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EDITORIAL

Legal Research is a significant tool for every individual in a Law Fraternity. Understanding, analyzing, criticizing, interpreting and applying the law is the core function of law students/advocates/ Judges/law academicians and so on. Lawyers can achieve this by realizing that research is a process. To become a good lawyer, one has to embark the journey into the interwoven process of research, analysis and writing. BharatiVidyapeeth New Law College, students and faculties are encouraged and promoted to undertake research and its publications into Bharati Law Review Journal.

BLR provides opportunities to the students and teachers to develop themselves as good researchers. BLR is a theme based quarterly journal promoting and publishing plagiarized checked research papers / articles. Special issues of BLR themed around Family Law, Human rights,Labour Laws, Cyber laws, Juvenile Justice Law, ADR have beenpublished till date wherein students and teachers from various lawcolleges have participated and got their articles published. BLR is an initiative to encourage students and faculties to measure the depth of their capabilities as researchers. As well it promotes the students and teachers to be innovative and interpretative.

Dr.Ujwala Bendale
Dean and In-charge Principal
BVDU New Law College,Pune

Law and Justice

Law is the ever-so-loyal mistress of the justice penned by Blackstone, which can be easily grasped that there are times when law decides to play hard to get with justice, and sometimes it even throws a tantrum and blocks justice's way. Although the idea of justice is supposed to be the be-all and end-all, the quest for justice might not just be a delightful adventure for those who are already at the bottom of the social ladder. For the average Joe, law and justice may as well be twins, but let's not kid ourselves, law is merely the vehicle to chase after justice. "Law is like a Vehicle, and oh, how wonderful it is that the vehicle's destination shall be Justice." But hey, there's no guarantee the vehicle will actually reach that destination, right?

What could possibly be the most pressing need for justice? It hinges on the ever-so-ambiguous wings of justice, where the values and principles of social justice can just whimsically shift to economic justice. In Social Justice, equality, Liberty, and opportunity are the latest trendy tools in the hands of our beloved justice lady, while in economic justice she wields the flashy swords of distribution and imposition; and for Criminal justice, she's got her correction and punishment gadgets all ready to go. In today's world, law has graciously taken on the role of the villain responsible for trampling on rights. Even though previous virtuous legislation not implemented with accurate honesty. All thanks to the creator being thoroughly drenched in prejudice, favoritism, and a hearty dose of self-obsession. Acknowledging the shortcomings of the legislator is apparently the most challenging hike in the vast landscape of legalized mountains. He's blissfully lost in his fantasy of being the center of his own little universe, happily ignoring reality. Most tragically, lawyers seem to be stuck in their own little bubble, and teachers are just too cozy to confront the harsh realities, all because of their self-serving interests. Or perhaps the upcoming lawyers and teachers are simply not receiving the right nutrients, or maybe the institutions are just too busy to nourish them to stand against the flood of bias. They might be reciting the words, yet no one seems to care about embodying the spirit of the Constitution. Democracy might just wave goodbye or sneak out the back door the moment despotism saunters in through the front door.

Now or never, what a splendid opportunity to unite and protect the fabric of self-realization for every individual in what is formally known as the world's largest democracy.

Dr.Jaykumar Bhongale

Associate Professor & Editor of Bharati law Review

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A CRITICAL ANALYSIS OF GENDER DISCRIMINATION AGAINST HOMOSEXUAL AND TRANSGENDER PARENTS IN INDIA

Mrs.Divya Anil Nair[1]
Dr. Sanjay Bang[2]

ABSTRACT:

In the pursuit of justice and equality, the legal system stands as a cornerstone of societal governance. However, an inherently important and persistent challenge resides within its corridors — the issue of gender discrimination. The main purpose of this study is to embark on a critical exploration of gender discrimination within the legal system, specially pertaining to Parenthood rights. The researcher uses the doctrinal method to comprehensively examine legal frameworks, societal norms, and case studies, and it aims to uncover the multifaceted challenges faced by individuals from the LGBTQ+ community in parenting roles. The dominant position of Heterosexuality present in our society has resulted in violence against LGBT+ people. Although the law has legalized homosexual relations, what is the status of these people who want to enjoy parenthood, just like other heterosexual people? Society has made it very difficult for LGBT+ people to avail the basic rights of Parenthood. The study's originality is on its focus on actionable insights and potential strategies for dismantling discriminatory norms. By not only identifying the discriminatory practices but also addressing the gaps in understanding and providing practical recommendations for policy reforms and societal change, this research seeks to go beyond mere identification of issues, aiming to contribute to the ongoing dialogue surrounding LGBTQ+ rights in India. Through this critical lens, the study aims to stimulate broader discussions and advocacy efforts toward a more equitable and inclusive society for all parents, irrespective of their sexual preferences or gender identity.

