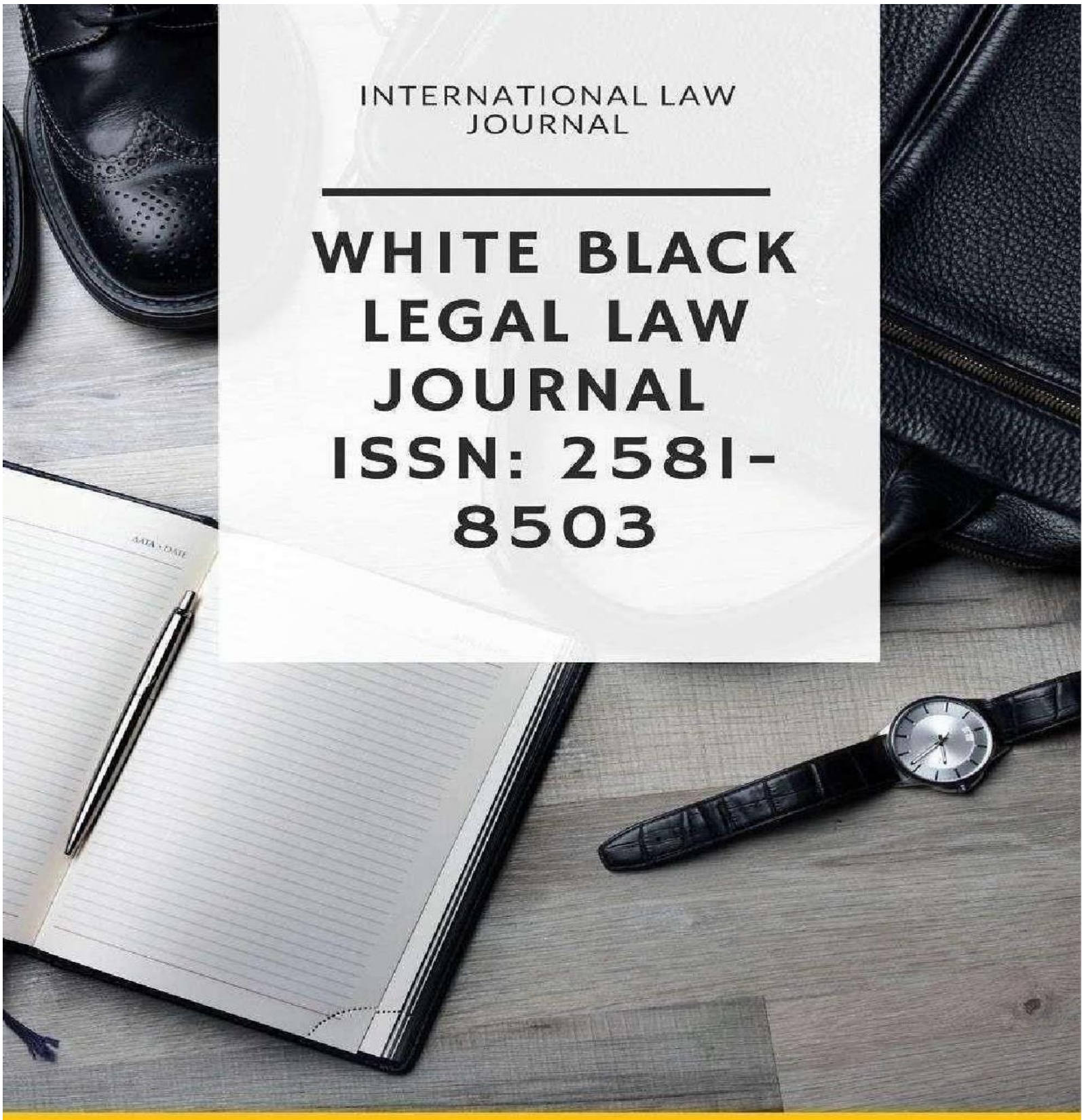

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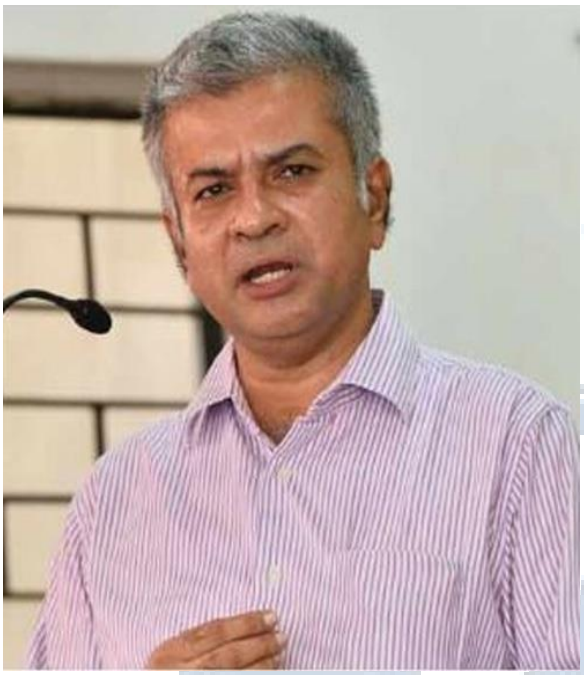

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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 DISCRETIONARY POWERS AND PUBLIC ADMINISTRATION LAW: A CRITICAL EVALUATION OF THE JUDICIAL REVIEW

AUTHORED BY - VRINDA YADAV

ABSTRACT

This essay critically investigates the relationship between public administration discretionary powers and the judicial review processes that monitor their use. Administrative agencies need discretionary powers in order to respond to complicated and changing conditions and carry out legislative requirements. But these powers can also be abused and arbitrarily used, so strong judicial oversight is necessary to maintain accountability, openness, and respect for the law. The paper examines the legislative frameworks that control the use of discretionary authority by public administrators and assesses its extent and limitations. It delves further into the norms and tenets that courts employ when evaluating administrative discretion, emphasising ideas like justice, proportionality, and reasonableness.

The study illustrates the difficulties and achievements in striking a balance between judicial scrutiny and administrative freedom via case studies and comparative analysis. The results highlight the value of judicial review as a vital check on executive authority, guaranteeing that discretion is used legally and in the public good. Recommendations for improving judicial review procedures are included in the paper's conclusion in order to better preserve democratic government and defend individual rights.

I. INTRODUCTION:

