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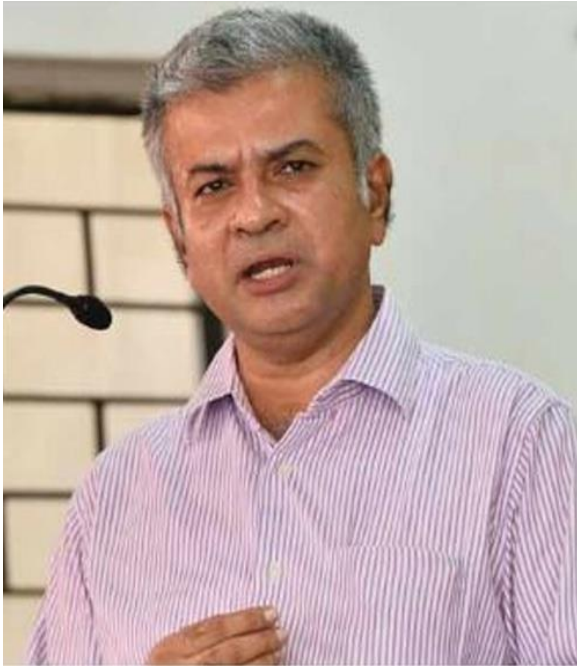
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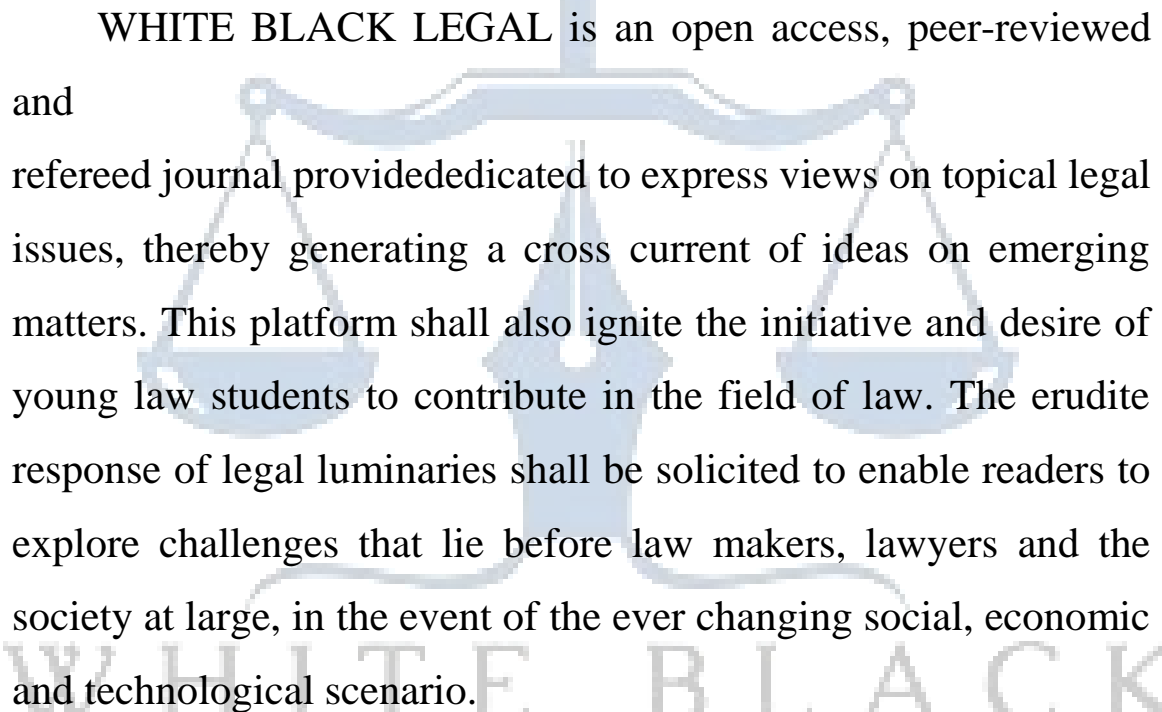


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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

“THE EFFECTS OF PROCEDURAL IMPROPRIETY: AN INDIAN JUDICIAL VIEW”

AUTHORED BY- DEEPSHIKHA RANJAN

Abstract

Since the state is no longer a Laissez-Faire police state and it has become a welfare state which in addition to traditional functions does so many welfare activities for the welfare of its citizens, so as to take care of them from the cradle to grave. Therefore, it has also been necessary that executive organs or of state be equipped with discretionary power. Whenever discretionary power is vested, there is always a strong possibility of such power being misused as it is said “power corrupts and absolute power corrupts absolutely.”

