International Journal of Leading Research Publication
IJLRP

© IJLRP | ISSN (O) - 2582-8010
November 2021 | Vol. 2 Issue. 3
www.ijlrp.com

JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

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ABSTRACT

As the word itself says, review by the judiciary of statutes, administrative actions, Ordinances, Orders, bye-laws, rules, regulations, notifications, customs or usages to check that whether or not they are in consonance with and doesn't curtail the provisions of Constitution and declare them void to the extent of its inconsistency if they are derogatory with Constitution.

The constitution or any statute for that matter doesn't provide for any hard and fast definition of judicial review, though it is a concept envisaged deep within the Indian jurisprudence and lex loci.

Keyword: *judiciary, law, article, courts, legal, authority, constitution, writs*

1. INTRODUCATION

Now the obvious question which may arise in one's mind is that the power of judicial review and the provisions of Constitutions which the judiciary has been entrusted to protect are made by Parliament and therefore, they can be amended too by Parliament as per its whims and judiciary will be left helpless.

That's not quite the case because in State of West Bengal v. Committee of Protection of Democratic Rights it was held by SC that fundamental rights (including Article 32 which is SC's powers to issue writs) enshrined in the Constitution are inherent and constitute the basic structure of the constitution which can't be amended by statutory and constitutional provisions. Also, in Kihota v. Zachillhu, it's been established by the Apex court that Judicial review under Article 32 and 226 is beyond the ambit of amenability.

2. WHY IS IT REQUIRED

India is a democratic country, and the essence of democracy lies in concepts like Rule of law, Principle of Natural Justice, Separation of Power (and many other principles) and these principles have been captured in the Indian Constitution under various provisions like Article 14, Article 22, Article 50 respectively.

The Supreme Court (SC) is the guardian of the Constitution in the sense that remedies against any unconstitutional act and infringement of Fundamental Rights by any part of the government can be enforced by invoking the jurisdiction of SC and thus, in order to protect the Constitution and its subjects from whims and fancies of other organs of the government, constitution's makers equipped judiciary with the power of judicial review so that it can a check on other two or organs and the balance of power can be maintained.

Thus, the power to review the action of administrative authority has been envisaged in appellate courts under Article 13 (law inconsistent with Part III are void), Article 32 (power of SC to issue writs), Article 132 (appeal against HC order in SC), Article 226 (power of High Courts to issue writs), Article 227 (superintendence of High Court over District courts and tribunals), so that the actions of executive bodies can be confined within the Constitutional limits.

3. DIFFERENT APPROACH FOR JUDICIAL REVIEW

Along with many other techniques availed to individuals to file grievances against unlawful administrative actions to the judiciary, writs is one of the most famous methods used by the public to seek redressal from the judiciary. Other methods for ensuring that administrative actions live the test of the constitution are:

- Appeal: Filing an appeal to SC against the decision of HC (A.132);
- Judiciary's opinion: Administrative bodies are allowed to seek judiciary's opinion an certain actions;
- Injunctions and declarations: Injunctions and declarations can be granted by judiciary under Specific Relief Act, 1963;
- Compensation: Compensation Under various statutory provisions and constitutional provisions, damages (monetary compensation) can be claimed against unjust administrative actions; and

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November 2021 | Vol. 2 Issue. 3
www.ijlrp.com

- Contractual obligations: If there is a breach of contractual obligations between the Government and individual, then judicial and quasi-judicial mechanism is in place to move to.

4. WRITS

The literal meaning of writ as per Cambridge dictionary is "a legal document from a court of law which orders someone to do something or not to do something." Article 32(1) of the Indian Constitution provides that it is the fundamental right of every citizen to move SC for the enforcement of their fundamental rights by initiating appropriate legal proceedings and SC under A.32(2) has the power to issue writs, orders and directions for the same purpose. As Article 32 falls under Part III of the Constitution, it is also a fundamental right known as "Right to Constitutional Remedies". In Assam Sanmilita Mahasangha v. Union of India, this right has been described as "heart and soul" of the Indian Constitution, as without this right, all the other fundamental rights are nugatory because ubi jus ibi remedium, meaning, where there is a right, there is a remedy and without remedy all the rights are vain.

