



## A CRITICAL ANALYSIS OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS IN INDIA: A COMPARATIVE STUDY WITH THE UNITED KINGDOM

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### ABSTRACT

Judicial review is the power of a court to examine legislative, executive, and judicial activities to ensure that they are constitutionally valid. It is one of the best instances of constitutionalism, which promotes the concept of power restraint. The paper would be focusing on the judicial review of administrative acts, which are actions taken by government agencies. These agencies are governmental bodies that have an impact on people's rights by setting rules, adjudicating cases, and conducting investigations, among other things. It can take many different forms, such as a board, office, officer, or company.

The article will include a comparison of India with the United Kingdom in terms of judicial review of administrative action. As far as the Indian situation is concerned, this paper would address certain grounds of judicial review, followed by many significant theories such as the notion of legitimate expectation, public responsibility, and proportionality in the justification of judicial review.

In addition, the author shall also deal with the judicial review in the United Kingdom and the various related principles such as the Wednesbury principle. And at the last, the paper would look at the practice of judicial review of administrative actions and practical implications in light of various legal precedents.

**Keywords:** Judicial review; Administrative action; Legitimate Expectation; United Kingdom: Wednesbury principle.

### INTRODUCTION

Judicial Review is a tool in the court's arsenal for declaring any statute or activity invalid if it violates the fundamental laws. The notion of judicial review is a gift from the United States to the rest of the world's constitutions. It was first mentioned in the classic US case of *Marbury v. Madison*.<sup>1</sup> In this decision; the Supreme Court established its authority to investigate government actions that violate the Constitution. However, the origins of judicial review can be traced back to a 1610 English judgement, *Dr Bonham v. Cambridge University*, given by Lord Coke.<sup>2</sup> The court, according to this idea, cannot review the fairness of any policy, but it can judge the way or process in which that policy is decided.<sup>3</sup>

### JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN INDIA

The concept of judicial review of administrative decisions was borrowed from the English constitution and is stated implicitly in Article 13. It is the constitution's fundamental structure that cannot be overturned by constitutional amendment.<sup>4</sup> Articles 32, 136, 226, 227, 300, and 311, for example, regulate and administrate the operations of administrative authorities. Both the Supreme Court and the High Court may uphold Fundamental Rights in India, as stated in Article 32 and Article 226, respectively. It was determined in *L. Chandra Kumar v. Union of India* that the central feature of the constitution is the power of judicial review, which is vested in the Supreme Court under Article 32 and the High Court under Article 226.<sup>5</sup>

### JURISDICTION OF THE SUPREME COURT

The Supreme Court is the final court of appeal and the last protector of an individual's fundamental rights under India's hierarchical system. As a result, neither the legislation nor the amending procedure can limit the Apex Court's jurisdiction under Article 32 or 136.<sup>6</sup> Judicial review power is granted to the Supreme Court under Article 32. In accordance with Clause 1 of Article VI, the people shall have the right to petition the Supreme Court for the enforcement of basic rights, and the Supreme Court shall have the authority to issue orders, writs, and directions for

<sup>1</sup> 5 U.S. (1 Cranch) 137.

<sup>2</sup> Thomas Bonham v College of Physicians, (1610) 77 Eng. Rep. 638.

<sup>3</sup> Tata Cellular v. Union of India, (1994) 6 S.C.C. 651.

<sup>4</sup> Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461.

<sup>5</sup> AIR 1997 SC 1125.

<sup>6</sup> Ramchandra Deshpande v. Maruti BalaramHaibatti, 1995 Supp (2) SCC 539.



the enforcement of such rights. If an infringement of a fundamental right is established, the court has the authority and responsibility to provide appropriate relief. If the victim has not asserted the court's jurisdiction, it can be exercised *Suo moto* or through public interest litigation.

