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Research Article

Study on Judicial Review of Administrative Law Actions in United States and India

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ABSTRACT
The term judicial review is nothing but the procedure of examining the three wings actions such as legislative, executive and administrative law. Additional judicial review also analyze whether such actions are consistent with the constitution of the country. The doctrine of legal audit has gained distinctive subtleties over the span of its advancement in UK, USA, and India. Its causes can be followed to UK which has no composed Constitution. It has turned out to be solidly settled in USA with a composed Constitution building up a government nation. In administrative law, administrative action judicial review process has been started first from Britain. Further based on this foundation, Indian Courts built control mechanism superstructure. The entire law processing of judicial review of administrative action has been developed by different judges based on different cases. As a result a thicket of inconsistencies and technicalities surrounds it. But now days, the trend of judicial decisions are to widen the judicial review of administrative action scope as well as to limit the immunity from the judicial review to the cases class. This relate to troops deployment and entering into international treaties. In this paper we are presenting the study on judicial review growth on two countries United States and India.

Keywords: Administrative Law, Administrative Actions, Judicial Review, India, US.

1. Introduction

Judicial review is a specialised remedy in public law by which the High Court exercises a supervisory jurisdiction over inferior courts, tribunals or other public bodies. The Court is concerned with evaluating fairness as Lord Hilsham L. C. ably puts it in Chief Constable of North Wales Police v. Evans: "It is important to remember in every case that the purpose … is to ensure that the individual is given fair treatment by the authority to which he has been subjected and that it is no part of that purpose to substitute the opinion of the judiciary or of individual judges for that authority constituted by law to decide the matters in question" [1].

Judicial review means review by courts of administrative actions with a view to ensure their legality. Review is different from appeal. In appeal the appellate authority can go into the merits of the decisions of the authority appealed against. In judicial review, the court does not go into the merits of the administrative action; court's function is restricted

to ensuring that such authority does not act in excess of its power. The court is not supposed to substitute its decision for that of the administrative authority. In Judicial review of administrative action, the courts merely enquire whether the administrative authority has acted according to the law. Judicial Review of administrative action, according to de Smith, is 'inevitably sporadic and peripheral'. It undertakes scrutiny of administrative action on the touchstone of the Doctrine of ultra vires. The administrative authorities are given powers by the statutes and such powers have to be exercised within the limits drawn upon them by the statutes [2]. As long as an authority acts within the ambit of the power given to it, no court should interfere. It is in this sense that such an authority is said to have the liberty to act rightly as well as wrongly. It has been held that a court exercising judicial review should not act as a court of appeal over a tribunal as an administrative authority whose decision comes before it for review.

In this paper, we are presenting the study on judicial review of administrative actions with respective two countries such as United States (US) and India. Section II presenting the study on judicial review in US. Section III presenting the study on judicial review in India. Section IV presenting the conclusion.

2. Judicial Review in US

In the U.S. the most important exercise of judicial review is by the Supreme Court. The court has used its power to invalidate hundreds of Federal, State and Local laws that it found to conflict with the Constitution of the U.S. The Supreme Court also has used judicial review to order Federal, State and Local officials to refrain from behaving unconstitutionally. However, the power of judicial review does not belong exclusively to the Supreme Court. In appropriate cases every court in the U.S. may strike down laws that violate the constitution. State courts have the power to review State government actions for compatibility with both State Constitution and the Federal Constitution.

The power of judicial review is essential to the political system of checks and balances established by the U.S. Constitution adopted in 1789. The United States would have a vastly different political system if the courts did not possess the power of judicial review. Without judicial oversight of government actions, the legislative branch would be legally supreme, and the fundamental protections included in the constitution, such as freedom of speech would be ineffective. The inclusion of fundamental rights in the Constitution, combined with the power of judicial review, serves to protect the minority from laws created by a slim majority because a supermajority (two-third of each house of congress plus ratification by three-fourth of the States) is required to modify the constitution.

2.1. Origin in United States

Although the United States Constitution itself is silent about judicial review, evidence indicates that many people anticipated that the courts established by the constitution would exercise such a power to some degree. The framers of the constitution were familiar with the concept. Before the constitution was adopted, State courts occasionally struck down laws for violating State Constitutions. Furthermore, the power was specially discussed in the debate surrounding adoption of the constitution. In 'The Federalist Paper', a series of essay advocating ratification of the constitution, Alexander Hamillton wrote that the courts have a duty "to declare all acts contrary to the manifest tenor of the Constitution, void." Hamilton felt that without this power, the protection of fundamental rights included in the Constitution would amount to nothing. In 1803, in Marbury v. Madison, the Supreme Court firmly established its authority to review and invalidate government actions that are incompatible with the constitution. In his controversial decision in that case, Chief Justice John Marshall declared that it is the duty of the courts "to say what the law is." If a particular act of congress violates the higher law of the Constitution, then the courts must reject the incompatible law. In the year 1821

decision of Cohens v. Virginia, Marshall made it clear that the federal courts may also review whether State Laws violate the Constitution [3] [4].

