

Judicial Review of Police Administrative Action in India

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Abstract

The Constitution specifies that police are a matter for the states to handle. As a result, there are police forces in all 29 of the states. In order to aid the states in maintaining order, the federal government is permitted to keep its own police force. Because of this, it has seven primary police forces and various police organisations for specific responsibilities including collecting information, investigating, conducting research and preserving records, as well as police training.... Enforcing laws, conducting investigations, and providing a safe haven for citizens are all important responsibilities of law enforcement agencies. Having a well-equipped police force in a vast and populous nation like India is critical to ensuring the safety and security of its citizens. Even more important is the fact that they must be given the operational independence to carry out their duties competently, while taking responsibility for either unsatisfactory performance or abusing authority. This paper begins by giving an idea about the discretionary powers given to administrative authorities and that these powers need to be checked via judicial control over these powers. Police being one such administrative agency is subjected to judicial review for their actions in that capacity. The article then goes on to discuss about the supremacy of rule of law in any action performed. The actions of any agency are judged on various factors including their compliance to doctrine of ultra vires and principles of natural justice. The scope of the doctrine is very wide and any action is subjected to judicial review on few grounds highlighted in this article. Lastly the article talks about the relief of judicial review that can be sought through invoking various writs.

Introduction

Discretionary Powers are conferred upon administrative authorities to expedite a liberal approach premised on subjective evaluation. This has become an intriguing requisite due to the impossibility of prescribing the factors on which the choice is to be made precisely and in advance. A wide range of powers are thus exercised on the intuitive satisfaction of an “administrative authority”, ranging from the power to detain a person without trial to the power to order an investigation into the affairs of a company.

When an administrative authority is granted some discretionary power by the legislature it is fairly obvious that the authority’s sense of judgment has been trusted. In other words, if a given statute does not expressly provide a right to appeal to a court then it can be said that a direct attack on the discretion has been prohibited. But it is to be noted that the exercise of discretion is not guarded from judicial review only because an appeal provision is not provided for the same.

In exercising their judicial control over the discretionary powers, the courts follow the fundamental principle of not going into the decision itself rather they decide only about the legality of that decision. The primary grounds for judicial intervention are, broadly speaking, abuse of discretion and failure to

exercise discretion. In a nation deeply committed to the ideal of constitutionalism, “judicial review” has surfaced being one of the most efficient tools for protecting as well as conserving cherished freedoms.

As per Black's Law Dictionary, "*Judicial Review*" may be defined as a "*Court's power to review the actions of other branches of government, especially the courts' power to invalidate legislative and executive actions as being unconstitutional.*" Judicial review encompasses a judges' authority to assert unconstitutional as well as difficult to enforce, any law or order premised on such law, as well as any other action by a public body that is inconsistent or in discord with the fundamental law of the land.

Setalvad¹ in his paper gives a precise and broad boundary of the problem involved in judicial review of these proceedings. He calls it as a topic of crucial importance in a democracy for all its citizens. But, in the current Indian scenario, the author believe it is far more important in this nation than anywhere else. India is in an unusual situation right now.

The article shall go on to deal with the notion that administrative action should be in consonance with rule of law and finding out the grounds on which the police administrative action be subjected to judicial review. When an administrative authority is bestowed with some discretionary power there are high chances of it being abused by the agencies and in such case the citizens should be envisaged with some remedies which include right to raise writ petition under Art 32 or 226 of the Indian Constitution. The doctrine of ultra vires serves as a ground for review but it has its own scope and extent to adhere to.

Police and Administrative Action

The Director General of Police now oversees a state's police force. An Inspector General/Deputy Inspector General of Police is in charge of each police range in a state, which is split into handy geographical divisions known as ranges. The range consists of a number of districts. Police divisions, circles, and police stations are further split within the district police. Apart from civil police, states retain their own armed police and have distinct departments for justice and law as well as separate departments for crime. Senior police positions in the Indian provinces are filled by members of the Indian Police Service (IPS), whose applicants must be citizens of India. Lower-level police officers, such as constables and deputy superintendents, are recruited, promoted, and subject to cadre supervision by the government.

Preventive arrests, investigation, detection and seizure, search and seizure, control of crowds, control in festivals and procession control, prevention of and control of communal riots, patrolling traffic, controlling unlawful assemblies and public agitation, and so on are all functions of the police.

