure that they are not violative of the Constitutional Principles.

The Administration has the responsibility of providing and administering facilities like public healthcare, town planning, maintenance of cleanliness and other functions. These are essential to bring into motion the concept of welfare state which has been envisioned by the Indian Constitution. It has been observed by Professor SP Sathe that, *"constitutional law is inclusive of administrative law and all the concerns of administrative law are also the concerns of constitutional law."*[7] There exists a genus-species relationship between Administrative Law and Constitutional Law where Constitutional Law is the genus and administrative law is the species. The concept has also been referred to as *"Watershed"* in Administrative Law. It means that, *"if one draws two circles of both at a certain place they may overlap and this area may be termed as 'watershed' in administrative law."*



There are several ways through which the Executive Action in India is protected. A subordinate

[5] *Chandrakant Krishnarao Pradhan* v. *Jasjit Singh*, (1955) AIR 1962 SC 204.
[6] *Rashid Ahmed* v. *Municipal Board, Kairana*, 1950 SCR 566.
[7] Sathe, S.P., Administrative Law (7th Edn., 2004), p. 12.

legislation comes under the sphere of Article 13 of the Constitution of India. It includes, *"orders, bye-laws, regulations and notifications"* within the definition of Law. This means that the Courts have the power to strike down an Executive Action if it is in the violation of the Fundamental Rights. Moreover, even an action which is purely Administrative can be held to be void, in case it results in the breach of Fundamental Rights.[8] This shows how Constitutional Law finds application in the regulation of Administrative Actions through Judicial Review. The Constitutionality of an administrative provision is determined using both administrative law and constitutional law, unlike statutes.[9]

V. JUDICIAL REVIEW AND ADMINISTRATIVE LAW

The Courts are vested with wide ranged power to review the actions of other organs of Government and examine their constitutionality. This power is known as Judicial Review. It plays a major role in upholding the *"Rule of Law"* which is a key feature of the Constitution of India.[10] In case an action violates the Constitutional Principles, it is deemed to be unconstitutional and it stands invalidated. It forms an important part of the relationship between Administrative Law and Constitutional Law.

In the case ***L. Chandra Kumar* v. *Union Of India***[11], the Hon'ble Supreme Court held that the definition of Judicial Review by Henry J Abraham is applicable to Indian Constitutional Law subject to a few modifications. Judicial Review in India comprises of three aspects:

- *"Judicial review of Legislative Action*
- *Judicial review of Judicial Decisions*
- *Judicial review of Administrative Action."*

The courts in India possess extraordinary power to review and control the actions taken by the administrative bodies. However, it has a limited scope where it looks for specific issues to develop principles to regulate Administrative Functioning. In the case ***B.A.L.C.O. Employees Union (regd.)* v. *Union of India***[12] the Apex Court observed that it is not in the domain of the courts nor the scope of Judicial Review to enquire if the public policy is wise or can be bettered. A Court does not have the power to strike down the policy solely on the ground that a different policy might have been better. Thus, matters which affect policy and require technical expertise

[8] *Rashid Ahmed* v. *Municipal Board, Kairana*, 1950 SCR 566.
[9] JUSTICE C.K THAKKAR., ADMINISTRATIVE LAW 6 (Eastern Book Company 1992).
[10] Usha Antharvedi, *Judicial Review of Administrative Actions and Principles,* SSRN (2008), https://dx.doi.org/10.2139/ssrn.1104955.
[11] *L. Chandra Kumar* v. *Union of India*, AIR 1997 SC 1125.
[12] *B.A.L.C.O. Employees Union (regd.)* v. *Union of India***,** (2002) 35 SCL 182.

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could be left by the court to the ones who possess the relevant expertise to deal with the issues. The Court shall usually interfere only if the policy or action is not consistent with the Constitution and the laws or has an arbitrary or an irrational abuse of power. However, "self-restraint" does indicate that the Courts lack the power of Judicial Review. When exceptional situations arose, the Courts have gone to review the policy matters and subjective satisfaction of the executive. There are several grounds on which Judicial Review of Administrative Action is carried out by the Court in India.

