ADMINISTRATIVE LAW AND JUDICIAL REVIEW OF ADMINISTRATIVE ACTION THROUGH WRITS: GROUND OF REVIEW

NANDISH C D

LLM CONSTITUTIONAL AND ADMINISTRATIVE LAW,

SCHOOL OF LAW,

CHRIST (DEEMED TO BE UNIVERSITY), BENGALURU.

ABSTRACT

The paper of Administrative law and judicial review of administrative action is one of the important subjects in modern times. This paper deals with the broader aspects of administrative law and various methods of judicial control through writs. Administrative law has an enormous social function to perform and it is the body of the reasonable limitations and affirmative action which are developed by the legislature and the courts to maintain and sustain the rule of law. A strong, independent and impartial judiciary is a sine qua non of any system of government, excluding dictatorship. In each country the judiciary plays the key role of interpreting and applying the law and deciding the disputes between one citizen and the other and between a citizen and state. Where there is a written constitution the courts perform the additional function of safeguarding the supremacy of the constitution by interpreting and applying its provisions and keeping all authorities within the limits of the constitution. Judicial review is a great institution and is a fundamental arch of the system of checks and balance without which no democracy worth the name can function. Judicial Review basically is an aspect of judicial power of the state which is exercised by the courts to determine the validity of a rule of law or an action of any agency of the state. The courts through writs of habeas corpus, mandamus, certiorari, prohibition and quo warranto control the administrative actions. The important source of Administrative law is the statutes, statutory instruments, precedents and the customs. The paper discusses the doctrine of ultra vires and remedies of judicial review. And the power of judicial control has become an important area of administrative law because the courts have proved more effective and useful than the legislative or the administrative powers.

Keywords: Administrative law, Rule of Law, Separation of power, Habeas corpus, Mandamus.

INTRODUCTION

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

[1] Prof. I. P. Massey, Administrative Law pp.62, 8th edition 2012

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." 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 body 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 look into the historical background 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

[2] Kailash Rai, Administrative Law, pp.395, 5th edition 2006
[3] U.S. 137, 1803
[4] Ibid
[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.
[7] Supra note.2
[8] Gerard W. Hogan, Discretion and Judicial Review of Administrative Action, Vol. 15, No.1, (1998)
[9] Matthew, D. Zinn, Ultra vires taking, Vol.97, No.1 (Oct.1998)

uncertainty in administrative action involving judicial interference. Sometimes the courts may believe they are willing to intervene because they feel strongly about the injustice of the case before them; sometimes they are not sure of the injustice and they follow the decisions of the administration.[10] 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) states 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.[11] This point will become clear after discussing the grounds on which to issue them.

GROUNDS OF REVIEW THROUGH WRITS.

- **Jurisdictional Principle: Doctrine of ultra-vires.**

An analysis of judicial power centres around the question of how far the courts can go in reviewing the administrative authorities 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.[12] 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 '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

[10] ibid
[11] Supra note.1
[12] Holdsworth, A History of English Law, Vol. 2 (1936) pp. 395-405

underlying doctrine is referred to as 'ultra-vires'. The ultra-vires doctrine, as explained by Lord Selbourne L.C. In one case[13], it should be rational, and not unreasonably interpreted and enforced, and whatever may be fairly regarded as 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.[14] Similarly, a local authority with authority to acquire land other than '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 ultra-vires) 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[17] 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[18], the view that the distinction between intra-vires errors and ultra-vires errors had been abandoned.

SCOPE OF THE DOCTRINE

In theory, the principle of jurisdiction allows the courts merely to avoid acting in excess of powers, but in reality, by interfering on grounds of unreason ability, bad faith, extraneous consideration, unfairness, manifest injustice and fair play, etc., they have increasingly entered the core of the subject matter. All those challenge heads were grouped together under the ultra-vires singe principle. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power. Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power. Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. To give an example, in R. V. Hill University Visitors exparte,[19] Lord Brown Wilkinson has embraced the conventional ultra-vires script. When, outside the authority granted, the decision-maker exercises his powers in a way that is procedurally unconstitutional or unfair to Wednesbury, he acts ultra-vires his powers and is therefore unlawful. The theory of ultravires is consistent with the principle of rule of law to some degree, thus, the definition of ultravires is now viewed by many as an insufficient excuse for judicial review. The alternative view, therefore, is that the courts do not need to resort to speculation such as the

[13] Attorney – General v. Great Eastern Railway Co. (1880) 5 AC 473
[14] London Country Council v. Attorney-General (1902) AC 165
[15] White and Collins v. Min. of Health (1939)2 KB 838.
[16] (1969) AC 147.
[17] (1979) QB 56.
[18] (1981) AC 363.
[19] (1993)2 AC 237.

