

Judicial Review and its Distinction with Appeal

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Abstract

Judicial Review is the basic and essential feature of the Indian constitutional scheme entrusted to the judiciary.¹

The supremacy of the Indian Constitution is maintained in large part by judicial review. Additionally, it aids in preserving the harmony between the state's three organs so that no law can be passed without being subject to review. Perhaps the most significant advancement in public law in the latter half of this century has been the judicial review of administrative action, and this paper focuses precisely on that. Judiciary review thus seeks to safeguard citizens from the misuse or abuse of authority by any branch of the State. This paper tries to cover the nuances of judicial review, like the grounds of judicial review, Doctrine of ultra vires, Writs, and finally, its distinction with an appeal.

Introduction

Administrative law is the body of acceptable constraints and affirmative action produced by the legislature and courts to maintain and perpetuate the rule of law, and it serves an essential social function. Any system of government, except for dictatorship, requires a strong, independent, and impartial court. The judiciary in each country plays a critical role in interpreting and applying the law and resolving conflicts between citizens and between citizens and the state.

Where there is a written constitution, the courts are also responsible for upholding the constitution's supremacy by interpreting and applying its provisions and ensuring that all powers stay within its bounds. Judicial review is an important institution and a cornerstone of the checks and balances system, without which no democracy worth its name can function. Judicial Review is a part of the state's judicial power used by the courts to determine the legality of a rule of law or action taken by a state agency.

Judicial review is the touchstone of the Indian Constitution. "Judicial review," according to the dictionary, is "a process by which a court can rule on an administrative action by a public body."² "The power of a court to review the actions of other branches of government, especially the power of the court to invalidate executive and legislative actions as being unconstitutional," is one definition of "judicial review."³ A Judicial review is an excellent tool in the hands of judges. It comprises the power of a court to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority that is inconsistent with or in conflict with the fundamental law of the land.⁴ The

¹ R.K Jain v. UoI, (1993) 4 SCC 119

² Concise Oxford English Dictionary (2002) 765

³ Black's Law Dictionary (8th Edn.) 864

⁴ Henry Abraham cited in L. Chandra Kumar v. UoI, AIR 1997 SC 1125

judiciary's most effective tool for upholding the rule of law is judicial review. The fundamental goal of judicial review is to ensure that the authority does not abuse its authority and that the person is treated justly and fairly, not to ensure that the authority comes to the correct legal conclusion.

Explanation

In India, judicial review primarily focuses on three different dimensions:

1. judicial review of legislative action,
2. judicial review of lower judicial decisions, and
3. judicial review of administrative action.

In this paper, we focus on the last point, the judicial review of administrative action. The Constitution has established an independent judiciary with the authority of judicial review to determine the legality of administrative action and the legitimacy of legislation, as noted by the Supreme Court in *Minerva Mills Ltd. v. Union of India*⁵. The judiciary has a sacred responsibility under the Constitution to use its judicial review authority as a sentinel on the qui vive to keep various state organs within the bounds of the authority granted to them by the Constitution.

The courts regulate the administrative actions through writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. Statutes, statutory instruments, precedents, and conventions are all significant sources of administrative law. Judicial review remedies and the doctrine of ultra vires are discussed in this paper. And because the courts have proven to be more successful and beneficial than legislative or administrative powers, judicial control has become an essential topic of administrative law.

Administrative action is any activity that isn't legislative or judicial in nature. It is focused on the treatment of a specific issue and lacks generalization. It has no legal obligations in terms of gathering evidence or considering arguments. It is based on subjective satisfaction with policy and expediency guiding the decision. It does not decide a right, but it may have an influence on one. However, this does not mean natural justice principles can be entirely disregarded when the authorities exercise administrative powers. Unless the statute specifies otherwise, the basics of principles of natural justice must always be adhered to, regardless of the facts of the case.

In the case of *A.K. Kraipak v. Union of India*⁶, the Court said that in order to determine whether an administrative authority's action is quasi-judicial or administrative, one must look at the nature of the power conferred, the people to whom it is given, the framework within which it is given, and the consequences.

