

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION, RIGHT TO INFORMATION, TRIBUNALS AND REGULATORY BODIES

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ABSTRACT

In the modern age, the administration functions have increased drastically. The power of adjudication is given to the administrative bodies. The adjudication means resolving disputes between individuals or state and individual, is vested in the court. This gives us the wrong impression that court enjoys the monopoly over the adjudication power. To control the power of the court and to reduce the burden on the courts the legislation has also created many administrative bodies and gave the power of adjudication that creates a necessity for a review that is done in Judicial review. One of the most popular ways of adjudication is through Administration, that includes Administrative Tribunals. This article deals with such adjudication authorities/bodies and they play an important role in India. Furthermore, it is necessary that the rules made or the change in rule shall come to public domain i.e. right to information to individual.

INTRODUCTION

MONTESQUIEU identified three organs of the constitutional government: legislature, executive and the judiciary. They are subordinate to each other. However, in most of the country's judiciary is an independent body which means on the principle of separation of powers and principle of checks and balances it claims independence and has kept check of the activities of both the other two organs of the governments as per constitutional principles. Judiciary acts as a guardian of the constitution and its principles are the general will of the people.

In the modern era due to globalization and expansion of economy which created problems for the government such as tax frauds, violation of consumer rights etc. Which lead to the governance structure divided into regulating bodies. As the administrative regulating bodies became necessary for the efficiency of the administration. The legislature has created said administrative bodies and given them adjudicating powers and also to reduce the burden over the courts. Administrative adjudication means the administration exercises the power of judicial functions.

Rulemaking was not an issue however long time it might be taken by legislature, quick law by ordinance or by administrative bodies it was necessary to amend and imply in public, further any issue regarding the following had to be dealt with was subjected to court. Which is again a wastage of time and money, so then why not to make laws that is perfect to public, that gave birth to Judicial Review.

CONSTITUTIONAL PRINCIPLES

Indian constitution is framed by taking many principles from other countries constitutions. India has adopted Westminster model of parliamentary system with independence judiciary. This is also followed by UK. The basic principles of Indian constitution are:

1. Fundamental rights
2. DPSP (Directive principles of state policy)
3. Socialism

4. Secularism
5. Sovereignty
6. Federalism
7. Independent judiciary and
8. Rule of law

For the sake of this paper we are taking four principles are important. The basic structure of the Indian constitution is based on rule of law. And other three principles are a part of rule of law. Montesquieu has appreciated the theory of separation of powers. As it ensures the rule of law and protects against the authoritarianism which jeopardize the rights of the citizens.ⁱ In the case of *L. CHANDRAKUMAR V UNIOIN OF INDIA*,ⁱⁱ the supreme court declared that judicial review, rule of law and separation of power as some of the basic features of the Indian constitution. In the case of *INDIRA NEHRU GANDHI VS RAJ NARAIN*ⁱⁱⁱ the supreme court of India held that parliament cannot perform judicial powers over the election of the Prime minister it will only be dealt in the designated tribunal which has adjudicating powers over the matter. In this case after the 39th amendment of constitution of India^{iv}. Article 329A was added to the constitution where the election of PM, president, vice president and the speaker cannot be challenged under the court of law. So, the petition was nullified because it is going against the basic structure of the Indian Constitution.

WHAT IS JUDICIAL REVIEW?

The Constitution of India gives space to Judicial Review in Article 226 and 227 for High Courts and Article 32 and 136 for Supreme Courts. There are three governing bodies of Indian rule making and applying system i.e. Executive, Legislative and Judiciary; all the three have been given three different duties to follow; one to legislate, promulgate and regulate bit one power is commonly given to all is to check the working. India has been a country where all of these structures can be bypassed; the best example, Indira Nehru Gandhi v. Raj Narain^v. This case is best known for the dirty politics. Indira Gandhi was held liable for electoral malpractices. Where there were certain provisions made that no question can be raised against the appointment. Further held that Judicial Review in election disputes which was not a compulsion as it is not a part of basic structure.

EVOLUTION OF JUDICIAL REVIEW

In the case of *S.P. Sampath Kumar v. Union of India*^{vi}; P.N. Bhagawati, C.J., relying on *Minerva Mills Ltd.*, declared that it was well settled that judicial review was a basic and essential feature of the Constitution. If the power of judicial review was absolutely taken away, the Constitution would cease to be working and the structure and functioning would be infringed.