Similarly, under Article 226(1) of the constitution, HCs have the power to issue writs to the concerned person or authority, and subject to the facts, even to the government falling within their respective jurisdictions for the enforcement of rights specified in Part III of the Constitution. It became clear in the case of Aruna Ramchandra Shanbaug v. Union of India & Ors. that just like SC, HC also has the power to issue orders and directions.

1. **Habeas Corpus;**
2. **Mandamus;**
3. **Prohibition;**
4. **Quo Warranto; and**
5. **Certiorari.**

The word "in the nature of" has been emphasised by the author because it is important to understand that though the concept of writs has been imported in Indian constitution from England, but it is not Indian courts are not bound by all the technicalities of this English concept. Judiciary construe them as per the requirement and interest of the nation keeping in view the underlying principle of "ensuring constitutionality" of administrative actions and statutes. A similar view has been expressed by SC in T.C Basappa v. T. Nagappa case:

Habeas Corpus

The literal translation of this Latin term is "you must have the body". This writ provided a quick and effective remedy to the citizens against illegal and unlawful detention. By this writ, courts order the person or authority who has detained a person, to present such person in front of the court so that court can delve into the authenticity, jurisdiction and merit of such detention. The main purpose of this writ is to equip the judiciary to protect fundamental rights of detenu, envisaged in Article 21 (Protection of Life and Liberty) and Article 22 (Protection against illegal detention) of the Constitution.

A detention can be unlawful if:

1. If it is not in consonance with the statutes.
2. If the due procedure established by the statutes is not followed while detaining a person.
3. There is no authority or law to detain such person.
4. The law which provides for such detention is in derogation with the constitution; and
5. If such law is ultra vires on the part of the legislature.

Author would like to highlight that writ of Habeas Corpus can be filed against the State as well as against the individual. Here is the sample of writ of Habeas Corpus drafted by author against an individual for detaining his daughter to force her to marry his paternal uncle.

Mandamus

It is a command issued by the court to an authority instructing it to perform or not to perform a task which it is legally bound to do. The writ of mandamus can be issued to any kind of authority for any kind of matter like: administrative, legislative, quasi-judicial, judicial. It can also be issued to undo a wrongful act which is against the law.

The main element to grasp here is, a writ of mandamus can only be issued when the authority in question owes a legal duty to the petitioner. Writs can't be issues when there is no such legal and public duty. HCs can't issue writs under A.226 for make and modify laws to the law-making authority.

Quo Warranto

The meaning of this phrase is, "what authority do you have?". This writ calls upon the holder of a public office to prove to the court that under what authority he is holding the public office in question. This writ tends to provide protection against the executive action of illegal appointments in public office, but also to protect the

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November 2021 | Vol. 2 Issue. 3
www.ijlrp.com

public from being deprived of the office they are entitled to.

The writ can only be issued in respect of the office of public character and not private. The following ingredients are required for court to issue quo warranto writ:

1. The office in question shall be of public nature, created under the Constitution or some other law; and
2. The person holding such office is not legally qualified to hold such office and his holding of such office is in clear infringement of laws.

PROHIBITION AND CERTIORARI

These writs can be issued to anybody, independent of the nature of the function they discharge, if there is merit in the grounds presented in the writ petition. A writ of certiorari can only be issued by appellate courts to inferior courts and tribunals who to transmit to the courts the record of the proceedings and decided or is due for scrutiny and if deemed fit, then to quash it too.

A writ of certiorari is usually exercised when an inferior court has acted in ultra vires manner. A few situations can be:

1. Acted without any jurisdiction or presumed jurisdiction where it didn't existed.
2. Transcending its jurisdiction.
3. Acting in disregarding the due procedure of law and rule of law or acting against the principle of natural justice where there is no procedure explicitly laid down thus leading to injustice.

