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STANDARDS OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION: A STUDY

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Abstract

“This research article delves into the intricate dynamics of judicial review of administrative actions within the Indian legal framework. Administrative action plays a pivotal role in governance, affecting the lives of citizens and the functioning of institutions. Consequently, the judiciary assumes the responsibility of scrutinizing such actions to ensure adherence to constitutional principles and legal standards. This study comprehensively examines the standards of judicial review applied by Indian courts, encompassing principles of reasonableness, procedural fairness, legality, proportionality, and non-arbitrariness. Through a meticulous analysis of landmark cases and legislative provisions, this research elucidates the evolution, application, and challenges associated with these standards in India.”

Introduction

In democratic societies, administrative agencies play a crucial role in implementing and enforcing laws, policies, and regulations. However, the exercise of administrative power is not immune to errors, biases, or overreach, which can potentially infringe upon individual rights and liberties.¹ To mitigate such risks and ensure accountability, judicial review serves as a fundamental mechanism for scrutinizing administrative actions. The standards by which courts evaluate these actions are pivotal in determining the balance between administrative discretion and the protection of citizens' rights.

Here, Judicial review refers to the judicial oversight of administrative acts aimed at safeguarding their fairness and legality. An administrative action attains lawfulness when it adheres to statutory prescriptions, operates within the bounds of delegated authority, and conforms to principles of natural justice where applicable. The pivotal role of judicial scrutiny arises in addressing

¹ E F Albertsworth, *Judicial Review of Administrative Action by the Federal Supreme Court*, 35(2) HARVARD LAW REVIEW, 127–53 (1921).

instances of administrative power misuse. Courts, when confronted with extraordinary circumstances, undertake the evaluation of policy considerations and executive discretion. It is imperative to recognize that judicial review operates as a protective mechanism, serving to ensure accountability rather than being wielded as an instrument of aggression.

In the landmark case of *State of Bihar v. Subhash Singh*², the Court unequivocally affirmed the validity and indispensability of judicial review of administrative actions under Articles 32 and 226 of the Indian Constitution. The Court underscored that judicial review constitutes a fundamental element of the rule of law. By affirming the authority of the judiciary to scrutinize administrative actions, the judgment reaffirms the constitutional imperative of upholding legality, fairness, and accountability in governance.³

Theories of Standards of Judicial Review

Theories surrounding the standards of judicial review form a critical aspect of administrative law and constitutional interpretation. These theories provide frameworks for courts to assess the legality, constitutionality, and fairness of governmental actions. Several key theories are the following: –

Doctrine of Ultra-vires

The legal principle of ultra vires serves as the bedrock for judicial review,⁴ delineating the boundaries within which administrative bodies may exercise their authority. Initially applied within the sphere of statutory corporations, the concept garnered scant attention until 1855. Notably, in the pivotal case of *Ashbury Railway Carriage and Iron Company Ltd v. Riche*⁵, the House of Lords refined and elucidated the theory of ultra vires. This landmark decision marked a significant turning point, providing clarity on the limitations imposed on administrative entities and laying the groundwork for subsequent developments in administrative law and judicial review.

The term "ultra vires" originates from Latin, where "ultra" means "beyond" and "vires" translates to "powers" or "authority." In its literal sense, "ultra vires" refers to actions or decisions that are

² State of Bihar v. Subhash Singh, AIR 1997 SC 1390.

³ Minerva Mills v. Union of India, (1980) 3 SCC 625.

⁴ R v. Hidl University, visitor [1993] AC 682 at 701.

⁵ Ashbury Railway Carriage and Iron Company Ltd v. Riche, (1875) L.R. 7 H.L.653.

beyond the legal authority or powers of an entity to undertake.⁶

From an epistemological perspective, "ultra vires" embodies the foundational principle of legal positivism, emphasizing the delineation of powers and constraints within legal frameworks. It serves as a boundary marker, demarcating the limits of governmental or corporate authority. The concept acknowledges that institutions possess delegated powers conferred upon them by law or statute, and any action taken outside these prescribed boundaries lacks legitimacy.