Parliament's purpose or the technicalities of jurisdictional evidence and error of law but rather that the courts must interfere whenever an unconstitutional exercise of power has occurred. As Dawn Oliver puts it, the question of judicial review has changed from the ultra-vires law to a concern for the security of rights and regulation of powers.

BASIS OF THE DOCTRINE OF ULTRA- VIRES

Administrative action for judicial review, using concepts of intra-ultra vires and the rules of natural justice ensure that the executive acts within the law. Following the granting of a request for judicial review, it is for the court to determine whether the body in question has acted intra-vires or ultra-vires (i.e., within or outside of its power). The main classes of action may be pursued; those alleging infringement of statutory requirements and those alleging that a decision was reached in an unreasonable manner or in disregard of natural justice rules. Traditionally, these broad headings have been broken down into a variety of subheadings. By way of illustration, a body can act ultra-vires if it uses its powers for the wrong purpose,[20] or if it abuses its powers,[21] or if it adopts such a rigid policy that it does not exercise its discretion with which it has been invested.[22] The law imposes requirements of reasonableness on administrative bodies and failure to act in a reasonable manner . cause an individual to act ultra-vires, an entity can act ultra-vires if delegated powers are vested but transferred to another. Statute may require administrators to adopt specific procedures in the exercise of those powers, if they do not do so, and the proceedings are judged to be 'mandatory'(compulsory) rather than directory (advisory) for an entity to act ultra-vires. If a public body that is under an obligation to act fails to act at all court can order it to do so. In decision-making, too, the laws of natural justice must be observed; where a person has a right or interest at stake due to an administrative decision, he is entitled to fair treatment.[23]

The House of Lords rationalized all these grounds for review into three main categories: illegality, irrationality, and procedural impropriety.[24] Lord Diplock noted today, "One can conveniently classify the grounds on which administrative action is subject to judicial review under the three headings". First ground 'illegality,' the second 'irrationality,' and the third 'procedural impropriety,' which is not to imply that further progress may not occur on a case-by-case basis. Over time, further grounds were added. Lord Diplock further elucidated the concepts. By illegality as a ground for judicial review, I mean that the decision-maker must correctly understand the law which governs and gives effect to his decision-making powers. Whether or not he had been, par excellence, a justifiable issue to be resolved, in case of disagreement, by those people, the judges, by whom the State's judiciary is exercisable. Through irrationality, I mean what can now be considered the unreasonableness of Wednesbury[25] in short. This refers to a judgment so absurd in its violation of logic or accepted moral standards that it could not have been made by any sensible person who had applied his mind to the issue to be determined.

[20] Attorney-General v. Fulham Corporation (1921)
[21] Westminster Bank v. Minister of Housing and Local Government (1971) AC 508.
[22] Padfield v. Minister of Agriculture Fisheries and Food (1968) AC 997
[23] Wheeler v. Leicester City Council (1985) AC 1054.
[24] Council of Civil Service Unions v. Minister for the Civil Service (GCHQ Case), (1985) AC 374.
[25] Associated Provincial Picture Houses Ltd. Wednesbury Corporation (1948) 1 KB 223.

Whether a decision falls within this category is a question which judges should be well equipped to answer through their training and experience.

Instead of failing to follow basic rules of natural justice or failing to act with procedural fairness towards the person affected by the decision, I have described the third head as 'procedural impropriety.' This is because, under this heading, susceptibility to judicial review often entails failure by an administrative tribunal to comply with the procedural rules specifically laid down in the statutory instrument by which its authority is granted, even if such failure does not entail any violation of natural justice.

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."[26] 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.[27] In condition of A.P. V. Me Dowell & Co.,[28] 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 (i) unreasonableness which is more appropriately called irrationality; (ii) unlawfulness; (iii) 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 authorities 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,[29] 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

[26] Wade, Administrative Law (1977) p. 40
[27] Tata Cellular v. Union of India (1994)6 SCC 651
[28] AIR 1996 SC 1627.
[29] (1994)6 SCC 651

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 [30]

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.[31]Arbitrariness based on proportionality theory is still without foundation. There is also no basis for not justifying the administrative action on merit.[32] 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.[33]

REMEDIES OF JUDICIAL REVIEW

Pursuant to Article 32 and Article 226 of the Constitution of India, five forms of writs are required for judicial review and administrative action.