Both certiorari and prohibition writs are issued on the same grounds, but the stage of proceeding in which they are issued is different. Certiorari is issued when the body in question has already given the verdict and the appellate court wants to quash that verdict but prohibition is issued when the matter has not yet been decided by the body in question and courts want to prohibit it from deciding it as it doesn't fall under its jurisdiction. This is also the only difference between a writ of certiorari and of prohibitive nature.

AGAINST WHOM WRITS CAN BE ISSUED

Article 12 of the Indian constitution provides the definition of "the State" and from the above discussion, it is clear that fundamental rights can be enforced against the State only. Thus, we can comprehend that writs, which are an instrument to enforce fundamental rights can be issued against the bodies and Institutions included in the definition of the State under Article12.

This question of who a subject of a writ can be is important to allow when it comes to the writ of mandamus and certiorari and prohibition. The writs of habeas corpus and quo warranto are in their own league as they deal with issues of such a bit stringent nature. Habeas corpus can be issued to anyone whether it is a public official or private individual, whoever has detained someone unlawfully. Similarly, quo warranto can be issued to any public officer to check under what authority he or she is holding such office, but not to a private individual. The complication comes in the case of certiorari and mandamus as it is not clear to whom the judiciary can order to perform or not to perform certain functions and to whom it can order to leave certain cases out of its paws.

Government: This includes the administrative bodies at state and at national level. To be more precise, it includes:

- President;
- Central Government;
- States' Government;
- Governor;
- Government departments like: Income Tax Department , Sales Tax Department , etc;
- Institutions run by the Government which have no separate legal entity; and
- A court under for its rule-making and administrative action only and not for judicial actions, as judiciary merely decides the cases and doesn't execute the verdict given by it.

Local Authority: Referring to Schedule VII, List II, 5th Entry, the local authority includes

- Municipal Corporations,
- Improvement Trusts,
- Districts Boards,
- Mining Settlement authorities, and
- Other Local Authorities for the purpose of local self-government or village administration.

Other authorities: The functions of such bodies are mainly exercising administration, quasi-judicial; and legislative functions within set boundaries. As per their structure, all such bodies can be included in the following four categories:

- Bodies directly incorporated by making a separate statute like LIC (under Life Insurance Corporation Act,

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November 2021 | Vol. 2 Issue. 3
www.ijlrp.com

1956 or like Air Corporation (under Air Corporation Act, 1953).

- Bodies established under the provisions of statutes like government building warehouses under Warehousing Corporation Act, 1962 or government constructing roads under Road Transportation Corporation Act, 1950.
- Bodies registered under statutes like private as well as public companies registered under Companies Act, 2013 or co-operative societies/societies registered under Co-operative Societies Act/Societies Registrations Act.
- Bodies registered under one statute but regulated by other statutes as well.

Statutory bodies: Statutory bodies constituted to discharge statutory functions are subject to writs for the functions they are established for. The test which the author has inferred by analysing various SC's cases of the past is "Who has set-up the body in question?". If it is set-up by the government, then without a shred of doubt it is statutory bodies.

Non-statutory bodies: This included non-statutory government companies, educational institutes and cooperative societies. A private institution which assists the state in fulfilling public duty is amenable under Part III of the constitution and thus subject to writs. Ex: A government company is very much similar to a statutory government undertaking; the only difference is that a government company is registered under the statute rather than being incepted under the statute.

This organisational structure difference is not much substantial and is merely on-paper. Their functions are almost alike. Even, a government company is much more under government control as compared to a government undertaking. That's why the government is now establishing more companies than undertaking.

LOCUS STANDI (LEGAL STANDING) FOR FILING WRITS

A writ of certiorari, prohibition and mandamus can only be filed by the aggrieved person, that is, the person whose rights has been infringed and now he is moving the courts to enforce those rights. But that is not quite the case when it comes to the writ of habeas corpus and quo warranto.

Speaking of quo warranto, an individual can indeed file the petition against the appointment to a public office, even though his right has not been directly infringed. The similar view has been taken by HC of Rajasthan, where they have mentioned that "the person aggrieved is dispensed to a great extent but it is not most certainly not abandoned altogether".