The doctrine of ultra vires encompasses two distinct categories⁷:

- I. Substantive Ultra vires and;
- II. Procedural Ultra vires

I. Substantive Ultra Vires

Substantive Ultra vires pertain to decisions made by administrative authorities that exceed the scope of their designated decision-making authority. In essence, when an administrative entity operates beyond the bounds of the authority vested in it, it is engaging in substantive ultra vires. This occurs when the administrative authority ventures into areas beyond its authorized jurisdiction, thereby rendering its actions invalid. Substantive ultra vires underscore the notion that administrative bodies must adhere strictly to the limits of their conferred powers, as any deviation constitutes a breach of legal norms.

II. Procedural Ultra vires

Procedural Ultra vires refer to instances where administrative actions, although aligned with the designated objectives, fail to adhere to prescribed procedural requirements. Even if the administrative authority pursues an approved objective, its actions may be subject to challenge if it deviates from specified procedural protocols. Procedural Ultra vires recognizes that adherence to procedural safeguards is essential for upholding the rule of law and ensuring transparency and accountability in administrative processes. In essence, while the administrative entity may have the right intentions, its failure to follow prescribed procedures renders its actions legally invalid. Distinguishing between Substantive and Procedural Ultra vires is crucial for understanding the nuances of administrative law. Substantive Ultra vires focus on the substantive legality of

⁶ P B Ajoy, *Administrative Action and the Doctrine of Proportionality in India*, 1(6) IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 16-23 (2012).

⁷ David Stott & Alexandra Felix, *Principles of Administrative Law*, (1997) 81.

administrative decisions, emphasizing adherence to the scope of authority. In contrast, Procedural Ultra vires underscores the significance of procedural regularity in administrative actions, highlighting the importance of following prescribed processes.

Both categories of Ultra vires underscore the principle of legality, emphasizing the imperative of administrative actions being within the confines of authorized powers and procedural norms. By delineating these categories, the doctrine of ultra vires serves as a cornerstone of administrative law, ensuring that governmental actions are subject to legal scrutiny and accountability, thereby upholding the rule of law and protecting individual rights and freedoms.

In the case of *State of U.P. v. Modi Distillery*⁸, the court held that a regulation conferring states with the authority to impose excise duty in excess of the constitutional limitations was deemed ultra vires. This determination was made on the basis that the regulation exceeded the prescribed constitutional boundaries, thus rendering it invalid under the principles of administrative law.

DOCTRINE OF WEDNESBURY:

The legal concept elucidated in the British case of *Associated Provincial Picture Houses v. Wednesbury Corporation*⁹, commonly referred to as the Wednesbury case, introduced the doctrine of Wednesbury unreasonableness. This principle serves as a cornerstone of judicial review, establishing essential criteria for assessing the legality of administrative decisions. Over time, this ancient theory has been recognized and referred to by various terms, including "the Wednesbury principle," "Wednesbury unreasonableness," and "Wednesbury reasons," by both judges and legal practitioners. Wednesbury unreasonableness delineates situations where an administrative decision is so unreasonable that no reasonable authority could have arrived at the same conclusion. In essence, it provides a framework for courts to scrutinize administrative actions, ensuring they remain within the bounds of reasonableness and are not arbitrary or capricious. This doctrine represents a fundamental aspect of administrative law, balancing administrative discretion with the need for accountability and fairness in governmental decision-making processes.

In the seminal Wednesbury case of 1948, Lord Greene delineated the parameters of judicial

⁸ State of U.P. v. Modi Distillery, (1995) 5 S.C.C.753.