As Lord Denning has observed, if such power is properly exercised, they lead to a welfare state but if abused lead to a totalitarian state. Discretion means the power to make a choice between two or more courses of actions.

The purpose of judicial review of administrative action is to ensure that the executive authority does not abuse its power and that the affected person receives just and fair treatment. As part of their constitutional responsibilities, courts can check whether the legislative, executive, and administrative institutions of the government are acting in accordance with the constitution. Inconsistent actions are considered null and void as a result.

In the Administrative Court, it is considered a type of court hearing where a judge determines whether a decision or action is legal or not. Judicial review is an option when no other means of challenge are available. The purpose of judicial review is to determine if the law has been applied correctly and if the proper procedures have been followed.

I. Introduction

Indian Constitution Article 13 Part III describes judicial review as a basic right. The people's fundamental rights are not to be restricted or deprived by the state or the union. This Article declares null and void any law passed by the State Legislature or Parliament that violates its provisions.

We owe it to our forefathers to protect the constitutional values laid down by the judiciary. In the Directive Principles of State Policy, the Constitution states that the amendments will eliminate the harm caused by the legislative branch and the government administration, as well as provide what the Constitution promises every citizen. The judicial review power makes all of this possible.

Getting to where we are today did not happen overnight; it has taken 50 years, and if anyone thinks it has been smooth, they are wrong. There are many people interested in attacking the judiciary, including politicians, technocrats, academicians, and attorneys. Corrupt practices and criminal contempt are both issues of concern, which are few and far between.

A constitution must contain this fundamental characteristic, which cannot be replaced if additional powers are exercised by parliament.¹ The rule of law is the foundation of democracy, and a court is majorly responsible for its enforcement. In addition to ensuring democracy is inclusive, judicial review ensures accountability for those who wield or exercise public power. Edmund Burke referred to persons in positions of authority as having one big master, the people, as to whom they must account for their behavior.

India, its democracy is a parliamentary type, in which all sections of the population participate in policymaking and decision-making, ensuring a fair representation of all viewpoints and all sections of the population within such bodies. In this kind of inclusive democracy, the judiciary plays an important role. All republican democracies operate on the principles of accountability, and that principle should be recognized by all those wielding power, regardless of what the constitution says.

¹ Dr Justice A.S. Anand Justice N.D. Krishna Rao Memorial Lecture Protection of Human Rights — Judicial Obligation or Judicial Activism, (1997) 7 SCC (Jour) 11; Jain S.N., New Trends of Judicial Control in Administrative Discretion, 11 J.I.L.I., 544, (1969), Jain S.N., Legality of Administrative Discretion, 8 J.I.L.I. 349 (1966).

Several countries written constitutions incorporate the notion of judicial review. Seervai noted in *Constitutional Law of India* that the principle of judicial review is familiar in the Constitutions of Canada, Australia, and India, despite the absence of the doctrine of Separation of Powers in the Indian Constitution in the strict sense. Separation of powers does not appear in the Indian Constitution in its strict sense, but there is sufficient differentiation between the functions of the different organs, that one organ may overrule another².

It is a core characteristic of the Indian Constitution to have the notion of separation of powers, and the power of judicial review is an integral part of it. Whenever a question arises in this regard relating to a State action, the courts must analyze it in accordance with the rule of law. According to Articles 226 and 227 of the Constitution, Judicial Review is vested in the High Courts. The Supreme Court controls every element of governmental or public functions through judicial review, as mandated by Article 32 and 136 of the Constitution³.

It is not without reverence but also with suspicion that judicial review's horizon is expanding, reverence in the sense that it provides universal and potentially unlimited check on the legislative and executive branches of government. Yet there is a possibility that they might overstep the scope of their authority.