In India, democracy was employed as a way of societal sociopolitical and economic transition, in contrast to the Western model, which was embraced for societal socioeconomic and political transformation. These attempts resulted in some alteration at the administrative level, but no significant changes were visible in the framework at the police administration level. Because the police system is important in the prevention and for the prevention of crime and the maintaining law and order in the nation, several attempts were undertaken to reach this aim, but in practise, this goal was not met. It is widely known that police evade crime registration and treat victims of crimes with disdain. Such a police culture leads one to believe that the police are not there to serve and benefit the individuals, but rather to boss over and hare them. Such thinking on the part of the public wreaks havoc on the police's public image. This is just one example in this context.

¹ Setalvad, M. C. "Judicial Review Of Administrative Proceedings." Journal Of The Indian Law Institute 1.1 (1958): 65-72

Anupam Sharma² in his paper says that, with freedom and the idea of welfare nation administration, it was anticipated that the novel system would live up to the standards of common men, which were greatly enhanced with the emergence of the system of democracy. Police administration was predicted to carry out their duties in a progressive and desirable manner in community, but in practise, this society is missing, and it still appears dictatorial and assertive.

Writs such as habeas corpus, or writ of mandamus or of certiorari, or of prohibition, and of quo warranto may be used to challenge administrative judgments. The basic sources of administrative law are the laws, legislative instruments, precedents, and conventions. In this article, we discuss ultra vires and judicial review options. Courts are now an essential part of administrative law since it is manifest that they are more efficacious and helpful than either the legislative branch or executive or administrative branches in controlling policy and decision-making.

Administrative Action and Rule of law

Administrative action is a term used to describe actions that lie between between legislative and judicial in nature. It is focused on a single issue and does not make generalisations. Evidence collecting and argument evaluation are not necessary in this situation. In this scenario, policy and practical considerations trump personal preference. Whether or whether it has an effect on a right is not clear. There can be no complete disregard for natural justice as long as administrative functions are being used by the authority Unless the statute explicitly specifies otherwise, the basic principles of natural justice must be observed in every case.

To determine whether a particular administrative action is quasi-judicial or administrative, the Supreme Court of India stated that the nature of the power granted, who receives it, the context in which they are granted, and their implications must all be considered when determining whether an administrative action is quasi-judicial or administrative.

Using the Legal System By upholding the rule of law, administrative entities are held more accountable for their actions. When it comes to common law countries such as Britain, it all started there. England also introduced the concept of judicial review to India. Prerogatives were established in India using a model from the court of King's Bench to ensure that officials/authorities were properly following the law while carrying out their judicial or non-judicial duties. To hold governments responsible when they adopt legislation that is unlawful or arbitrary, judicial review may be a strong instrument. Judicial review is a core element of constitutionalism since it helps to guarantee that the government has a restricted scope of authority.

With or without the authority of the law, administrative actions might be either statutory or non-statutory. It's up to each state to decide what they want to do about it. Non-statutory administrative activities, such as senior police official giving orders to subordinates that lack legal force, may be penalised with disciplinary action if they are disobeyed.

Despite the fact that administrative action is mostly founded on personal satisfaction, the administrative authority most definitely should operate honestly, equitably, and rationally during all times.. The judicial review process is where the meaning and rationality of a law are discovered; it shapes and moulds the law, smooths out the angularities, strikes down bad legislation or unlawful action, and most importantly, exerts sturdy moral forces of restraint when expediency is all that matters.

² Sharma, Anupam. "Police Culture In Indian Democratic System." The Indian Journal Of Political Science (2013): 295-302

An administrative action of any agency including the police officials may be subject to judicial review on the basis of following:

Illegality

Irrationality

Impropriety in procedure

Proportionality

Administrative actions are examined by courts in order to decide whether or not they are legal. Administrative authority is granted by legislation, and it must be exercised in accordance with those statutes.³

An administrative body may be declared null and void if it is found to be in violation of the Constitution by the courts.⁴

In spite of the American Constitution's omission, the "Supreme Court of the United States" is credited for inventing concept of judicial review. As the Supreme Court demonstrated in *Marbury v. Madison*⁵, courts have the authority to conduct judicial reviews.

All individuals who drafted the written constitutions agreed that it was the fundamental and ultimate law of the land, and therefore any government must operate on the premise that any act of legislative that conflicts with the Constitution is illegitimate.

