

Judicial Review of Administrative Action

ADMINISTRATIVE ACTION

- Simply speaking, it means **“act of an administrative authority”**. It is, however, a term of wider connotation. It is said that the **administration is the meeting point of three kinds of governmental functions ,namely legislative, judicial and executive.**

Classification of Administrative Action:-

- I. Quasi-legislative
- II. Quasi-Judicial
- III. (Purely) administrative (an action which is neither Quasi-legislative nor Quasi-Judicial).

**(I) Quasi-legislative Administrative
Action**

(a) Rules etc. made by Central Government, State Government, Board of Revenue, I.G. of Police etc.

(b) Rules, Regulations, Bye-laws, scheme etc. framed by authorities other than legislative come under this category.

(c) All India Services (Conduct) Rules, 1968 and All India Services (Discipline and Appeal), 1969

Quasi-Legislative functions - Ingredients

- If an order is Legislative in character, it has to be **published**.
- If an order is Legislative in character, the court will **not issue a writ of certiorari to quash it**
- **Rules of Natural Justice do not apply** in case of quasi-legislative function.

Judicial Action distinguished from Quasi- Judicial Action

1. A court **cannot be a judge in its own cause** , while an administrative authority vested with **quasi judicial powers may be a party to the controversy but it can still decide**
2. A court is bound to follow the rules of **evidence and procedure** while a quasi-judicial authority **is free from such requirements**
3. A court is bound by **precedents**, quasi-judicial authority is not.
4. A **lis inter parties** is an essential characteristic of a judicial function, but this may not be true of a quasi-judicial function.

DISTINCTION BETWEEN QUASI-LEGISLATIVE AND QUASI-JUDICIAL FUNCTIONS

- A legislative function (framing rules/regulations) **prescribes future pattern of conduct and creates new rights and liabilities**, whereas a decision (judicial function) **determines rights and liabilities on the basis of present or past facts and declares the pre-existing rights and liabilities**.
- **Legislative function** is general and relates to the future whereas the **Judicial Function** is specific, final and ordinarily relates to the past.

Distinction between Administrative and Quasi-Legislative Functions

1. **Duty to give reasons** applies to administrative orders but not to legislative orders.
2. Since a quasi-legislative function is legislative in character, the rules of **Natural Justice** do **not** apply in case of quasi-legislative function.
3. If an order is legislative in character, it has to be **published** in a certain manner, but it is not necessary if it is of an administrative nature.

DISTINCTION BETWEEN ADMINISTRATIVE & Q- JUDICIAL ACTS

- Acts which are required to be done on the subjective satisfaction of the administrative authority are 'administrative' acts, while acts which are required to be done on objective satisfaction of the administrative authority are Q-Judicial acts.
- (Administrative decisions **which are founded on pre-determined standards are called objective decisions** where as decision which involve a choice (as there is no fixed standard to be applied) are called subjective decisions).
- In case of the administrative decision there is no legal obligation upon the person charged with the duty of reaching the decision **to consider and weigh-submissions and arguments or to collate the evidence .**

Judicial Review

- The term “ Judicial Review” consists of two words. The key word is “Review” which used as noun, **means looking over something again; judging again; reconsideration; reassessment; critical examination.**

CLASSIFICATION OF JUDICIAL REVIEW –as per CONSTITUTION

- **1) Judicial review of constitutional amendments.**
- **(2) Judicial review of legislation of Parliament, State Legislatures as well as subordinate legislation.**
- **(3) Judicial review of administrative action**

GROUNDS FOR THE EXERCISE OF THE POWER OF JUDICIAL REVIEW

1. The administrative *action is contrary to law.*
2. *Non-compliance* with the mandatory *procedural requirements.*
3. Where the act complained of is *violative of* *Fundamental* Rights
4. That the *decision is outrageous and has been taken in defiance of logic or of accepted moral standards* that *no sensible person could have arrived at such a decision. (Wednesbury Principle)*

GROUNDS FOR THE EXERCISE OF THE POWER OF JUDICIAL REVIEW

5. Where the **authority imposes a condition
 patently unrelated to or inconsistent with
 the purpose or policy** of the statutes.
6. Failure to exercise discretion; or
7. Excess or abuse of discretion.

Associated Provincial Picture Houses v Wednesbury Corporation [1948]

- "Associated Provincial Picture Houses" were granted a licence by the defendant local authority to operate a cinema on condition that **no children under 15 were admitted to the cinema on Sundays.** The claimants sought a declaration that such a condition was unacceptable, and outside the power of the Wednesbury Corporation to impose. The Court accepted the contention of the claimants.