Further a series of cases continued relating Judicial Review:

1. In *Sampath Kumar V Union of India*^{vii}, the Court further declared, that if a law made under Article 323-A (1) were to exclude the jurisdiction of the High Court under Articles 226 and 227 without setting up an effective alternative institutional mechanism or arrangement for judicial review, it would be violating the basic structure and further outside the constituent power of Parliament.

2. In *Kihoto Hollohan v. Zachillhu*^{viii} another Constitution Bench, while verifying the validity of para 7 of the Tenth Schedule to the Constitution which excluded Judicial Review of the decision of the Speaker or Chairman on the question for disqualifying of MLAs and MPs, observed that it was unnecessary to pronounce on the contention whether Judicial Review is a basic feature of the Constitution and para 7 of the 10th Schedule violated the basic structure.

3. *L. Chandra Kumar v. Union of India*^{ix} a larger Bench of seven Judges unequivocally declared, that the power of Judicial Review over legislative actions are vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure.

In spite of the fact that one doesn't reject that capacity to survey is significant, simultaneously one can't likewise give an outright capacity to audit and by perceiving legal survey as a piece of essential element of the constitution Courts in India have given an alternate importance to the hypothesis of check and balances rule that additionally implied it has covered the idea of division of forces, where the legal executive will give itself a liberated ward to survey all that is finished by the governing body.

So, the point is that law making process is not fateful or trustworthy until there is Judicial review. According to me still ow the law-making process is a political play.

WHAT ARE ADMINISTRATIVE ACTIONS?

Before defining Administrative Actions let's deal with Administrative Laws; Basically, Administrative Laws is a study that deals with the Administration, law made by them and the implementation. According to M. P. Jain Administrative law and its actions are not specifically defined, it says the power and procedure concerning Administrative agencies, including especially the law governing Judicial Review of Administrative Actions, by Kenneth Culp Davis.^x

The issue arise to Administration is that when a law is made, passed and applied in public domain. To determine that it necessary that to figure out what are the organs involved in the process, the process, and how applied is to be knows. And where the issue arises.

Administration is not an executive body nor legislative or judiciary body, but a part of it is played in this role. It consists of bodies Quasi-legislative, quasi-judicial bodies which make laws based on subjective satisfaction where decision is based on policy and expediency. It does not decide a right though it may affect a right. However, it does not mean that the principles of natural justice can be ignored completely when the authority is exercising "administrative powers".

There are a certain number of cases that question upon the delegation of power to certain bodies, rules implication, questioning the procedure and also why the act was made and grounds of nullifying it. Each of the cases dealt in this chapter suffer a minimum of the principles of natural justice must always be observed depending on the fact situation of each case.

Grounds for Judicial Review of Administrative Actions:

1. Illegality
2. Irrationality
3. Procedural impropriety

4. Proportionality

In case *A.K. Kraipak v. Union of India*^{xi}, the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.

Administrative action may be statutory, having the force of law, or non-statutory, devoid of such legal force. The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having the force of law, but its violation may be visited with disciplinary action. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, the administrative authority must act fairly, impartially and reasonable.^{xii}

Mentioned in Article 32 and Article 226 for the remedies in High Courts and Supreme Courts providing certain writs Habeas Corpus, Mandamus, Quo-Warranto, Prohibition, Certiorari for specific purpose.

ADMINISTRATIVE ACTIONS IN INDIA

Let's begin with the sources of Administrative law, basically this part is divided into three parts i.e. pre-Independence, post-independence and after amendment of constitution. So there are a lot of phases and cases and emergency phase that determine the sources and amplification of the laws.

The basic sources are

1. Judicial precedents
2. Constitution
3. Statutes
4. Ordinances
5. Delegated legislation

6. Commissions and committee
7. Administrative Quasi-legislation

In India the basic question arise to an administration is regarding the law passed by administration. The procedure mentioned says that the act shall be in contrary to the constitution followed by the parent act and then a rule should be made. In India an amendment of law takes lot of time which does involves a lot more of procedures, debate, most importantly it is a political play. Now what are the quick remedies to amend laws? Ordinance passed by President^{xiii} or the Governor of state^{xiv}. Giving power to Committee specified for making specific laws to which they have proper knowledge and better judgement and Administrative Quasi-legislation, these are the bodies that are not legislature but have power to make or alter any law according to deemed fit.