Nirman Arora⁶ in his article has talked about how police torture has become a routine practice by officers as a part of their discretionary powers of rule of law. The police is the law enforcing agency and it has been given the discretionary powers but there needs to be a check on these powers to preserve and protect the natural and fundamental rights of people.

Remedies available

An investigation into whether a "cause of action" against police officers in their personal capacity for violating the constitutional rights could enhance the oversight by the Police Complaint Authorities is undertaken given the reported failure of state and central governments to fully implement apex Court's directions in "*Prakash Singh v. Union of India*"⁷. How can external police accountability be achieved? First, in line with Supreme Court of India's *Prakash Singh v. Union of India* verdict, we explore the formation of police monitoring committees. After discussing a court remedy for police officers who violate constitutional rights, this section will focus on how to increase police accountability via a cause of action against police officers. As a result of current criminal laws, both public and private legislation will be examined for their judicially enforceable accountability provisions.⁸

There is also a short discussion of the National and State Human Rights Commissions (NHRC/SHRC) as a possible recourse for police wrongdoing. It will be determined in the memorandum if the court-based remedy under criminal, private, or public law should be preferred to a structure of independent police monitoring boards. This topic may benefit from a quick review of the Indian police organization's quasi-federal structure and recent improvements in the field of police reforms. Because "Police" is

³ Prof. I. P. Massey, *Administrative Law* Pp.62, 8th Edition.

⁴ Kailash Rai, *Administrative Law*, 5th Edition 2006

⁵ *Madison*, 5 U.S. 137 (1803)

⁶ Arora, Nirman. "Custodial Torture In Police Stations In India: A Radical Assessment." *Journal Of The Indian Law Institute* 41.3/4 (1999): 513-529

⁷ *Prakash Singh V. Union Of India* (2006) 8 SCC 1

⁸ Kailash Rai, *Administrative Law*, 5th Edition 2006

included in the State List of the 7th Schedule under Article 246 of the Indian Constitution, state governments may enact legislation governing the police in their jurisdictions. Despite the strong federal nature of police regulations in India, which is a quasi-federal republic, the central government is also active in the control of police forces. All-India Services regulates the recruitment of IPS senior officers, for example. The Central Reserve Police Force and the Border Security Force are paramilitary forces under the control of the Central Government, while the Ministry of Home Affairs is in charge of police matters. Laws controlling the police in India are organised around the Indian Police Act, which was passed in 1861. Most states either embrace this central legislation or have laws based on it. Police reforms have been implemented in a number of ways throughout the last 3 decades., The National Police Commission has issued around seven to eight reports including many suggestions, but no action was done.

Supreme Court ruled that these changes have to be implemented immediately after “*Vineet Narian v. Union of India*”⁹ in 1998. The Ribeiro Committee issued two reports one in 1998 and other in 1999; “Padmanabhaiah Committee Report” was issued in 2000; and “Malimath committee” was issued in the year 2002. Finally, in “*Prakash Singh V. Union of India*”,¹⁰ the Supreme Court addressed all of these issues. Three components of police organisation are addressed in the ruling, namely, police autonomy, accountability, and efficiency. Then there were precise instructions from the Supreme Court about what the federal and state governments should do until legislation was passed in this area. It was noted State governments must set up State Security Commissions to guard against political meddling in law enforcement operations. fixing the selection and tenure requirements for Chiefs of Police (DGP); fixing the tenure requirements for Inspectors General of Police (IGP), Deputy IGPs, District Police Superintendents, and Station Officers; separating the investigation role from “law and order” functions; instituting a Police Complaints Authority; creating the National Security Commission; and instituting the Police Establishment Board; and instituting the Police Complaints Authority and the National Security Commission.

The Courts obey the Constitution when there is a contradiction between the Constitution and the laws established by the legislature. When a judgement is under review, the reviewing authority does not have the authority to consider the decision's merits, but on appeal, the appellate authority may do so. Therefore, according to de Smith, judicial review is always limited and infrequent.¹⁰ Therefore, in “judicial review”, judiciary scrutinise administrative actions based on ultra vires concept as a standard of reference.