THE WEDNESBURY PRINCIPLE

- ***A decision will be said to be unreasonable in the Wednesbury sense*** if
 - 1. it is based on wholly irrelevant material or wholly irrelevant consideration,***
 - 2. it is so absurd that no sensible person could ever have reached to it.***

Failure to Exercise Discretion

- The main object of conferring discretionary power on an administrative authority is that the **authority itself must exercise the said power.** If there is **failure to exercise discretion on the part of that authority the action will be bad.** Such type of flaw may arise in the following circumstances:
 - a) Sub-delegation;
 - b) Imposing fetters on discretion by self-imposed rules of policy;
 - c) Acting under dictation;
 - d) Non-application of mind

(a) Sub-delegation

- The very object of conferring a power on a particular administrative authority is that the power must be exercised by that authority and cannot be sub-delegated to any other authority or official.

(b) Imposing fetters on discretion by self-imposed rules of policy

- In **Keshavan Bhaskaran v. State of Kerala (1961)**, the relevant rule provided that no school-leaving certificate would be granted to any person **unless he had completed fifteen years of age.** The Director was, however, empowered to grant exemption from this rule in deserving cases. But **the Director had made an invariable rule of not granting exemption unless the deficiency in age was less than two years.** The court held that the rule of policy was contrary to law.

(c) Acting under dictation

- Sometimes, an authority entrusted with a power does not exercise that power but acts under the dictation of a superior authority. Here, the authority invested with the power purports to act on its own but ‘in substance’ the power is exercised by another. The authority concerned does not apply its mind and take action on its own judgment, even though it was not so intended by the statute. In law, this amounts to non-exercise of power by the authority and the action is bad. **It is well-settled that if the authority permits its decision to be influenced by the dictation of others, it would amount to abdication and surrender of discretion.** If the authority “hands over its discretion to another body it acts ultra vires”.

Mansukhlal v. State of Gujarat (1997)

- In that case, the government did not grant sanction to prosecute appellant (public servant) under the Prevention of Corruption Act. The complainant filed a petition in the High Court and the High Court 'directed' the authorities to grant sanction. **The appellant was prosecuted and convicted.** Setting aside the conviction, the Supreme Court observed that **“by issuing a direction to the Secretary to grant sanction, the High Court closed all other alternatives to the Secretary and compelled him to proceed only in one direction”.** ***The sanction was, therefore, illegal and conviction bad in law.***

(d) Non-application of mind

- When a **discretionary power** is conferred on an **authority**, the said authority must exercise that **power after applying its mind to the facts and circumstances** of the case in hand. If this condition is not satisfied, there is clear non-application of mind on the part of the authority concerned. **The authority might be acting mechanically, without due care and caution or without a sense of responsibility in the exercise of its discretion.** Here also, there is failure to exercise discretion and the action is bad.

Jagannath v. State of Orissa (1966)

- In Jagannath v. State of Orissa, in the order of detention six grounds were verbatim reproduced from the relevant section of the statute. In the impugned order in which various grounds were mentioned, instead of using the conjunctive “and” the disjunctive “or” had been used. The Court held that there **was clear non-application of mind by the Home Minister and the order was liable to be quashed.**

Excess or Abuse of Discretion

- Excess or abuse of discretion may be inferred from the following circumstances:
 - a) Absence of power;**
 - b) Exceeding jurisdiction;**
 - c) Irrelevant considerations;**
 - d) Mala fide;**
 - e) Improper purpose: Collateral purpose;**
 - f) Colourable exercise of power;**
 - g) Non-observance of natural justice**

(a) Absence of power

- In **State of Gujarat v. Patel Raghav Nath(1969)**, the *revisional authority* exercising powers under the Land Revenue Code *went into the question of title.* The Supreme Court observed that *when the title of the occupant was in dispute,* the appropriate course would be to *direct the parties to approach the civil court and not to decide the question.*

(b) Exceeding jurisdiction

- An administrative authority must exercise the power within the limits of the statute and if it exceeds those limits, the action will be held ultra vires.
- For example, *if an officer is empowered to grant a loan of Rs.10,000 in his discretion for a particular purpose and if he grants a loan of Rs.20,000, he exceeds his power (jurisdiction)* and the entire order is ultra vires and void on that ground.

GES Corporation v. Workers Union (1959)

- The authority is empowered to **award a claim for the medical aid of the employees**. The authority **granted the said benefit to the family members** of the employees. Held that the authority exceeded his powers.
- **Chaudary v. Datta (1958)**: The relevant regulation empowers the management to **dismiss a teacher**. However the management **dismissed the principal**. Held that the management exceeded its powers.