The three branches of government that are included in Montesquieu's doctrine of separation of powers are the legislative, the executive, and the judicial. An executive's function in public administration is significant. The legislature has crafted laws, rules, regulations, and legislation that are all indiscriminately administered in compliance with administrative law by the executive, which is the law enforcement body. However, the court upholds the concepts of check and balance

when the executive executes laws pursuant to the legislature's assigned authority.
Administrative law is the corpus of sub-legislative decision-making and process that includes the following components:

The laws that specify the responsibilities and authority of administrative agencies, such as constitutions, statutes, compacts, charters, ordinances, and resolutions.

The policies and guidelines established by executive branches. the judgements, guidelines, and instructions that administrative authorities issue.

Administrative officials conduct hearings and investigations.

The court rulings and guidelines pertaining to everything mentioned above.

However, it is evident that throughout the previous century, the function of public administration was significantly impacted by urbanisation, industrialization, the Great Depression, and two World Wars.[1]

II. PRESENTATION OF THE LIMITED EXECUTIVE IN ENGLISH LAW

Discretion is often quite important in public management. However, discretion ought to be used sparingly and not capriciously. An officer may use administrative discretion by choosing an alternate course of action that complies with the law, agency policy, and particular project goals, as well as his own moral and ethical standards. An analysis of Anglo-Saxon political and judicial systems shows that this kind of discretion has been there for a very long time. There was never a difficulty prior to Magna Carta because the king's power was practically limitless. Nevertheless, once feudalism collapsed, the fight to curtail the King's power became central to English constitutional theory.