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INTRODUCTION

Gender discrimination occurs when a person or group of people are treated differently solely based on their gender, rather than on their individual skills or capabilities. While the importance of gender equality is consistently emphasized, its application in the real world often falls short. Gender inequality involves discrimination based on sex or gender, resulting in one gender being routinely privileged or prioritized over the other. Gender equality is not just a desirable objective; it is a fundamental human right, and any form of gender-based discrimination violates this right. The roots of gender disparity are often found in childhood, limiting the lifelong potential of individuals worldwide, particularly affecting girls disproportionately. The Societies perception and Indian stereotypes play a significant role in fostering gender discrimination. Overcoming these challenges requires raising awareness and challenging societal norms that instills this inequality in mind of people.

The government approximates that there are about 2.5 million LGBT+ individuals in India. Despite the substantial size of this community, they have consistently faced stereotypes and discrimination in society. The LGBT community in India has been struggling for their basic rights for over a decade now. In the pivotal case of Navtej Singh Johar v. Union of India[3], the Supreme Court has decriminalized homosexuality. The widely celebrated decriminalization of Section 377 has brought a ray of hope to the LGBTQ+ community. But the fight that started with the de-criminalization of Sec 377 must not end here, it is still a long ongoing battle, where they need acceptance from society. Laws concerning many other aspects, like family, sexual assault, parenthood, adoption, etc., are yet not clearly framed to bridge the gap of gender standards present in society. Just like Planets revolve around the Sun, we revolve around our Family. Family is of utmost importance in our Indian culture, but it's just strange that not everyone can take advantage of that benefit. Parenthood rights are still complicated for LGBT+ people.

The experience of parenthood is considered very important and a central aspect in the life of most Indians. However, not all couples can experience this joy of parenting and have to resort to some other method.

[3](2018) 1 SCC 791

In the case of Parenthood for LGBT+ people, another question arises whether the parents are married, not married, or in a live-in relationship. In a country like India, where the rights of children and families involved in Live-in-Relationship are still a struggle, the topic of parenthood for LGBT+ people is a farfetched war. As the LGBT+ people are still an incomplete social institutions, the gendered norms and stereotypes present in society by heterosexual people hinder their lives. The decision to have a child is a simple one, but the emotional, financial, physical, marital status, and other aspects accompanied by it create a lot of stress. However, for LGBT+ people, it is occupied with legality; as to avail the benefits of Parenthood, there arise many complications. Some of the options available to them to have a child are Adoption, Surrogacy, and Artificial Reproductive Technique. There are still many ethical, moral, and religious issues in relation to these steps. Additionally, a prevailing narrow mindset and stereotype persists among many individuals, asserting that only married heterosexual couples can adequately provide protection to children, while considering unmarried or gay and lesbian couples as incapable. However, it is a gross fallacy to presume that homosexual people are not good at parenting; by thinking so, we are denying them their basic fundamental rights. It is important to note that parenting should not be judged on any such measures. There is an obscure line between gender, reproduction, and law, which is yet causing a lot of discrimination among people in society.

The primary objective of this research is to conduct a comprehensive analysis, shedding light on the discriminatory practices and their varied effects on LGBT+ parenting experiences. By employing a doctrinal approach, the study aims to unravel the nuanced layers of discrimination and identify the root causes embedded within legal and societal contexts.

This research seeks to address a significant gap in the existing literature by providing a thorough investigation into the lived experiences of LGBTQ+ parents in India. The justification for this study lies in the pressing need to understand, critique, and ultimately challenge discriminatory practices to foster inclusivity and equality within any family structures. By engaging with this critical examination, the research aspires to contribute to broader societal understanding, encourage policy reforms, and stimulate conversations surrounding LGBTQ+ rights and parental dynamics in India.