(c) Irrelevant considerations

- A power conferred on an administrative authority by a statute must be exercised on the considerations relevant to the purpose for which it is conferred. Instead, **if the authority takes into account wholly irrelevant or extraneous considerations the exercise of power by the authority will be ultra vires and the action bad.**

Hukam Chand v. Union of India (1976)

- In Hukam Chand v. Union of India, under the relevant rule, the Divisional Engineer was **empowered to disconnect any telephone on the occurrence of a 'public emergency'**. When the petitioner's telephone was disconnected on the allegation that it was used for illegal forward trading (satta) the Supreme Court held that it was an extraneous consideration . (In finance, a **forward** contract or simply a **forward** is a non-standardized contract between two parties to buy or to sell an asset at a specified future time at a price agreed upon today, making it a type of derivative instrument).(gold etf =Exchange traded fund)

(d) Mala fide

- *If the power is not exercised bona fide, the exercise of power is bad and the action illegal.*
- Though precise and scientific definition of the expression “mala fide” is not possible, it means *ill-will, dishonest intention or corrupt motive.*

Rowjee v. State of A.P. (1964)

- In Rowjee v. State of A.P., the **State Road Transport Corporation** had framed a scheme for nationalization of certain transport routes. This was done as per the directions of the then **Chief Minister**. Evidence was adduced by the petitioner that *particular routes were selected to take vengeance against the private transport operators of that area as they were the political opponents of the Chief Minister.* The Supreme Court upheld the contention and quashed the order.

(e) Improper object: Collateral purpose

- In *Nalini Mohan v. District Magistrate* (1951), the relevant statute empowered the authority to **rehabilitate the persons displaced from Pakistan as a result of communal violence**. That power was ***exercised to accommodate a person who had come from Pakistan on medical leave.*** The order was set aside.

(f) Colourable exercise of power

- Where a power is exercised by *the authority ostensibly for the purpose for which it was conferred, but in reality for some other purpose, it is called colourable exercise of power.* Here, though the statute does not empower the authority to exercise the power in a particular manner, the authority exercises the power under the 'colour' or guise of legality.

Nader v. Bork (1973)

- In the leading American case of Nader v. Bork, by revoking a regulation, Cox, a **Special Prosecutor** was relieved by the Attorney-General by abolishing that office. However, *within few days, once again, the regulation was reinforced.* The court held the revocation illegal since *“it was simply a ruse to permit the discharge of Cox, purpose that could never be legally accomplished with the original regulation in effect”*.

Vora v. State of Maharashtra (1984)

- In Vora v. State of Maharashtra, the State Government requisitioned the flat of the petitioner, but in spite of repeated requests of the petitioner, it was **not derequisitioned**. Declaring the action bad the court observed that though the **act of requisition was of a transitory character, the Government in substance wanted the flat for permanent use,** which would be a **'fraud upon the statute'**.

(i) Non-observation of natural justice

- By now, it is well-settled law that even if the exercise of power is purely administrative in nature, if it adversely affects any person, the principles of natural justice must be observed. Violation of the principles of natural justice makes the exercise of power ultra vires and void.

A.K.Kraipak v. Union of India (1969)

- In this case, *Naquishbund, was a candidate for selection to the Indian Forest Service and was also a member of the Selection Board.* N did not sit on the Board when his own name was considered. *Name of N was recommended by the board and he was selected by the Public Service Commission.* The candidates who were not selected filed a writ petition for quashing the selection of N on the ground that the principles of natural justice were violated. The Court quashed the selection

J.Mohapatra v. State of Orissa (1984)

- In this case, the State of Orissa constituted an Assessment Committee in order to recommend and select books of various authors and publishers for various school subjects. Some of the persons whose books were in the selection list were members of the Assessment Committee. The meeting of the Committee was held. The result was that the books of the members of the Assessment Committee were accorded approval. The action of the Government was challenged on the ground of bias. **The Supreme Court quashed the action.**

Various forms of abuse of discretion may overlap

- The various forms of abuse of discretion may even overlap. Take the classic example of the **red-haired teacher, dismissed because she had red hair**. In one sense, it is **unreasonable**. In another sense, it is **taking into account irrelevant or extraneous considerations**. It is **improper exercise of power** and might be described as being done in bad faith or colourable exercise of power. *In fact, all these things 'overlap to a very great extent' and run into one another.*

DOCTRINE OF PROPORTIONALITY

- In Ranjit Thakur v. Union of India(1987) – an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court martial proceedings were initiated and a *sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.* The said order was challenged.
- The said order was set aside on the ground that the *punishment was grossly disproportionate.*

DOCTRINE -LEGITIMATE EXPECTATION:

- Legitimate expectation may arise either from express promise or existence of regular practice which the applicant can reasonably expect to continue.
- For example, if the Government has made a scheme for providing drinking water in villages in certain area but later on changed it so as to exclude certain villages from the purview of the scheme than in such a case **what is violated is the legitimate expectation of the people in the excluded villages for tap water and the government can be held responsible if exclusion is not fair and reasonable.** Thus, the doctrine becomes a part of the principles of natural justice and **no one can be deprived of his legitimate expectations without following the principles of natural justice.**