Under Article 32 and 226 of the Indian Constitution, “the Supreme Court and the High Courts” have the ability to examine administrative acts via habeas corpus, mandamus, certiorari, prohibition, and quo warranto writs. As a result of their lengthy history of development in England, the writs we follow in India have amassed a slew of technicalities.¹¹

Generally speaking, Indian courts adhere to the complexities of English law. In contrast, the Indian Constitution's broad phrasing indicates that India's judicial authorities do not oblige to adhere to specifics of English laws while deciding on writs of habeas corpus. Indian courts' attitudes are mostly shaped by English precedents, though. Historically, England's “ultra-vires or excess of authority” concept is cornerstone of judicial review when we examine historical context of “the doctrine of ultra-

⁹ Vineet Narain & Others Vs. Union Of India & Another, (1997)1 Scc 226

¹⁰ S. A. De Smith, *Judicial Review Of Administrative Action*, Vol.8, No.4, Oct., 1959

¹¹ Basappa V. Nagappa, AIR 1954 SC 440: (1995) 1 SCR 250

vires or excess of jurisdiction”.¹²

When tribunal tried to apply this restrictive definition to current administrative issues, it created a number of technicalities and artificialities. Courts consider written authorization to be supervisory in character rather than an appeal from an agency, to a court, and hence cannot be compared to one.¹³

The police are seen as a key part of a state's government rather than an active part of the government. Police practises have existed for as long as civilization has existed, but the “Darogah system” of organised and legal policing emerged in British-India in year 1792 (Lord Corn Wallis)¹ in the state of West Bengal, which was then expanded to the province of Bombay.. (1793). Unfortunately, the Darogah system failed to live up to promises, failing to exert control over rural police forces due to a lack of personnel.

The ultra vires doctrine serves as a middle ground between appeals and no review at all.¹⁴

Because in ultra vires courts are only able to invalidate administrative decisions that go beyond the authority's competence, they have no jurisdiction over whether or not an appeals authority's decision is lawful and whether or not it should be substituted for its own judgment.

Strictly adhering to judicial and legal procedures, and not debating the merits of a case As a result, the scope of an appeal on a legal or factual issue is expanded and the court's jurisdiction is expanded. As a result, administrative actions requiring judicial involvement are complicated by the midway analysis, the extent of this is not always evident. It's possible that the courts feel strongly enough about the unfairness of the issue before them to want to act, but it's also possible that they aren't certain there is any injustice and just follow the administration's judgments.

This is something that courts fail to recognise honestly, thus they get at their conclusions using arbitrary conceptualizations and ambiguous formulas. As a result, the judiciary is riven by incoherence and disarray. Judges often undertake their investigations to see whether administrative authorities have acted in conformity with the law and natural justice principles.

This is the most common cause for an administrative judgement being overturned. The Indian constitution, in contrast to the American one, explicitly permits judicial review. Part III's basic rights are safeguarded by Article 13(1) of the Constitution, which states that any legislation in existence on Indian soil prior to the Constitution's inception will be nullified and invalid insofar as they conflict with these rights. However, the courts have created numerous grounds for intervention throughout the years, but the legislation pertaining to “judicial review of administrative action via writs” is sophisticated, intricate & insufficient.¹⁵ After analysing the basis for issuing them, this point will become evident.

Principles of Jurisdiction

In the ultra-vires doctrine,

In examining the scope of the courts' jurisdiction to review administrative authority decisions and actions, the focus is on how far the courts may go beyond the scope of appeal in review processes. With this issue in mind, it is vital to evaluate the subject in terms of historical events and power that impacted and formed it; values & ideas that fostered it; stretch of conditions in which must work; and stage of advancement that it has reached.

¹² Supra Note.2

¹³ Gerard W. Hogan, Discretion And Judicial Review Of Administrative Action, Vol. 15, (1998)

¹⁴ Matthew, D. Zinn, Ultra Vires Taking, Vol.97, No.1 (Oct.1998)

¹⁵ White And Collins V. Min. Of Health (1939)2 KB 838

Common law has long influenced law of “judicial review in India”, and the most prominent part of this was the control of public authority's powers by the ordinary court of law. As a result, all matters brought before borough tribunals were transferred to the king's court in Westminster from the very beginning.

The term "ultra-vires," which refers to a boundary that lesser tribunals cannot pass, was used during this review process to describe the idea of jurisdiction. There is a dichotomy in the idea of jurisdiction, which divides instances into those in which a tribunal may rule within its jurisdiction and those in which it can rule outside of its jurisdiction. Ultra-vires is a word used to describe the concept of jurisdiction that decides whether an administrative action is subject to review.