VI. GROUNDS OF JUDICIAL REVIEW

a. Doctrine of Ultra Vires

It is the *"juristic basis of Judicial Review."*[13] The concept of Judicial Review was first established in the case of ***Ashbury Railway Carriage and Iron Company Ltd* v. *Riche*** by the House of Lords.[14] The phrase *"ultra vires"* means beyond the power of lack of powers. Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. It prevents an authority from overstepping its power. The body must act under the scope of its powers.

One of the leading exponents of this view Sir William Wade, has said that, *"The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law."*[15] It is one of the *"core principles of Administrative Law."* If the action taken by the agency is within the limits of the statute, it is valid. If the action is outside the limits, it is *"ultra vires"* and therefore, invalid.

It can be divided into two:

1. Substantive Ultra Vires

It occurs when the decision maker did not possess the power to make the decision. It is an instance of abuse of power and the action can be deemed invalid. For example, the power to regulate railway stations does not confer the power to regulate airports. In the case of ***Laker Airways* v. *Department of Trade***[16], the Civil Aviation Act, 1971 gave the power to the minster to guide the Civil Aviation Authority as to the exercise of its functions. However, he did not have the power to issue the Authority with an instruction to revoke Freddie Laker's license to operate the skytrain service from London to New York. Hence, this was deemed as Ultra Vires.

[13] *R* v. *Hidl University*, [1993] AC 682.
[14] *Ashbury Railway Carriage and Iron Company Ltd* v. *Riche*, (1875) L.R. 7 H.L.653.
[15] H.W.R. Wade and C.F. Forsyth, Administrative Law 35 (Oxford 2000).
[16] *Laker Airways* v. *Department of Trade*, (1977) 2 ALLER 182.

2. Procedural Ultra Vires

When there is a failure by the administrative authority to follow the procedure even if it possesses the power to do the act, the act can be challenged for being *"Procedural Ultra Vires."* The view taken by the Courts is that the procedural norms which are directive in nature should be substantially complied it. However, the application of mandatory norms of procedure must be meticulous. This means that if the directive norms are not complied with, the action may not be held to be *"ultra vires"* depending upon the facts and circumstances of the case. However, if the mandatory procedure is not observed, the action is rendered as *"ultra vires."*[17]

In ***Ridge* v. *Baldwin***[18] it was held that the dismissal of a constable was void on the grounds that he was not given a fair trial. In the Case of ***Rajendra Prasad Agarwal* v. *Union of India***[19] it was held that the Tribunal set up under the Unlawful Activities (Prevention) Act 1967, only had the power to decide if there was sufficient cause for declaring an association illegal. It could not adjudicate upon the legality or otherwise of the declaration made under proviso to Section 3(3) of the Act that the association would, for reasons to be recorded in writing, be illegal with immediate effect.[20] It was held that a rule which gave power to the states to levy excise duty beyond the limits fixed by the Constitution of India is Ultra Vires, as it exceeded constitutional limits.[21]

The judges by applying the Doctrine of Ultra Vires are fulfilling their Constitutional duty. They use the power of Judicial Review to promote the rule of law and to uphold the principles of Natural Justice in the case of Administrative Decisions.

b. Wednesbury Principles

In the case of ***Associated Provincial Picture Houses* v. *Wednesbury Corporation,***[22] the *"basic principles of Judicial Review"* were laid down which are also known as Wednesbury Principles.

The Sunday Entertainment Act, 1932 empowered the local authority to give the cinema permission to open on Sunday. The permission would be *"subject to such conditions as the authority think fit to impose.*" The plaintiff, Associated Provincial Pictures House Ltd. was given the permission to open the cinema by the Wednesbury Corporation on the condition that that, *"no children under 15 should be allowed in with or without an adult*." An action was brought by the plaintiff regarding the said condition claiming it to be unreasonable and ultra

[17] *Raza Buland Sugar Co.* v. *Rampur Municipality*, AIR 1965 SC 895.
[18] *Ridge* v. *Baldwin*, (1964) AC 40 p. 489.
[19] *Rajendra Prasad Agarwal* v. *Union of India*, AIR 1993 All 258.
[20] J Kaur, *Analytical Study of the Judicial Review of Administrative Action in India* (2020).
[21] *State of U.P.* v. *Modi Distillery* (1995) 5 S.C.C.753.
[22] *Associated Provincial Picture Houses* v. *Wednesbury Corporation*, (1948) 1 K.B.223.