⁹ Associated Provincial Picture Houses v. Wednesbury Corporation, (1948) 1 K.B.223.

review concerning administrative decisions. He articulated that when legislation grants administrative authorities discretionary powers, the scope of judicial review is circumscribed. Lord Greene emphasized that interference by the judiciary would only be warranted under specific circumstances, namely:

- I. If the decision contravened established laws/statutes.
- II. If pertinent factors were overlooked or not duly considered.
- III. If irrelevant considerations unduly influenced the decision-making process.
- IV. If the decision reached was so unreasonable that no rational authority could have arrived at the same conclusion.

These criteria outlined by Lord Greene have since served as guiding principles for judicial review in both the United Kingdom and India. Courts in both jurisdictions routinely employ these benchmarks to assess the legality and validity of administrative actions. By adhering to these criteria, the judiciary ensures that administrative decisions remain within the confines of legality, rationality, and fairness, thereby upholding the rule of law and safeguarding individual rights.

Furthermore, in the pivotal *Council for Civil Services Union v. Minister of Civil Services*¹⁰ case of 1983, commonly referred to as the CCSU case, Lord Diplock succinctly encapsulated the grounds for judicial review of administrative action. These grounds are predicated on one or more of the following principles:

- I. Illegality
- II. Procedural irregularity
- III. Irrationality

Lord Diplock's formulation has become widely accepted and adopted in both the United Kingdom and other common law jurisdictions as a comprehensive framework for assessing the legality and validity of administrative actions through judicial review. These principles underscore the judiciary's role in upholding the rule of law and ensuring accountability and fairness in governmental decision-making processes.

I. Illegality

Illegality in the context of judicial review pertains to actions or decisions that contravene

¹⁰ Council for Civil Services Union v. Minister of Civil Services, (1983) 1 AC 768.

established legal norms or statutory provisions. Essentially, it denotes conduct that is against the law. Anything beyond an individual's legal authority is deemed unlawful. Courts intervene when administrative orders transgress legal boundaries. This ground for judicial review rests on the premise that administrative authorities must operate within the confines of the law and its limitations.

Administrative actions are deemed "illegal" if they exhibit any of the following characteristics: lacking jurisdiction, failing to exercise jurisdiction when required, abusing jurisdiction, or exceeding the scope of jurisdiction granted. In essence, illegality underscores the imperative for administrative authorities to possess a comprehensive understanding of legal frameworks and constraints before undertaking any action. Judicial review serves as a safeguard against unlawful exercises of authority, ensuring adherence to legal principles and upholding the rule of law.

II.Procedural irregularity

The adherence to procedural requirements outlined within the legislative instrument granting authority, rooted in principles of natural justice and fair process, is termed procedural impropriety. This concept emphasizes the necessity of following prescribed procedures to ensure fairness and transparency in administrative actions. Instances that necessitate the application of fair procedures include:

- A. **Constitutional obligation:** In cases where the infringement of people's fundamental rights is at stake, fair procedures are mandated as a constitutional imperative.
- B. **Legal requirement:** If legislation prescribes a specific procedure that administrative authorities must follow before taking any action, strict adherence to that procedure is obligatory. Any deviation from the procedural standard renders the administrative action invalid.
- C. **Implicit obligation:** Even in situations where legislation remains silent on procedural matters, there exists an implicit obligation to uphold fair procedures. This implicit duty arises from the overarching principles of natural justice and the need for procedural fairness in administrative decision-making processes.

III.Irrationality

The concept of irrationality was established as a ground for judicial review by the Court in the landmark case of Associated Provincial Picture House v. Wednesbury Corporation, a

decision that later gave rise to the "Wednesbury test" for assessing the rationality of administrative decisions. This test, also referred to as "Wednesbury irrationality," serves as a benchmark for evaluating the reasonableness of administrative discretion.

Lord Diplock, in his judgment, likened irrationality to the standard set forth in *Wednesbury*. Essentially, administrative discretion must be exercised in a manner that is reasonable and not arbitrary or capricious. The "Wednesbury test" requires that administrative decisions must be within the realm of rationality, meaning they must be based on relevant considerations and devoid of any glaring irrationality.

