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# Understanding Judicial Review in Administration

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## ABSTRACT

*This manuscript briefly explains the nitty gritties of the Judicial review system in India. It describes the various roles and functions performed by the various authorities under this particular system. Judicial review in India deals with the legislative actions, judicial actions as well as administrative actions. There are several grounds on the basis of which the cases of judicial review can be taken upon. The manuscript talks about how exactly the judicial review system helps in maintaining an an equilibrium among the legislative, executive and the judiciary heads of the country. It talks about circumstances when an authority goes beyond the power that has been conferred in it and that might lead to an ultra vires judgement. The manuscript deals with the principle of irrationality, doctrine of legitimate expectation and many other instances where the need for judicial review can arise. The manuscript talks about the various remedies for judicial review of administrative actions are available in the form of writs that are elaborately described under Article 32 and Article 226 of the Constitution of India. These remedies include the five writs known as Habeas Corpus, Mandamus, quo warranto, Prohibition, Certiorari. The entire system of judicial review holds the crux of administrative law and more aspects pertinent to the same has been briefly discussed in the manuscript.*

## I. INTRODUCTION

Constitution alone can't build the foundation of a lawful society. To ensure that the laws are enforced, effective administration is necessary. Administrative law assumes the power to execute the laws which comes with a restriction. Judicial review limits the officers and other public bodies acting under the administrative capacity, to traverse beyond the scope and violate the fundamental rights enshrined in Constitution.

Judicial review of administration enquires into the legal competence of a public authority. Any act of administration can be rendered invalid if the reviewing court has sufficient jurisdiction. That doesn't pose itself to understand the wisdom, reasonableness, expediency of the

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administrative act. In many countries, the judicial review concerns itself with the correctness of the procedure observed during the act.[3] Hence the complainant has the burden to prove the occurrence of maladministration.

## II. ADMINISTRATIVE ACTION

It is a residuary action, neither judicial nor legislative in nature. It solely concentrates on the treatment of a particular situation and is deprived of generality. It doesn't have the power to decide a right as it is based on the subjective satisfaction that a decision is taken from the perspective of policy and expediency. However, that doesn't deprive the administrative actions of the principles of natural justice. Depending upon the facts and circumstances of each case, certain principles of natural justice has to be taken into consideration.[4]

Administrative action is mostly statutory because the actions derive its powers from a statute created under constitution. Sometimes, the administrative action might be non-statutory in nature, but the violation of which can call for disciplinary action.

## III. ORIGIN OF JUDICIAL REVIEW IN INDIA

The origin of judicial review can be traced back to UK which followed uncodified law. The doctrine of judicial review was affirmed when the Supreme Court of India bestowed the widest ambit in the case of Kesavananda Bharati v. State of Kerala. In the case of Marbury v. Madison, the Supreme Court of America had also acknowledged the power of judicial review.[5]

Judiciary has been vested with tremendous powers, out of which power of judicial review is given to High Courts and Supreme Courts. Throughout the years, administrative action has been empowered with numerous powers under the statute. The Lord Acton rightly quoted 'Power tends to corrupt and absolute powers corrupts absolutely'.[6] To keep the administrative powers in check and the corruption at bay, the Supreme Court and High Courts have intervened time and again. The court, while using the power of the judicial review only concerns itself with the decision making process than the merit of decision itself.[7]

[3] Judicial review of administration, BRITANNICA https://www.britannica.com/topic/administrative-law/Judicial-review-of-administration.
[4] Mohd Aqib Aslam, Judicial Review of Administrative Actions an Overview, LEGAL SERVICE INDIA https://www.legalserviceindia.com/legal/article-1979-judicial-review-of-administrative-actions-an-overview.html.
[5] Manoj Bhushan, Judicial Review of Administrative Actions in India, LEGAL SERVICES INDIA http://www.legalservicesindia.com/article/1581/Judicial-Review-of-Administrative-Actions-in-India.html.
[6] Lord Acton Quote Archive, Acton Institute https://www.acton.org/research/lord-acton-quote-archive.
[7] State of Uttar Pradesh vs. Johri Mal, SCC 2004 Part 4, 714

