Judicial Review of Administrative Action through Writs

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‘As the paramount law, the Constitution creates the Legislature itself and confers upon it power to make laws subject to certain limitations, without which, of course, the power of the Legislature to make laws would have been plenary. It is because the limitations contained in Part III and other articles of the Constitution are imposed by a paramount or fundamental law, that a law made by the Legislature must give way whenever it transgresses the limitations imposed by the Constitution, and out of that arises the function of the Judiciary to invalidate such unconstitutional law.'

This paper is an attempt to analyze the well-known practice of Judicial Review of Administrative Action through Writs under the ambit of Administrative Law.

Administrative Action

Administrative law is that branch of public law which deals with the various organs of the sovereign power being concerned with such topics as the collection of the revenue, the regulation of the military and naval forces, citizenship and naturalization etc. In modern times the administrative process as a byproduct of intensive form of government cuts across the traditional forms of governmental powers and combines into one all the powers which were traditionally exercised by three different organs of the state. In Halsbury's Laws of England also it is stated that however the term the Executive' or 'the Administration' is employed, there is no implication that the functions of the executive are confined exclusively to those of an executive or administrative character.3

Judicial Review

Judicial review is "a court’s power to review the actions of other branches of government, especially the court’s power to invalidate legislative and executive actions as being unconstitutional" 4 Judicial review is one of the essential conditions of federalism. Through this the Judiciary tries to undo the harm that is being done by the legislature and the executive and also they try to provide every citizen what has been promised by the Constitution. Judicial review is the corner-stone of constitutionalism, which implies limited government.5 It is the significance of judicial review, to ensure that democracy is inclusive and that there is accountability of everyone who wields or exercises public power. It is an accepted axiom that the real kernel of democracy lies in the courts enjoying the ultimate authority to restrain the exercise of absolute and arbitrary power. Without some kind of judicial power to control administrative authorities, there is a danger that they may commit excesses and degenerate into arbitrary bodies, and such a development would be inimical to a democratic constitution and the concept of rule of law.7 It is the function of the courts to instill into the working of officials and expert administrative bodies the fundamental values inherent in the country’s legal order.8

Judicial Control of Administrative Action

The power of the courts to examine legislative and administrative acts can be discussed under two conceptual categories. The first inquiry is that of examining the ‘legislative competence’ of either the

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1 Kania, In Re Delhi Laws Act, (1951) SCR 747 (765) (India).
7 Sanjay Satyanarayanan Bang, Judicial Review of Legislative Action: a tool to balance the supremacy of the Constitution

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Parliament or State Legislatures by deciding whether a particular legislation was within their designated law-making powers. In the domain of administrative law, the inquiry shifts to whether administrative bodies had the authority to create rules and regulations or to pass orders on a particular subject.\textsuperscript{9}

However, the much broader inquiry relates to the second form of ‘judicial review’ which involves the protection of fundamental rights. This empowers the higher judiciary to examine administrative acts as well as legislations and decide whether they are compatible with the fundamental rights guaranteed to all citizens under Part III of our Constitution.\textsuperscript{10} The focus of this piece is specifically on the use of writs as a form of judicial review and critically analyzing them in order to suggest reforms for the better.

An individual who is aggrieved by an administrative action can bring his complaint to the cognizance of the courts through way of writs along with other mechanisms like appeals, reference to the court, injunctions, declarations, suits for damages for tortuous actions of the administration and civil servants. Writs are issued by the Supreme Court and High Court under articles 32 and 226. It is the Court’s role of protecting fundamental rights, which has led to the evolution of some innovative remedies that have been created by harmoniously reading in long-established principles of administrative law.\textsuperscript{11}

Writs which are 5 in number are an essential feature of judicial control:

Habeas Corpus literally means “You may have the body” this writ is issue to secure the release of person from illegal detention or without legal justification, its deals with person right of freedom.

Mandamus means “To command the public authority” to perform its public duty in India. It is discretionary remedy even as all five writs are discretionary remedy in nature. Court has full power to refuse to entertain a writ petition.

Quo Warranto is used against an intruder or usurper of public office. Literally means “What is your authority”. Court directs the concerned person that by what authority he holds the office. The Court may expel a person from the office if he finds that he is not entitled to obtain such office.

Prohibition seeks to prevent Courts, Tribunals, Quasi-judicial authorities and officers from exceeding their jurisdiction. Main objective of this writ is to prevent the encroachment of jurisdiction.