In essence, the principle of irrationality underscores the expectation that administrative authorities will exercise their discretion judiciously and in accordance with established legal principles. By applying the "Wednesbury test," courts ensure that administrative decisions are not so unreasonable that no reasonable authority could have arrived at the same conclusion. This standard promotes accountability, transparency, and fairness in administrative decision-making processes.

DOCTRINE OF PROPORTIONALITY OT STRICT SCRUTINY:

The doctrine of proportionality has its roots in both civil law and common law legal systems, with its origins dating back centuries. However, it gained prominence in modern legal discourse primarily through the development of administrative law and constitutional law in Europe during the 20th century.

The modern theory of proportionality finds its origins in Europe, particularly in Prussia during the late 18th century. It was initially utilized in the context of the *Rechtsstaat* ("constitutional State") framework and further developed by German courts in the 19th century. Since then, the principle of proportionality has become a cornerstone of administrative law and human rights jurisprudence in many legal systems worldwide, reflecting its enduring significance in promoting fairness, justice, and the rule of law.

However, the doctrine of proportionality gained widespread recognition and acceptance in legal systems across the globe following its adoption by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Through landmark judgments, these

supranational courts established proportionality as a key principle of European Union law and international human rights law.

Today, the doctrine of proportionality is regarded as a fundamental principle of law in many jurisdictions worldwide. It serves as a tool for courts and tribunals to assess the compatibility of government actions with legal standards, ensuring that measures taken by authorities are necessary, suitable, and proportionate to achieving legitimate objectives while minimizing interference with individual rights and freedoms.

The concept of proportionality is rooted in the principle of interpreting legislative provisions in a manner that upholds fairness and justice. It serves as a mechanism to temper administrative actions, preventing them from becoming excessively severe or arbitrary. At its core, proportionality scrutinizes how administrators prioritize various factors in decision-making, emphasizing the need for a balanced approach.

In the realm of human rights, proportionality entails two key tests: the "balancing test" and the "necessity test." The balancing test involves assessing whether administrative actions result in disproportionately harsh penalties or infringements on rights, while the necessity test requires that any violation of fundamental rights be done in the least restrictive manner possible.

Proportionality entails the court independently evaluating the benefits and drawbacks of administrative actions. The court will uphold such actions only if the balance weighs in favor of their justification. This principle underscores the importance of administrators considering the overall impact of their decisions on the public or individuals, necessitating a thorough evaluation of the pros and cons.

In recent decades, two prominent models of proportionality have emerged¹¹:

- I. **The British model of proportionality**, also known as the state-limiting concept, emphasizes the role of proportionality in constraining state power. Under this model, proportionality serves as a means to limit governmental action, ensuring that it remains within the bounds of legality and respects individual rights and freedoms.
- II. **The European model of proportionality**, alternatively termed the optimizing

¹¹ Ajoy P.B., "Administrative Action and the Doctrine of Proportionality in India", 16-23 [IOSR Journal of Humanities and Social Science (JHSS) Volume 1, Issue 6] (Sep-Oct. 2012).

conception, focuses on achieving an optimal balance between competing interests and objectives. This model views proportionality as a tool for maximizing societal welfare while safeguarding fundamental rights. It aims to strike a balance between the state's interests and individual rights, seeking to achieve the greatest overall benefit for society.

British Model

In the jurisprudence outlined by Lord *Stynn in R v. Secretary of State for the Home Department ex parte Daly*¹², the British approach to proportionality finds its roots in the Privy Council's ruling in *De Freitas v. Permanent Secretary of the Ministry of Agriculture*¹³, Fisheries, Land and Housing. In this landmark case, Lord Clyde, drawing on legal precedents from South Africa and Canada, formulated a three-stage test for assessing proportionality during an appeal originating from Antigua and Barbuda.