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vires the corporation.

The court held that, *"it could not overturn the decision of the corporation simply because it disagreed with it. To have the right to intervene the court would have to form the conclusion that:*

- *The corporation, in making that decision is taking into account factors that ought not to have been taken into account.*
- *The corporation failed to take account factors that ought to have been taken into account.*
- *The decision was so unreasonable that no reasonable authority would ever consider imposing it."*

After evaluating the facts and circumstances of the instant case, the Court came to the conclusion that it does not fall into any of these categories. This resulted in the failure of the claim and the decision taken by the Wednesbury Corporation was upheld.

In the closing remarks Lord Greene holds:

"The power of the court to interfere in each is not as an appellate authority to override a decision of the local authority but as a judicial authority which is concerned and concerned only, to see whether the local authority has contravened the law by acting in excess of the powers which parliament has confided in them."

The norms for the application of *"Wednesbury Principles"* to India were laid down by the Supreme Court of India laid in the case of ***Tata Cellular* v. *Union of India***.[23] It held that, *"the duty of the court is to confine itself to the question of legality. Its concern should be:*

- *Whether a decision making authority exceeded its powers?*
- *Committed an error of law,*
- *Committed a breach of the rules of natural justice,*
- *Reached a decision which no reasonable Tribunal would have reached, or*
- *Abused its powers."*

The Supreme Court ruled that, *"an administrative decision should not be interfered with unless it is illogical or suffer from procedural impropriety or is shocking the conscience of the Court."*[24] The grounds based on which administrative action is subject to control by judicial

[23] *Tata Cellular* v. *Union of India* (1994) 6 SCC 651.
[24] *V. Ramana* v. *A.P.S.R.T.C.*, AIR 2005 SC 3417.

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review are:

- Illegality
- Irrationality
- Procedural Impropriety[25]

Illegality

The Plain meaning of illegality is that what is contrary to law. Everything is illegal that is not warranted by law and the court interferes with the orders which are contrary to law.[26] The Supreme Court in the case of ***Tata Engineering and Locomotive Co. Ltd.* v. *Assistant Commissioner of Commercial Taxes***[27], held that the courts ought to have exercised jurisdiction in a case arising from sales tax proceeding where assesses had claimed exemption on the ground that the goods in the stockyard of the assesses in different states were still of the assesses and that the property in them had not passed to the purchaser but the sales Tax Authorities had refused to allow exemption without hearing the assesses.

Irrationality

The exercise of administrative discretion should be reasonable. The matters which are crucial to the subject which is being deliberated upon must be considered. The matters which are not relevant to the subject must be excluded from consideration. If these rules are not obeyed a person can be said to be acting unreasonably and irrationally. In ***Robert* v. *Hopwood***,[28] the adoption of a policy by the Council of paying higher wages compared to the national average wage to the workers was found to be unreasonable since the decision of the authority were limited by the law. It did not have the power as a statutory authority to adopt a socialist policy for the payment of wages at the expense of the tax payers. In ***Air India* v. *Nargesh Mirza***[29], was held that, *"termination of the service of an air hostess on her becoming pregnant was held to be irrational and ultra vires."* The Supreme Court in ***Maneka Gandhi* v. *Union of India***[30] held that, *"an order made under Section 10 of the Passport Act, 1967 could be declared as violative of Fundamental Rights conferred by the Constitution of India of it imposes unreasonable restrictions on the individual freedom."* The decision of the government was held to be

[25] *Council of Civil Service Union* v. *Minister of Civil Services*, (1984) 3 ALL ER 935; *Indian Railway Construction Co. Ltd.* v. *Ajay Kumar*, AIR 2003 SC 1843.
[26] DEVINDER SINGH, ADMINISTRATIVE LAW, 179 (Allahabad Law Agency 2016).
[27] *Tata Engineering and Locomotive Co. Ltd.* v. *Assistant Commissioner of Commercial Taxes*, AIR 1967 SC 1410.
[28] *Robert* v. *Hopwood*, (1925) AC 578.
[29] *Air India* v. *Nargesh Mirza*, (1981) 4 SCC 335.
[30] *Maneka Gandhi* v. *Union of India*, AIR 1978 SC 597.