[1] polity and governance, available at:https://www.drishtiias.com/pdf/1662622315_Polity%20&%20Governance-II%20(2022).pdf (last visited: 1/5/2024)

Almost four centuries later, when the barons forced King John to sign the Magna Carta, they sought some of the same concessions that would subsequently be included in the William and Mary Bill of Rights. The concept of a contract was crucial in each instance. The primacy of law was made clear and the crown was swapped for the adoption of particular limits. Every year,
Parliament was to meet and no taxes were to be imposed without their approval. It was mandated that men be imprisoned arbitrarily and that no man be found guilty of a crime without a jury trial. Men were supposed to feel safe in their houses, protected from arbitrary search and seizure.[2]

III. SUPREMACY OF THE LAW

As long as public administration is conducted in compliance with administrative law, the rule of law always remains supreme. However, the idea of the supremacy of law is a strong expression of American roots in English constitutionalism. This effectively means that every executive official . Laws govern and constrain the discretion of those in positions below the President. Statutes and constitutions, in turn, express law, which courts interpret and uphold. (In principle, such laws are implemented in accordance with the "letter of the law" and are not susceptible to administrative interpretation or discretion.) We have shown that in reality, such a clean separation is not achievable. However, generally speaking, the division of powers between. There are executive, legislative, and judicial branches to the extent that each is limited in its primary activity to carrying out its fundamental constitutional duties.
Procedural due process is what the notion of supremacy of law literally means. The United States Constitution's Fifth and Fourteenth Amendments provide that no one may be deprived of their life, liberty, or property without first receiving due process. This indicates that certain the law must be applied in a specific case by following prescribed processes. For instance, the rights of those who are accused of a crime serve as an example of procedural due process. These people are entitled to a fair trial by an unbiased jury, legal representation, cross-examination of witnesses, and other rights. In our legal constellation, the independent judiciary is another star.
Law and custom work together to protect judges' independence, impartiality, and status.

Citations for contempt of court are one kind of punishment for anyone who try to sway or predict

[2] Ibid

the court's decision. Lifelong employment and sufficient income to foster personal another is financial freedom. Public opinion has generally been supportive of judicial integrity; many Americans have long maintained, for example, that the Supreme Court is an institution beyond politics. It is crucial to note that administrative action is only legal when it complies with the law. It suggests that those in charge of administrations ought to be able to clearly connect their decisions to power granted by laws or the Constitution. However, the growingly more intense role of public the bureaucracy has been granted extensive legislative authority in administration due to societal needs. As a result, there appears to be an ongoing conflict between the ideal of the rule of law and the realities of contemporary administration. [3]

According to Montesquieu's thesis, an administrative action must be consistent with solid judicial principles, legislative requirements, and constitutional law; otherwise, there is a risk that administrative authority may be exercised arbitrarily. The fundamental component of the Indian Constitutional Law's basic framework is the provision for judicial review. Such an administrative or executive decision may be subject to check and balance under the Constitution's articles 226 and 227 before the High Court or article 32 before the Supreme Court.

IV. DEVELOPING AND IMPLEMENTING POLICY: ADMINISTRATIVE AND DISCRETIONARY AUTHORITIES

It is important to remember that the main duties of the Indian executive branch are the creation and execution of public policy, which is made possible by the parliamentary system of government that governs both the federal government and the individual states. An since the executive depends on the legislature's majority support to exist, tight cooperation between the legislative and executive branches is a necessary feature of such a system. The idea that the Council of Ministers would be held collectively accountable to the Lower House of the legislature is entrenched in the Indian Constitution.

Therefore, the legislature's automatic support for the executive branch's policy-making and administrative endeavours is guaranteed. It is noteworthy that the administrative organ in India does not necessarily require a system to function. Legal authority to take action and carry out a

[3] rule of law, available at: https://www.britannica.com/topic/rule-of-law (last visited: 1/5/2024)

policy. The Supreme Court has clarified this issue and provided examples of how far the executive branch can extend its authority without a law's approval. The programme of publishing, producing, and selling textbooks for use in the state's assisted schools was started by the Punjabi government. Two reasons were raised in opposition to this government action: (i) the State Government lacked the legal jurisdiction or approval to carry out the intended business; and (ii) it violated the Fundamental Rights of the petitioner to continue operating as a school book publisher.[4] Regarding the first query, the Court determined that the scope of the government's executive and legislative branches are equal. Therefore, the executive authority of a State Government encompasses all things falling under the State's legislative domain, and in a similar vein, the executive authority of the Centre is limited to the Center's accessible legislative domain.

