RAMA UNIVERSITY

www.ramauniversity.ac.in

FACULTY OF JURIDICAL SCIENCES

Course :LLB , 5th Semester
Subject : Administrative Law
Subject code : LLB 501
Faculty Name : Ms Taruna Reni Singh

ADMINISTRATIVE LAW

UNIT I

- Definition, Nature and Scope of Administrative Law, Conceptual Objections to the growth of administrative Law
- Rule of Law, Separation of Powers
- Administrative discretion: Meaning, Need, and Judicial Control

UNIT II:

- Legislative Power of Administration: Necessity, Merits and Demerits,
- Constitutionality of Delegated Legislation; Legislative and Judicial Control of delegated
- Legislation

UNIT III:

- Principles of Natural Justice and their Exceptions Rule against Bias, Concept of Fair hearing
- Judicial review of administrative action through writs;
- Judicial control through suits for damages, injunction and declaration
- Administrative Tribunals: Need and reasons for their growth, characteristics, jurisdiction and procedure of administrative Tribunals.

UNIT IV:

- Liability of the administration: Contractual liability, tortuous liability. Public Undertakings, their necessity and Liabilities, governmental Control, Parliament Control, Judicial Control
- Ombudsman: Lokpal and Lokayukta
- Right to information ACT, 2005 (S.1-S.20)
- Government Privilege to withhold evidence in public interest

Books

1. Wade, Administrative Law (VII Ed.) Indian Print, Universal
2. M.P.Jain, Principles of Adminstrative Law, Universal Delhi
3. I. P. Massey: Administrative law

.

LECTURE 35

Scope of The Doctrine

In theory, the principle of jurisdiction allows the courts merely to avoid acting in excess of powers, but in reality, by interfering on grounds of unreason ability, bad faith, extraneous consideration, unfairness, manifest injustice and fair play, etc., they have increasingly entered the core of the subject matter. All those challenge heads were grouped together under the ultra-vires singe principle. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power.

Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. So, in administrative law, the doctrine of ultra-vires is the basic doctrine. Control of administrative actions is considered as the foundation of judicial power. Ultra-vires applies to actions that are outside or beyond the control of decision-making bodies. To give an example, in R. V. Hill University Visitors exparte, [1] Lord Brown Wilkinson has embraced the conventional ultra-vires script.

When, outside the authority granted, the decision maker exercises his powers in a way that is procedurally unconstitutional or unfair to Wednesbury, he acts ultravires his powers and is therefore unlawful. The theory of ultravires is consistent with the principle of rule of law to some degree, thus, the definition of ultravires is now viewed by many as an insufficient excuse for judicial review.

[1] (1993)2 AC 237

The alternative view, therefore, is that the courts do not need to resort to speculation such as the Parliament's purpose or the technicalities of jurisdictional evidence and error of law but rather that the courts must interfere whenever an unconstitutional exercise of power has occurred. As Dawn Oliver puts it, the question of judicial review has changed from the ultra-vires law to a concern for the security of rights and regulation of powers.

Basis of The Doctrine of Ultra-Vires

Administrative action for judicial review, using concepts of intra-ultra vires and the rules of natural justice ensure that the executive acts within the law. Following the granting of a request for judicial review, it is for the court to determine whether the body in question has acted intra-vires or ultra-vires (i.e., within or outside of its power). The main classes of action may be pursued; those alleging infringement of statutory requirements and those alleging that a decision was reached in an unreasonable manner or in disregard of natural justice rules.

Traditionally, these broad headings have been broken down into a variety of subheadings. By way of illustration, a body can act ultra-vires if it uses its powers for the wrong purpose, or if it abuses its powers, or if it adopts such a rigid policy that it does not exercise its discretion with which it has been invested. The law imposes requirements of reasonableness on administrative bodies and failure to act in a reasonable manner cause an individual to act ultra-vires, an entity can act ultra-vires if delegated powers are vested but transferred to another.