THEORETICAL FRAMEWORK

The term gender has become more complex than it has been in the past. The prevailing belief suggests that an individual's physique should align with either feminine or masculine characteristics. As a result, society tends to overlook those who defy societal norms and the restricted definitions associated with male and female attributes.[4] Unfortunately, this societal tendency extends to legislative oversight, particularly concerning the challenges faced by transgender and homosexual communities. Historical and mythological evidence attests to the existence of the transgender community in India. However, rather than having their rights acknowledged, they had historically been denied full citizenship for a very long time. Emphasizing the concepts of gender discrimination, legal frameworks, societal attitudes, and family dynamics, research examines theories including the Theory of Planned Behavior, Social Cognitive Theory, and the Theory of Reasoned Action. This integration aims to elucidate how person's attitudes, subjective norms, thinking and perceived behavioural control, as well as personal, environmental, and behavioural factors, influence intentions and behaviours related to the treatment of LGBTQ+ parents in the society. The framework critically argues for the adoption of these theories, highlighting their relevance in the distinctive context of gender discrimination against LGBT+ parents in India.

MATERIALS AND METHOD

The basic objective of this research is to know the status of Parenthood rights for homosexual and transgender people in India and all the problems faced by them pertaining to the stereotypes present in society and the lack of proper legislation in many aspects. The method adopted by the researcher for research is Qualitative/Doctrinal. Qualitative research is done to obtain the behavior and thinking of different persons in relation to LGBT+ people. The study is conducted using a doctrinal method. The primary sources will include statutes, policies, parliamentary debates, and legislation. The secondary sources will include scholarly articles, reports, and journals, which would help to analyze the legal aspect in relation to the Constitution of India.

[4]Menon, N.(2013). Seeing like a Feminist. Zuban and Penguin Books India Pvt Ltd.

DISCUSSION AND RESULTS

Lesbian, Gay, Bisexual, Transgender Queer etc,(LGBT+) belong to the sexual minority of our country and are highly discriminated against. Home Sexuality is a part of a human's personal preference and sexuality and is now also included as a Human Right, so it is their right to be free from any kind of discrimination. Consensual Sexual Acts of adults is allowed by the LGBT Community legally. The science of sexuality science posits that individuals have minimal to no control over their attractions, and thus, any discrimination based on sexual orientation would constitute a violation of the fundamental right to personal expression. In light of the recent judgments of the Supreme Court in Justice K.S Puttaswamy (Retd.) v. Union of India[5] , Joseph Shine v. Union of India[6] and Navtej Singh Johar v. Union of India[7], which highlights the importance of fundamental rights, it has become important to critically analyze the parenting rights of the LGBTQ community in India.

The term "Gender Neutrality," as defined by the Oxford Dictionary, refers to an adjective which is suitable for both male and female genders. It expresses the idea that policies, language, and societal institutions should avoid differentiating roles or perceptions based on individuals' sex or gender, emphasizing the legal equal treatment of either of the gender without discrimination.[8] Considering everyone equal and giving equal privileges to all irrespective of gender will also ensure the true form of justice and uphold the right of equality under the Indian Constitution. Parenting is the most beautiful right that all individuals should be able to avail.

GENDER DISCRIMINATION

Discrimination is a very comprehensive term,it changes its dimension as per the societal expectations and stereotypes. Whenever the term Discrimination comes, we relate it in terms on women's right. It is rather true in many aspects as women have faced a lott of atrocities based on discrimination; to name a few dowry, sati, domestic violence and rape. But with the growing times the Vulnerable group have expanded who face discrimination insociety, now it also includes the minority

[5] (2018) 1 SCC 908
[6] (2019) 3 SCC 39
[7] Supra Note 1
[8] "Gender Neutrality" Oxford Dictionary

group in society, which includes minority religion, children, disabled, a person suffering from some incurable disease, LGBT etc. And if we talk specifically in terms of gender discrimination, LGBT+ community are coming under the purview of minority group who are facing a lot of hatred from society and facing many discrimination pertaining to basic live facilities. The Gender Discrimination against men cannot be hidden anymore, as there are many researches who have found innocent men to be victim of gender discrimination wherein fake charges are filed onn their name in the veil of fake feminism and also the laws are not providing them required protection. Here in this article, the analysis is focusing on the gender discrimination faced by LGBT+ people in society regarding their right to parenting.

