

# Judicial Review of Administrative Action in India



-Justice K Chandru ®

## Judicial Review

A strong and impartial judiciary is a sine qua non of any government. Judiciary plays a key role in deciding the disputes between the citizens and between a citizen and state. In today's age, the administration plays an essential role in every individual's life. Administrative laws are also expanding to meet the demands of new conditions. Judicial review is an integral component of the rule of law.

## **What is Administrative Action**

Administrative action is the residuary action which is neither legislative nor judicial. It is concerned with the betterment of a particular situation. It has no procedural obligations of collecting evidence and weighing arguments. It is where the decision is based on policy and expediency, it does not decide a right but it may affect one.

## **No man can be a Judge of his own cause**

The Supreme Court held that a person who sits on a Committee for the selection of candidates for a certain job must not be a candidate himself for the Job. The logic is that Judges could be impartial and neutral. He must be free from any controversy, suspicion of bias in rendering Justice. The court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative.

**A.K. Kraipak V. Union of India, 1969 (2) SCC 262**

## **What is Judicial Review?**

Judicial review has been recognised as a necessary and fundamental requirement for the construction of an advanced civilisation to safeguard the liberty and rights of the citizens.

Judicial review is the court's power to review the actions of other branches of government, especially the court's power to deem invalid actions exercised by the legislative and executive as 'unconstitutional'.

# Judicial review deals with

1. Judicial Review of Legislative Actions;
2. Judicial Review of Administrative Actions;
3. Judicial review of Judicial Actions.

# Grounds for Judicial Review

- 1. Jurisdictional Error;**
- 2. Irrationality;**
- 3. Procedural Impropriety;**
- 4. Proportionality;**
- 5. Legitimate Expectation**

## **Jurisdictional Error (1)**

A case of 'lack of jurisdiction' is where the tribunal or authority holds no power or jurisdiction at all to pass an order. The court may review this administrative action on the ground that the authority exercised jurisdiction which it was not supposed to.

## **Irrationality (2)**

The definition of the irrationality ground of judicial review recognises the constitutional principle of the separation of powers, in allowing for judicial control of the executive only very rarely.

## **Procedural Impropriety (3)**

It is a failure to comply with the laid down procedures. Procedural Impropriety is to cover two areas which are failure to observe rules given in statute and to observe the basic common-law rule of justice.

## Proportionality (4)

Proportionality means that the concerned administrative action should not be more forceful than it requires to be. The principle of proportionality implies that the court has to necessarily go into the advantages and disadvantages of the action called into question. Unless the so-called administrative action is advantageous and in the public interest, such an action cannot be upheld. This doctrine tries to balance means with ends.

## **Legitimate Expectations (5)**

This doctrine serves as a ground of judicial review to protect the interest when a public authority rescinds from a representation made to a person. A legitimate expectation arises in the mind of the complainant who has been led to understand expressly or impliedly that certain procedures will be followed in reaching a decision. The expectation has a reasonable basis. This doctrine has evolved to give relief to the persons who have been wronged because of the violation of their legitimate expectation and have not been able to justify their claims on the basis of law.

# Remedies

There are five types of writs for judicial review of administrative actions under Article 32 and Article 226



# SUPREME COURT OF INDIA



## Article 32

### Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of **habeas corpus, mandamus, prohibition, quo warranto and certiorari**, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

# Prerogative Writs

- 1. Habeas corpus**
- 2. Mandamus**
- 3. Prohibition**
- 4. quo warranto**
- 5. certiorari**

## **Habeas Corpus (1)**

It means “have the body”. This writ is issued as an order calling upon the person who has detained another person to produce the detainee before the court of law. If the court finds out that the detention has been illegal or without legal justification, it will order for the immediate release of the detainee. The main objective of this writ is not to punish the detainer but to release the detainee from wrongful detention.

## **Mandamus (2)**

It means 'to command the public authority' to perform its duty. It is a command given by the higher courts (High Courts and Supreme Court) to the Government, Inferior courts, tribunals, corporations, authorities or any other person to do any act or refrain from doing an illegal act. The purpose of this writ is to compel the performance of public duties and to keep control over the activities of the administration.

## **Prohibition (3)**

Prohibition is issued by a superior court to an inferior court or tribunal or body exercising judicial or quasi-judicial functions to prevent them from exceeding their jurisdiction. It is based upon the maxim 'Prevention is better than cure'.

## Quo Warranto (4)

The word 'quo warranto' means by what authority. Such writ is issued against a person who usurps a public office. The court directs the concerned person to show by what authority he holds that office. The unauthorized or illegal usurper would be removed by judicial order and the right person belonging to it would be entitled to it.