Lord Selbourne¹⁶ L.C.'s explanation of the ultra-vires theory.: As much as possible, it should be reasonable, and not arbitrarily construed and enforced; in the other instance, it should not (unless explicitly banned) be declared ultra-vires. This notion was clearly shown by London Country Council's legislative ability for purchasing as well as operating trams, which ranked omnibuses. It was ruled by the “House of Lords that the London Country Council” had no authority to operate omnibuses that were not related to tramway operations.¹⁷

An authority having power to purchase property “other than park, garden, or pleasure ground,” is said to have moved beyond its jurisdiction when it acquires land that is part of that park. This is called expropriation.¹⁸ If an excess of power can be shown, judicial review is likely to occur. “Any error of law (intra- or ultravires) may effect the jurisdiction” was decided in the case of *Anisminic Ltd. v. Foreign Compensation Commission*¹⁹. There is thus no longer a difference between mistakes of jurisdiction and errors of non-jurisdiction for legal errors.

That wasn't really evident, though. As a result of the case of “*Pariman v. Harrow School's Keepers and Governors*”²⁰, “Lord Denning M. R. followed *Anisminic*”, and said there was not any more a difference between intravires & ultravires mistakes, according to this. “Finally, in *S E Asia Fire Bricks v. Non-Metallic Union*”²¹, the Privy Council rejected the idea that the difference between intra-vires and ultra-vires mistakes had been abandoned.

Reach of the Doctrine

As a theoretical matter, the principle of jurisdiction allows the courts to avoid to behave in excess of their authority; however, in practise, they have more extensively went in core of the matter by impeding on grounds of extraneous consideration , unreasonability, manifest injustice , bad faith, just play, and, unfairness, etc. The ultra-vires singe concept was applied to all of those challenge heads. As a result, the idea of ultra-vires is foundational in administrative law.

For example, activities that are not far beyond the purview of decision-making body are considered to be ultra-vires. In administrative law, ultra-vires is the fundamental theory. The cornerstone of judicial authority is the control of administrative acts. Actions outside of the control of decision-making bodies are considered ultra-vires. “Lord Brown Wilkinson” has used the standard ultra-vires script in “*R. V. Hill University Visitors*” exparte, for example.

¹⁶ Attorney – General V. Great Eastern Railway Co. (1880) 5 AC 473

¹⁷ Supra Note.3

¹⁸ White And Collins V. Min. Of Health (1939)2 KB 838.

¹⁹ *Anisminic Ltd. V. Foreign Compensation Commission.* (1980) 5 AC 473

²⁰ *London Country Council V. Attorney-General* (1902) AC 165

²¹ *S E Asia Fire Bricks V. Non-Metallic Union* (1981) AC 363

Using his powers in an unconstitutional or unjust manner to Wednesbury, the decision-maker acts in a manner that is *ultra vires* his powers and, thus, is illegal. For instance, detention by police may be necessary for investigation purposes but the officials have to make sure that they do not abuse this power in an unfair and arbitrary way which not lawful or beyond their powers in reality. In certain ways, the concept of *ultra vires* is compatible with the notion of rule of law, and hence, the definition of *ultra vires* is presently considered inappropriate basis for “judicial review” by few scholars.

The opposing position is that judiciary must intervene whenever an illegal use of authority has occurred, rather than relying on conjecture about the Parliament's intent or “the technicalities of jurisdictional proof and mistake of law”. The issue of “judicial review” has evolved from one of *ultra vires* law to one of rights protection and power control, as Dawn Oliver puts it.

Foundation of Doctrine

Taking into account the notions of *intra-ultra vires* and the standards of natural justice, the administration or executive may be held accountable for its actions via judicial review. Upon receiving an application for judicial review, the court must evaluate whether the entity in issue acted within or beyond the bounds of its authority (that is., within or outside its power). Lawsuits claiming that a judgement was made in an unreasonably or in violation of natural justice norms are the most common types of legal action.

It has been customary to break down these main topics by subheadings. This is an example of an organisation acting *ultra vires*: it may do so by misusing or abusing its authority, by adopting a strict policy that prevents it from using the judgement with which it has been endowed, or by any combination of these actions.²² The law requires administrative bodies to behave in a way that is reasonable and failing to function in said manner lead an individual to act *ultra vires* his power, an entity may act *ultra vires* if delegated powers are vested but transferred to a different person or organisation.

