

A Critical Analysis on Constitutional Remedies in Administrative Actions in India.

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ABSTRACT: This research delves into the flaws within the Indian administrative actions with helps of administrative law and Constitutional remedies through judicial supremacy of judicial review system pertaining to the administrative actions and propose potentials reforms for improvements. Given the intricate bureaucracy and evolving regulatory landscape of the Indian administrative framework, a robust and efficient mechanism for judicial oversight becomes imperative. Delays in adjudication, limited access to justice, inconsistent review standards, and the imperative for heightened transparency and accountability are some of the flaws that have been identified. Actually, the problem of administrative action is very complex. It is correctly said that absolutely corrupts absolutely. It leads to arbitrariness in many situations. So, in India the Art.14 which the significant one of the Fundamental Rights guaranteed to Indian citizens and is also considered to be the beauty of the Indian Constitution acts as a major check to this arbitrariness arising due to administrative discretion of bias, affirmative action and etc. The study aims comprehensively comprehend existing shortcomings through a meticulous analysis of these challenges. Proposed reforms encompass procedural improvements, legislative modifications and judicial interventions. Evaluation is conducted to ascertain the viability of specialised administrative tribunals, alternative dispute resolution mechanisms and standardized review criteria for stream lining the judicial review process. Additionally, the research explores the role of technology in expediting adjudication and promoting transparency. In alignment with the international standards, the study acknowledges the significance of public participation in administrative decision-making and the assimilation of global best practices. Emphasis is placed on maintaining alternative efficiency while ensuring an effective review process. The research illuminates the intricate interplay between judicial

activism and restraint, illustrating how diverse philosophies impact the extent of court exercised review powers. By critically examining these reforms, the study seeks to contribute vital insights to the ongoing discourse on augmenting the judicial review.

I. INTRODUCTION:

Administrative discretion is a necessary evil of the present system of administration as in any intensive form of government, the govt. cannot function without the exercise of some discretion by the officials. In other words, it has its own pros and cons. The court can very well bring the administrative actions under the purview of judicial review which forms a basic structure of the Indian Constitution. The Right to Constitutional remedies, enshrined as a fundamental right in the Indian Constitution, is pivotal for justice, accountability, and the protection of individual rights. It empowers citizens to seek redress for the violation of rights, which is crucial for safe guarding liberties in a democracy. Indian Constitution is considered to be the supreme law for every citizen. Thus, the Part III of the Constitution from Article 12-35 highlights important Fundamental Rights, Mainly, Article 32 explains the right to constitutional remedies, which is a crucial fundamental right. Citizens experiencing a breach of their fundamental right by the agencies of administrators and executors can apply to Supreme Court under Article 32. Hence, they don't have to wait for the dilatory phase under Article 32. It means that they don't need to apply to lower court and gradually move ahead. Therefore Article 32 provides a simple guaranteed, and faster remedy for the enforcement of constitutional rights. Article 32 also states that the Supreme Court has the power to write, order, and issue directions. Article 226 empowers to issue writs by the High Courts. The above information also explains that constitutional remedies are also a fundamental rights. Therefore it is to be read carefully and note

down the vital information about the constitutional remedies. The High Courts and the Supreme Court of India are protecting the legal rights of the Indian citizens from the government authorities viz. Administrators and executors whenever they acted with abuse of power and ultra-virus by their rules and also Acts put with their delegated powers. Judicial review implies invalidation of legislative or executive action.

Meaning, Sources, Importance and Functions of Administrative law:

Generally Administrative Law is, in fact, the body of those which rules regulate and control the administration. Administrative Law is that branch of law that is concerned with the composition of power, duties, rights and liabilities of the various organs of the Government that are engaged in public administration. Under it, we study all those rules laws and procedures that are helpful in properly regulating and controlling the administrative machinery even the great juries several authors/ Juris viz. Austin, Holland, Bernard Schawartz, Jennings, Dicey, Hobbes K.C. Davis and Friedman given various definitions to administrative law.

