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Judicial scrutiny of administrative action: an analysis

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Abstract
Since ancient time it is being realized that individual liberty and freedom was the ends of all Governments but to ensure that, efficient administration was also an equal necessity. In order to have the first, certain minimum requirements had to be fulfilled by Government. These were that every person should be under the law, that there should not be monopoly of public power or, in other words, there should be constitutional checks and balances among the three major Governments Organs. On the other hand, in order to safeguard the efficiency of Government, Civil and Criminal responsibility of public officials had to be very carefully regulated as any sort of laxity on the part of government in this regard would certainly aggravate the miseries of the governed.

Keywords: Responsibility**,** Organs, monopoly, administration

Introduction
The position mentioned above is not so easy as numerous developments have been taking place in the area of administration. These development impinged on the traditional theory of the rule of law and produced a very unsatisfactory stage of affairs. Many of the traditional doctrines of law which went well till then became out of place now and produced friction. Certain rules of interpretation of statutes and the difficult of renouncing the conception born of the doctrine of separation of power were felt by the administrative to place unnecessary obstacles to the smooth implementation of legislative policies through administrative action.

In CCT v. Shukla & Bros. Swatanter Kumar, J. Observed that:

"the order of an administrative authority may not provide reasons like a judgement but the order must be supported by the reasons of rationality".

In Mohd. Shahabuddin v. State of Bihar'- Dalveer Bhandari J. Observed that:

"The Court like other institutions also belong to the people. They are as much human institutions as any other. The other instruments and institutions of the State may survive by the power of the purse or might of the sword. But not the courts. The courts have no such means or power. The courts could survive only by the strength of public confidence. The public confidence can be fostered by exposing courts more and more to public gaze."

On careful concluding examination of the working of the administration and the Court, we find that the following conceptions, judicial assertions and legitimate expectations are deeply influencing the national life.

Review of Literature
The direct and immediate effect of the above noted conceptions, judicial assertions and expectations falls on the individuals. Consequently, the grievances of the individuals are becoming more and more vocal. The mushroom growth of State's instrumentalities and agencies created and unequipped with very wide powers of administration with a view to subserve the common good are tarns pressing human liberty and dignity to a great extent. The capital problem of democratic countries is to keep the authority of the State in due proportion to the reasonable liberty of the individuals.
While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in the matter of policy or to sermonize any matter which under the Constitution is within the sphere of the legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.

In Tata Cellular v. Union of India, the Supreme Court observed that, the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favoritism.

Main Grounds for the Intervention

The main grounds for the intervention of courts in administrative action are contained in Rex V. Board of Education Wherein Farewell, L.J., after pointing out that the principles on which judicial control of administrative action was exercised was a great importance because of the parties if Parliament to refer many question of great public concern to Government Departments that learned judge added:

"such department when so entrusted becomes a tribunal charged with the performance of a public duty and as such amenable to the jurisdiction of the High Court, within the limits now well established by law. If the tribunal has exercised the discretion entrusted to it bonafide, not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the Courts, cannot interfare, they are not a court of Appeal from the tribunal, but they have power to prevent the international usurpation or mistaken assumption of a jurisdictions beyond that given to the tribunal by law, and also the refusal of their true jurisdiction by the adoption of extraneous considerations in arriving at their conclusion or deciding a point other than that brought before them, In which cases the Courts have regarded them as declining jurisdiction. Such tribunal is not an autocrat tree to act as it pleases, but is an inferior tribunal subject to the jurisdictions which court of King's Bench of centuries and the High Court, since the Judicature Acts, has exercised over such tribunal."

The above passage on analysis gives three main grounds. The First is abuse of the power granted. The Second is committing an illegality in the course of the exercise of the power, and the Third is the exercise of the power our subject matter, or person at a time not converced by the grant of power.

The Excess of Power or Ultra Vires

Statute enacted by the Legislature is the main source from which an administrative authority derives its power of administration. Thus it is a plain principle that if an authority on whom the power of administration is conferred, acts within the scope of authority conferred by the statute, is said to have acted within the limits of power are valid and enjoys immunity from the courts process. But in case an authority acted in excess of power conferred on him, the courts will certainly upset it. When does an authority is said to have acted beyond jurisdictions? Answer to this question seems to be that when an authority does an act for which it is not authorities by the statute, is said to have acted beyond jurisdiction. A few cases mentioned below illustrate the point.