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irrational and unreasonable.

Procedural Impropriety

There is an obligation to ensure that the procedural requirements that have been laid down in the legislative instrument are observed. It is based on *"principles of natural justice"* and *"fair procedure."*[31] The requirement of fair procedure arises in the following cases:

"(i) As a Constitutional mandate where fundamental rights of the people are violated.

(ii) As a statutory mandate. If statute lays down any procedure which administrative authority must follow before taking action, it must be faithfully followed and any violating of the procedural norm would vitiate an administrative action.

(iii) As an implied requirement, where statute is silent about procedure."[32]

In ***Sterlite Industries (I) Ltd. Etc.* v. *Union of India and Ors. Etc.***,[33] the Supreme Court held that, *"the Specific grounds upon which a public authority can be challenged by way of judicial review are the same for environmental law as for any other branch of judicial review, namely on the grounds of illegality, irrationality, and procedural impropriety."*

Thus, if the competent authority grants environment clearance in excess to the powers it possesses under the *"Environment (Protection) Act, 1986"*, the High Court could quash it on the ground of illegality. If there is evidence that the clearance is based on an unreasonable conclusion, the High Court can interfere on the ground of irrationality.

Therefore, if the environment clearance granted by the competent authority is clearly outside the powers given to it by the *"Environment (Protection) Act, 1986"*, and the rules, the high court could quash it on the ground of illegality. In this case, the Supreme court said that, *"if the clearance is based on a conclusion so unreasonable that no reasonable authority could ever have come to the decision, the high court could interfere on the ground of irrationality."* A challenge can be raised before the court on the ground of procedural impropriety if there is a breach of the proper procedure.

c. Doctrine Of Proportionality Or Strict Scrutiny Or Ccsu Principles

The *"Doctrine of Proportionality"* is based on the principle of interpretation of statutory provisions with the view of maintaining fairness and justice. The primary aim is to prevent the administrative action from being drastic, when it is utilized to obtain the desired results. It

[31] I.P. MASSEY, ADMINISTRATIVE LAW, 283 (Eastern Book Company 2008).
[32] J Kaur, *Analytical Study of The Judicial Review of Administrative Action in India* (2020).
[33] *Sterlite Industries (I) Ltd. Etc.* v. *Union of India and Ors.* Etc, (2011) 7 SCC 338.

provides a safeguard against the unlimited use of legislative and administrative powers. It keeps a check on the administrative authority so that it may act only to the extent needed to attain its objectives.

Tom Hickman identified the most common formulation as a three-part procedure.[34] The following must be considered by the court when reviewing:

- *"Whether the measure was suitable to achieve the desired objective.*
- *Whether the measure was necessary for achieving the desired objective.*
- *Whether, even so, the measure imposed excessive burdens on the individual it affected."*

As per the principle of proportionality a public authority needs to maintain a proportion between the goals and the means employed to achieve them. It should make sure it hardly infringes on individual rights and aims to maintain public interest. The action should have a rational link to the purpose for which it is being undertaken. The doctrine further elucidates that it is not permissible *"to use a sledge-hammer to crack a nut"* or that *"where paring knife suffices, battle axe is precluded."*[35] The Court will evaluate the pros and cons of an administrative action. If the action is found to be advantageous, the Court will uphold the administrative action. If the court is of the view that the action is not well balanced and reasonable, it tends to interfere and provide the appropriate relief as per the situation.