Certiorari deals with a method to bring the record of subordinate Court before the superior Court for correction of jurisdiction or error of law committed by them.

It must be pointed out here that while exercising ‘judicial review’, the courts do not exercise ordinary appellate powers. The intention is not to take away the powers and discretion that is properly vested with administrative authorities by law and to substitute the same with judicial determinations on specific facts. Judicial review is a protection and not an instrument for undue interference in executive functions. Any administrative action can only be set aside when it is arbitrary, irrational, unreasonable or perverse.\textsuperscript{12} In Delhi Development Authority\textsuperscript{13}, the Supreme Court made the following observations:

"One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". Courts are slow to interfere in matters relating to administrative functions unless decision is tainted by any vulnerability such as, lack of fairness in the procedure, illegality and irrationality. Whether action falls in any of the categories has to be established. Mere assertion in this regard would not be sufficient. The law is settled that in considering challenge to administrative decisions courts will not interfere as if they are sitting in appeal over the decision. He who seeks to invalidate or nullify any act or

\textsuperscript{9} Ibid.
\textsuperscript{10} Ibid.
\textsuperscript{11} Ibid.
\textsuperscript{12} Supra Note 3.
\textsuperscript{13} Delhi Development Authority v. M/s UEE Electricals Engg. Pvt. Ltd, 2004 (3) SCR 286 (India).
order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. It cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility”.

Limitations

A notable aspect of writ jurisdiction is that it can only be invoked when there is an administrative action in conflict with the Fundamental Rights of the petitioner. It cannot be invoked if no question of enforcing a Fundamental Right arises. While dealing with a petition under Art. 32, the court would confine itself to the question of infringement of Fundamental Rights, and would not go into any other question. Art. 32 cannot be invoked even if an administrative action is illegal unless petitioner’s Fundamental Right is infringed. Thus, a petition merely against an illegal collection of income tax is not maintainable under Art. 32, for the protection against the imposition and collection of taxes except by authority of law falls under Art. 265 which is not a Fundamental Right. But when an illegally levied tax infringes a Fundamental Right, then the remedy under Art. 32 would be available. In Tata Iron & Steel Co., the company paid tax under the Central Sales Tax Act to the State of Bihar. The State of West Bengal also sought to levy tax under the same act on the same turnover. In such a fact situation, a petition under Art. 32 was entertained by the Supreme Court because the Act in question imposes only a single liability to pay tax on interstate sales. The company having paid tax to Bihar, the threat by West Bengal to recover sales tax in respect of the same sales prima facie infringed the Fundamental Right to carry on trade and commerce guaranteed by Art. 19(1)(g).

Suggestions and Conclusion

Albeit these dilemmas and limitations seem to be chronic or protracted, it is opportune to submit some suggestive guidelines and possible way-out for the exercise of judicial control over administrative actions. The Constitutional change ought to be brought about some provisions enabling any person to move to the Supreme Court for writs on the grounds of pro bono publico for the common good in order to defend people’s rights and interests and thereby, to meet the ends of justice and not solely on the infringement of Fundamental Rights. And all the decisions taken by the administration have to have opportunity to judicial review. The frontier of functions to be discharged by the administrative authorities must clearly be demarcated. If the law enacted by the Parliament lucidly fixes their boundaries of works, they may not be indulgenced in unduly using their discretionary powers or misuse or abuse powers. Besides, more stringent check should be placed on the delegated legislation which at times tend to be arbitrary. These delegated powers must be made exercise reasonably in good faith. Delegated legislation which are manifestly unjust or oppressive or outrageous must be declared ultra vires by the courts.

Presently, writs of any kind can only be sought in the High Courts and the Supreme Court. For people’s sake and in order to maintaining respect to the right of individuals, the opportunity of filing writ petition in the district court may be created with amending necessary procedural laws of the country so that the people may have an easy excess to justice in the remedy of writ.

Optimistically, a viable judicial control mechanism would provide an effective check on bureaucratic adventurism and encourage administrative instrumentalities to act as legally valid and socially wise and just. Such a condition would optimally help the society grow with liberty and dignity. However, since the judiciary is not substantially independent and also not free from any defects and thus, some plausible measures are badly needed to be employed, it is expected that the findings and the way out suggested in this paper would helpfully be handful guidance for any attempt to make pro-people administration and goal-oriented judiciary.

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15 Laxmanappaa v. Union of India, AIR 1955 SC 3 (India).