There are four principal sources of administrative law in India.

a) Constitution of India; b) Acts and Statutes, c) Ordinance, Administrative directive directions, notifications and Circulars, d) Judicial Decisions

The Indian society lacks homogeneity, as there exist differences of religion, language, culture, etc. There are sections of people who are comparatively weaker than others-economically, socially and culturally and their lot can be ameliorated only when the state makes a special effort to that end. To promote a sense of security among the minorities, to ameliorate the conditions of the depressed and backward classes, to make them useful members of society, to weld the diverse elements into one national and pervades every aspect of human life. The functions of a modern state may broadly be placed into five categories, viz, the state as:- 1. Protector; 2.Provider; 3.Entrepreneur. 4. Economic Controller and 5.Arbitrator.

Administration law exercises today not only the traditional functions of administration, but other varied types of functions as well. It exercises legislative power and issues a plethora of rules, bye-laws and orders of a general nature. The administrative process is that it could evolve new techniques, processes and instrumentalities, acquire

expertise and specialization, to meet and handle new complex problems of modern society. Constitutional law is being as supreme law for all other laws including Administrative law even powers separated and delegated to the administrator and executors. Thus, the three organs of the Government (i.e. the Executive, the Legislature and the independent Judiciary) are not separate according to the Indian Constitution. But the functions of the three organs of the government have been sufficiently differentiated (Ram Jawaya - Vs- state of Punjab. AIR 1955 SC 549) None of the three of organs of the Government can take over the functions assigned to the other organs (Keshavanand Bharti -Vs- State of Kerala, AIR 1973 SC 1461, The Indian Constitution provides powers to the government with term of "Rule of Law" administer protect the people against the arbitrary action of the administrative authorities. The meaning of the Rule of Law that no man punishable or can lawfully be made to suffer on body or goods except for a distinct breach of law.

Relations between Administrative Law and Constitutional Law:

The preamble to the Constitution enunciates the great objectives and the socio-economic goals for the achievement of which the Indian Constitution has been established. These are: to secure to all citizens of India social, economic and political justice; to secure to all Indian citizens liberty of thought, expression, belief, faith and worship; to secure to them equality of status and opportunity, and to promote among them fraternity so as to secure the dignity of the Individual and the unity of the nation. The concept of a welfare state is further strengthened by the Directive Principles of State Policy, which set out the economic, social and political goals of the Indian constitutional system and etc.

The Indian Constitution has a chapter on Fundamental Rights and thus guarantees to the people certain basic rights which denoted as fundamental rights. Untouchables is the most wanted offence. The people can claim their Fundamental Rights against the state subject to some restrictions, which the state can impose in the interests of social control. These restrictions on Fundamental Rights are expressly mentioned in the Constitution

The judiciary ensures an effective and speedy enforcement of these rights.

Objectives of Constitutional Remedies:

Through this research topic A Critical Analysis on Constitutional Remedies in

Administrative Actions in India, just have come to know that there are little gap are avail even several articles as there already contains with the era of Champakam Dorairajan Case to M.C Metha Cases for protecting fundamental rights against the erotic Administrative Actions violating the principles of natural justice and also various PILs for securing environmental from various pollution in India. But now the information technology is very much developing day to day, the offences also increasing at the level same, so increasing laws to restrict/prohibit its and violations of public and individual's legal right as well to establish the rights same in the society it is very much need to analyze and update the knowledge of laws at the level of social transformation in India and globalization. Now a days we can see and hear about problems lots of violations in the legal rights and fundamental rights by the individuals and as well as the administrative of Union and State. For most example can say the very much important and significant decision of the Honorable Supreme Court on 15.02.2024 it has unanimously struck down Union Government's 2018 Election Bond (EB) Scheme only on the reason of it is violated voter's right to information enshrined in Article 19 (1) (a) of the Constitution. (Association for Democratic Reforms & another -Vs-Union of India) The Court also directed that sale of electoral bonds from banks stopped with immediate effect. These are further making us to know and deal and analyse the impact of constitutional remedies against to the erotic administrative actions in India with the interest of social justice.