Many believe judicial self-restraint is responsible for all limitations on judicial review, except for constitutional and procedural limitations. The choice of structural socio-political values involves a complex, difficult political process, as Justice Dwivedi empathized. There is no way that this court can fulfill that duty. Since there are no express Constitutional rules and no complete proof, the court's decision on structural value will mostly be subjective. The decision will be influenced by our personal preferences. As a result of subjectivism, legal certainty, a necessary component of the rule of law, is weakened.⁴

A second assumption that explains self-restraint is that court decisions on socio-political issues can be subject to subjective judgments. One can observe a considerable divide between the Supreme Court justices when looking at its decisions on fundamental constitutional law issues,

² H.M. Seervai, *Constitutional Law of India*, 3rd ed., Vol. 1, N.M. Tripathi Private Ltd. Bombay, 1983, p. 237.

³ P.P. Rao, "Basic Features of the Constitution", (2000) 2 SCC (Jour) 1; Justice Syed Shah Mohammed Quadri, "Judicial Review of Administrative Action", (2001) 6 SCC (Jour) 1; Soli J. Sorabjee Soli J. Sorabjee, "Decision of the Supreme Court in *S.R. Bommai v. Union Of India: A Critique*", (1994) 3 SCC (Jour) 1.

⁴ *Keshavananda Bharati v. State of Kerela*, AIR 1973 SC 1461, 2008-2009.

including the Parliament's authority to change the Constitution, federal relations, and the President's powers. Clearly, he is expressing his observations. Despite the expansion of judicial review powers, it does not guarantee that the decisions will not be reversed.

When applying the presumption of constitutionality, judges sometimes apply an interpretation method known as "reading down." In the event that one interpretation of a law is consistent with the constitution but another interpretation renders it unconstitutional, the device says the court will tend to favor the former interpretation.⁵ But it all depends on a judge's perspective and values.⁶

For judicial scrutiny, administrative actions are not subject to the same presumption of legitimacy as statutory acts. Despite these restrictions, the courts have opted for caution when a topic is expressly delegated to an administrative authority.

There can be no question about the legality of the exercise of discretionary power unless and until it has been abused, including misuse of power, incorrect use of power, disregarding relevant considerations, and in some cases, unreasonable use of power and failure to exercise discretion in certain circumstances, such as when it has been exercised without appropriate delegation and under dictation.

There are many relevant considerations which should lead to a judicial decision in favor of activism or restraint, including the policy and scheme of the statute, the object of conferring discretionary powers, the nature and scope of the discretion, and finally, the nature of the rights and interests affected. Without carefully considering these considerations, rash activism is likely to be viewed negatively. Judiciary activism, which is the exception rather than the rule, requires solid justification in relation to the control of discretionary power. As long as there are no other sound arguments supporting the intervention, other arms of government may retaliate, further limiting the reach of judicial review.

Investigations of administrative activities are now under the authority of both the HC and SC. Legal review is primarily concerned with protecting the rights of the public and ensuring the

⁵ Per Sinha C.J. In *Kedar Nath v. Bihar*, AIR 1962 SC 955.

⁶ See the observation made by Chief Justice Chandrachud in *All Saints High School v. Andhra Pradesh*, AIR 1980 SC 1042 at 1050.

rights of individuals. Whenever the executive, judicial, or legislative branch violates constitutional values, the Constitution represents a strong safeguard.

The government has overturned many administrative decisions due to legality or procedural errors in recent years. Even constitutional amendments cannot eliminate judicial review, which is a fundamental feature of the Indian Constitution. Upon the instance of the High Courts, it is incorporated into Articles 226 and 227 of the Constitution. The Supreme Court has the power of judicial review under Articles 32 and 136 of the Constitution.

Fundamental rights can be protected through judicial review under the Indian Constitution. These rights are enforced in a procedural manner by provisions in articles 32 and 226, respectively. A state entity that is responsible for upholding and protecting the Constitution and Fundamental Rights is the Judiciary. Various people refer to the Supreme Court as the Constitution's Guardian.

Now, Certain judicial review problems arise, and they are addressed as follows:

Q1. What is Judicial Review, and how does it work? What are its benefits and drawbacks?