It originated in England and has since spread to other nations with common law. England introduced the idea of judicial review to India as well. India's structure was based on the English prerogative with a pattern provided by the Court of King's Bench in order to exercise general supervision over officials/authorities performing judicial or non-judicial responsibilities in accordance with the law. According to conventional wisdom, the judge-led development of judicial review is one of the great

⁵ *Minerva Mills Ltd. v. UoI*, (1980) 3 SCC 645: AIR 1980 SC 1789

⁶ *A.K. Kraipak v. UoI*, (1969) 2 SCC 262: AIR 1970 SC 150

achievements of common law in the twentieth century. Lord Diplock famously referred to it as "the greatest achievement of my judicial lifetime."⁷ According to this interpretation, the judiciary abandoned its earlier quiescence starting in the middle of the 20th century and created a new body of law capable of submitting the administrative state to the rule of law by building on the doctrines, strategies, and remedies that had been used to control inferior tribunals since Victorian times. Thus, the common law commitment to upholding the rule of law is seen in contemporary law as being similar to that seen in early cases like *Entick v. Carrington*⁸ and *Cooper v. Wandsworth Board of Works*⁹, which was revived in the landmark *Wednesbury*¹⁰ decision and expanded by Lord Reid in the "Quartet"¹¹ before being systematised by Lord Diplock in *GCHQ*.¹²

Administrative action can be statutory, i.e., having legal force, or non-statutory, i.e., not having legal effect. Most administrative actions are statutory because they are based on a statute or the Constitution, but in other situations, they may be non-statutory, such as issuing directives to subordinates, which do not have legal effect, but whose disobedience may result in disciplinary action.

Despite the fact that administrative action is generally discretionary and dependent on subjective discretion, the administrative authority must act fairly, impartially, and reasonably. The courts pick out the golden thread of reason and meaning in law during the judicial review process; they shape and mould the law, reveal its fitness and nuances, smooth the angularities, strike down bad law or illegal action, and, most importantly, exert the strong moral forces of restraint in times when expediency is all that matters.

Judicial review refers to examining administrative activities by courts to guarantee their legality. Administrative authorities are granted powers by legislation, which must be exercised within the parameters set out in the statutes. If an administrative body is proven to be in breach of the Constitution, the courts can declare the acts of the legislature and executive void. Despite the fact that there is no explicit provision for judicial review in the American Constitution, the American Supreme Court invented and refined the notion of judicial review. The Supreme Court made it apparent in *Marbury v. Madison*¹³ that the courts possessed the authority of judicial review.

Under Article 226 and 32 of the Constitution of India, the Supreme Court at the national level and the High Courts at the state level, respectively, can examine administrative decisions through various writs such as mandamus, habeas corpus, certiorari, prohibition, and quo warranto. The writs that we follow in

⁷ *R v. Inland Revenue Commissioners Ex parte National Federation of Self-Employed and Small Business Ltd* (1982) AC 617, 641

⁸ *Entick v. Carrington* (1775) 19 Howell's State Trials 1029

⁹ *Cooper v. Wandsworth Board of Works* (1863) 14 CB (NS) 180, 143 ER 414

¹⁰ *Associated Provincial Picture Houses Ltd v. Wednesbury Cororation* (1948) 1 KB 223.

¹¹ The 'Quartet' is sometimes used to denote four monumental House of Lords administrative law decisions of the 1960s, *Ridge v. Baldwin* (1964) AC 40 (HL); *Conway v. Rimmer* (1968) AC 910 (HL); *Padfield v. Minister of Agriculture, Fisheries and Food* (1968) AC 997 (HL); and *Anisminic Ltd v. Foreign Compensation Commission* (1969) 1 AC 147 (HL).

¹² *Council of Civil Service Unions v. Minister for the Civil Service* (1985) 1 AC 374 (HL).

¹³ *Madison*, 5 U.S. 137 (1803)

India were borrowed from England, with lengthy development history, and they have accumulated a lot of technicalities as a result.

Grounds of Judicial Review

Grounds for Judicial Review of Administrative Actions:

1. Illegality
2. Irrationality
3. Procedural impropriety
4. Proportionality

The first ground is "illegality," the second is "irrationality", the third is "procedural impropriety", and the fourth is "Proportionality" which does not rule out further progress on a case-by-case basis. More grounds were added over time. Lord Diplock elaborated on the concepts.

Illegality is a basis for judicial review, by which I mean that the decision-maker must have a thorough understanding of the law that governs and implements his decision-making authority. Whether or not he had been a justifiable issue to be resolved, in the event of disagreement, by those people, the judges, who have the power to exercise the State's judiciary.

Irrationality, in this case, refers to what is now known as Wednesbury's unreasonableness. This refers to a decision that is so irrational in its defiance of logic or accepted moral standards that it could not have been made by any rational person considering the issue at hand.