## Certiorari (5)

This writ is issued by the Superior Courts (High Courts and the Supreme Court) to the inferior court or tribunal or body which may exercise judicial or quasi-judicial functions, for the correction of jurisdiction or error of law committed by them. If any order passed by them is illegal, then the Superior Court may quash or demolish it. Grounds of this writ are (a) excess or failure to exercise the jurisdiction (b) violation of the principles of natural justice (c) authority has failed to correct an error which has been apparent on the face of the record.

## **133. Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters**

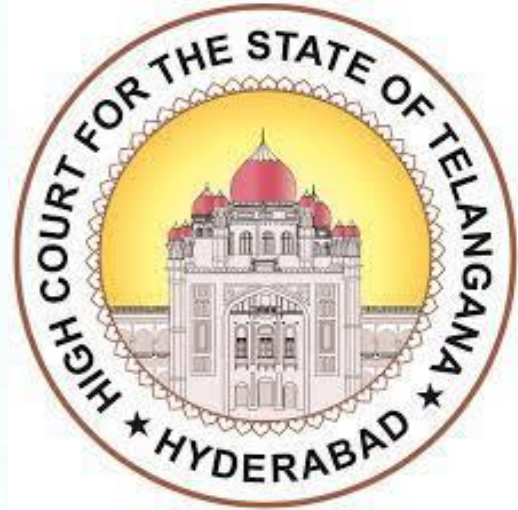
- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under Article 134A
  - (a) that the case involves a substantial question of law of general importance; and
  - (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court

(2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause ( 1 ) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided

(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court

## **136. Special leave to appeal by the Supreme Court**

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
- (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces



# Power of the High Courts

## 226. Power of High Courts to issue certain writs

(1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1 ) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories

## **227. Power of superintendence over all courts by the High Court**

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories interrelation to which it exercises jurisdiction

(2) Without prejudice to the generality of the foregoing provisions, the High Court may

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

# TRIBUNALS

## **323A. Administrative tribunals:**

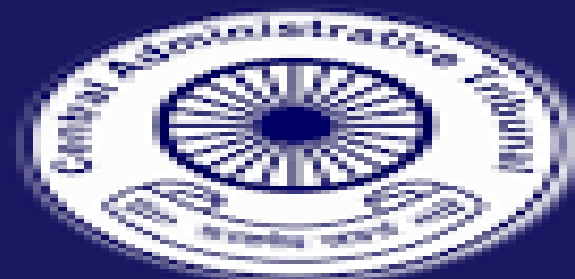
(1) Parliamentary may, by law provide for the adjudication or trial by Administrative Tribunals of disputes and appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

# Administrative Tribunals Act 1985

/ POLITY /

*what is*

**Central Administrative  
Tribunal**



**Power of Review by High Courts cannot be taken away  
as it is a basic structure of the Constitution**

**(L.Chandra Kumar vs. Union of India,  
1997 (3) SCC 261)**

# Special Provisions for A.P. and Telengana and Constitution of Public Services Tribunal

## Article 371D (5)

The order of the Administrative Tribunal finally disposing of any case shall become effective upon its confirmation by the State Government or on the expiry of three months from the date on which the order is made, whichever is earlier:

Provided that the State Government may, by special order made in writing and for reasons to be specified therein, modify or annul any order of the Administrative Tribunal before it becomes effective and in such a case, the order of the Administrative Tribunal shall have effect only in such modified form or be of no effect, as the case may be

## Article 371D(5) was struck down

“We must therefore hold that the Proviso to Clause (5) of Article 371-D is unconstitutional as being ultra vires the amending power of Parliament”

**P. Sambamurthy.Vs State Of A.P.**

**1987 (1) SCC 362**

## **Apply the Gandhian Test**

"Whenever you are in doubt .. apply the following test. Recall the face of the poorest and the weakest man whom you may have seen, and ask yourself, if the step you contemplate is going to be of any use of him."

**Gujarat Steel Tubes Ltd vs Gujarat Steel Tubes Mazdoor Sabha**  
**1980 (2) SCC 593**

## **Even quasi-judicial exercise of power, disciplinary action can be initiated.**

“( i ) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

- ( ii ) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- ( iii ) if he has acted in a manner which is unbecoming of a government servant;
- ( iv ) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- ( v ) if he had acted in order to unduly favour a party;
- ( vi ) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great.”