According to the Supreme Court's ruling, it might not be feasible to define executive function in all of its contexts. Typically, the executive branch refers to the remaining parts of the government that stay after the removal of the legislative and judicial branches of government. The executive branch is not permitted to violate any laws or the requirements of the Constitution. However, as we have previously shown, this does not imply that laws must already be in place for the executive to operate, nor that the executive's authority is restricted to enforcing existing laws. Furthermore, it was decided that "determining policy and putting it into action are both parts of the executive function." This obviously involves the introduction of laws, the upkeep of the peace, the advancement of social and economic wellbeing, the formulation of foreign policy, and, in actuality, the conduct or oversight of the state's general administration"

However, because the Council of Ministers reports to the legislature, the executive branch is still subject to ultimate legislative oversight. Additionally, the legislature must approve any action that calls for financial expenditures since no funds may be without an Appropriations Act, taken out of the Consolidated Funds. Furthermore, special legislation is required if the government has to carry out a particular activity and needs additional authorities beyond what it already has under regular law.

[4] Khare, Shubham Manoj, Administrative Discretion & Limitation on Administrative Discretion By Article 14 & 16 of the Indian Constitution (September 1, 2009). Available at SSRN: https://ssrn.com/abstract=1465519 or http://dx.doi.org/10.2139/ssrn.1465519

If it turns out that violating someone's privacy is required to allow the government to carry out the relevant activity, then particular laws authorising such a path would be required. In this instance, the Court determined that the government's conduct did not violate the petitioners' legal rights, much less their Fundamental Rights, because they were free to continue printing and selling books as usual. Their books could not legally be required to be used as text books in classrooms. In the Naraindas v State of MP. case, this argument was restated. The facts are similar in the state of M.P[5].

The case established the principle that, if it does not violate anyone's legal rights, the executive may conduct administrative action without a special statutory penalty throughout the whole territory coming under the relevant legislature's legislative competence. A governing body might hence, without particular law for the purpose, participate in commerce, enter into a treaty with other countries, make appointments, promote people to higher administrative posts, set seniority, and open stores with reasonable prices. An executive decision which, on the other hand, functions to adversely impact any person's legal right, such as personal liberty, must be supported by legal authority. Furthermore, it must be underlined that an authority cannot carry out a legislative or adjudicatory role absent legal authorization, It is limited to acting in an administrative capacity.

V. ADMINISTRATIVE PROCEDURES COMPARABLE TO COURT CASES

Researchers and scholars who study administrative law often possess knowledge and expertise in foundational subjects like corporate organisations, contracts, and torts. He is conversant with the idea of a court "case or controversy," the jargon employed in the legal context, and the steps involved. He is also aware that learning a new topic required him to become acquainted with unfamiliar concepts and vocabulary. In these ways, administrative law is not any different. However, administrative law is much easier to understand than other courses due to its resemblance to legal principles and procedures. "It is important to acknowledge that at times, particularly in the early stages of the federal administrative tribunal's existence, the Courts were convinced to impose judicial restrictions on the administrative procedure," even though the

[5] State of M.P. V. Bharat Singh

Supreme Court acknowledges that complete administrative absorption of judicial processes is not only impractical from a practical and constitutional standpoint, but also superfluous. Administrative agencies have the authority to control the scope of investigations when they exercise that authority, or they can commence the inquiry themselves. The procedural, trial, and review procedures that have developed out of courts' experiences and histories cannot be wholesale transplanted due to these distinctions in origin and purpose.