The question of whether a decision falls into this category is one that judges should be well prepared to answer based on their training and experience. I've dubbed the third category 'procedural impropriety,' rather than failing to follow basic rules of natural justice or acting in a procedurally fair manner toward the person affected by the decision. This is due to the fact that under this heading, an administrative tribunal is frequently susceptible to judicial review if it disregards the procedural requirements outlined in the statutory instrument by which its authority is granted, even if doing so does not amount to a violation of natural justice.

Case Laws

Because they can be upheld by the court, fundamental rights should be seen as more than just a guiding principle. They are the foundation of the Constitution. Legislation, the executive branch, and the judiciary are the three branches of the Constitution. It is crucial that they are in the proper balance. In some cases, the executive and legislative branches have taken action to gain more control over the other branches. The judicial system has repeatedly taken actions to protect each individual's rights. Article 13 of the Indian Constitution, which gives the Court the authority to use judicial review, was inserted by constitutional thinkers with the goal of creating a free country.

- An analogous attempt to abuse Parliament's authority was made in the case of *Minerva Mills v. Union of India*¹⁴. The Court ruled that judges must determine whether laws are valid before implementation. If the Court were stripped of its authority, a controlled constitution would turn into

¹⁴ Ibid at page 2

an uncontrolled one. Thus this was the landmark case which told us about the concept and importance of judicial review.

- In *Kesavananda Bharati v. the State of Kerala*¹⁵, the court ruled that as long as fundamental rights are protected, the court must use its judicial review authority to ensure that those rights are not curtailed.
- The Supreme Court ruled in the *A.K. Gopalan*¹⁶ case that a statute must adhere to constitutional requirements and that it is up to the judiciary to determine whether or not an act is constitutional.
- According to Chief Justice Patanjali Shastri, judicial review authority is a part of the law in *State of Madras v. V.G. Row*¹⁷. This puts the court in this country under a lot of pressure to carry out its constitutionally mandated duties.
- In *L Chandra Kumar versus the Indian Union*¹⁸, the Supreme Court has the authority to uphold the Constitution, the court ruled. To ensure there is no constitutional restriction, the court must preserve the balance of power and oversee the activities of the legislature and executive activities. A vital component of the basic structure doctrine is judicial review.
- In *I.R. Coelho v. Tamil Nadu State*¹⁹, the court ruled that any additions to the ninth schedule made after the *Kesavananda Bharati* Case are subject to judicial review.

Legitimate Expectation

This doctrine serves as a basis for judicial review when a public authority retracts from a representation made to a person in order to protect the public interest. A legitimate expectation arises in the complainant's mind, who has been led to believe that specific procedures will be followed in reaching a decision, either explicitly or implicitly. The expectation is grounded in reality. This doctrine has provided relief to people who have been wronged due to a breach of their legitimate expectations and have been unable to prove their claims in court. Two factors determine legislative expectations:

- When a group or an individual has been led to believe that a specific procedure will be followed, either implicitly or explicitly,
- When a group or an individual relies on a previous policy or guideline that governed a specific area of executive action.

Doctrine of Ultra Vires

What is Ultra Vires?

The concept of jurisdiction, sometimes known as ultra-vires, emerged during this review process, which defined an area where lesser tribunals are absolute judges but are not authorized to cross the wall. The notion of jurisdiction entails a distinction between circumstances in which a tribunal decides within its jurisdiction and those in which it rules outside its jurisdiction; judicial power is only available in the latter category. Want or excess jurisdiction is a common expression for the principle of jurisdiction that governs the reviewability of administrative action; the underlying doctrine is known as ultra-vires.

¹⁵ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225

¹⁶ *A.K Gopalan v. State of Madras*, 1950 SCR 88: AIR 1950 SC 27

¹⁷ *State of Madras v. V.G. Row*, AIR 1952 SC 196

¹⁸ *L. Chandra Kumar v. UoI*, (1995) 1 SCC 400: AIR 1995 SC 1151

¹⁹ *I.R. Coelho v. State of T.N.*, (2007) 2 SCC 1: AIR 2007 SC 861

Actions beyond decision-making bodies' control are referred to as ultra-vires. The notion of ultra-vires is thus the fundamental doctrine in administrative law. The foundation of judicial power is the control of administrative actions.

The Scope of this Doctrine

The scope of the courts in evaluating the administrative authority's judgements or acts, as opposed to those of appeal in review processes, is central to examining judicial power. To get an answer to this issue, consider the historical events and power that inspired and formed it; the environment of values and beliefs that fostered it; the breadth of conditions in which it must work; and the level of development it has made.

In India, the legislation pertaining to judicial review of administrative action has typically been taken from common law, with the most prominent feature being the control of constraints on the powers of public authorities by the ordinary court of law.