Q2. How may Judicial Review be used to defend constitutionally given rights from administrative acts that are infringing on them?

Q3: What is the definition of procedural impropriety?

II. Procedural Impropriety as a ground of Judicial Review

The following are the general grounds for judicial review in India:

1. Jurisdictional Error;
2. A lack of rationality;
3. Procedural inadequacies;
4. The principle of proportionality;
5. A reasonable expectation.

Council of Civil Service Union⁷ was reviewed on the above grounds by Lord Diplock of England. Despite not being exhaustive, these grounds for judicial review offer a solid foundation on which the courts may exercise their jurisdiction.

⁷ Council of Civil Service Union v. Minister of Civil Service [1984] UKHL 9, [1985] AC 374, [1984] 3 WLR 1174, [1985] ICR 14, [1984] 3 All ER 935, [1985] IRLR 28.

In this article, we discuss Procedural Impropriety as a basis for Judicial Review. Rules aren't being followed. An infraction of procedural integrity can be classified into two categories: failing to follow statutory regulations as well as failing to follow natural justice. Thus,

- *Audi alteram partem* (both viewpoints have been heard):

Hence, it implies that both sides have an equal chance of being heard and no one should go unnoticed. Justice will be served to both parties. Listen to the other side is synonymous with this phrase. By enforcing this regulation, everyone is guaranteed a fair hearing. In applying this maxim, the opponent is always afforded an opportunity to respond to the facts alleged against him.

Fairness and justice have been achieved through this principle for those who have been harmed. Most of its uses are administrative in nature. Just and equitable techniques should be used. In a court of law, the individual should have the opportunity to defend himself. It would be unfair for him to make a decision without listening to the opposing side, even if he says what is right. Hearings are essentially a set of rules applied to every stage of an administrative process, from notification to final conclusion.

Natural justice requires that equity is offered to both parties in a straightforward, reasonable, and sensible manner. The Court ensures that both parties are equal and have an equal chance to speak and prove their case.

- *Nemo iudex in causa sua* (There should be no bias, and no one should be a judge in their own cause.):

In a case of apparent prejudice, the maxim *Nemo iudex in causa sua* applies, even if there is none, because justice must be done not just but must also be perceived to have been done. An unfair trial can result in a flawed judgement that can be quashed, challenged in court, or remitted for reconsideration.

The maxim's principle applies not only to cases in which the judge is a direct party to the dispute, but also to cases in which he has a legal or financial interest in which the judges deciding the case should not be influenced by their personal interests, but should avoid the appearance of doing so. This idea is based on the case of *Dimes versus Grand Junction Canal*⁸, in which it was determined that the judgement was made on the basis of interest, and that the decree was thus voidable and had to be reversed. The authority making the judgement must be

⁸ “*Dimes v Proprietors of Grand Junction Canal and others*: HL 26 Jun 1852”, [swarb.co.uk](https://swarb.co.uk/dimes-v-proprietors-of-grand-junction-canal-and-others-hl-26-jun-1852/). <https://swarb.co.uk/dimes-v-proprietors-of-grand-junction-canal-and-others-hl-26-jun-1852/>. (accessed on July 6, 2021).

neutral and act rationally without prejudice, which is a minor need of the characteristic equity. The principle ensures that the adjudicator has no financial or personal stake in the outcome of the case.

The reason for this is that it leads to bias in the rule of law. When you act consciously or unconsciously out of bias, you are acting unfairly towards a certain party or issue. Because of this rule, the judge can be impartial and rely on the evidence presented in the case to make a decision.

In the instance of A.K. Kraipak case⁹ UPSC members were on the selection committee for Chief Conservator, which included the acting Chief Conservator of Forests. The court concluded that the person's interests and the responsibility he was obligated to assume were clearly in conflict, and that the level of judgement reached was against natural justice.