MORAL AND ETHICAL DILEMMA TOWARDS HOMOSEXUAL AND TRANSGENDER PARENTS

Professor Michael Boylan in his book "A Just Society[9]" stated that ethics is a science that deals with the right and wrong of human behaviour[10]. Ethical theories highlight various perspectives, each striving to arrive at a morally accepted conclusion. In ethical considerations, the focus is on determining whether a specific action is deemed moral or immoral. Traditionally, society perceives marriage as a sacred union between a man and a woman. Throughout human history, marriage has played a significant role in relationships, serving as a foundation for emotional and moral support, economic stability, and the upbringing of children. However, the question arises: must marriage exclusively be confined to a union between a man and a woman?

Being homosexual or transgender is not a matter of choice; rather, it is an inherent personal aspect of an individual's identity. Individuals are born with their sexual orientation, it cannot be changed and it is not a decision they make. Upholding the dignity of homosexual individuals necessitates recognizing their right to marry; unjust discrimination against them should be eliminated, and they should be accepted and treated equally.

The main Moral and Ethical dilemma faced by gay parents is also that a child needs a mother, so gay parents are not given preference or importance towards parenting.

[9]Boylan. M. (2009). *A Just Society*. Maryland: Rowman& Littlefield Publishers.
[10]id

The concept of homosexuality itself creates a lot of moral and ethical complications, as their relationship is still considered taboo and treated in the same manner. With the fear of morality in society, people are hiding their sexual preferences and, thereby, their own identity. Our society needs to have a broader perspective when it comes to sexual preferences or identity of an individual. The LGBTQ+ community has been striving from a very long time for their basic fundamental rights, civil rights, and acceptance from society. We need to consider their basic rights to live their life, their right to be married to a person of their choice and their right to parenthood. They should be allowed the same rights as any other Indian citizen.

One of the primary motive behind marriage is procreation and to upheld the institution of family. Because homosexual couples cannot naturally conceive children through conventional means, their unions are often deemed immoral, as they don't contribute to the continuation of the human species. Additionally, legalizing gay unions is viewed as immoral, given concerns about the well-being of adopted children who may lack the essential roles of either a father or a mother.[11]

LEGAL VULNERABILITIES TOWARDS OTHER GENDER

There are plenty of shortcomings when it comes to providing rights to homosexuals or transgender. But in many countries, the laws are not specifically designed to discriminate against homosexuals or transgender, rather based on the traditional concept of what a family is and how it should be. The parents as well as children of homosexual or transgender are impacted by lacuna in laws with relation to the parental sexual orientation. There are different laws in different countries. India has recently recognized consensual homosexual relations as legal, while there are countries where people are still penalized for it. Internationally, the legal scenario for sexual minorities is diverse and continually changing. In 2020, ration to deal with homosexuals were different, some imposed the death penalty or imprisonment for sexual minorities, whereas among 28 countries provided access to civil marriage (ILGA World et al., 2020).[12]

[11]Teacher, Law. (November 2013). Gay Marriage A Moral Issue. Retrieved from https://www.lawteacher.net/free-law-essays/family-law/gay-marriage-a-moral-issue-family-law-essay.php?vref=1

[12]Waaldijk et al., 2017; ILGA World et al., 2020

SURROGACY LAW DISCRIMINATES AGAINST HOMOSEXUAL AND TRANSGENDER

Surrogacy is a commonly choosen option for Gay couples and transgender people who want to be biologically connected with their children while also popular among Lesbians who are unable to conceive a child because of some medical complications. A family constitutes a natural and essential unit of society, deserving protection from both the State and society.[13] The Surrogacy Regulation Act 2021 has only recognized the rights of heterosexual couples and single women but is silent on the homosexual couple's right to opt for surrogacy., while on the other hand, surrogacy is a boon to people who cannot conceive naturally, restricting that right from Homosexuals and Transgenders is a violation of their rights to be parents. The reproductive rights of couples are being progressively considered as a basic right under International human rights laws and not giving that right in India is a non-progressive step here; the right to avail this right should be available to them too.