Article 136, which deals with Special Leave Petition, gives the Supreme Court the power to grant special leave from the effects of an order, judgement, or decree. It does not establish a right to appeal, but it does grant the court discretion in the administration of justice. This item is critical in ensuring that administrative acts are subject to judicial review. It also includes tribunals, which are statutory bodies that deal with individual rights. By Article 136, such administrative service tribunals fall under the jurisdiction of the Supreme Court.

#### JURISDICTION OF THE HIGH COURT

Article 226 of the Constitution gives the High Court the authority to issue orders, directions, and writs for the enforcement of basic rights and other purposes. Because of this additional function, the High Court's jurisdiction is substantially broader than the Supreme Court's, encompassing both basic and legal rights. Article 226 is limited to the technique or manner of making a decision, but it cannot be used to make a decision. Furthermore, Article 227 imposes the rule of the High Court's supervision on all lower courts and tribunals.

It examines whether lesser courts and tribunals are operating within their legal authority or exceeding it. It's worth noting that the word tribunal was deleted from Article 227 by the 42nd Amendment Act of 1976, but it was later reinstated by the 44th Amendment Act of 1978. The Supreme Court has made it plain that this power is utilized to avoid legal encroachment and to prevent the misapplication of justice. The high court can use the abovementioned Articles to intervene in cases of *ultra vires* and administrative arbitrariness.

The primary goal of judicial review of administrative action is to protect Indian citizens from abuse or misuse of administrative authority. Article 13 defines laws as rules, regulations, notifications, and the like. The Supreme Court and the High Court might declare them invalid if they are incompatible with any of the fundamental rights. If an executive or administrative body's action is illegal or unreasonable, the court can overturn it. When an administrative body or a court is given discretion, it becomes a legal requirement that it be applied honestly and appropriately.<sup>7</sup>

#### GROUND FOR JUDICIAL REVIEW

Judicial review is the most important instrument for monitoring how administrative bodies make decisions. Because this law is mostly formed by judges, it is fraught with issues. According to a study on judicial review, it is founded on the principles of the rule of law, non-arbitrariness, and fairness. As a result, judicial review can be used for the following reasons:

1. **Illegality**– Because laws are established to defend the interests of the entire public, it is the responsibility of an administrative body to make decisions within the framework of prescribed laws. If they fail to do so, how the judgement is made becomes '*ultra vires*' and is automatically susceptible to judicial review.
2. **Irrationality**– It signifies that the authority's choice is so irrational that it can't be supported on any grounds. In such a circumstance, the judiciary has the authority to intervene and perform a review of such irrationality, which is obvious on moral as well as legal grounds to any sane individual.
3. **Procedural Impropriety**– It signifies that the administrative authorities' decisions must be fair and just. Only the person who is authorized to make the decision can make it. The principles of natural justice should be applied, which means that a person cannot make a decision in his or her case and that both parties must be heard. In the absence of the aforementioned prerequisites, judicial review is possible.
4. **Proportionality**– According to this principle, administrative actions and their results must have a rational relationship between them.

In the highlighted case of *Council of Civil Service Unions vs. Minister for the Civil Service*,<sup>8</sup> it was held that the grounds for judicial review can be settled into three forms. The first one is illegality, the second one is irrationality and lastly procedural impropriety. In *Ajay Hasia v. Khalid Mujib*,<sup>9</sup> a rule made by the regional engineering college to allot maximum marks based on oral tests was held arbitrary and unconstitutional due to its short duration and it violates article 14 of the constitution. The Apex Court of India in *Air India v. Nargesh Meerza*,<sup>10</sup> held certain

<sup>7</sup> CK Takwani, Lectures on Administrative Law (4th ed. 2008) p276.

<sup>8</sup> (1984) 3 AII ER 935

<sup>9</sup> 1981 AIR 487

<sup>10</sup> 1981 AIR 1829



regulations regarding the pregnancy and retirement of Air India and Indian Airlines to be unconstitutional, as the grounds provided by the corporation are purely arbitrary.