As a result of this, administrators may be compelled to use certain processes in order to exercise such powers, then proceedings are determined to be required instead of advisory for the organisation to act *ultra vires* under the statute. A court may compel a public entity with a duty to act to do so if it fails to do so. If an individual's rights or interests are affected by an administrative decision, the principles of natural justice must be upheld throughout decision-making process as well.²³

Legality, irrationality, and procedural impropriety were the three basic grounds for reconsideration identified by the House of Lords.

Lord Diplock said, “*One may readily group the grounds for judicial review of administrative action under the three areas. The first reason is illegality, the second is irrationality, and the third is procedural impropriety, which is not to say that additional progress cannot be made on a case-by-case basis. Over time, more land was purchased and added to the property.*” Lord Diplock explained the topics in further detail.

The decision-maker must comprehend and follow the legislation that regulates and gives effect to his decision-making abilities in order for judicial review to be valid. It was up to those who have the power to exercise the state's judiciary, the judges, to decide whether or not he had been, *par excellence*, a legitimate problem. For the most part, judicial regulation's primary goal is to guarantee that laws passed by government are consistent with the rule of law. Some inherent disadvantages of judicial control are

²² Westminster Bank V. Minister Of Housing And Local Government (1971) AC 508

²³ Wheeler V. Leicester City Council (1985) AC 1054

well-known. It's more suited for resolving disputes than doing administrative tasks, in my opinion. The administration and the judiciary work together to ensure that the government is fulfilling its constitutional responsibilities in conformity with the law. Irrationality, in this context, refers to what has come to be known as *Wednesbury*. This is used to describe a decision that is so illogical or morally repugnant that it could not have been taken by a reasonable person who had given serious consideration to the subject at hand.

This is a question that judges should be well-versed in answering because of their education and expertise. In place of natural justice or procedural fairness, I have referred to the third category as 'procedural impropriety.' As a result, administrative tribunal decisions that are subject to review by a court are more likely to be overturned if they fail to follow the procedures set down in the legislative instrument that grants them power, even if natural justice has not been violated.

Dimensions of India's Doctrine of Ultra-Vires

Judicial review has its roots in the English theory of ultra-vires, which holds that an official's power can never be exceeded. Since the ultravires doctrine has a wide range of applications, it has been dubbed as "core rule" of administrative law²⁴ because it has a wide range of applications throughout all administrative law. Similarly to England, the theory of ultra-vires, which allows courts to examine not only actions that are obviously outside of jurisdiction, but also rationality, intents, as well as validity of considerations, has reached a level of complexity in India as well.

Various components of judicial discretion have been curtailed by the courts. If procedural terms are so much so distinct from the directory as is required to be mandatory, then faults in the procedure are also regarded jurisdictional. There is judicial review in India for administrative acts that are illegal, illogical, or procedurally incorrect.²⁵ It was determined that in event of administrative action, the "judicial review" was confined to three reasons: namely, :

Irrationality, better described as unreasonableness.

Unlawfulness.

Injustice in the course of conduct.

Only in cases of arbitrariness, unreasonableness, or unfairness is judicial review of administrative actions warranted. It is acceptable to invalidate a measure if it contains any of the following: *mala fides*, bias, arbitrariness, verging on perversity, or such kind of unreasonableness that no rational individual can imagine. There are a variety instances in which the notion of ultra-vires may be applied, such as when something is done without justification, for the wrong motives, or according to the improper process.

When anything is done improperly, unjustifiably, or in the wrong way, it is regulated by the ultra-vireo theory, which encompasses a wide range of abuses of power. The ultra-vires doctrine is the most important judicial tool of regulatory authority. Regulations that go beyond their jurisdiction are included in this category. Also known as the rule of law or the rule of lawfulness. Because it isn't sitting as an appeals board in a court of review, it is just assessing the process by which the judgement was made.