**Union of India Vs. K K Dhawan, 1993 (2) SCC 56**

# The All India Services (Confidential Rolls) Rules, 1970

## PART - III

To be filled in by the Reporting Authority

### B.Attributes

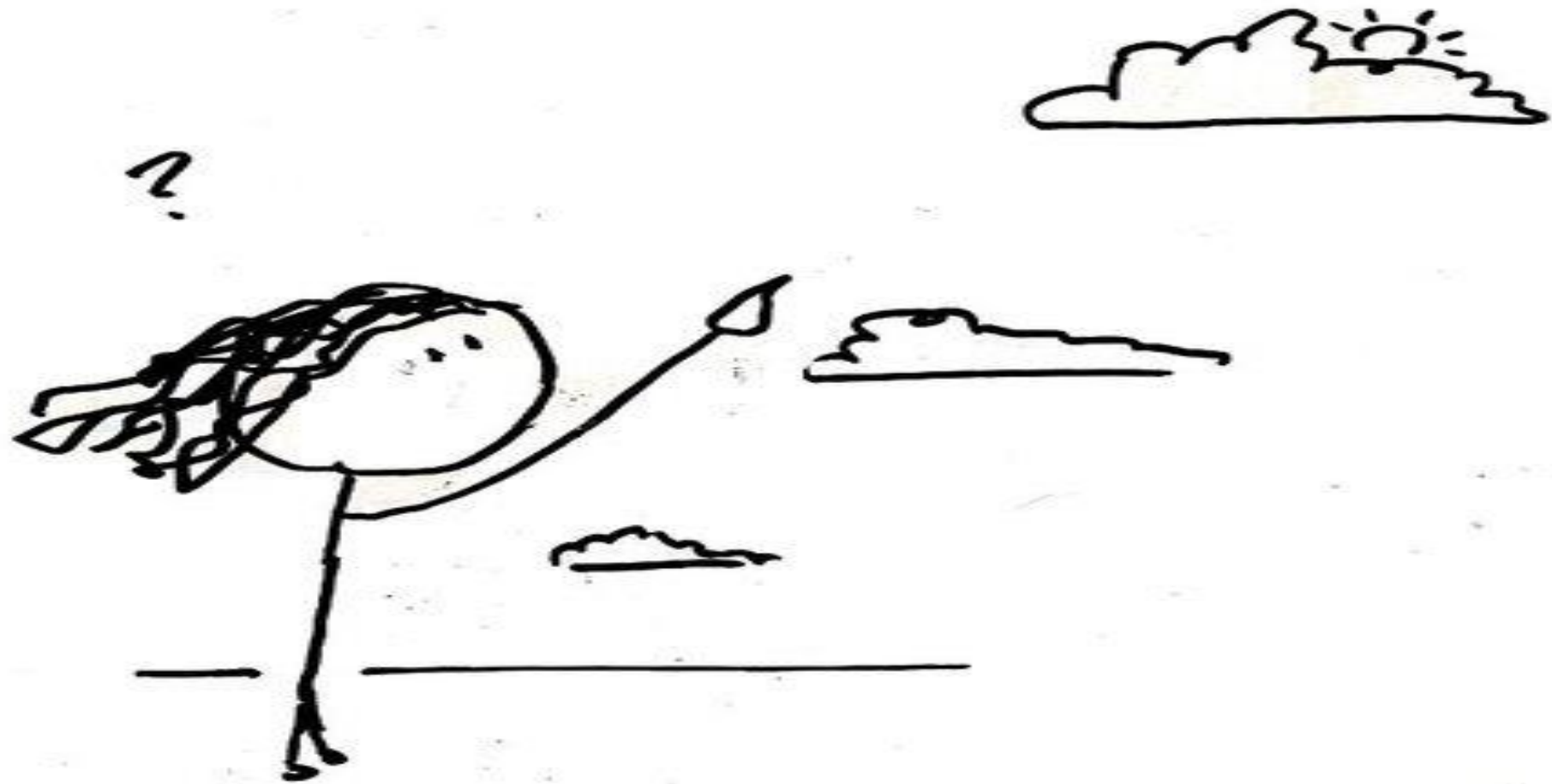
#### 8. Attitude towards Scheduled Castes/Scheduled Tribes/Weaker Sections of Society—

Please comment on his/her understanding of the problems of Scheduled Castes and Scheduled Tribes/Weaker Sections and willingness to deal with them.

## Conclusion

Judicial review of administrative actions is in our constitution based on the rule of law and separation of power. It is an effective remedy against administrative actions and is regarded as the basic features of our constitution, which cannot be abolished. It is the executive who ensures that the government fulfils its duty

Be thou so high the law is above you



DADR

NATIONAL FOOD

BRIBE



# MAGNA CARTA

The Foundation of Freedom  
1215-2015



- ❖ To none shall we deny Justice
- ❖ To none shall we delay Justice
- ❖ To none shall we sell Justice

A wooden-framed chalkboard with the words "Thank You" written in white chalk. The chalkboard is set against a background of horizontal wooden planks. In the bottom left corner, a portion of a red rotary telephone is visible. In the top right corner, a green leafy plant is partially seen. The overall scene is lit with soft, natural light.

Thank  
You