2.2. Impact

The Supreme Court has overturned more than 125 Federal Statutes, 1200 State laws and municipal ordinances, most of them since the late 19th century. By contrast, the Supreme Court invalidated two federal laws before the American Civil (1861-1865). The first was the law at the issue in Marbury v. Madison, which modified the jurisdiction (authority to hear and decide cases) of the Supreme Court. In the second instance, the court in 1857 invalidated a portion of the Missouri compromise that banned slavery in the territories north and west of Missouri. In that decision, known as the Dred Scott case, the court also declared that blacks could never be citizens of the U.S. the decision intensified debate over slavery, further polarizing the nation and spurring events leading to the civil war. After the war, the ruling was effectively overturned by the adoption of 13th and 14th amendments to the Constitution, which abolished slavery and provided that all people born in the United States are citizens of the nation and of the State in which they reside [5].

2.3. Limitation

Since the 1950's the court has decided several prominent cases that have overturned unconstitutional laws. Many of the court's decisions were controversial, and critics have charged that justices/ judges have written their own values into the constitution. There are several restrictions on the exercise of judicial review courts may strike down unconstitutional laws only when cases are brought to them. In the absence of a case, judges may not issue advisory opinion – that is, they may not say what they think a constitutional rule means or whether a law is invalid, moreover not every case presents the possibility of judicial review. The parties seeking review must have "standing"- that is, they must be the ones actually affected by the law in question. Also, the dispute must be "ripe" – a person may not ask a court to void a law if it has not yet been applied to that person. If the constitution says that other branches of the government have discretion to deal with an issue, the courts will not review such so called political questions. e.g., the courts have not reviewed such so called political questions. For example, the courts have no authority to overturn the President's decision to pardon a felon since the constitution provides that the right to pardon is an executive function.

III. Judicial Review in India

Unlike the U.S., the constitution of India explicitly establishes the Doctrine of Judicial Review in several Articles, such as, 13, 32, 131-136, 143, 226 & 246. The doctrine of judicial review is firmly rooted in India, and has the explicit sanction of the constitution. Article 13(2) even goes to the extent of saying that "The State shall not make any law which take away or abridges the rights conferred by this part (Part III containing the Fundamental Rights) and any law made in contravention of this clause shall, to the extent of the contravention, be void."9. The courts in India are thus under a constitutional duty to interpret the constitution and declare the law as unconstitutional if found to be contrary to any constitutional provision. The courts act as sentinel on the qui vive so far as the Constitution is concerned.

Underlying this aspect of the matter, the Supreme Court stated in State of Madras v. V.G. Row that the constitution contains express provisions for judicial review of legislation as to its conformity with the constitution and that the courts "face up to such important and none too easy task" not out of any desire "to tilt at legislative authority in a Crusader's spirit, but in discharge of the duty plainly laid upon them by the Constitution". The Court observed further: "while the court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute."

The doctrine of Supremacy of the Constitution and judicial review has been expounded very lucidly but forcefully by Bhagwati, J., as follows in State of Rajasthan v. Union of India:

"It is necessary to assert in the clearest terms particularly in the context of recent history, that the constitution is suprema lex, the permanent law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the constitution and it has to act within the limits of its authority. No one however highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the constitution or whether its action is within the confines of such power laid down by the constitution. This court is the ultimate interpreter of the constitution and to this court is assigned the delicate task of determining what is the power conferred on each branch of government, whether it is limited, and if so, what the limits are and whether any action of that branch transgresses such limits."

Judicial Review has been justified from time to time in different cases. In Kesavananda Bharti's case, the Supreme Court has emphasized upon the importance of Judicial Review:

> "As long as some Fundamental Rights exist and are a Part of the Constitution, the power of judicial review has also to be exercised with a view to see that the guarantee afforded by these Rights is not contravened.... Judicial Review has thus become an integral part of our Constitutional system....."

The extent of legal audit in India is to some degree encircled when contrasted with that in the USA. In India, the major rights are not all that extensively worded as in the USA, and confinements subsequently have been expressed in the constitution itself and this assignment has not been left to the courts. The constitution producers embraced this methodology as they felt that the courts may think that it's hard to work out the restrictions on the principal rights and a similar better be set down in the constitution itself. The constitution producer likewise felt that the legal ought not to be raised to the level of the 'super-assembly'.

There is no denying the fact that there have been occasions when judicial pronouncements have not been palatable to the governments and the legislatures in India. The exercise of the power of judicial review has at times generated controversies and tensions between the courts, the executive and the legislature. For example, the judicial pronouncements in the area of property relations, legislative privileges and constitutional amendments have been controversial and have even led to several constitutional amendments which were undertaken to undo or dilute judicial rulings which the central government did not like.

3.1. Object, Nature & Scope

The unrevealed object of legal review is to protect the jurisdiction does not misuse its authority and the separate receives just and fair treatment and does not sure that jurisdiction achieves a consequence which is wrong in the eye of government rules.