The Basis of this Doctrine

Using principles of intra-ultra vires and natural justice rules, administrative action for judicial review ensures that the executive acts within the law. The court must evaluate whether the body behaved intra-vires or ultra-vires after granting a request for judicial review (i.e., within or outside of its power). Two types of lawsuits can be filed: those alleging statutory violations and those asserting that a decision was made inappropriately or in violation of natural justice norms.

If administrators do not follow certain procedures in the exercise of such powers, the statute may oblige them to do so, and the proceedings are deemed "mandatory" (compulsory) rather than "advisory" for a body to act ultra-vires. A court can order a public entity that is required to act if it fails. Principles of natural justice must also be followed in decision-making; where a person's right or interest is at stake due to an administrative decision, he is entitled to fair treatment.

Judicial Review and Ultra Vires in India

The ultra vires doctrine is an essential tool for judicial oversight of administrative authorities, and it has been dubbed the "core rule of administrative law" because of its wide-ranging implications. This doctrine of ultra-vires has been extended to a high level of complexity in England and India, allowing courts to investigate acts outside of their jurisdiction and the reasonableness, intentions, and validity of considerations.

The courts have restricted various aspects of discretionary powers. If the procedural provision is as distinct from the directory as mandatory, procedural errors are also considered jurisdictional. Administrative actions in India are subject to judicial review in cases of illegality, irrationality, or procedural impropriety.

The Supreme Court stated in *Tata Cellular v. Union of India*²⁰ that judicial review is concerned with reviewing the decision-making process rather than the decision's merits. If an administrative action is

²⁰ *Tata Cellular v. UoI*, (1994) 6 SCC 651: AIR 1996 SC 11

allowed to be reviewed, it will take the place of its own, potentially flawed decision. It is the court's responsibility to limit itself to the issue of legality. The court's job is to stay focused on the legality of the situation. The objective should be to ascertain whether the decision-making authority exceeded its authority, violated the rules of natural justice, committed a legal error, or made a decision that no reasonable tribunal would have made.

Writs

Under Article 226 and Article 32 of the Indian Constitution, five types of writs are available for judicial review of administrative actions.

Habeas Corpus

The writ means "Have the body," and it is issued to secure a person's release from illegal detention or detention without legal justification. It is concerned with a person's right to freedom. In simple terms, the court orders the person or authority who has detained an individual to bring him or her before the court so that the detention's validity, justification, and jurisdiction can be determined. Anyone can file this writ.

The court issues this writ when a person detained does not appear in front of a magistrate within 24 hours of being detained. If the arrested person does not comply, he or she will be released. The Supreme Court ruled in *Gopalan v. Government of India*²¹ that the earliest date on which the legality of detention can be examined is the date on which the application for it is filed with the court.

The writ of habeas corpus can be used not only against the government but also against anyone holding someone in illegal custody or detention. In such circumstances, it is the police's responsibility to make all reasonable efforts to ensure that the detainee is released. However, if a person is not found despite such efforts, the police cannot be forced to do the impossible.

Mandamus

In India, it means "to command the public authorities" to carry out their public duty. It is a discretionary remedy in the same way all five writs are in nature. Whether to hear a writ petition or not is entirely up to the court. This writ does not apply to the president, governors, state legislatures, private citizens, or any other governmental entity.

A Mandamus can be issued when the government denies itself jurisdiction that it clearly has under the law or when power is improperly refused to be exercised by an authority vested with it. The purpose of mandamus is to keep public authorities within their legal authority when performing public functions.

It can be issued to any authority performing any function – administrative, legislative, quasi-judicial, or judicial. A mandamus is a legal tool to compel public officials to carry out their responsibilities. When the government has no legal obligation, a mandate is not issued.

²¹ A.K Gopalan v. State of Madras, 1950 SCR 88: AIR 1950 SC 27

Quo Warranto

It is a common law remedy that dates back to the Middle Ages. It's used to get rid of a government intruder or usurper. "What is your authority?" literally means "What is your authority?" The court instructs the person in question as to what authority he holds the position. If the court determines that a person is not entitled to hold the position, he or she may be removed from it.

A person's illegal usurpation of public office is prevented by Quo warranto. The court must be satisfied that the office in question is public, created by the constitution or law and that the person holding the office is not legally qualified to hold the office in apparent infringements of the constitution or law before issuing a writ.

The writ of quo warranto is issued to a person against whom she or he must demonstrate that she or he has the authority to hold the office. The High Court will only consider other factors that may be relevant for the issuance of a writ of certiorari when issuing such writ, such as the illegality of the appointment when issuing a writ.