The principle of proportionality is not applied independently in India. It is applied in relation to the Article 14 of the Constitution of India. In case, the challenge of arbitrariness is raised against an Administrative Action under Article 14 of the Constitution, the Court needs to determine whether the administrative order is "rational" or "reasonable" as the test to apply is the Wednesbury test. The Supreme Court in ***E. Royappa* v. *State of Tamil Naidu***,[36] held that, *"if the administrative action is arbitrary, it could be struck down under Article 14."*

Ranjit Thakur* v. *Union of India[37] was the first decision on Supreme Court of India which referred to proportionality. The appellant was found guilty of defying a lawful command that had been given to him by his superior officer in the court-martial proceedings. This resulted in a punishment where he was dismissed from service and given a sentence of imprisonment under the Army Act, 1950. The decision was challenged on four grounds with one being that the

[34] Tom Hickman *Proportionality: Comparative Law Lessons*, 12 Judicial Review, 31-55 (2007).
[35] *Chairman-cum-Managing Director, Coal India Ltd.* v. *Mukul Kumar Choudhuri*, AIR 2010 SC 75.
[36] *E. Royappa* v. *State of Tamil Naidu*, AIR 1974 SC 555.
[37] *Ranjit Thakur* v. *Union of India*, AIR 1987 SC 2386.

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punishment given was disproportionate to the offence that had been committed by him. The appellant contended that the quantum of punishment awarded to him was an indication of the involvement of malice and bias. The contention of the appellant was accepted by the court. The Court ruled that the penalty which is imposed should be in line with the magnitude of the misconduct. If the penalty is not in proportion to the magnitude of the misconduct, such a decision would be a violation of the Article 14 of the Constitution of India. It held that in the instant case the punishment case was highly disproportionate to the offence committed. This necessitated Judicial interference to strike down the unconstitutional action by the administration. The Apex Court has, however, repeatedly ruled that interference with quantum of punishment should not be one in a routine manner.[38]

In the case Management, ***K. Tea Estates* v. *A.B.C. Mazdoor Sangh***,[39] the Workman of the Tea Estates allegedly arrived at the premises equipped with lethal weapons. He had the intention to *"gherao"* the Manager and other staff in order to raise a claim for his bonus. He caused damages to property of the estate and wrongfully confined the Manger and others. He was dismissed on the allegation of extortion. The Court held that, the dismissal was not disproportionate to the misconduct proved against him.

It can be concluded that the doctrine of proportionality was employed by Supreme Court to examine whether the administrative actions are valid or not only in the instances where the Fundamental Rights are being violated in a disproportionate manner by the administrative authority. The quasi-judicial bodies within the administrative set up can be subject to interference on grounds of proportionality only when the punishment imposed is grossly disproportional.

d. Doctrine Of Legitimate Expectation

It is used to aid people who are unable to validate their claims on the basis of law in the strict sense of the term despite suffering from a civil consequence as a result of the violation of their legitimate expectation. In India, this doctrine has been developed by the Supreme Court in order to check the arbitrary exercise of power by the authorities. An expectation can only be aid to be legitimate if it can be inferred by the sanction of law or custom or contains an established procedure followed in regular and natural sequence.

The expectation must be *"justifiably legitimate and protectable."*[40] The development of this

[38] *P. D. Agrawal* v. *State Bank of India*, AIR 2006 SC 2064
[39] *K. Tea Estates* v. *A.B.C. Mazdoor Sangh*, AIR 2004 SC 4647.
[40] *Punjab Communication Limited* v. *Union of India*, AIR 1999, SC 1801.

concept is primarily in the context of *"reasonableness"* and *"natural justice."* It provides a device to render justice in addition to statutory rights.[41] The concept is of a positive nature. It is only applicable in the cases where a practice is found to be prevailing. In the cases where the expectation is based upon an illegal and unconstitutional order, the doctrine of legitimate expectation is wholly inapplicable. If the State has consistently adopted a past practice, it can furnish grounds for legitimate expectation.[42]

In ***R.P. Singh* v. *State of Bihar***[43], the expression "established practice" was explained the Supreme Court. The Court stated that, *"It refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority."* The expectation, the Court ruled should be legitimate, that is reasonable, logical and valid. The doctrine cannot be invoked to create a fresh right.