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## IV. GROUNDS FOR JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS

In the case of DDA New Delhi vs. Joint Action Committee Allottee of SFS Flats, Supreme Court had laid out key points to determine the involvement of the courts in the administrative action. The following points are required to be taken into consideration while making policies subject to judicial review:[8]

1. Whether it is contradicting executive policies against the statutory or larger policy
2. Whether it is unconstitutional
3. Whether it is de hors the provisions of act and regulation
4. Whether the delegate has acted beyond the scope of regulation

Broadly, judicial review in India deals with the legislative actions, judicial actions as well as administrative actions. There are specific grounds under which the cases can be taken upon:

**(A) Ultra Vires:** it is the basic doctrine in administrative law. It proposes that an authority can exercise powers which are conferred upon them by law. If the action of the authority transgresses the limit of law, it is ultra vires. The doctrine has two aspects i.e., substantive and procedural. If the delegated legislation goes beyond the limit of law, or is in conflict with the parent statute, it is called substantive ultra vires.[9]

**(B) Jurisdictional Error:** jurisdiction is very important as it enables the court to take cognizance of the matter presented before them. however, there are scenario of excess of jurisdiction' or 'abuse of jurisdiction' or 'lack of jurisdiction'. lack of jurisdiction arises when the tribunal or the adjudicating authority doesn't have the power to pass any order. This issue has to be examined alongwith other determinants like

1. Whether the law empowering the administrative action is constitutional?
2. Whether the authority is properly constituted as per the provisions?
3. Whether the authority took upon jurisdictional fact by mistake?

Secondly, excess of jurisdiction occurs when the adjudicating authority having the authority has traversed beyond the scope of jurisdiction and had entertained matters outside its jurisdiction.

Finally, situations of 'abuse of jurisdiction' occur under certain situations:

1. Authority abuses its power for a different purpose

[8] Deepali Anand, Judicial Review of Administrative Actions, 2, pen ACCLAIMS ,6 (July 2018) http://www.penacclaims.com/wp-content/uploads/2018/08/Deepali-Anand.pdf

[9] The Doctrine of Substantive Ultra Vires in Indian Administrative Law, Lawteacher.net (21 September 2021) https://www.lawteacher.net/free-law-essays/constitutional-law/the-doctrine-of-substantive-ultra-vires-constitutional-law-essay.php

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2. Error is apparent on the record
3. Administrative authority has acted dishonestly
4. Administrative author doesn't exercise discretion at all
5. Administrative authority doesn't analyse the relevant matter

**(C) Irrationality**: the concept of irrationality was introduced through Wednesbury Test. The court in the same case had reiterated three conditions to enable the right to intervene:

1. While arriving at the decision, defendant reflected upon the factors which shouldn't have been taken into consideration
2. Defendant failed to consider the important factors
3. Decision was unreasonable to the extent that any reasonable authority wouldn't pass such order.[10]

In the case of Rameshwar Prasad vs. Union of India, the apex court relied heavily on this principle for determining the reasonableness of an executive action.[11]

**(D) Procedural Impropriety:** it refers to the failure on the part of the public authority to comply with the procedures specified. Twin pillars of procedural impropriety are described as 'the rule against bias's and 'the right to be heard'. Fairness must be ensured without any apparent bias.[12]

**(E) Proportionality:**

The doctrine of proportionality was originated in Europe and has been well founded in the European Administrative Law. It proposes that a public authority ought to justify proportionality between his goals and the means he uses to achieve them, so as to ensure that this action doesn't harm the public interest at large.[13] In judicial review, the courts take upon themselves to determine the advantages and disadvantages of an administrative action. If the advantage is balanced, then the court upholds the administrative action. This ensures that the administrative authority maintains a proper balance between the adverse consequences of its decisions on the rights of the individual and take a proportionate decision.