As analysis by the Supreme Court in Minerva Mills Ltd. v. UOIl7, the constitution has construct an free judicial which is absolute with the administrative of the judiciary feedback to measure the authority of governmental action and authority of government rules. It is the solemn responsibility of the judicial control the constitution to maintain various parts of the states within the restriction of the government converse upon them by the constitution by utilized the authority of judiciary feedback as sentry on the qui vive. These, judiciary feedback goal to secure community from the misuse o the authority by any department of state.

Judicial exploration in governmental things is to attack the balance among the governmental judgement to resolve that things as per the administrative rules, and that required of justice, any unfair activity must be put correct by governmental feedback. The

Judicial feedback of governmental activity is possibly the large significant evolution in the field of community rules in the second half of this century. In India, the principle of the judicial feedback is the fundamental feature of the constitution. Judiciary feedback is large powerful armament in the hands of the Judicial for the keeping of the rules of the law. Judicial feedback is the guide of ours Constitution. The Supreme Court and High Courts are the eventual translator of ours constitution. It is, therefore, the responsibility to determine the range and restriction of administrative to the co-related departments thus are legislature and executive to see that they does not sin their restriction. This is actually an intricate work allocates to the judiciary by the Constitution. The authority of judicial feedback is an essential parts of constitutional system and without it, there are the no administrative of the rules would become a chaff mirage and assurance of unreality. Judicial feedback, the fundament and integral feature of the ours constitution and it cannot be repudiate without effecting the fundamental scheme of the Constitution. The areas where judicial power can operate are limited to keep the executive and legislature within the schemes of division of powers between three organs of the State. The ultimate scope of judicial review depends upon the facts and circumstances of each case. The dimensions of judicial review must remain flexible2l. It is cardinal principle of our constitution that no one howsoever highly placed and no authority lofty can claim to be the sole judge of its power under the constitution. The rule of law requires that the exercise of power by the legislature or by the judiciary or by the government or by any other authority must be conditioned by the constitution. Judicial review is thus the repository of the supreme law of the land. It is a vital principle of our constitution which cannot be abrogated without affecting the basic structure of the Constitution.

The judiciary assumes an essential part as a defender of the protected esteems that the establishing fathers have given us. They attempt to fix the mischief that is being finished by the governing body and the official and endeavour to give each subject what has been guaranteed by the constitution under the Directive Principles of State arrangement. This is conceivable because of the energy of legal audit. This isn't accomplished in a day; it took the greater part of a century where we are at this moment. In the event that anybody imagines that it has been a thrill ride with no blocks, they are incorrect. Judiciary has been confronting the brunt of numerous government officials, technocrats, academicians, legal counsellors and so forth. Maybe a couple of them being honest to goodness concern, and among these reactions one is the part of defilement and energy of criminal hatred.

"Judiciary survey of managerial activity is achievable and the same has its application to its fullest in even departmental procedures where it is discovered that the recorded discoveries depend on no proof or the discoveries are absolutely unreasonable or lawfully untenable." This is a central prerequisite of law that the precept of Natural Justice be conformed to and the same has, truly, ended up being a necessary piece of administrative jurisprudence of this course.

The rule of law is the bedrock of vote based system, and the essential duty regarding usage of the run of law lies with the legal. This is currently a fundamental element of each constitution, which can't be adjusted even by the activity of new powers from Parliament. It is the essentialness of legal audit, to guarantee that vote based system is comprehensive and that there is responsibility of everybody who uses or activities open power. As Edmund Burke stated: "all people in places of forces should be firmly and legitimately awed with a thought that 'they demonstration in trust', and should represent their direct to one extraordinary ace, to those in whom the political power rests, the general population". India decided on a parliamentary type of vote based system, where each area is associated with strategy making, the choice taking, so every perspective is reflected and there is a reasonable portrayal of each segment of the general population in each such body. In this sort of comprehensive vote based system, the legal has an essential part to play. That is the idea of responsibility in any republican majority rule government, and this essential topic

must be recollected by everyone practicing open power, regardless of additional communicated articles of the constitution.

3.2. Limitations

There number of limitations of judicial review of administrative actions in India. The detailed discussions on limitations is out of scope of this paper, but below are four core forms related of judicial review limitations:

- Courts substituting the decision it, with what it thinks fit
- Courts misapplying the existing principles
- Courts ignoring the existing principles and interfering on its own considerations
- Courts not interfering when it is supposed to

4. Conclusion

From above study we are concluding that at national level, the history of country, theory of constitutional, politics in country play the vital part in judicial review of administration. Three main systems into which judicial review broadly defined. First is the Common law model, second is the French which is also called council of State model; and third is the procurator model. The role model for decision taken as well as governance thereon should manifest fair play, equity and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but also must create an impression that the decision making was motivated on the consideration of probity. In this paper we discussed judicial review of administrative actions in US and India with respect to impact and limitations. It will be interesting further to present detailed study for India.

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