Judiciary's role is not to assess the merits but the method by which the judgement is made, according to the Supreme Court in "*Tata Cellular V. Union of India*"²⁶,. Reconsideration of an administrative decision will take the place of the original decision, which may have been flawed. It is the court's

²⁴ Wade, Administrative Law ,(1977)

²⁵ Supra Note3

²⁶ Tata Cellular V. Union Of India (1994)6 SCC 651

responsibility to limit its considerations to issue of legality. The court's job is to stay within the bounds of the law. And it must be ultimate goal to see:

- An mistake of law was committed.
- Whether or whether the decision-making authority has gone beyond the scope of its jurisdiction.
- acted in a manner inconsistent with the principles of natural justice.
- No rational tribunal could have come to the same conclusion.
- Exert unduly excessive control over it.
- Unrestricted judicial review is not desirable.

²⁷Proportionality theory does not support arbitrariness. Furthermore, there is no foundation to argue that administrative action should not be defended on the merits. Only the way in which the court formed its judgement or issued a ruling may be scrutinised. It's not even about the decision's merits.

In the case of *Paramvir Singh Saini v. Daljit Singh* ²⁸, the Supreme court laid emphasis that police has been given discretionary powers to deal with law and order and emergency situations but it has been visible even to the naked eye that these powers are arbitrarily used upon the individuals by subjecting them to cruelty like that of custodial violence and deaths. Supreme Court insisted that such activities of police needs to be checked and kept an eye upon to make them accountable for their actions. In the light of this only the apex court issued a guideline to be followed which insisted upon installation of CCTV cameras in police stations and like organizations to keep a check on their functioning. Apart from this these recordings should be kept for at least an year. A similar kind of guideline to use videography in criminal investigation was given in the case of *Shafi Mohammad V. State of Himachal Pradesh* ²⁹. But time again it has been seen that these guidelines starting from those laid down in the landmark judgment of *DK Basu v. State of West Bengal*³⁰, have not been complied with by the police department and they remain written on papers only.

Current Scenario and Escape to Writs

It is critical to address the malignancy in exercise of power via use of “judicial review”. Self-restraint, however, has become more important in light of the country's changing socioeconomic conditions. Courts should not intervene in administrative judgments unless they are arbitrary or mala fide, or if the administrative action is in violation of the law or the Constitution.

Public Interest Lawsuits and Judicial Review

Under Article 32 and Article 226 of the Indian Constitution, there are five different sorts of writs that may be used to challenge administrative decisions.

1) Habeas Corpus

In the literal sense of the word, the writ is to "Have the body." It is used to obtain the release of a person from custody that is either unlawful or for which there is no legal reason. Simply put, the court orders the person or authority holding the detained individual to appear before the court to determine if the detention is legal, justified, and within the scope of the court's jurisdiction. It may be submitted by anybody.

²⁷ Mansukhlal V. State (1997)7 SCC 622.

²⁸ Paramvir Singh Saini V. Daljit Singh (2020) 3 SCC (Cri) 150

²⁹ Shafi Mohammad V. State Of Himachal Pradesh, (2018) 2 SCC 801

³⁰ DK Basu V. State Of West Bengal, (1996), SC 10

Ground for the issue of this writ:

Basically, a court will issue this writ if a detained individual fails to appear before a magistrate within 24 hours after being held. If this is not done, the individual who was arrested will be freed.

According to “*Gopalan v. Government of India*”³¹, the Hon’ble Supreme Court declared that when an application for detention is filed to a court, the legality of the custody may be considered.

Recently it Hon’ble Supreme Court decided in the case of “*S. Kasi V.State Through The Inspector of Police Samaynallur Police Station Madurai District*”³² that in case of protection of fundamental right to life and liberty under Art. 21 and to avoid preventive detention as a regular police practice the victim to such process can always adhere to this writ under Art 226 itself only after it has exhausted all other remedies.

2) Mandamus writ

The term refers to "commanding the public authority" in India to carry out its public responsibility. It is a discretionary remedy, same as the other five writs. A writ petition may be dismissed at the discretion of the court. Not even presidents or governors are mentioned in this writ. It's just for private citizens and registered organisations.

In cases when the government refuses to use a power it clearly possesses under the law, a writ of habeas corpus might be granted in the form of a writ of mandate. While performing public duties, mandamus is used to ensure that public officials stay within their legal boundaries.

Mandamus may be issued against any form of authority – administrative, legislative, quasi-judicial, judicial – and for any type of function. Mandamus is a legal tool that may be used to compel public officials to carry out their responsibilities. When the government has no legal obligation to provide a mandate, no mandate is issued.

