Judicial Control Over Administration

The control exercised by the Courts over the administrative acts is called judicial control. In other words, it means the power of the courts to keep the administrative acts within the limits of the law. It also implies the right of an aggrieved citizen to challenge the wrongful acts of administrators in a court of law. The primary objective of judicial control over administration is the protection of the rights and liberties of citizens by ensuring the legality of the administrative action. In the words of L.D. White, “The purpose of legislative supervision is principally to control the policy and the expenditure of the executive branch, the end sought by judicial control of administrative acts is to ensure their legality and thus, protect citizens against unlawful trespass on their constitutional or other rights.”

As rightly observed by M.P. Sharma (the first Professor of public administration in India), “looked at from the point of view of the citizens whose liberties and rights they (i.e. courts) are intended to protect, the controls exercised by the courts are called 'judicial remedies.' As a matter of fact, official liability before the courts and judicial remedies for the citizens against official excesses or abuse of power are the two faces of the same coin.”

Basis

The judicial control over administration emanates from the concept of ‘rule of law’ which is a cardinal feature of the British Constitution as well as the Indian Constitution. A.V. Dicey, the British constitutional lawyer, in his famous book Introduction to the Study of the Law of the Constitution gave a classic exposition of this concept which is as follows.

“No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land... no man is above the law, but... every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals... every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen... the general principles of Constitution... are with us the result of judicial decision determining the rights of private persons in particular cases brought before the courts.”

In short, the three elements of the ‘rule of law’ are as follows:

(i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
(ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.
(iii) The primacy of the rights of the individual, that is, the Constitution, is the result of the rights of the individual as defined and enforced by the courts of law rather than the Constitution being the source of the individual rights. Thus, the rights of the citizens of Great Britain flow from judicial decisions, not from the Constitution.

Scope (Grounds)

The judiciary can intervene in the administrative acts under the following circumstances.

(i) Lack of jurisdiction, that is, when the administrator acts without authority or beyond the scope of his authority or outside the geographical limits of his authority. It is technically called ‘overfeasance’ (excess of authority).
(ii) The error of law, that is, when the administrator misinterprets the law and thus imposes upon the citizen, obligations which are not required by the content of the law. It is technically called ‘misfeasance’.

(iii) Error in fact-finding, that is, when the administrator makes a mistake in the discovery of facts and acts on wrong presumptions.

(iv) Abuse of authority, that is, when the administrator uses his authority (or power or discretion) vindictively to harm some person. It is technically called ‘malfeasance.’

(iv) The error of procedure, that is, when the administrator does not follow the laid down procedure.

The citizens who are affected by the above cases can seek the intervention of judiciary in the administrative acts.

Methods

The judiciary exercises control over administration through the following methods or techniques.

**Judicial Review** It is the power of the courts to examine the legality and constitutionality of administrative acts. On examination, if they are found to be violative of the Constitution (ultra vires), they can be declared as illegal, unconstitutional and invalid by the courts. The scope of judicial review in the USA is much wider than in Britain. India falls in between the two due to the constitutional and statutory limitations (on the scope of judicial review).

**Statutory Appeal** The parliamentary statute (i.e. law or act) may itself provide that in a specific type of administrative action, the aggrieved citizen will have the right of appeal to the courts. Under such circumstances, the statutory appeal is possible.

**Suits Against Government** In India, Article 300 of the Constitution governs the suability of the state. It states that the Union Government and state government can be sued, subject to the provisions of the law made by the Parliament and the state legislature respectively. The state is issuable in contracts. This means that the contractual liability of the Union Government and the state governments is the same as that of an individual under the ordinary law of contract. However, in the case of torts, the position is different (a tort is a wrongful action or injury for which a suit for damages lies). In this regard, a distinction is made between the sovereign and non-sovereign functions of the state. The state, for the tortious acts of its servants, can be sued only in case of its non-sovereign functions but not in case of its sovereign functions.

In Britain, there has been traditional immunity of the state (i.e. Crown) from any legal liability for any action. Suits against the government in contract or tort were severely restricted. Such restrictions were relaxed and the situation was improved by the Crown Proceedings Act of 1947. The present position in Britain is that the State can be sued for the wrongful acts of its officials whether in contracts or torts, with some exceptions.

In the USA, subject to a few exceptions, the state cannot be sued in cases pertaining to torts. In other words, the State (either federal government or state government) is immune from the tortious liability of its servants, except in few cases.