According to this framework, a decision is deemed proportionate if it satisfies the following criteria:

- i. The legislative or executive purpose behind limiting a basic freedom is sufficiently important to warrant such restriction.
- ii. The legislative or executive objective is logically connected to the means proposed to achieve it.
- iii. The measures employed to curtail rights or freedoms are no more intrusive than necessary to accomplish the intended goal.

An examination of this three-stage test underscores the court's primary focus on ensuring that decision-making bodies opt for the least intrusive method to achieve their objectives. Under this paradigm, proportionality entails pursuing predefined goals utilizing the most efficient or least intrusive means available. Importantly, this approach does not question the scope of judicial review but rather imposes a judicially mandated scrutiny of the necessity and effectiveness of the measures employed. Thus, the assessment of proportionality in this context prioritizes the consideration of need as the final stage of evaluation while overlooking the balancing aspect.

This British model of proportionality, as elucidated by Lord Stynn, places a significant emphasis on the principle of necessity. It underscores the importance of ensuring that any limitations on fundamental freedoms are justified by legitimate objectives and are no more intrusive than

¹² *Stynn in R v. Secretary of State for the Home Department ex parte Daly*, (2001) 3 All ER 433 (HL)

¹³ *De Freitas v. Permanent Secretary of the Ministry of Agriculture*, (1999) 1 A.C. 69.

absolutely required to achieve those objectives. By adopting this approach, the judiciary aims to strike a delicate balance between respecting individual rights and enabling the effective functioning of governmental policies and actions.¹⁴

Furthermore, the influence of Lord Clyde's three-stage test extends beyond its immediate application in Antigua and Barbuda. It has had a profound impact on the development of the proportionality doctrine in British legal jurisprudence, providing a structured framework for assessing the compatibility of governmental actions with fundamental rights. As such, the British approach to proportionality, characterized by its emphasis on necessity and efficiency, continues to shape judicial decision-making in matters concerning the delicate balance between state interests and individual liberties.

European Model

The concept of proportionality originated in nineteenth-century Prussia, where it was first conceptualized. This Prussian notion of proportionality entailed various assessments to ensure the balanced application of laws and regulations. The European Court of Justice affirmed this concept in the case of *R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la Sante Animale*¹⁵ (FEDESA).

Julian Rivers further develops this idea by proposing a four-stage test based on the FEDESA case:

- I. Legitimacy: Does the conduct under examination align with a valid general goal within the framework of the right in question?
- II. Suitability: Is the action capable of achieving the intended goal?
- III. Necessity: Is the action the least intrusive means of achieving the desired level of goal realization?
- IV. Fair balance or proportionality in a limited sense: Does the action result in a net benefit when weighed against the loss of rights, considering the level of goal achievement?

This four-stage test provides a structured approach to evaluating the proportionality of administrative actions. It considers whether the actions pursued are legitimate, suitable, necessary, and result in a fair balance between the achievement of goals and the infringement of

¹⁴ Margit Cohn, *Legal Transplant Chronicles: The Evolution of Unreasonableness and Proportionality Review of the Administration in the United Kingdom*, 58(3) THE AMERICAN JOURNAL OF COMPARATIVE LAW 583-629 (2010).

¹⁵ *R v. Minister of Agriculture, Fisheries and Food, ex parte Federation Europeenne de la Sante Animale*, (1991) 1 C.M.L.R. 50.

rights. By employing this test, decision-makers can ensure that their actions are proportionate and aligned with legal principles, thereby promoting fairness and justice in administrative processes.

Status of Indian Judicial Approach

In the case of *Ranjit Thakur v. Union of India*¹⁶, a landmark Supreme Court judgment in administrative law, the concept of proportionality was expressly introduced for the first time. The Supreme Court made notable observations, stating that while judicial review typically targets judgments, it can also scrutinize the decision-making process itself.