3. Quo Warranto

If warranted, then, It is a common law remedy that dates back centuries. Intruders or those who want to seize public office may utilise it. "What is your authority?" is the literal meaning of this phrase. The court informs the individual in question of the power that he or she has in his or her position. If the Court determines that a person is ineligible for the position, he or she might be removed from it.

Quo warranto forbids a person from illegally assuming public office. In order for the court to issue a writ, several conditions must be met: the office in question must be public, established by statute or the constitution, and held by someone who does not have the legal qualifications to do so.

Writ issued against

There must be proof that the individual in question has the authorization to occupy the position for which he or she has been summoned. If the High Court issues a writ of certiorari, it will only declare that the appointment was invalid and will not take into account any other reasons.

In the case of “*P.R. Murlidharan V. Swami Dharmanada*”³³, the hon’ble court held that the petitioner cannot envisage this writ petition for own personal use. The writ cannot be used as a tool for giving

³¹ A.K. Gopalan V. Government Of India 1966 AIR 816 1966 SCR (2) 427

³² S.Kasi V.State Through The Inspector Of Police Samaynallur Police Station Madurai District,(2020),SCC Online, SC 529

³³ P.R. Murlidharan & Ors V. Swami Dharamanda Theertha Padar & Ors, (2006), SCC 1634

directions to police officials to give protection to somebody on the ground that he is entitled or have this as a right. It can only be invoked in case of threat or in case of violation of any fundamental right.

4) Prohibition

Courts, Tribunals, Quasi-judicial agencies, and personnel may be prevented from overstepping their boundaries by the exceptional prerogative writ of prohibition. The primary goal of this writ is to limit the scope of the court's authority. It is predicated on the premise that "Prevention is better than Cure."

Reasons for issuing this writ of mandate

An inferior court or tribunal may issue a writ of prohibition:

Acts outside of one's legal authority or in excess of one's legal authority

Exercising authority beyond one's constitutional authority; violating basic rights; acting in breach of the standards of natural justice.

The Karnataka High Court in the case of *Vanajakshi and others v. State of Karnataka*³⁴ dismissed the writ petition for prohibition on the ground that if the petitioner is alleging for police officials to not put false cases against him then he should follow proper procedure of law and should not directly come to the court.

5) Certiorari

An approach to correcting a subordinate court's jurisdictional or judicial errors is discussed here. The Apex Court and the High Courts have issued this writ to remedy any mistake made by a lower court in deciding the matter outside its authority. Initially, it was only employed in criminal trials, but in more recent years, civil cases have now begun to make use of it.

For this writ to be granted:

Inappropriate use of authority or indifference to it

Violation of the natural justice norms, such as the right to be informed and heard;

A violation of a person's constitutional rights or the letter or spirit of the law.

The discovery of facts that no reasonable person could have deduced.

This writ is not in direct consonance with police administrative decisions and cannot be raised against police officials. Though in case there has been a violation of someone's fundamental rights by the police and the inferior court has failed to appreciate the fact then this can be raised in High court or Supreme Court.

Conclusion

The following conclusions may be drawn from the precedents. "Section 197 of the Criminal Procedure Code" provides a procedural protection only if the accused police officer can prove that the alleged criminal conduct occurred while he or she was executing an official function. The issue of whether or not a police officer should be prosecuted rests on whether or not the officer's actions were in the course of his or her duty. Second, the police's actions are judged on whether or not they have a direct connection to their official duties. Third, the Apex Courts have never regarded actions that violate basic rights to be done in the course of official responsibilities.

Even when in the course of pursuing the duty if a police official violates or infringes someone's legal or

³⁴ Vanajakshi And Others V. State Of Karnataka,(2017), Kar 4792

fundamental right, the person always have the course to go to the court of law for his redressal. “Article 32, Article 136, or Article 226 of the Indian Constitution” are only options open to the public if the discretionary authority is misused or if the government fails to use its discretion. For the most part, judicial regulation's primary goal is to guarantee that laws passed by government are consistent with the rule of law. The inherent disadvantages of judicial control are well-known. It's more suited for resolving disputes than doing administrative tasks, in my opinion. The administration and the judiciary work together to ensure that the government is fulfilling its constitutional responsibilities in conformity with the law. It is to be ensured that this judicial review extends to the lever of judicial activism but does not become a case of judicial overreach.

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