The very first motive of a law for a government is to bring it to public domain and make it working. And this is the stage where publication of law is necessary, officially new laws are published in the Official Gazette also for better understanding it is published in local newspaper.

NEED OF DELEGATED LEGISLATION

This part of Administration is basically the one who make rules and exercise it also in the public domain, but forgets to check the power exercised by the authorities. There are a lot of cases regarding amending and applying of rules which were later invalidated on the grounds of ultra-vires being bad law to public. In the case of *Himmat V Commissioner of Police*^{xv}, Rule-33 empowered police to male law as deemed necessary, well to that they made a Rule-7 regarding public assembly, to take permission from them and make any. This violated Article-19(1)(b) held Ultra-Vires.

Another example *Arvinder Singh V State of Punjab*^{xvi}. In this case Municipality failed to collect tax upon liquor which was stated in the rule, failing to which State and Central Government imposed tax over it of Rs.10. Held valid since it is a duty charge impose upon foreign liquor. So, from these two cases we find out Judicial review is necessary in both the cases even if the

act is not wrong. The benefit of Delegated Legislation is that it saves a lot of time, subsequently laws are made by the experts in the specific field.

RIGHT TO INFORMATION

An information is a knowledge, through which a system works and so as public follow. Article-19(1) from Constitution of India speaks about Freedom of Speech and Expression. Referring to case of Indira Nehru Gandhi V Raj Narain stated that people cannot speak or express themselves unless they know. Therefore, right to information is embedded in Article-19. In the same case, Supreme Court further said that India is a democratic country. Therefore, the master shall have a right to know how the governments, meant to serve them, are functioning. Now, Right to Information is a Fundamental Right. But how to use the Act. On 15th June 2005 Right to Information Act was made effective, which laid down the procedure for accessing information from Government.

What rights are available under RTI Act 2005?

1. 1.Right to Information Act 2005 empowers every citizen to
2. 2.Ask any questions from the Government or seek any information
3. 3.Take copies of any government documents
4. 4.Inspect any government documents.
5. 5.Inspect any Government works
6. 6.Take samples of materials of any Government work

TRIBUNALS AND REGULATING BODIES IN INDIA

In this modern era, the Indian government has embarked on a great challenge to provide justice to everyone. Due to many factors such as globalization, liberalization etc. there is an increase in disputes regarding various matters to reduce the burden on the courts the legislation has introduced independent tribunals and autonomous regulating bodies. Even before all this in India we have tribunals to provide speedier justice. We can say that tribunals have made earlier entry in the regulatory dominion before various regulating bodies.

The growth of tribunals has increased exponentially. Administrative tribunals come into existence when they are called for. The 42nd amendment of the constitution of India empowers legislation to provide administrative tribunals to adjudicate disputes. The part XIV-A of the 42nd amendment^{xvii} which includes Article 323A and 323B. Article 323A empowers the legislature to give the power to establish the administrative tribunals related to the recruitment and terms of service of government officials under the Central Government and the Government of the State. It includes employees of any local or other authority within the territory of India or under the jurisdiction of the Government of India or of a government-owned or government-controlled company. Article 323B empowers the legislature in both central and state to establish tribunals for the matters or disputes mentioned under clause (2) of Article 323B.

When India opened for globalization to increase the economy, we were in dire need of some autonomous regulating authorities to increase the confidence of the foreign investors to invest in India. Hence, the legislature through bills has established many regulating authorities such as: SEBI in 1992, TRAI in 1997 etc. These authorities are provided with tribunals for a speedy way to dispose of trials. By these tribunals are a part of the autonomous regulating system.

TRIBUNALS IN INDIAN JUDICIARY SYSTEM

In India we have the Supreme court also known as apex court which is at the top of the Indian judiciary. Under the Supreme court we have various high courts and under high courts we have district courts. Supreme court and high courts are called as constitutional courts because they are the guardians of the Indian constitution. Indian judiciary also has appellate jurisdiction. Apart from that decision of the Supreme court binds all the courts under it.^{xviii} Article 32 and Article 226 give the Supreme court and high court power of judicial review.