### DOCTRINES SUPPORTING THE JUDICIAL REVIEW

#### *The doctrine of Legitimate Expectation*

This theory protects persons who are unable to prove their claims in court. According to this doctrine, an administrative authority can be held liable for failing to meet a legitimate expectation that was generated by the authority itself. For example, if the government proposes a plan to develop a certain area but then fails to implement it, it creates a genuine expectation among the people who live there, and the government might be held liable. This doctrine can be traced back to Article 14, which condemns arbitrariness while still protecting from government action. It is a wonderful example of judicial inventiveness and might be considered a part of natural justice.

In India, the very first time it was observed was in the *State of Kerala v. K.G. Madhavan Pillai*.<sup>11</sup> The respondent was allowed permission to operate an unassisted school in this case. After fifteen days, however, a direction was issued suspending the sentence. The court ruled that the sanction violated natural justice principles because it established a genuine expectation for the respondent and the court rejected the administrative authority's instruction.

In *SC and WS Welfare Association v. State of Karnataka*,<sup>12</sup> some slum clearance schemes were framed by the government, which were later on amended and certain areas were left out which was earlier part of it. The court held that the legitimate expectation of the people living in that area is infringed, as a fair hearing is denied to those people.

*Navjyoti Coop Group Housing Society v. Union of India* was another case in which this theory was used.<sup>13</sup> In this case, the development authority changed the pattern of land allotment from the registration sequence to the date of member approval without prior notice, affecting the legitimate expectations of persons who benefited under the previous pattern. The development authority's action was deemed to violate legitimate expectations. Legitimate expectations are grounded on the rule of law and other norms such as natural justice, fairness, and non-arbitrariness. It is also considered a legally binding right in certain instances.<sup>14</sup>

#### *The doctrine of Public Accountability*

One of the most important aspects of administrative law is this notion. The primary goal of this philosophy is to prevent administrative bodies from abusing their power and to ensure that they function in the public interest. In *A.G. of India v. Amritlal Prajivandas*,<sup>15</sup> Under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act of 1976, the validity of illegally acquired properties is challenged. The forfeiture of all smuggled-in properties was part of the deal. The court upheld the Act's legality.

In *State of Bihar v. Subash*,<sup>16</sup> It was the public accountability theory that the court utilized to hold the department head liable and accountable. The highest court said that even if a chain of command exists, the department head is ultimately liable unless there are exceptional circumstances. The emergence of the polluter pays principle strengthens this principle of public responsibility.<sup>17</sup> Every administrative body is responsible for fulfilling its statutory obligations, and a lack of cash does not excuse them from doing so.<sup>18</sup>

**Doctrine of Proportionality :** The proportionality doctrine isn't totally established or widely accepted. This principle focuses on the administrative authorities' priorities in issuing orders. It should be done with the priority of considering significant and relevant variables. It is always employed as a balance test in the context of fundamental rights. It is a test that looks for unjustified sanctions and violations of people's rights. Proportionality is also used to judge the reasonability of restrictions imposed over the fundamental rights of the citizens. In *State of Orissa v. Vidya Bhushan Mahapatro*,<sup>19</sup> It was decided that while this theory is entirely applicable in determining reasonable limitations on fundamental rights, it is not fully applicable in administrative law because it is still developing.

<sup>11</sup> (1988) 4 SCC 669; AIR 1989 SC 49

<sup>12</sup> (1991) 2 SCC 604

<sup>13</sup> AIR 1993 SC 155

<sup>14</sup> M.P. Oil Extraction Co. v. State of M.P., (1997) 7 SCC 485

<sup>15</sup> (1994) 5 SCC 54

<sup>16</sup> (1997) 4 SCC 430

<sup>17</sup> Indian Council for Enviro-Legal Action v. Union of India, (1996) 8 SCC 212

<sup>18</sup> Ratlam Municipal Corpn. v. Vardhi Chand, AIR 1980 SC 1622

<sup>19</sup> 1963 Supp (1) SCR 648



## JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN THE UNITED KINGDOM

Earlier in England, an appeal was made to the crown over the officers' wrongdoings. This norm of official duty was thought to be a fundamental aspect of English law. However, due to the immunities that protected officers from such wrongdoings, the rule was not faultless. In the 16th and 17th centuries, efficient and robust benches were introduced that were identical to those found in France. This proliferation was stifled as a result of the Revolution in 1688. Finally, in the late 17th century, England developed a system of administrative law and judicial review.