As we return to the topic of procedural irregularities, in *Ridge v Baldwin*, we see an example of procedural fairness that insists on judicial review no matter what body decides the case. A charge of obstructing the course of justice resulted in *Ridge*, Brighton's chief constable, being suspended. The Judge harshly criticized his behavior in spite of dismissing the claims against him. A meeting that concluded his removal from the police department did not invite him to the meeting that terminated him. The decision-making committee offered him the opportunity to speak with them. After that, *Ridge* complained about the committee's actions in the House of Lords, arguing that natural justice had been violated. Because it illustrates the importance of the right to be heard and the right to know what happened to one, this case is significant.

An invalid judgment could result from failure to follow statutory procedures. As a result of the *Bradbury* decision, the 1944 Education Act required that local education authorities would notify the minister before establishing new schools or shutting down existing schools. A public notice followed to allow interested parties to comment on the proposal. Following the Council's failure to fulfill its obligation to notify the public, the plaintiffs sought an injunction. According to the Council, educational chaos would follow if they were forced to follow the rules. Courts did not show much sympathy for this plea.

The courts have long been grappling with the distinction between judicial and administrative

⁹ A. K. Kraipak & Ors. Etc vs Union Of India & Ors. (1969).

activities in an attempt to put the ever-expanding administration of government agencies under judicial control. The two strands of thinking were distinct. As the first lesson underlined, an authority exercising power under strict norms differs from an authority with a broad range of administrative discretion. Second, judicial functions are viewed as just specialized versions of administrative functions, with no meaningful distinction between them.

III. Jurisdictional Principle of Judicial Review

Doctrine of ultra-vires:

Administration of law is governed by the doctrine-ultra-vires. Judicial review depends on it to ensure the actions of the administration are under control. A person performing an ultra-vires action is carrying out the action in a way that goes way beyond the scope of the person performing it. A law's purpose is to restrict an authority's ability to exercise power to what it is authorized to do by law. Due to this, judges must determine whether a delegation is an abuse of power by the administrative authority. If a subordinate legislative authority stays within their power or follows the necessary methods, but their actions are not authorized by the act, the court will declare it ultra virus.

Ultra virus occurs when a subordinate law does not follow the parent's procedural requirements. A distinctive check on the executive has emerged in recent years: procedural fairness. It is important to ensure procedural fairness when reaching a decision. A rational interpretation and application of the ultra-vires doctrine should establish that all things that are ancillary or following from the things that are permitted by the Legislature are not ultra-vires unless specifically forbidden.

It is important to examine judicial power in relation to the extent to which courts can review judgments and actions of administrative authorities and not only those of appeal in review processes. If you are seeking an answer to this question, explore the events and power that have shaped it in the past; the circumstances that have led to its formation; and how far it has progressed.

It has been common for the law of judicial review of administrative action in India to be drawn from common law, with the most prominent characteristic being the control of constraints on public officials' powers by ordinary courts of law. With respect to ultra vires, the law has

become extremely complicated in this case because courts are exploring not only acts clearly outside their purview, but also reasonableness, intentions, and validity.

The statute may compel administrators to follow certain procedures in exercising such power, and the procedures are deemed mandatory rather than advisory for the organization to act ultra-vires. Public entities are required to act by law, and a court can order them to act if they fail to do so. It is also necessary to follow natural justice in decision-making. If a person's right or interest is at stake as a result of an administrative decision, he should be treated fairly.

Due to this, ultra-vires does not only regulate abuses of authority, but also abuses of power, such as when something is done unjustifiably, for the wrong reasons, or by improper methods. A regulatory authority's most important tool is the ultra-vires doctrine. Regulations that are taken without permission are considered this. It is also known as the principle of jurisdiction. As opposed to appeals courts, the court of judicial review examines the manner in which the decision was made, rather than acting as an appeals court.

In the event that an administrative judgment is allowed to be reviewed, it will replace its own, possibly flawed, judgement. Courts should limit their attention to the question of legality. Focusing on the legality of a situation is the court's duty. The goal should be to:

1. Examine whether the decision-making authority has overstepped its bounds.
2. Check to see if it has made a legal mistake.
3. To see if there has been a violation of natural justice rules.
4. Check to see if the decision obtained is one that no rational tribunal would have made.
5. To see how powerful abuse is.