**(F) Legitimate expectation:**

[10] Diganth Raj Sehgal, Judicial Review of Administrative Action, IPLEADERS (July 3,2020) https://blog.ipleaders.in/judicial-review-administrative-action-2/#Grounds_of_judicial_review

[11] The Wednesbury Principle, LAWTEACHER.NET (October 2021) https://www.lawteacher.net/free-law-essays/constitutional-law/scope-of-the-wednesbury-principle-constitutional-law-essay.php

[12] Judicial Review, ASHURST (18 June 2019) https://www.ashurst.com/en/news-and-insights/legal-updates/judicial-review/

[13] Doctrine of Proportionality-Legitimate Expectation-Public Accountability https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/Doctrine%20of%20Proportionality_VI%20Sem.pdf

The doctrine of legitimate expectation belongs to the field of public law, wherein it presupposes to give relief to the aggrieved who aren't able to justify their claims through law. The term was first used by Lord Denning in 1969 and thereafter it has assumed a significant position. In India, this doctrine helps the court to curb the arbitrary exercise of power of the administrative authorities. Private law only allows the aggrieved to approach the court if there has been violation of the statutory laws, however the locus standi for public law is more wide. The doctrine fills the gap between the 'no claim' and a 'legal claim' to hold the public authority accountable, on the ground of legitimate expectation.[14]

For example, the government announces a scheme for construction of houses in a particular village and comprises every villager. Later, it demarcates certain area and strips the villagers of the right to this scheme. Herein, the villagers have a legitimate expectation that the government should work equally for the benefit of the entire population. The government can be held liable for the same.

## V. REMEDIES AVAILABLE TO JUDICIAL REVIEW

The remedies for judicial review of administrative actions are available in the form of writs that are elaborately described under Article 32 and Article 226 of the Constitution of India.

### (A) Habeas Corpus

The writ of Habeas Corpus basically signifies "having a body"[15]. This writ is made while keeping in mind the unlawful detention of people and this writ is meant for the protection of the detainees who have been detained without any relevant cause or valid reason. Cases where the court investigates and finds out that the detention has been unlawful they immediately ask for the release of the respective detainees. The intention of this particular writ is not to punish the detainer rather this writ is made with an objective of releasing people from unlawful detentions. In case an authorized person has detained another, then this writ can be put forth as an order to the detainer where he is compelled to substantiate the reasons based on which he might have felt that the detention was necessary. If the court is not satisfied with the justification as provided by the detainer, then the detainer is ordered to set the detainee free. In England this writ is regarded as the doorway of finding freedom for a person who has been put behind the bars for no absolute reason or justification. This writ was thus first adapted in the

[14] Usha Antharvedi, Judicial Review of Administrative Actions and Principles, SSRN, 7 (11 March, 2008) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1104955

[15] M. Sumi Arnica, Habeas Corpus, Legal Sevices India, https://www.legalserviceindia.com/legal/article-1328-habeas-corpus.html

Constitution of United States and later on, it has been adapted by the Indian Constitution. This writ signifies the human rights and freedom of people who are put behind the bars and whose rights and freedoms are taken away without substantiating any valid reason against the same. In India, only Supreme Court has the right or the authority to issue the writ of Habeas Corpus. Initially it has been said that the writ of Habeas corpus could not be used for any past illegal detentions, however, Supreme Court has been successful in expanding the scope of this particular writ and it has said that this particular writ can now be applied to seek for compensations or remedies for all the past detentions that has been unlawfully or illegally done. The Supreme Court also stated that in case any such past detentions have led to the loss of life of any detainee then this particular writ can be very well applicable to seek compensation for the same. The same has been evident in the case of Rudul Shah v. State of Bihar[16], where the compensation was ordered to be given in the form of payments.

**(B) Mandamus**

The writ of mandamus basically means 'to command the public authority' [17]to perform its duty. It is a command given by the higher courts (High Courts and Supreme Court) to the Government, Inferior courts, tribunals, corporations, authorities or any other person to do any act or refrain from doing an illegal act. The objective behind this particular writ is to check the activities of the administration in order to supervise the functioning of the duties by the administrative authorities for the public in general. Article 329 gives the power to the Supreme Court to issue the writ of mandamus along with several other writs. These writs are supposed to be issued by the Supreme Court whenever it feels the necessity of applying the rights conferred in the respective writs. Art. 32 guarantee to every person the right to move the Supreme Court directly for enforcement of fundamental rights. However, this particular provision clearly states the very fact that the writ can only be applied when there is a clear breach of fundamental rights. This provision also states that disputed questions of facts should not be a part of the breach. Any statute infringing the basic fundamental rights of any person directly makes the perfect example of a situation where writ of mandamus can be very well applied. The statute that has led to the breach of the rights might be a statutory order or an executive statute. The provision of article 32 also states the fact that a writ of continuous mandamus can be very well issued in circumstances where any public agency is found not performing their functions properly as a result of which fundamental rights of people are being