Statute may require administrators to adopt specific procedures in the exercise of those powers, if they do not do so, and the proceedings are judged to be â€˜mandatory'(compulsory) rather than directory (advisory) for an entity to act ultra-vires. If a public body that is under an obligation to act fails to act at all court can order it to do so. In decision-making, too, the laws of natural justice must be observed; where a person has a right or interest at stake due to an administrative decision, he is entitled to fair treatment.

The House of Lords rationalized all these grounds for review into three main categories: illegality, irrationality, and procedural impropriety. Lord Diplock noted today, One can conveniently classify the grounds on which administrative action is subject to judicial review under the three headings. First ground â€˜illegality,' the second irrationality, and the third procedural impropriety, which is not to imply that further progress may not occur on a case-by-case basis. Over time, further grounds were added. Lord Diplock further elucidated the concepts.

By illegality as a ground for judicial review, I mean that the decision-maker must correctly understand the law which governs and gives effect to his decision-making powers. Whether or not he had been, par excellence, a justifiable issue to be resolved, in case of disagreement, by those people, the judges, by whom the State's judiciary is exercisable.

Through irrationality, I mean what can now be considered the unreasonableness of Wednesbury {25} in short. This refers to a judgment so absurd in its violation of logic or accepted moral standards that it could not have been made by any sensible person who had applied his mind to

the issue to be determined.

Whether a decision falls within this category is a question which judges should be well equipped to answer through their training and experience. Instead of failing to follow basic rules of natural justice or failing to act with procedural fairness towards the person affected by the decision, I have described the third head as â€˜procedural impropriety.' This is because, under this heading, susceptibility to judicial review often entails failure by an administrative tribunal to comply with the procedural rules specifically laid down in the statutory instrument by which its authority is granted, even if such failure does not entail any violation of natural justice. Grounds for this writ are:

a. Excess or failure to exercise the jurisdiction
b. Violation of natural justice rules such as right of notice and hearing
c. Violation of fundamental rights or statutory provisions of laws.
d. Finding of facts which no person would have reached to the conclusion.

Conclusion

Judicial review of the administrative action inherent in our constitutional scheme based on the rule of law and separation of power. It is regarded as the basic features of our Constitution, which cannot be abolished even by the exercise of parliamentary constitutive power. It's the most effective remedy against administrative excesses available. It is a positive feeling among the people that if the administration carries out any function or acts at the discretion of the power given to it, either by legislative norms or in accordance with the provisions of the Indian constitution.

Unless, because of that discretionary power, it is a failure to exercise discretion or misuse of discretionary power to satisfy its gain or any private gain, the only choice before the public is to go to court under Article 32, Article 136 or Article 226 of the Indian Constitution.

The main purpose of judicial regulation is to ensure compliance of the laws enacted by the government with the rule of law. Judicial regulation has certain drawbacks inherent in this. It is better suited to dispute resolution than to administrative functions. It is the executive who administers the law and the judicial system function to ensure that the government fulfils its duty in accordance with the provisions of India's constitution.

MCQs

---

1. **Which was the first Commonwealth country in the world to adopt the Ombudsman system?**

   a) India
   b) Sweden
   c) New Zealand
   d) United Kingdom

2. **The 'Procurator system' is still running in which of the following countries:**

   a) India
   b) Sweden
   c) New Zealand
   d) Russia

3. **Consider the following 3 statements:**

   1. The judiciary is within the purview of Lokpal/Lokayukta in India
   2. In New Zealand, the judiciary is NOT within the purview of the Parliamentary Commissioner for Investigation
   3. In Sweden, the judiciary is NOT within the purview of the Ombudsman system

   Which of the above statement/s is/are true?

   a) Only 1 and 3
   b) Only 2 and 3
   c) Only 2
   d) All are true

4. **Which was the first Indian state to establish the institution of Lokayukta?**

   a) Bihar
   b) Uttar Pradesh
   c) Andhra Pradesh
   d) Maharashtra

5. **Which state's Lokayukta's office is considered to be the strongest in terms of power and scope?**

   a) Bihar
   b) Karnataka
   c) Andhra Pradesh)
   d) Maharashtra

6.