The Court emphasized that in cases such as Court-Martial proceedings, where the authority holds discretion over determining the nature and severity of punishments, the penalty must be proportionate to the offense and the individual's culpability. It cautioned against penalties that are vengeful or unduly severe, emphasizing that they should not shock the conscience or indicate prejudice.¹⁷

In the specific instance, the appellant was found guilty in a Court-Martial and faced a punishment of separation from service and imprisonment, permitted under the Army Act of 1950. The appellant contested the verdict, arguing that the severity of the penalty implied malice and demonstrated bias.¹⁸

Upon hearing the appeal, the Supreme Court concurred with the appellant's contention. It ruled that the penalty imposed must align with the gravity of the misconduct and any disproportionate punishment would violate Article 14 of the Constitution, which ensures equality before the law. The Court concluded that the penalty imposed in this case was egregiously unfair, warranting intervention and justifying the appellant's appeal.¹⁹

The case of *Union of India v. Ganayutham*²⁰, provided a comprehensive examination of the application of the 'proportionality' principle in administrative law. It clarified the primary role of administrators and the secondary role of courts in cases that do not impact fundamental freedoms. In assessing the legality of administrative orders or legislative discretion, the Wednesbury test

¹⁶ Ranjit Thakur v. Union of India, AIR 1987 SC 2386.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Union of India v. Ganayutham, [1997] 7 SCC 463.

serves as the standard framework. This test evaluates whether a decision was unlawful, involved procedural flaws, or was so unreasonable that no reasonable decision-maker could have arrived at the same conclusion based on the available evidence and legal principles.²¹

The Court underscored its reluctance to interfere with administrative judgments unless they were unlawful, marred by procedural irregularities, or illogical in a manner that defied both logic and moral norms. This approach highlights the deference afforded to administrators in their decision-making processes, while also emphasizing the judiciary's role in ensuring adherence to legal standards and procedural fairness.²²

The Supreme Court's pivotal judgment in *Omkumar v. Union of India*²³, marked a significant milestone, as it acknowledged the utilization of the proportionality concept in Indian jurisprudence. Surprisingly, the Court found that Indian courts had routinely applied the doctrine of proportionality since 1950 to assess the validity of legislative actions pertaining to laws encroaching upon the fundamental freedoms outlined in Article 19(1) of the Indian Constitution. The Supreme Court noted that Indian courts had consistently scrutinized whether the limitations imposed by legislation were disproportionate to the circumstances and whether they represented the least restrictive means available. This scrutiny extended to laws that infringed upon the rights guaranteed under Article 14 (prohibition of discrimination) and Article 21 (protection of life and personal liberty) of the Indian Constitution.²⁴

Conclusion

Despite the landmark ruling in Om Kumar's case a decade ago, little progress has been made in advancing the application of proportionality in Indian administrative law. The legal landscape concerning proportionality in India remains largely unchanged since the pronouncement in Kumar's case. While there have been subtle indications in subsequent judgments that the doctrine of unreasonableness is gradually yielding ground to proportionality, the scope of proportionality assessment in relation to administrative action remains constrained under the current legal framework, as emphasized by the Supreme Court.

²¹ *Ibid.*

²² *Ibid.*

²³ *Omkumar v. Union of India*, AIR 2000 SC 3689.

²⁴ *Ibid.*

This limited progress can be attributed to the prevailing tendency in India, where administrative actions are predominantly challenged in courts on grounds of arbitrariness, necessitating recourse to the Wednesbury unreasonableness doctrine. Consequently, the ruling in Kumar's case has had minimal impact on the expansiveness of judicial review in India. The Supreme Court's failure to provide the rationale for confining the application of the Wednesbury unreasonableness doctrine solely to claims of arbitrariness raises questions.

Two plausible explanations for this phenomenon can be posited. Firstly, the Supreme Court may have adopted a parallel categorization akin to that in England, where the Wednesbury principle was exclusively scrutinized in cases involving convention rights, while non-convention rights were subject to proportionality scrutiny. Secondly, akin to the concerns voiced by Lord Lowry, the Supreme Court might have anticipated a surge in litigation if the threshold for judicial review were lowered.