Similarly, a writ of habeas corpus can be filed even by someone who is a relative, friend or even total stranger to detenu and exclusively by detenu. There have been multiple cases like Sunil Batra v Delhi Administration, Sheela Barse v State of Maharashtra and Veena Sethi v State of Bihar where the courts have entertained the habeas corpus by friends of detenu, journalists and even from social activists.

PUBLIC INTEREST LITIGATION

Public Interest Litigation (PIL) is also a writ but filed for protecting and preserving the interest of public unlike the normal writs where there is some vested interest of the petitioner in the filing of the writ petition. Ex: Violation of human rights, unconstitutional conduct of executive against public at large, infringement of religious rights or any other fundamental rights, etc. If the court finds out that there is behind filing a PIL, there is some underlying vested interest of the petitioner, then the court declares that PIL as frivolous and imposes cost (penalty) on the petitioner.

The main difference between a writ and a PIL other than the matter of public interest is that the filing procedure for PILs is less expensive as compared to writs and locus standi is eased in PILs in comparison with normal writs.

Some of the most commendable work in the field of getting relief for the public via PILs have been done by M.C Mehta and Ashima Mandla. Some of these PILs happen to be landmark cases like Bhopal Gas Tragedy case, Taj Trapezium case, Community Kitchen case, etc

LIMITATIONS OF JUDICIAL REVIEW

Article 32

It is of paramount importance to appreciate the fact that Article 32 can only be invoked when there is an infringement of provisions of Part III (fundamental rights) of the Constitution.

There have been instances like in A.K. Gopalan v. The State of Madras, where the court has struck down the provisions of the Preventive Detention Act, which restricts the detenu on the pretext of prosecution from telling the courts the grounds of his detention. Due to this, the court was unable to scrutinize the grounds of detention and thus can't ascertain whether the fundamental rights of the detenu has been infringed or not making courts power

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November 2021 | Vol. 2 Issue. 3
www.ijlrp.com

under A. 32 nugatory and illusory, hence court struck down the said provision by declaring it unconstitutional.

In Ramdas Athawale v. Union of India, where an MP moved SC under A.32 to declare certain proceedings of Lok Sabha should be declared void, it was held that no petition under A. 32 is maintainable unless it is shown that some fundamental right of the petitioner has been infringed in any manner.

Article 226

This is where the main difference between a writ under A.32 and a writ under A. 226 kicks in. In the former, the petition can only be filed for the enforcement of Fundamental rights but in latter, the petition can be filed for the enforcement of non-fundamental rights as well.

It shall be noted that the jurisdiction of SC under A.32 is in no way curtailed by A.226, meaning one has no mandate to first exhaust his remedies under A.226 for the enforcement of his fundamental rights and can straightaway move SC under A.32 for the same. But, if one chooses to first file a case on HC and there the writ gets rejected on the lack of merit, then he can approach SC only via appeal under A.132, die to res judicata.

Jurisdiction of HC under A. 226 extends to the whole state of that HC, and also the territory outside the state if the cause of action in relation to the government, authority or person in question is within those territories (a question of fact).

REFRENCE

1. AIR 2010, SC 1476
2. AIR 1993, SC 412
3. AIR 2011 SC 1175
4. AIR 2011 SC 1290
5. AIR 1954 SC 440
6. Surya Devi Rai v Ram Chandra Rai, AIR 2003 SC 3044
7. Surya Devi Rai v Ram Chandra Rai, AIR 2003 SC 3044
8. Haroobhai v State of Gujarat, AIR 1953 SC 549
9. Ram Jawaya v, State of Punjab, AIR 1953 SC 549
10. Krishna Rao v. Government of AP. (1979) 2 Andh WR 41.46.
11. KA. Karin Sons, Income tax Officer, 1983 Tax LR 1168
12. Rajendra Kumar Tulsyan v Commissioner of Sales Tax, UP, 1983 Tax LR 2970
13. Naresh v State of Maharashtra AIR 19617 SC 1.
14. AIR 1950 SC 27
15. AIR 1963 SC 996.