Consequently, the purpose of this analysis is just to highlight specific legal parallels in this area of law, not to argue that these legal parallels exist or ought to exist in the form that is being examined here. Despite the fact that administrative law is predicated on the idea of a fair trial, Indian courts are same adheres to fair trial trends. Let's examine how the natural justice concepts of "No man can be judge of his own case" and "No man can be convict without being heard" are used in court procedures and administrative processes.[6]

A number of recent cases from the US Courts of Appeals show that judges are becoming more inclined to reverse administrative agency judgements for reasons that don't seem to have anything to do with the decisions' actual merits. Rather, the focus has been on changing the processes by which the agencies make judgements in specific circumstances. The historically, administrative agency decisions have been subject to oversight by federal courts. Traditionally, courts have acted to resolve legal disputes by interfering only seldom and then only to overturn administrative decisions that were made on the basis of sound reasoning. [7]

But in the lack of legislative guidance, the courts have recently shown a greater willingness to take on a supervisory role over the administrative decision-making process rather than the final result. A crucial part of this oversight is that the courts are demanding a change in the balance of power between the parties taking part in the administrative process. The judicial methods for forcing modifications to the agency's decision-making process, the impact of these modifications on the administrative agency's capacity to operate as a decision-making body, and the likelihood that

[6] M.P. Jain and (Late) S.N. Jain; Principles of Administrative Law; (1986); Ed: 4th ; Pub. Bombay N.M. Tripathi Pvt. Ltd. P. 319

[7] Muskrat V. United States (1911) 219 U.S. 346, 55 L. Ed. 246, 31 S. Ct. 250

these changes will be implemented are all covered in this note, innovations will drastically alter the administrative process's overall substantive outcomes.

The High Courts have the same authority to use judicial review to examine the Administrative Authority's decision-making authority. It may be used in Writ Petition, Sue Moto, and PIL proceedings. Additionally, the Supreme Court and High Courts have established the reliable judicial principles serve as guidelines for the administrative authorities in a variety of situations to uphold the rule of law.

VI. THE JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS AND DECISION-MAKINGS WITHIN THE CONSTITUTIONAL FRAMEWORK

Roman Laws and the United Kingdom's Administrative Law served as the models for the judicial review system and decision-making authority. The development of German and British administrative law has been bolstered by Indian courts, where the Ombudsman's provisions serve as a check and balance on administrative acts. The Indian Constitution guaranteed stronger protection for individual rights and gave the courts more authority to investigate governmental failures. During its tenure as a constitutional court, the Indian judiciary shown enormous potential in upholding the liberties and rights of the people.

The people and the executive branch are connected through the Court. Every citizen in our nation has the right to contest the administrative action or judicial review of decisions made. Article 32 and 226 of the Constitution provide the harmed citizen of our nation with a remedy in the form of Writ Petitions filed before the Supreme Court and High Court challenging the constitutionality of administrative measures. For the purpose of enforcing basic rights, the Supreme Court or High Court may issue the necessary directives, orders, or writs, such as those pertaining to habeas corpus, prohibition, quo-warranto, and certiorari of the resentful party, as protected by Article III of the Constitution. The Supreme Court has been established under this article to safeguard and defend basic rights.

Every High Court is authorised by Article 226 (1)[8] of the Constitution to grant writs, orders, or instructions to any person or authority, including the government in proper circumstances includes (writs for the enforcement of any rights granted by Part III and for any other purpose, including those in the form of habeas corpus, mandamus, prohibition, warranto, and certiorari, or any combination of them). As a result, the courts have broad discretion under articles 32 and 226 of the Constitution when it comes to awarding appropriate remedies when the facts of the case so dictate. In addition to issuing writs, the courts have the authority to issue whatever directives or orders they see fit believe appropriate under the circumstances to provide the petitioner with the right remedy. Injunctions or declarations may also be appropriate remedies, if such is the case. The petitioner would not be dismissed based just on the ruling that the right writ or instruction must be sought for.

According to the Supreme Court, judicial reviews are administrative actions that the courts would do in accordance with the core ideas of their prerogative writs. The extent of judicial review in India under Art., however, is determined by a comparative analysis of English and Indian law 32 and 226 are comparable to the prerogative writs system in England.