Article 227 high courts have the power of superintendence over all the tribunals and all the courts within its jurisdiction. This enables tribunals are parallel to other courts within the jurisdiction of high court. This was challenged in many cases. In the case of State of Karnataka vs Vishwabharathi housing building coop society^{xix} it was contended that legislature cannot establish a Consumer forum parallel to the hierarchy of courts under Article 323A and 323B. The court has referred to the case L Chandrakumar v. Union of India^{xx} where the court held

that Clauses 2(d) of Article 323A and 3(d) of Article 323B were repealed by the Supreme Court on the ground that they removed the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32, respectively. The SC ruled that the courts established pursuant to Articles 323A and 323B must continue to be first-instance courts in their respective areas for which they are established. It is not appropriate for litigants to explicitly approach the High Courts by overlooking the jurisdiction of the tribunal concerned. As taking reference from the above case the court held that the forums established for the Consumer Protection Act but not supplement to the courts.

In the case of *S.P. Sampath Kumar v. Union of India*^{xxi} The constitutional validity of the Administrative Tribunals Act, 1985, was questioned primarily on the ground that, under Articles 226 and 227, this Act removes the jurisdiction of the High Courts with regard to service matters, thus destroying the principle of judicial review that was an integral feature of the Indian Constitution. The supreme court stated that it already mentioned in the *Minerva Mills* case^{xxii} that judicial review is an integral component of the Indian constitution.

The validity of the Act was upheld by a Five-Judge Bench of the Court, except for Section 6(1)(c). The Court held that, while this Act removed the authority of judicial review exercised by the High Courts in matters of operation, the principle of judicial review was not completely excluded. The jurisdiction of the Supreme Court pursuant to Articles 32 and 136 of the Supreme Court has not been withdrawn by this Act and has remained unjustified.

There is, however, still an authority where questions of injustice can be dealt with by judicial review. Judicial examination, which forms part of the fundamental framework of the Indian Constitution, can be removed from a specific field only if there is an alternative efficient institutional process or authority.

Section 6(1)(c) of the Act, however, was held to be unconstitutional as it gave the government unlimited power to nominate the President, Vice-Chairman and other members of the tribunals. Only after consulting the Chief Justice of India shall these appointments be made by the Government in a substantive and efficient manner.

The court advised that the five-year period mandated under the Act for the tribunal's chairman, vice-chairman and other members is not reasonable since it will act as a barrier to the decent and charitable people accepting the tribunal 's work and should therefore be fairly extended.

Through the Administrative Tribunals (Amendment) Act, 1987, the directions issued by the Supreme Court went into effect.

TRIBUNALS IN INDIAN CONSTITUTION

The Indian Constitution does not follow strict form of Principle of separation of powers and principle of checks and balances as USA but they are part of basic structure of Indian constitution. In the case of Union of India v. R. Gandhi, president, Madras Bar Association^{xxiii} it was contended that trial process by tribunals and adjudicatory functions are contended by the adjudicatory functions in regulatory bodies violates the principle of separation of powers. Facts: The constitutionality of the National Company Law Tribunal (NCLT) and National Company Law Appeal Tribunal (NCLAT) on the following grounds-

1. Parliament does not have the power to vest the judicial roles in any court that has been historically exercised for so long by the High Courts.
2. The transfer of the entire corporate authority of the High Court to the tribunal is contrary to the Rule of Law doctrine, the separation of powers and the independence of the judiciary.
3. In violation of the fundamental principles of the Rule of Law, Separation of Powers and Independence of the Courts, the separate provisions of Section 1B and 1C of the Companies Act are faulty and unconstitutional.

In exercising the powers and authority of the High Court, the court upheld the constitutionality of NCLT and NCLAT, subject to the required adjustments to be made in the Companies Act, 1956, as amended in 2002, by appropriate amendments.