The principle of parliamentary sovereignty prevails in English law, which prevents reconsideration. It does not give the court of primary legislation the power of judicial review, but it does allow for judicial review of delegated legislation. In England, judicial review is influenced by the principle of ultra vires, which states that any administrative decision can be overturned if it exceeds the power granted by parliament. Judicial review petitions are heard by a single High Court judge, and in extreme situations, by a divisional bench.

### GROUNDINGS FOR JUDICIAL REVIEW

#### *Substantive Grounds:*

**Abuse of discretionary powers** – Discretionary power includes the ability to choose from a variety of choice options, but it must be legal. In some cases, the administrative body's manner of decision-making is illegal, and the court may overturn it. This does not imply that the court will make its own decision in this case. It may intervene if the method appears to be illegal. Under the heading of abuse of discretionary power, there are a few sub-grounds to consider:

**Unreasonableness** – This is one of the important grounds for judicial review which is generally called irrationality also. But the problem comes that what decision is considered to be unreasonable. In the famous case of *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation*,<sup>20</sup> the Sunday Entertainment Act of 1932, provided power to the local authority to open up the cinemas on Sundays also but with the condition that the children are not allowed with or without an adult person.

It was held that the decision was neither unreasonable nor ultra vires. In the judgment, Lord Greene MR came out with the Wednesbury Test. According to this, a court may strike down the decision on the basis that no authority could reach such an unreasonable decision. Other aspects of the examination, such as irrelevant considerations and inappropriate intent, play into the conclusion that the action was unreasonable.

**Proportionality** – The violation of basic rights should not be out of proportion to the public motivation that is being pursued when the law is broken to achieve a legitimate aim. To serve the public interest, every limitation on a person's freedom must be reasonable in light of the harm avoided.

**An error of Law** – When discretion is granted to a body then it must be exercised based on law otherwise the decision may be held unlawful.

**Irrelevant Considerations** – The court has the power to strike down such decisions if it seems that such decisions are not relevant as per the legal requirements and some decisions are omitted that need to be taken.

**Unauthorized Delegation** – When discretion is granted to a body then that body cannot pass its discretion to another body until the same is prescribed under the statute.

**Ultra Vires** – When any act is done which is beyond the power prescribed by the statute then such an act becomes ultra vires. This applies to administrative bodies, but not to the parliament. As it deals with the power prescribed by the parliament in any particular Act. The minister had the authority to adopt rules under the Social Security Contributions and Benefits Act 1992 in *R v. Social Security Secretary, ex p Joint Council for the Welfare of Immigrants*.

The minister forbade the refugees seeking asylum from benefiting from the law. They had appealed their deportation under the Asylum and Immigration Appeals Act of 1993, but they were nevertheless permitted to stay in the country while their cases were reviewed. Because of the lack of relevance of the rule to certain asylum applicants, the court found that it violated the 1993 Act and declared it ultra vires.

**Failure to perform a statutory duty** – In the above-mentioned points, we have seen how public authorities misuse their discretionary power. An authority is considered to act unlawfully if it fails to perform a duty prescribed by the statute.

**Acting incompatibly with convention rights** – An act of public power is unlawful if it is incompatible with traditional rights, according to Section 6 of the Human Rights Act 1998. The term "act" refers to the defeat of an act,

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<sup>20</sup> (1948) 1 KB 223



not the failure to produce a motion in parliament or the failure to prepare any main legislation [Section 6(6)]. If an authority does not address the convention's important issues, it is either defeating itself by avoiding irrelevant variables or risking disproportionate decision-making.