The Act establishes specific eligibility criteria that create a distinction between heterosexual and homosexual couples, permitting only the former to engage in surrogacy. The exclusion of LGBT+ couples in the Bill raises concerns as it goes against the Right to Equality enshrined in the Constitution, which prohibits discrimination and exclusion. Furthermore, this exclusion contravenes several international conventions. Section 16[14] of the UDHR acknowledges an individual's right to marry and start a family, while Article 17[15] of the ICCPR prohibits the State from arbitrary interference in an individual's privacy, family, home, or correspondence. Additionally, Article 10[16] of the ICESCR recognizes an individual's right to parenthood.

Gay men face even more problems in relation to surrogacy or adoption, as there is a norm in society that the mother is the caretaker and the father is given secondary

[13] The Universal Declaration of Human Rights, Art. 16(3).
[14] Sec 16 Universal Declation of Human Rights
[15] Art 17 International Covenant on Civil and Political Right
[16] Art 10 International Covenant on Economic, Social and Cultural Rights

importance in many aspects of our society.[17] If a child is desired by a family, she can be nurtured by a single parent or by either a same-sex or different-sex couple, by ensuring all the basic essential care is given to that child. In contemporary times, it is commonplace to observe children being raised by single mothers or grandparents within a wide range of family structures, all adequately equipped to provide proper upbringing for these children.[18]

ADOPTION LAWS FOR HOMOSEXUALS AND TRANSGENDERS

As per a study conducted by UNICEF, India has approximately 29.6 million orphaned and abandoned children. However, the adoption rate in the country remains notably low. However, those homosexual people who are willing to be parents are not able to avail their adoption rights in our country. India's adoption laws are not aligned with the principle of the best interest of orphaned children, as they exclude potential prospective adoptive parents from the adoption process based on their sexual orientation. . Adoption plays a very significant role in the life of LGBT people as IVF and ART are costly processes; they are barred by law from using surrogacy[19]. Hence, adoption seems to be the most comfortable way to go.

Adoption law in India is governed by the Hindu Adoptions and Maintenance Act, 1956[20] and The Juvenile Justice Act. Under HAMA, adoption includes for Hindus, Buddhists, Sikhs, Jains, and other religions governed by Hindu Law. While considering the capacity for adoption,Section 7[21] and 8[22] of HAMA uses the words "husband" and/or "wife" which shows that the act does not consider adoption by same-sex couples or transgenders[23]. Additionally, the guidelines for adoption are outlined for Hindu males and Hindu females, creating ambiguity in the application of these laws to third-gender couples. Under HAMA, single-parent adoption is allowed, however in that case, the other parent will have to sacrifice his adoption rights, and also, it will put a legal obligation on only one parent and such a situation

[17] Mallon, G. P. (2004). The Journey Toward Parenting. In *Gay Men Choosing Parenthood* (pp. 23–58). Columbia University Press. http://www.jstor.org/stable/10.7312/mall11796.6
[18]Campos Refosco, H., &GuidaFernandes, M. M. (2017). Same-Sex Parents and Their Children: Brazilian Case Law and Insights from Psychoanalysis. *William & Mary Journal of Women and the Law, 23*(2), 175. Retrieved from https://scholarship.law.wm.edu/wmjowl/vol23/iss2/2
[19]Surrogacy Regulation Act, 2021
[20] Hindu Adoption and Maintenance Act, 1956
[21] Sec 7 of Hindu Adoption and Maintenance Act, 1956
[22] Sec 8 of Hindu Adoption and Maintenance Act, 1956
[23] Id

will create problems during a complication in their relationship. HAMA is also incapable of understanding the complexities that may arise in case of sex change or sex-reassignment surgery of a transgender woman or man, and whether he/she will be able to adopt. It is evident that HAMA is discriminatory towards the LGBT community regarding adopting a child