The court accepted and upheld Parliament's constitutional power to appoint tribunals for the adjudication of disputes. Article 245, 246 and 247 of the Constitution, read with various entries in the Union List and the Concurrent List that are in no way influenced or governed by Article 323A or 323B of the Constitution, relates to the statutory competence of Parliament to provide for the establishment of courts and tribunals. Furthermore, the court added that it cannot be presumed that the creation of tribunals and the transfer of judicial powers per se breach the rule of law, the separation of powers and the independence of the judiciary, because the Constitution

allows the exercise of judicial powers by both courts and tribunals. What matters most is whether the principles of separation of powers, the rule of law and the independence of the judiciary are upheld and maintained by the appointed tribunals. The constitution of NCLT and NCLAT must be subject to judicial review in order for the court to investigate the matter in the exercise of judicial review to verify whether certain values are undermined by such tribunalization and can interfere with it in order to retain the same.

APPOINTMENT OF MEMBERS OF TRIBUNALS

Section 6 of the administrative Tribunal act, 1985, lays down the provisions and requirement for the appointment of the members of the tribunals.

Generally, the chairman, vice-chairman and judicial members shall be appointed by the president of India with the consultation of Chief justice of India. Their term of office is prescribed under section 8 of the same act, the members shall hold office for 5 years or until he attains:

1. Age of 65 in case of chairperson and vice-chairman
2. Age of 62 in case of other members.

In Sampath Kumar case, the court has emphasized that the bench of the tribunal shall consist of at least one technical member and one judicial member. In order to get the balance of power and knowledge of the subject matter. Here, the technical member consists of a member from bureaucracy and the judicial member should consist of Judge from either high court or supreme court. this is done due to bureaucrat has the dynamism and knowledge in economics and other subjects which a judge may not have the knowledge. This give the bureaucrat skill and dynamism to be a successful chairperson.

CONCLUSION

With vast diversity in category of people in count with population of 1.3 Billion it does seem making law impossible. Laws made by Administrative bodies are to be considered to be better with regarding to specific bodies the rule is made. Further rule made shall be in public domain, knowledge to people for applying it to its most extent.

Indian legal system has evolved based to the history, legal, social and political context. When former Prime minister P.V. Narasimha Rao has opened India for globalization. There is need for regulating authorities in order to get balance between political, legal and economic environment of the country. Role of judiciary system was key during this period, to reduce the burden over the courts the parliament has introduced tribunals and regulating bodies. In India the tribunals and regulating bodies are led by bureaucrats which is beneficial for the circumstances.

It can be quiet a tussle between bureaucrats and judicial system. While the judicial role in regulatory bodies should be restricted in order to ensure the separation of powers, controls and balances, its role in the courts should be relevant in order to ensure continuity in the legal system. In order to ensure that the fractured regulatory regime remains accountable to the citizens of India and that the vision of the constitution makers is upheld, it is important for individuals appointed to the tribunals and regulatory bodies as well as those appointed by them to have accountability and general affinity with the Indian legal and political system.

ENDNOTES

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ⁱⁱⁱ (1975) Supp. SCC 1.

^{iv} "The Constitution (Thirty-Ninth Amendment) Act, 1975," National Portal of India, accessed September 30, 2020, <https://www.india.gov.in/my-government/constitution-india/amendments/constitution-india-thirty-ninth-amendment-act-1975>.

^v (1975) AIR 865, 1975 SCR (3) 333

^{vi} 1987 SCR (3) 233, 1987 SCC Supl. 734

^{vii} 1987 SCR (3) 233, 1987 SCC Supl. 734

^{viii} 1992 SCR (1) 686, 1992 SCC Supl. (2) 651

ix (1997) 3 SCC 261

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xi WP (C) No.541/2019

xii Sakshi Rawat, Meaning, Administrative action- meaning, classification and need to control, (Sep. 24, 2020,8:40 PM), <https://www.juscholars.com/post/administrative-action-meaning-classification-and-need-to-control>

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xiv Article 213 of the Constitution of India

xv 1973 AIR 87, 1973 SCR (2) 266

xvi 1979 AIR 321, 1979 SCR (1) 845

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xviii Art. 147 of Indian constitution.

xix (2003) 2 SCC 412.

xx (1997) 3SCC 261.

xxi 1987 (1) SCC 124.

xxii Minerva Mills Ltd v. Union of India (1980) 3 SCC 625.

xxiii Madras Bar Association v. Union of India (2010) 11 SCC 1.