Habeas corpus: This writing is mainly used to secure the release of a person who has been illegally detained, or without any legal justification. This allows for effective determination of a person's right to liberty. According to Article 22 of the Indian Constitution, a person arrested must be brought before a magistrate within 24 hours of his arrest and failure to do so would entitle the person arrested to release. An individual's freedom is a highly priced liberty and habeas corpus writing is a powerful weapon from which a common man can protect his freedom. To a large extent, the success of the habeas corpus writing depends on the substantive part of the law under which an individual's rights has been curtailed. According to the Supreme Court in Sunil Batra case, the dynamic role of judicial remedies imparts to the habeas corpus a flexible vitality and operational utility which enables the healing presence of the law to live up to its reputation as a bastion of freedom even within the secrecy of the cell.

Quo warranto: The writ of quo warranto is used to judicially control executive action in the matter of appointing public offices in accordance with relevant statutory regulations. This prohibits the individual from being the occupant of a public office he has no right to. Quo warranto will not be given if the law calls for an

[30] Mansukhlal v. State (1997)7 SCC 622.

[31] Paharpur Cooling Tower Ltd. v. Bangaigaon Refinery and Petrochemicals Ltd., AIR 1994 Del. 322
[32] K.L. Trading Co. Pvt. Ltd. v. State, AIR 1996
[33] S.R Bommai v. Union of India, AIR 1994 SC 1919.

appropriate legal remedy. In Gokaraju Rangaraju v. Andhra Pradesh[34] State "the de facto activities of the officers carried out by them within the limits of their presumed official authority". It is simply as true and binding in the interests of the public or of third persons, and not for their own gain, as if they were acts of officers de jure. Quo warranto prevents an individual from illicitly usurping public office. Before issuing a writ, the necessary ingredients to be satisfied by the court are that the office must be in public, created by the constitution or a law, and the person holding the office is not legally qualified to hold the office in clear breach of constitutional or legal provisions. It is the person whom quo warranto writing is directed towards. A writ of quo warranto can be issued only if the appointment is contrary to constitutional regulations.

Mandamus: Mandamus is a court-issued order to an agency that orders it to fulfil a public duty imposed by statute on it. When a body omits to determine which matter, it is bound to decide, the same can be ordered.[35] It can be provided when a power which the government certainly has under law is denied to itself. Mandamus has the purpose of keeping public authorities within the boundaries of their authority when conducting public functions. Mandamus may be given to any form of authority over any sort of administrative, legislative, quasi-judicial, judicial purpose. In India, mandamus may be given to reverse what has already been done in breach of a statute, or to impose an agreement to abstain from acting unlawfully. To retain a mandamus petition, the petitioner must show that he has the right to compel the government to act in a specific way. Mandamus cannot be granted, in the absence of any such privilege. Such a right exists as the sine qua non for the issuance of the writ. A mandamus writing is not a right writing but, as a rule, it is discretionary.

Prohibition: Prohibition is an unprecedented prerogative writ of prevention; it seeks to avoid violating their authority by courts, tribunals, quasi-judicial bodies and officers. The main purpose of this writing is to discourage jurisdictional encroachment. It is founded on the maxim "prevention is better than cure."

Certiorari: This deals with a method of putting the inferior court record before the superior court for redress of the jurisdiction or the error of law committed by them. Simply put, if any subordinate court decides the case beyond its control then Apex Court and High Courts by issuing this writing correct the error. It was used earlier for criminal matters but was later also used in civil cases. Reasons for this writing are (a) excess or inability to exercise jurisdiction, (b) violation of principles of natural justice such as the right to notice and hearing, (c) infringement of fundamental rights or substantive provisions of laws, and (d) discovery of evidence that no person would have drawn a conclusion.

CONCLUSION

Judicial review of the administrative action inherent in our constitutional scheme based on the rule of law and separation of power. It is regarded as the basic features of our Constitution, which cannot be abolished even by the exercise of parliamentary constitutive power. It's the most effective remedy against administrative excesses available. It is a positive feeling among the people that if the administration carries out any function or acts at the discretion of the power given to it, either by legislative norms or in accordance with the provisions of the

[34] AIR 1981 SC 1473
[35] Mysore v. Chandrasekhara, AIR 1965 SC 532

Indian constitution. Unless, because of that discretionary power, it is a failure to exercise discretion or misuse of discretionary power to satisfy its gain or any private gain, the only choice before the public is to go to court under Article 32, Article 136 or Article 226 of the Indian Constitution. The main purpose of judicial regulation is to ensure compliance of the laws enacted by the government with the rule of law. Judicial regulation has certain drawbacks inherent in this. It is better suited to dispute resolution than to administrative functions. It is the executive who administers the law and the judicial system function to ensure that the government fulfils its duty in accordance with the provisions of India's constitution.