Significance of the Constitutional Remedies:

Constitutional Remedies refer to the legal mechanisms provided by the constitution of country to safeguard and enforce the fundamental rights of individuals. These remedies empower citizens to seek relief from the judiciary when their constitutional rights are violated by the state or any other entity. Part III of Constitution provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles the citizens of India to move the Supreme Court or High Courts for the enforcement of these rights. under Articles 226 and 32. Article 32 empowers the supreme court to issue writs for the protection of the rights in case of violation because of this authority directions or orders for execution of any right conferred by the constitution. Supreme court is made " the protector and guarantor of the Fundamental Rights". From these it can be easily ascertained that and it is confirming exactly to truth or to a standard the

ultimate quote of Dr. B. R. Ambedkar is Article 32 of the Indian Constitution is called the Heart and Soul of the Constitution, Further that rights granted through it always be exercised in the Supreme Court unless the Constitution has been amended. Hence, it is very much important to know further about the legal remedies in state's violation of the legal and fundamental rights of individuals with the administrative powers at the level of social transformation in India through Constitutional Challenges.

Importance of Constitutional Remedies:

Constitutional Remedies is the most important fundamental right because it ensures that all citizens enjoy their fundamental rights. Under this right citizens can approach the High court or the Supreme court to reclaim the rights. Challenging the violation of in visual's right by the state and establishing the victim's legal rights with help of the Constitutional Law is Constitutional rights. Hence, it is very much need acquiring knowledge and improve data of acquaintance our knowledge through analyzing various case laws which made day to day against the erroneous administrative actions India is great study to the all. Consisting study for finding evolution of the constitutional remedies is an important criteria to acquire and improve the strengthen knowledge for find erroneous state actions also in the interest of protecting social justice too. None of us except the constitutional law can get fair justice while any person affected by the administrative actions. So, ultimately it is very much need to study about the Constitutional Remedies to be successful by establishing legal and fundamental rights against the violators in our democratic India.

Role of High Court and Supreme Court in Constitutional Remedies:

The High Courts and Supreme Court of India are securing the private individual's constitutional rights too with speedy and efficacious manner by its day to decisions in various disputes with various remedies. All the decisions of the both courts followed by the judge made laws (Judicial precedents). Based on the objectives of the Study and the Research questions, the following hypothesis has been formulated. In this Research work contains the study about subject matter viz." A Critical Analysis of the Constitutional Remedies in the Administrative Actions since the adoption of our Indian Constitutional Law by analyzing with some journals and important case (Judicial Precedents) study method, Part III of the Indian Constitution

provides for legal remedies for the protection of these rights against their violation by the State or other institutions/individuals. It entitles citizens of India to move the Supreme Court or High Court for the enforcement of these rights with the power of independent judiciary to eradicate the bad activities of abuse and misuse of powers, misbehaviour with ultra-virus proceedings against the principles of Welfare State and Natural Justice.

Judicial Activism and shift from Locus Standi to Public Interest Litigation:

Access to justice is a fundamental aspect of rule of law. If the justice is not accessible to all, establishment of the rule of law is not possible. The individuals fail to reach justice system due to various reasons including lack of basic necessities, illiteracy, poverty, discrimination, privacy, poor infrastructure of the justice system, etc.

The Supreme Court of India has recognized in many landmark judgments that access to justice is a fundamental right.¹² Indian Judiciary has played an active role in ensuring access to justice for the indigent persons, members belonging to socially and educationally backward classes, victims of human trafficking or victims of beggar, transgender, etc. In many cases, the Supreme Court exercised its epistolary jurisdiction¹³ and took suo motto actions on mere postal letters disclosing the human rights violations in society. Human rights violations, which published in the newspapers, were taken into judicial consideration. The court entertains the petitions which are being filed by the public spirited persons in the public interest. By doing so, the superior courts have liberated themselves from the shackles of the principle of natural justice. It was established through various cases by the Supreme Court i.e. Keshavanandha Bharathi case and etc. through the power of Judicial Review provides and describes by Article 13(1) of Indian Constitution which is a weapon in the hand of judiciary to scrutinize the administrative powers.