**Procedural Grounds:**

**Statutory requirements** – Where power can only be used after following the procedure, if an authority does not follow the procedure prescribed under the statute, then that power is considered to be null. In the case of *Ridge v. Baldwin*,<sup>21</sup> the chief constable was dismissed on the ground of conspiracy by the Brighton police committee. The police Act 1919 lay to do the procedure of formal inquiry to be followed before the dismissal. In contrast, the committee argued that the Municipal Corporation Act of 1882 did not need such process when it came to the firing authority. According to the House of Lords' decision, the rules do indeed apply, and any action taken that is not in accordance with them is null and invalid.

**Natural justice** – Natural justice is a part of common law. These are essentially unwritten norms that have formed as a result of the superior court's jurisdiction over lesser courts and are rooted in human nature. Natural justice is founded on two guiding principles:

**The rule against bias** – According to this principle, the decision should be taken by the person who is not partial, provided certain precedents in the common law. As per this principle, the judge may be disqualified on the following 2 grounds. Firstly, the judge must have some monetary benefit in the subject matter of a particular case. Secondly, if the fair-minded person observes that there is a chance of biases on the part of the tribunal.<sup>22</sup>

**Right to a fair hearing** – This privilege ensures that both parties have an equal opportunity to submit their case in front of the court. Both parties must be able to represent themselves in front of the judicial officer, and no one can speak with the judicial officer without the other. Unwritten rights are even recognized by the courts.

It is a general rule that as per natural law principles, the public authorities must act fairly while making decisions. If the right of any person is violated, then it is the subject matter of judicial review due to noncompliance with the procedure of natural justice. In the same form, the rule against bias can be applied to the local authorities.

**Legitimate Expectation:**

The concept of legitimate expectation is exactly similar to the Indian legitimate expectation doctrine. India has adopted this doctrine from Britain only. When public body deals with private individuals, then individuals need to know that can they rely upon the notifications given by those bodies. If a legitimate expectation is created among the public then the authorities can be held responsible for not fulfilling it or if they change the scheme later on.

**DIFFERENCE BETWEEN BRITISH AND INDIAN JUDICIAL REVIEW OF ADMINISTRATIVE ACTION**

- The scope of judicial review in India is much wider in comparison with the UK. In India, we have a written constitution while in the UK there is an unwritten constitution.
- In India, the process of judicial review can be exercised for legislative Acts, constitutional amendments and administrative acts. Whereas in the UK, only the judicial review of secondary legislation can be done.
- There are certain articles in the Indian constitution relating to judicial reviews, such as Articles 13, 32, 131-136, 143, 226, 227, 246 and 372. While there is no such article in the UK due to the unwritten constitution.
- In the UK, parliamentary sovereignty prevails. According to this, the laws made by parliament are supreme— and no one is above parliament. But in India, the constitution is the law of the land and is considered to be supreme. All other organs have to work under the prescribed limits of the constitution.
- In India, we have various doctrines like the doctrine of severability and the doctrine of the eclipse. While there is no such doctrine in the UK due to the absence of the concept of judicial review.

**CONCLUSION**

The judiciary has taken on the role of defender of numerous world constitutions. Judicial review doctrine is a fluid term. Even though the United Kingdom has a concept of parliamentary sovereignty, judicial review is critical in analyzing secondary laws entrusted to administrative authorities. Every piece of law in India can be subjected to judicial review. When we talk about judicial review of administrative action, we're talking about the judiciary's authority over public authorities' arbitrary conduct. Due to the administration's enormous power, judicial review has become a crucial area of administrative law.

<sup>21</sup> (1964) AC 40, 117

<sup>22</sup> Porter v Magill (2002) 2 WLR 37, at (103) (Lord Hope).