IV. Judicial Review of Administrative Actions in India

A legislative or judicial action is not an administrative action. The paper deals with a specific issue rather than generalizing. As far as gathering evidence or considering arguments is concerned, it has no legal obligations. Policy and expediency guide the decision, which is based on subjective satisfaction. However, it may influence a right, even though it does not determine one. Nevertheless, this does not mean that authority should ignore all natural justice norms when exercising its administrative authority. No matter what the facts of the case, a minimum of natural justice principles must always be followed.

Courts examine the legality of executive branch decisions in the judicial review process. In judicial review, the goal is to ensure the proper usage of power by administrative authorities and the fair treatment of those affected. In such cases, the court does not act as a court of appeal, so judicial review does not focus on the merits of the decision or order, but rather on whether the administrative authority or tribunal acted within its authority and followed the proper procedures.

The courts must intervene when an administrative authority has not exercised its discretion in a proper, reasonable, and lawful manner. Courts may intervene with administrative discretion when there is a failure to exercise authority or an excess of jurisdiction.

Statutory or non-statutory, lawful or unlawful, administrative action can constitute a regulated act. It is statutory that most administrative actions are based on statutes or the Constitution, however, in other situations, they may not be statutory, such as giving non-binding directives to subordinates, which may result in disciplinary action. While administrative actions are generally discretionary and based on subjective satisfaction, they must be conducted fairly, impartially, and reasonably by the administrative authority.

Judicial review is crucial when it comes to dealing with malignancies in power. With the changing socioeconomic realities of the country, though, the Court is emphasizing self-control. Unless a decision is illegal, arbitrary or mala fide, courts should not interfere with administrative decisions. The Supreme Court held in Sidheswar Sahakari case¹⁰ that the Court should not intervene in government policy matters unless they are demonstrated to conflict with the Constitution or to be contrary to the law.

V. Conclusion

Based on the rule of law and separation of powers in our constitution, judicial review of administrative actions makes sense. Even the constituent authority of parliament cannot change this fundamental element of our Constitution. To combat administrative excesses, it is the most effective tool.

Well, there is a good perception among the general public that whenever the government

¹⁰ Sidheshwar Sahakari Sakhar ... vs Union Of India And Ors.

completes any task or acts within discretionary powers granted to it by statutory provisions or the Indian Constitution, it acts in the best interests of the people. In the event that privacy is compromised or private profit is made because of a failure to exercise discretion or abuse of discretion, the Indian Constitution gives citizens the only option of moving to court pursuant to Article 32, 136 or Article 226.

The primary objective of judicial review is to ensure that the legislature's laws are consistent with the rule of law. Judicial review is subject to certain inherent restrictions. Rather than handling administrative tasks, it is better suited to resolving conflicts. While the executive is responsible for enforcing the law, the judiciary ensures that the government complies with the Indian Constitution.

Judicial Review, on the other hand, restricts the government's ability to function. When it overrides any existing legislation, it goes against the constitution's stated limits on power. Judicial Review has the potential to harm the public at large since the judgement may be swayed by personal or selfish intentions.

Instead of a separation of powers, India adopts a separation of functions. The separation of powers idea is not fully implemented. However, the legislature has built a system of checks and balances, with the court having the power to reject any unlawful legislation passed by the legislature.

The courts, on the other hand, operate as custodians of fundamental rights thanks to the power of judicial review. As the modern state's functions have grown, judicial intervention in the process of making and carrying out administrative decisions has grown as well. As part of the idea, the concept of judicial review and judicial activism must be reconsidered.

However, judicial review cannot be used arbitrarily though the courts have the power. An administrative body's decisions should be reviewed and changed by the courts if they have been abused. A judge should act according to the constitution, as does the judiciary and other state-based organizations. Legislation can be invalidated or interpreted by them, but they cannot pass them themselves.

Therefore, courts will not intervene unless the decision is unconstitutional, illogical,

procedurally improper, or not proportional. A simple claim of these grounds is not enough; each one must be supported by evidence. When administrative decisions are formulated properly, there will be no need for the court to intervene. Besides relieving the pressure on the courts, this would also give people a sense of fulfillment and security, which are the cornerstones of a welfare state. Incompatible laws can be declared unconstitutional, but they cannot be annulled by the courts. In other words, courts are only allowed to interpret the constitution.



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