Prohibition

Prohibition is a writ of extraordinary prerogative that seeks to prevent Courts, Tribunals, quasi-judicial authorities, and officers from exceeding their authority. The primary goal of this writ is to prevent jurisdictional encroachment. It is based on the principle that "prevention is better than cure".

In most cases, a writ of prohibition is issued when an inferior court or tribunal:

- Proceeds to act without or beyond the scope of his or her authority
- Proceeds to act in contravention of natural justice rules or
- Proceeds to act under a law that is ultra vires or unconstitutional in and of itself
- Continues to behave in a manner that is in violation of fundamental rights.

Certiorari

It discusses a method for bringing a subordinate court's record before a superior court for correction of jurisdiction or a legal error committed by them. Simply put, if a lower court decides a case beyond its jurisdiction, the Supreme Court and the High Courts correct the error by issuing this writ. Initially, it was only used in criminal cases, but it has since been used in civil cases as well.

The following are the grounds for this writ:

- Excessive or non-exercise of jurisdiction
- Natural justice rules such as the right to notice and a hearing have been broken.
- Violation of a person's fundamental rights or a law's statutory provisions.
- Finding facts that no one else would have come to the same conclusion.

Distinction with Appeal

Judicial review and appeal differ in fundamental ways. In dealing with an appeal, the court is focused on the decision's merits and correctness; in judicial review, the court's investigation is restricted to the process by which the decision was reached. In a judicial review, the question is whether the decision-

making process was reasonable, rational, and in accordance with the law and the constitution. In an appeal, the court will consider whether the appealed decision is correct or incorrect.

Judicial review and appeal are similar and, at the same time, very different concepts. A request to a higher court to review and, if necessary, reverse the lower court's decision in favour of the losing party after the final judgement has been rendered. The losing party must provide legal reasons for believing the lower court's decision was incorrect and should be overturned by the higher court. In this case, the losing party and the appellant must demonstrate that errors or mistakes were made during the previous trial. An appeal can be filed on one of two grounds:

1. Only errors that are grave in nature are counted under this provision when a mistake was made during the trial. Errors that are not harmful cannot be used as a basis for appeal. The appellant ought to also show that the error resulted in a violation of his rights.
2. When the evidence does not support the verdict, proving an appeal based on insufficient evidence is much more difficult. Because the Court of Appeal did not hear all of the proceedings in the previous trial, it could not render an impartial decision. Most appeal courts weigh and then decide based on their belief in the trial court's decision.

In an appeal, the appellant will contest the inferior court's decision with an appeal to a higher court than the one that issued the verdict. This appeal is a motion for a new trial. A request has been made to the higher court to amend the lower court's decision. The lower court's decision may be upheld or overturned by the higher court. A review is not a statutory right for the public and is only available at the court's discretion. A request for a review is made in the same court where the original decision was made, and it is a request to consider the ruling's legality. A review is conducted based on procedural irregularities, impropriety, irrationality, and illegality.

There is only one review available. The second review request is truthful. On the other hand, there are three appeals:

- First Appeal from the District Munsiff Magistrate Court/Subordinate Judge's Court to District Judges;
- Second Appeal from the District Judge's Court to the High Court;
- From the High Court to the Supreme Court (Third Appeal).

An appeal is assigned to multiple judges, whereas a review is assigned to a single judge. The grounds for appeal are more expansive than those for review.

The ultra vires doctrine is the halfway point between appeal review and no review at all for judicial review. In an appeal, the appealing authority may not only quash the administrative decision but also consider the validity of the decision and substitute its judgement in its place. In contrast, in an ultra vires case, the court's jurisdiction is limited to only quashing the administrative decision if it exceeds the authority's power.

Conclusion

Administrative actions are subject to judicial review under our constitutional framework, which is based on the rule of law and separation of powers. It is regarded as one of our constitution's fundamental features, which cannot be changed, even through parliamentary constitutive power. It's the most effective way to deal with administrative excesses. People have a favourable opinion of the administration if it performs any duties or acts within the authority's parameters, whether by statutory requirements or the Indian constitution's provisions.

The public's only option is to go to court under Article 32, Article 136, or Article 226 of the Indian Constitution unless there is a failure to exercise discretion or misuse of discretionary power to satisfy its own gain or any private gain. The primary goal of judicial regulation is to ensure that the government's laws are consistent with the rule of law. There are some disadvantages to judicial regulation. It's better at resolving conflicts than it is at performing administrative tasks. The executive is responsible for enforcing the law, while the judicial system ensures that the government performs its duties in accordance with India's constitution.