The Juvenile Justice (Care and Protection of Children) Act, of 2000 has considered adoption to be as one of the best ways to ensure the care and rehabilitation of child. Section 57 of the Juvenile Justice Act has discussed the eligibility of prospective adoptive parents and Adoption Regulation 2017, Regulation 5(3) states that 'No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship'[24] .As the same-sex marriage is not yet legally recognized in India, they are not able to show their stable marital relationship of 2 years, and it becomes difficult for Homosexuals and transgender to adopt a child, which is a part of their Fundamental rights. Section 5 (2) of the Adoption Regulation 2017 grants the right of adoption regardless of marital status, allowing single parents to adopt. However, for married couples, the consent of both spouses is required. In the context of same-sex couples, as same-sex marriages are not recognized in India, they would effectively fall under the category of unmarried couples. Additionally, societal stigma further deters authorities from approving adoption for homosexuals and transgender individuals. Art 14, 15, and 21 of the Indian Constitution protects the right of LGBT people to adopt. Classifying people on the basis of their sexual orientation is arbitrary, unjust, unfair, and unreasonable. Hence there is no rational nexus established to create discrimination between different-sex couples and same sex couples. Also, there is no established evidence to show that homosexual couples are in any way inferior to heterosexual couples to bring a child.

In the Navtej Singh v. UOI[25] case, the court referenced a Canadian case, asserting that human dignity is compromised when individuals are treated unfairly based on personal traits unrelated to individual needs, capacities, or merits. The court affirmed that the LGBT community possesses the same inherent, fundamental, and constitutional rights as other citizens and should not face discriminatory treatment under the guise of social morality. The non acceptance of adoption rights to same-sex couples, based on their sexual orientation, will undermine the dignity of

[24]Adoption Regulation 2017, Regulation 5(3)
[25]AIR 2018 SC 4321, (2018) 10 SCC 1

individuals in the community, irrespective of their capacity or merit as potential parents. [26]A study indicated that lesbian couples exhibited the most supportive and least undermining behavior, gay couples showed the least supportive behavior, and heterosexual couples displayed the most undermining behavior. Overall, supportive co-parenting was associated with better child adjustment.[27]

The Hindu Adoptions and Maintenance Act specify that a single male individual can adopt a female child only if he is at least 21 years older than the adoptee.[28] Similarly, there must be a 21-year age gap between a single adoptive mother and a male child.[29] The Adoption Regulations, established under the Juvenile Justice Act, prevent a single male from adopting a female child, while no such restriction applies to a female adopting a male child. The Act extensively use gendered sections, with numerous reference of the terms 'male and 'female' in the Adoption Regulations rather than keeping it gender neutral. This lack of gender-neutral or third-gender-specific terms creates ambiguity for transgender individuals. The determination of gender, whether of the prospective transgender parent, the child to be adopted, or both, introduces complexities in the adoption process. Inheritance and Succession will also be a big issue for the adopted children until the marriage of LGBTQ+ is legalized.

Since the position of Homosexual relations and Transgender is legally recognized now, it's high time to make rules and regulations in support of LGBT people to let them adopt a child and consider them equal to the heterosexual section of society. Concerning apprehensions about the adjustment of adopted children in homosexual families, it was observed that aspects such as children's adjustment, parents approach towards a child, and the couple relationship adjustment or family ties were not significantly linked to parental sexual orientation.[30] Every child has a right to family and every family or individual that wants to nurture a child should equally have the right to parenting. The Process for adoption is thorough but a very

[26] Shukla, A. (2019). European Human Rights Law Review - University of Oxford. Retrieved from https://www.law.ox.ac.uk/sites/files/oxlaw/shukla_from_2019_ehrlr_issue_2_print_final_0904-8.pdf
[27]Farr, R. H., & Patterson, C. J. (2013). Coparenting among lesbian, gay, and heterosexual couples: associations with adopted children's outcomes. *Child development*, *84*(4), 1226–1240. https://doi.org/10.1111/cdev.12046
[28] Sec 7 - Hindu Adoption and Maintenance Act
[29] Sec 8 - Hindu Adoption and Maintence Act
[30]Farr, R. H. (2017). Does parental sexual orientation matter? A longitudinal follow-up of adoptive families with school-age children. *Developmental Psychology, 53*(2), 252-264.https://doi.org/10.1037/dev0000228

tedious and time-consuming. This process should not be weakened but the process should be sped up so that those abandoned or orphan children won't have to spend long time in those institutions and can rather have a family to live with. Every individual who wants to adopt a child should be given a chance to do so regardless of the sexual identity of that individual.