In Bar Council of Delhi v. Surjeet Singh. 3(4) of the Advocates Act, 1961 was in question. Under this section the qualifications entitling an advocate to vote at an election, or for being a candidate for membership of the State Bar Council, have to be prescribed by the State Bar Council of India. This cannot be done by the State Bar Council. If a rule for this purpose is made by the State bar Council, it cannot be valid even if it is made by the Bar council of India for (i) approval of an ultra vires rule cannot validate it; (ii) making of a rule and giving approval to a rule are two distinct concepts

Error of Law

Error of law apparent on the face of record is recognized ground for the issue of certiorari. In R V. Notthamberland Appeal Tribunal, it was held that the decision of an administrative tribunal can be quashed for error apparent on the face of the record. Though there is a view that this was the risk instance of a common law certiorari issued in England to a tribunal which was not a court strict sensu, the decision is generally accepted now as necessary development of common law.

Besides *"error of law"* and *"error of law going to the jurisdiction"*, there is also a third category. *viz "Patent error of law"*. A decision of an authority can always be quashed if there is an error of law apparent on the face of the record, even though the error is non-jurisdictional. Theoretically neither certiorari nor prohibition is issuable merely on the ground that the decision of an authority involves an *"error of law"* which is neither *"Jurisdictional"* nor *"patent"* but *"latent"*. However, with the blurring of the distinction between an *"error of law"* and *"Jurisdictional error"* and also with the expansion of the concept of *"patent" error of law* the scope of mere term of law has been very much narrowed down. Whenever a court wants to interfere, it can characterise an *"error of law"* as either *"jurisdicational"* or *"patent"*.

Jurisdictional Facts

The jurisdiction of an authority depends upon the existence of certain facts or condition. The question as to whether such fact or conditions exits are called 'collateral' or jurisdicational questions. Where jurisdiction is contingent on a legal provision and such a legal provision is a jurisdictional question.

The basic principle of judicial review is that courts don't interfere with the decision of a tribunal on the ground that its findings of fact or interpretation of law is wrong. There are exceptions to it: (a) Where jurisdictional question is involved, court can reassess facts or reinterpret the law, (b) Where the finding affect of the tribunal is perverse (c) where the tribunal has committed an error of law apparent on the face of the record. The tribunal has to decide first whether such facts or conditions exist. It can assume jurisdiction only if they exist. If a tribunal has jurisdiction, upon the determination of a collateral question and if it wrongly decides such question, its proceeding shall be quashed by certiorari on the ground of lack of jurisdiction. When the jurisdiction of the court of tribunal depends upon the existence of some collateral fact, it is well settled that it cannot by a wrong determination of such question, give to itself the jurisdiction which it otherwise would not possess. However, administrative tribunal alone is competent to decide such preliminary questions and the Courts usually do not interfere with it is wrong. It is only when it has decided the question one way or the other that a writ of certiorari may be asked for on the ground that the question has been decided wrongly.

Conclusion

Court occupy key position in India as regards judicial remedies against action. Since we adopted the concept of

welfare State. It became exceedingly necessary that the rule of law and conformity to the provisions of the Constitution are maintained and the multitudious administrative authorities are brought under the control of Courts of law. In the exercise of their statutory, nonstatutory powers, it has to be seen that they are not violative of any of the mandates of the Constitution.

Thus when a person manipulated facts in order to get a decree by a court to defeat the ends of justice in such a situation petition under Article 32 is maintainable. While exercising jurisdiction the court will not go into questions of policy of the State which is required to be dealt with by the legislature. On this basis the Court declined jurisdiction where the personal laws of Hindus, Muslims and Christians were challenged as violative of fundamental rights of women. The Court also cannot issue direction which would result in amendment of government existing policy. Existence of alternative remedy does not affect the jurisdiction of the Writ Court, but it would be a good ground for not entertaining the petition.

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