This Principle was invoked by the apex court in ***Supreme Court Advocates on Record Association* v. *Union of India*.**[44] It held that, *"due consideration of every legitimate expectation has to be observed by the Chief Justice of India. Just as a High Court Judge at the time of his initial appointment has the legitimate expectation to become Chief Justice of a High Court in his turn in the ordinary course. He has a legitimate expectation to be considered for appointment of the Supreme Court in his turn, according to his seniority."*

In ***P. Oil Extraction Co.* v. *State of M.P.***[45], the Court held that, *"when government enters into an agreement with related industries they can legitimately expect the renewal clause to be given effect to in usual manner according to past practice, unless there is any special reason not to adhere to such practice. The denial of the same would vitiate an administrative action."*

The Court cannot interfere in a decision which is taken entirely by the deciding authority without any legal bounds, if the decision is taken in a fair and objective manner. There can be no interference by the Courts on the grounds of procedural fairness to a person whose interest based on legitimate expectation might be affected. The only scenario in which a Court could interfere is in case the decision was found to be *"arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest."* Therefore, a legitimate expectation can be classified as one of the grounds for Judicial Review. However, the scope of the grant of relief is very limited.[46]

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[41] *Ashoka Smokeless Coal India (P) Ltd.* v. *Union of India*, (2007) 2 SCC 640, 702 (para 183).
[42] *State of Haryana* v. *Jagdish*, (2010) 4 SCC 216, 238-39 (para 51).
[43] *R.P. Singh* v. *State of Bihar*, (2006) 8 SCC 381.
[44] *Supreme Court Advocates on Record Association* v. *Union of India*, AIR 1994 SC 268 at 437.
[45] *P. Oil Extraction Co.* v. *State of M.P.*, AIR 1998 SC 145.
[46] Justice Thakker, *Doctrine of Legitimate Expectation the Law*, THE LEGAL BLOG (Jan., 2011),

e. Doctrine of Public Accountability

The word "accountable" as defined in the Oxford Dictionary means *"responsible for your own decisions or actions and expected to explain them when you are asked."*[47] The Government is accountable to the public to deliver the broad set of outcomes expected from it. The delivery mechanism is carried out through public servants engaged in public service.[48] According to Stewart:

"Public accountability rests both on giving an account and on being held to account."

The doctrine primarily aims to prevent the administration from misusing its power. It aims at the provision of expedient relief to the aggrieved party when such power has been exercised. The principle is that the power given to the administrative authorities is a public trust. Therefore, the exercise of the power should be in the interest of the public. Thus, laws made should be made so keeping the well-being of the general public in view. If the laws are not made with such an intent, the court can conduct a Judicial Review. The matters covered under public accountability are matters relating to the spending of public funds, the exercise of public authorities, or the conduct of public institutions. The scope of Judicial Review can extend to private bodies that receive public funding or those who exercise public privileges. No public functionaries can misuse the powers given to them under this doctrine.

In ***P. V. Narsimha Rao* v. *State***,[49] it was observed by the Court that, *"members of the Parliament who received a bribe to vote cannot be given immunity from prosecution under Article 105 of the Constitution, since the Constitution does not protect corruption."* Hence, MPs can be prosecuted under Prevention of corruption Act, 1988.

The notion of *"public accountability"* was also based on *"constructive trust"* and *"principle of equity."* The trustee is *"a public servant who enriches himself by corrupt means holds the property acquired by him as a constructive trustee."* This concept was laid down by Privy Council in ***A.G. of Hong Kong* v. *Reid***.[50] In this case the respondent took bribes in order to supress some criminal prosecutions in Hong Kong. Using the bribe money, the respondent purchased a number of properties in the name of his wife. The properties were claimed by the Hong Kong Administration on the ground that the owners of the properties are constructive

www.Legalblog.in/2010/01/doctrine- of -legitimate-expectation-law.html. (last accessed on March 10, 2023).

[47] Heenavrm, *Judicial Accountability in India*, LEGAL INDIA SERVICE.COM, https://www.legalservicesindia.com/article/538/Judicial-Accountability-in-India.html (last accessed on March 10, 2023).

[48] Y. K. Sabharwal, Chief Justice of India, *Right to Information, Issues of Administrative Efficiency, Public Accountability and Constitutional Governance*", (Feb. 14, 2022 11:55 AM), http://www.Supremecourtofmdia .nic.in/new_links/rti:htm.