Only in cases when an administrative action violates the petitioner's basic rights may article 32 of the Constitution be cited. The Court would only address the issue of basic rights infringement and not address any other issue. It cannot be used until the petitioner's basic rights are violated, even in cases when an administrative action is unlawful.

Therefore, under article 32, which provides protection against the imposition and collection of taxes, a petition just challenging an illegal income tax collection is not maintainable, unless it falls within article 265 (which is not a basic right)29. However, in the event that an unlawfully imposed tax violates a fundamental right, article 32 of the Constitution provides a remedy. [9]

Article 226 of the Constitution offers a completely discretionary remedy, meaning the petitioner cannot claim it as a matter of right. The High Court may refuse to provide the remedy if it

[8] ART 226 of the Indian constitution
[9] Romesh Thapper V. State of Madras A.I.R. 1950 SC 124

determines that the injured party is entitled to an acceptable alternative remedy. This remedy cannot be claimed as a matter of right; instead, the High Court must use its discretion based on well-established principles and judicial considerations, unless it is convinced that the typical statutory remedy will be too difficult or time-consuming to provide reasonable and prompt relief. When awarding these reliefs, the High Court need to use extraordinary caution, particularly in the event that criminal investigations are ongoing. However, the provision stating that it may decline to give any writ in cases when an alternative remedy is available is only a discretionary rule rather than a legal requirement 32. There are several examples of writs that have been granted despite the fact that the injured party has another sufficient legal option. A significant amount of judicial power to monitor administrative action is found in article 226 of the Constitution, and each year thousands of writ petitions are filed in the High Courts contesting various administrative actions. Being a clause of the Constitution, the scope of article 226 cannot be limited or reduced by law, and even in the event that a statute were to make a declaration, an administrative action might still be taken to contest it. [10]

Articles 323A and 323B were inserted to the Constitution by the Constitution (Forty-second Amendment) Act of 1976, allowing parliament to create special courts that would take on a significant portion of the High Courts' duties. Parliament passed the Administrative Tribunals Act of 1985 in order to the situations involving government employees. Under articles 226 and 227, the High Court's authority over these Tribunals had been removed.

However, by ruling that paragraphs 323A and 323B (3) (d) of the Constitution are invalid, the Supreme Court has reinstated the authority of the High Court under articles 226 and 227 of the Constitution. The Court found that the authority of judicial review of the High Court under article the fundamental elements of the Constitution, which cannot be altered or removed, are outlined in Articles 226 and 227. [11]

[10] Basappa V. Nagappa A.I.R. 1954 SC 440
[11] State of Bombay V. United Motors A.I.R. 1953 SC

CONCLUSION

A careful balance between judicial monitoring and administrative autonomy is revealed when discretionary powers in public administration are assessed through the prism of judicial review. Discretionary powers are essential to public administration's efficient operation because they give agencies the adaptability to meet a wide range of changing social requirements. Unrestricted discretion, on the other hand, increases the possibility of arbitrary judgements and power abuse, which emphasises the need for judicial review as a safeguard for the rule of law and individual rights.

The important check that judicial review provides makes sure that discretionary powers are used within morally and legally acceptable bounds. The concepts of rationality, proportionality, and justice offer a systematic framework that courts use to evaluate the validity of administrative acts. In addition to fostering accountability and openness, this supervision also strengthens public confidence in administrative institutions.

The analysis demonstrates the advantages and disadvantages of the present court review procedures. Even when overt abuse of discretion is successfully reduced by judicial review, maintaining the right amount of scrutiny without sacrificing administrative effectiveness is still difficult. Review criteria must be continuously improved in order to handle the ever-evolving difficulties in public administration, as a result of the dynamic interaction between courts and administrative authorities.

To sum up, strengthening judicial review procedures is crucial to guaranteeing that discretionary powers are applied sensibly and in accordance with democratic ideals. This balance may be strengthened by improving judicial review procedures through more transparent rules, more judicial training, and enhanced public participation. This would eventually preserve the integrity of public administration and defend people' rights.

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