[16] RUDUL SAH V. STATE OF BIHAR, (1983) 4 SCC 141

[17] Pallavi Ghorpade, Analysis of writ of mandamus, Legal services India, http://www.legalservicesindia.com/article/592/Analysis-Of-Writ-Of-Mandamus.html,

breached in a continuous manner. Despite of making the criteria and situations of issuing mandamus absolutely clear, there are certain times when the court finds it really confusing while using the writ of mandamus. This writ is the most commonly used writ however, it is the trickiest writ as well. While applying this particular writ the situation needs to be understood very well. A writ of mandamus or remedy is basically a public law remedy and is not generally available against private wrongs. This particular writ is made for the actions of the public authorities and this writ makes sure that the administrative authorities are liable for the work that they are assigned to deliver, and this writ also supervise the fact that whether these administrative works are delivered or performed properly or not. This writ of mandamus keeps a check on the powers of the higher authorities and takes a note of the fact that these powers are not misused by the authorities that are performing the public duties.

**(C) Quo Warranto**

The word 'quo warranto' basically means "by what authority"[18]. The writ of quo warranto is applicable against a person who holds a certain public office. This writ can be used to question a person that by what authority does the person hold that particular public office. In other words, we can say, the writ of quo warranto helps in determining the validity of the authority of a person holding any public office or position. In case, this writ finds the fact that the authority by which the person holds the public office, is illegal or unlawful in nature and the person is not capable of providing any justification to the court, then that person will be immediately removed from the office by enforcing judicial order.

**(D) Prohibition**

Sometimes courts exceed the scope of their jurisdiction and pass judgements beyond the power that has been conferred to them. The writ of prohibition is a writ that is made to put a check on the aforesaid situation. The higher court or the superior court is conferred with the power of issuing this writ to the lower court or tribunal or body exercising judicial or quasi-judicial power, in cases where the superior court feels that the lower courts or the aforementioned bodies have gone beyond their powers and has functioned to an extent that they were not meant to be.

**(E) Certiorari**

There are certain circumstances or situations where the courts pass a judgement that brings an

[18] Pushraj Deshpande, Articles 226 And 227 Of The Constitution Of India – Their Scope, Powers And Differences, https://www.mondaq.com/india/court-procedure/691090/articles-226-and-227-of-the-constitution-of-india-their-scope-powers-and-differences

adverse effect either to the society or to any of the parties involved in the case. These kinds of judgements if not corrected, might lead to a damage to either of the parties against whom these judgements have been made. Here, comes the writ of certiorari. This writ is issued by the Superior Courts (High Courts and the Supreme Court) to the inferior court or tribunal or body which may exercise judicial or quasi-judicial functions, for the correction of jurisdiction or error of law committed by them. If any order passed by them is illegal, then the Superior Court may quash or demolish it. This writ can be applied only when certain grounds are present, which includes failure to exercise the jurisdiction properly, violation of the principles of natural justice and in cases where the authority has failed to correct an error which has been evident from the record of the case that has been put forth to the court.

## VI. Conclusion

The entire system of judicial review can be called the heart of administrative law. This system holds a huge position in the sphere of administrative law, because it gives the law, a system of checks and balance and most importantly, a scope of correction. There are certain times when the actions of public authorities do not meet the needs of the public in general, and the public feels helpless because they did not know whom to approach for what. The process of judicial review and all the remedies available in it, helps the public and makes a shell of protection around the public. As population is increasing, the public offices and administrative authorities are also increasing in quantity with each passing day. Had the system of judicial review not been there, the increasing number of public offices could not be controlled in a better manner. Judicial review is known to be the most basic feature of the constitution and its contribution to administrative law absolutely inexplicable.

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