[49] *P. V. Narsimha Rao* v. *State*, (1998) 4SCC 626.

[50] *A.G. of Hong Kong* v. *Reid*, (1993) 3 WLR 1143.

trustees for the Crown. This was upheld by the Privy Council. It observed that, *"the theory of constructive trust is not applied when there is danger that the properties may be sold and the proceeds be transferred into some 'numbered bank account.'"*

This doctrine was followed by the Indian Supreme Court in the case of ***A.G. of India* v. *Amritlal Prajivandas.***[51] The court had to decide if section 3(1) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) was valid or not. The act allowed properties that had been earned as a result of smuggling or other illegal activities irrespective of the fact that they were in the name of the offender or in the name of other parties. The Court held that the Act was valid.

This principle was further enlarged in the case of ***Delhi Development Authority* v. *Skipper Construction Co***[52]. it was stated that, *"despite the absence of a fiduciary relationship or the involvement of a holder public office, if found that someone has acquired properties by defrauding the people and the person defrauded should be restored to the position in which they would have been but for the said fraud, the court can make necessary orders."* It was based on the principle of equity and Courts in India are not only courts of law but also courts of equity. Properties like this must be attached immediately and the holder of the property will have the burden of proof in such a case, to prove that they had not been attained with the aid of money received as an outcome of corrupt deals.

Thus, it can be concluded that a *"Judicial Review of Administrative Action"* has been efficaciously undertaken by courts and led to the evolution of principles which provide guidance as to how they should be dealt with. It can hold the officer holders personally liable if they act in a way that is against the principles of natural justice. It reflects the interplay of Constitutional Law and Administrative Law where Constitutional Principles must be upheld even in the cases of Administrative Actions.

VII. CONCLUSION

The role of Government has undergone a massive transformation from that of a defender to an organisation responsible for the welfare of its citizens. Therefore, it needed to develop administrative bodies to efficiently discharge its functions and allow for good governance. Administrative Law provides for a way to regulate the functioning of administrative bodies and a remedy to the people in case the administrative authorities mismanage their powers.

Administrative Law and Constitutional Law are closely interlinked to each other. Thei

[51] *A.G. of India* v. *Amritlal Prajivandas*, (1994) 5 SCC 54.
[52] *Delhi Development Authority* v. *Skipper Construction Co*, (1996) 4 SCC 622.

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relationship is indiscernible and Constitutional Law. The control mechanism of Administrative Actions is provided in the Constitution itself under Articles 32, 136, 226, 227. It also includes directives from the State under part IV and the limits placed by the Indian Constitution on delegation of powers. The doctrine of the watershed in administrative law shows that both administrative law and constitutional law are interconnected as well reliant on each other. The watershed acts as a link between both laws. The application of Constitutional Principles to Administrative Actions is largely carried out using the power of Judicial Review.

Judicial review of administrative action is one of the important components of Administrative Law. It is a part of the basic features our Constitution and is based on the *"rule of law"* and *"separation of power."* It is the most powerful remedy available against administrative abuse of power. It aids in keeping the administration within the limits of law and protect the interests of the citizens. The Courts have used the wide ranged powers and discretion provided to them to ensure that the Constitutional Principles are upheld and citizens are not denied fair and just treatment by Administrative Bodies.

The Pandemic was being used as an excuse by the Government to push through a number of reforms evading Parliamentary scrutiny. Some of these are not always in the best interest of the public but the administrative bodies are intently pushing them forward with the pandemic as an excuse to the Court every time they are questioned. Projects like Central Vista, the transparency of the PM cares fund, the haphazard policy of unlock post lockdown, the holding back of Dearness Allowance, the relentless privatization, the EIA bill etc. are few of the decisions taken which the Courts have dismissed appeals against and have not given satisfactory answers to the public. So, it is suggested that courts take a leaf out of their own books, make a closer examination of public decisions and not let authorities take undue advantage of the pandemic situation to put forth malicious reforms and excuse them from public accountability. It is one of the fundamental features of democracy and the courts must ensure that no democratically elected government can behave in an autocratic manner and destroy the basic tenets of our Constitution.

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