Constitutional Supremacy on Administrative law:

Constitutional remedies consist of remedies by Prerogative writs such as Habeas Corpus, Mandamus, Injunction and Quo-warranto, by the constitutional courts i.e. the Supreme Court and the High Courts of Art-32 and 226, and by orders under other Articles such as Art-131 to 136,¹³⁷ curative relief, 142 and etc. In India the Supreme Court having vital role in the process of interpretation of rule of law vis-à-vis operation of administrative power.in several cases. Mr. Justice

Bhagwati explains fully the significance of rule of law that it permeates the entire fabric of the Constitution and indeed forms one of its basic features. The rule of law excludes arbitrariness, its postulate is 'intelligence without passion' and reason free from desire. Wherever we find arbitrariness or unreasonableness there is denial of the rule of law in the context of rule of law does not mean any law enacted by legislative authority, howsoever arbitrary, despotic it may be, otherwise even in dictatorship it would be possible to say that there is rule of law because every law made by the dictator, however arbitrary and unreasonable, has to be obeyed and every action has to be taken in conformity with such law. In such a case too even where the political set-up is dictatorial it is the law that governs the relationship between men and the administrator. The Rule of Law implies that the functions of the government in a free society should be so exercised as to create conditions in which the dignity of man as an individual is upheld.

II. CONCLUSION:

Constitutional law and administrative law are the two main types of federal law. Constitutional law is any law related to the rights and responsibilities of the different branches of a government. Administrative law related to the administration of bureaucratic agency in a government. The Constitutional law will be the ruler of all other laws with its supreme power and supervising power while one affected by the other law including the administrative Law. While dealt the sources of administrative law it can be easily ascertained that the administrative law is nothing without the Constitution law.

Accordingly, Remedies can be Constitutional, Statutory or equitable. UBI JUS IBI REMEDIUM denotes "Where there is a Right, there is a remedy". Remedy denotes the manner in which a right is enforced or satisfied by a Court in case of violation. State is under the obligation to protect the individuals' fundamental rights and implement the Directive Principles of State Policy. In order to restrain the State from escaping its responsibilities, the Indian Constitution has conferred inherent powers, of reviewing the State's action, on the courts. In this context, the Indian judiciary has been considered as the guardian and protector of the Indian Constitution. Considering its constitutional duty, the Indian judiciary has played an active role, whenever required, in protecting the individuals' fundamental rights against the State's unjust, unreasonable and unfair actions/ inactions. According to the Constitutional powers of the Supreme Court and High Courts in India the

Judicial activism happens when the courts have power to review the State action. Article 13 read with Articles 32 and 226 of the Indian Constitution gives the power of judicial review to the higher judiciary to declare, any legislative, executive or administrative action, void if it is in contravention with the Constitution. On the other hand as already discussed above actually, the problem of administrative action is very complex. It is correctly said that absolutely corrupts absolutely. It leads to arbitrariness in many situations. So, in India the Art.14 which the significant one of the Fundamental Rights guaranteed to Indian citizens and is also considered to be the beauty of the Indian Constitution acts as a major check to this arbitrariness arising due to administrative discretion of bias, affirmative action and etc. The court can very well bring the administrative actions under purview of judicial review which forms of a basic structure of the Indian Constitution and quash an administrative action under Art.14. Thus, it can be concluded Art.14 plays an important role in checking arbitrariness in the administrative actions. From the above analysis it is well established that the power of judicial review is a basic structure of the Indian Constitution in providing remedies to the victims by the ultra-virus activities of the legislators as well as administrators in any manner even it is the limitation of the right to constitutional remedies that there can be no hearing related to the fundamental rights in case the President of India imposes a national emergency in the country under article 352.

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