In France, where the system of ‘Droit Administratif’ prevails, the state assumes responsibility for the official actions of its servants and compensate the citizens for any loss suffered by them. The aggrieved citizens can directly sue the state in the ‘administrative courts’ and get the damages awarded.
Suits Against Public Officials In India, the President and the state governors enjoy personal immunity from legal liability for their official acts. During their term of office, they are immune from any criminal proceedings, even in respect of their personal acts. They cannot be arrested or imprisoned. However, after giving two months’ notice, civil proceedings can be instituted against them during their term of office in respect of their personal acts. The ministers do not enjoy such immunities and hence they can be sued in ordinary courts like common citizens for crimes as well as torts.

Under the Judicial Officer’s Protection Act of 1850, the judicial officers are immune from any liability in respect of their acts and hence cannot be sued.

The civil servants are conferred personal immunity from legal liability for official contracts by Article 299 of the Constitution of India. In other cases, the liability of the officials is the same as that of an ordinary citizen. Civil proceedings can be instituted against them for anything done in their official capacity after giving two months’ notice. As regards criminal liabilities, proceedings can be instituted against them for acts done in their official capacity with prior permission from the government.

The Monarch in Britain and the President in the USA enjoy immunity from legal liability. The legally accepted phrase in Britain is, ‘The King can do no wrong.’ Hence he cannot be sued in any court of law.

Extraordinary Remedies These consist of the following six kinds of writs issued by the courts.

(i) Habeas Corpus It literally means “to have the body of.” It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court will set the imprisoned person free if the detention is illegal. This writ is a bulwark of individual liberty against arbitrary detention.

(ii) Mandamus It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties which he has failed to perform.

(iii) Prohibition It literally means ‘to forbid.’ It is issued by a higher court to a lower court when the latter exceeds its jurisdiction. It can be issued only against judicial and quasi-judicial authorities and not against administrative authorities. Hence, its importance as a tool of judicial control over administration is highly restricted.

(iv) Certiorari It literally means ‘to be certified.’ It is issued by a higher court to a lower court for transferring the records of proceedings of a case pending with it, for the purpose of determining the legality of its proceedings or for giving fuller and a more satisfactory effect to them that could be done in the lower court. Thus, unlike the prohibition which is only preventive, the Certiorari is both preventive as well as curative.

(v) Quo Warranto It literally means ‘by what authority or warrant.’ It is issued by the courts to inquire into the legality of the claim of a person to a public office. Therefore, it prevents the illegal assumption of public office by a person.

(vi) Injunction It is issued by the court asking a person to do a thing or refrain from doing it. Thus, it is of two kinds viz. mandatory and preventive. The mandatory injunction resembles the writ of Mandamus but it is different. As put by M.P. Sharma, “Mandamus cannot be issued against private persons while the injunction is primarily a process of private law and only rarely a remedy in administrative law. Mandamus is a remedy of common law while the injunction is the strong arm of equity.”

Similarly, preventive injunction resembles the writ of prohibition but it is different. In the words of M.P. Sharma, “Injunction is directed to the litigant parties while prohibition to the court itself. Also, while injunction recognizes the jurisdiction of the court in which the proceedings are pending, prohibition strikes at such jurisdiction.”
Writs in India

The following points can be noted in this context.

(i) The courts can issue all the above-mentioned writs. However, only the first five are mentioned in the Constitution of India.
(ii) Article 32 of the Constitution authorizes the Supreme Court to issue writs for the enforcement of the Fundamental Rights of citizens guaranteed to them by the Constitution.
(iii) Article 226 of the Constitution authorizes High Courts to issue the writs not only for the enforcement of the Fundamental Rights of citizens guaranteed by the Constitution but also for other purposes. This means that the writ jurisdiction of High Courts is wider than that of the Supreme Court.
(iv) Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the High Courts can issue the writs and not any other court.

Limitations

The following factors limit the effectiveness of judicial control over administration.

(i) The judiciary cannot intervene in the administrative process on its own. The courts intervene only when the aggrieved citizen takes the matter before them. Therefore, the judiciary lacks the suo moto power.
(ii) The control exercised by the courts is in the nature of a post mortem control, that is, they intervene after the damage is done to the citizen by the administrative acts.
(iii) All administrative acts are not subject to judicial control as the Parliament may exclude certain matters from the jurisdiction of the courts.
(iv) The self-denying ordinance, that is, the judiciary denies to itself jurisdiction in certain matters.
(v) The courts refuse to intervene in certain purely administrative matters on its own accord.
(v) The judicial process is very slow and cumbersome as well as very expensive.
(vi) The judges being legal experts cannot fully and properly understand the highly technical nature of administrative acts.
(vii) The volume, variety, and complexity of administration have increased due to welfare orientation of the state. Hence, the courts cannot review each and every administrative act affecting the citizen.

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