ASSISTED REPRODUCTION FOR HOMOSEXUALS AND TRANSGENDER

Assisted Reproductive Technology (Regulation) Act, 2021, is a timeless legislation for a timeless problem. The Act works towards curbing the problems related to illegal and unregulated ART clinics, but it has failed to address some serious issues. The Act is designed to oversee and regulate ART clinics, ART banks, and prevent the misuse of ART services. However, there are significant challenges related to health claims and the high cost of ART procedures, making the journey to parenthood a complex and costly endeavor; making it more challenging for LGBT couples. There are also instances wherein homosexuals are rejected by health providers and not given the benefit of health insurance as well. Assisted Reproductive Technology (ART) is currently accessible exclusively to heterosexual married couples dealing with infertility or single women who are widowed or divorced. This exclusionary practice neglects the LGBTO+ community and unmarried partners. Such limitations contradict both international norms and the landmark judgement of Navtej Singh Johar v. UOI case, which decriminalized consensual same-sex relations among adults. Professor Courtney Cahill observes that Obergefell[31] implies the constitutional safeguarding of procreation as a liberty right[32]. This acknowledgment stems from Obergefell's recognition of the interconnection of marriage with that of procreation, deeming them "related rights" forming a "unified whole." This legal perspective from Obergefell has the potential to establish constitutional equality between sexual and assisted reproduction. ART can incur significant expenses[33], and even with coverage, unlimited cycles may not be included and the success rate of IVF is also around only 25-30%. In India the

[31]Obergefell v. Hodges, 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609, 25 Fla. L. Weekly Supp. 472 (2015)
[32]Obergefell, 135 S. Ct. at 2600. (quoting Meyer v. Nebraska, 262 U.S. 390, 399 (1923)).
[33]Hamilton, B. H., & McManus, B. (2012). The Effects of Insurance Mandates on Choices and Outcomes in Infertility Treatment Markets. *Health Economics, 21*(8), 994–995.

ART facility is accessible only to infertile couples, medical certificate for the same is required which directly eliminates the chances of LGBTQ+ from availing insurance for these services while not considering the aspect of infertility being in the same sex relationship.[34]

DISCRIMINATION TOWARDS CHILDREN OF HOMOSEXUAL AND TRANSGENDER PARENTS

Parenthood comes with infinite joy and challenges, but the most important challenge that impacts Homosexual Parents is the discrimination they face. Although Homosexuality is legalised under our Indian laws, our society is still not ready to accept homosexual people as normal because of the orthodox thinking in our society. Same sex families are still treated differently and excluded by many people with narrow thinking. [35]

Children may live with a negative attitude towards their parents because of the way society treats them; these children are also more prone to depression and negative attitude. [36]They face struggle in many domains of life. A Positive Environment and Support group is needed for these children and parents to feel comfortable and included in society.[37] Facilitating open conversations about same-sex family structures can play a role in establishing an inclusive and diverse educational setting.. It will help the students from diverse backgrounds feel represented and valued. There must be public awareness that homosexual people are as normal as heterosexuals and especially the children belonging to homosexual parents are not incomplete in any way.

The National Commission for Protection of Children's Rights (NCPCR) had raised objections towards the legality of same-sex marriages, during the argument in the recent Supreme Court judgemnt of Supriyoa.k.aSupriyaChakraborty&Abhay Dang

[34]Mohapatra, S. (2014). Fertility Preservation for Medical Reasons and Reproductive Justice. *Harvard Journal on Racial & Ethnic Justice, 30*(1), 193-207.
[35] Patterson, C., &Blanchfield, B. (2016). Children with lgbq parents, psychosocial outcomes. In The SAGE Encyclopedia of LGBTQ Studies (Vol. 3, pp. 211-214). SAGE Publications, Inc., https://doi.org/10.4135/9781483371283
[36] Barrett, H., &Tasker, F. (2001). Growing up with a gay parent: Views of 101 gay fathers on their sons' and daughters' experiences. Educational and Child Psychology, 18, 62-77.
[37]Mazrekaj, D., De Witte, K., &Cabus, S. (2020). School Outcomes of Children Raised by Same-Sex Parents: Evidence from Administrative Panel Data. American Sociological Review, 85(5), 830–856. https://doi.org/10.1177/0003122420957249

v. Union of India[38]. Supreme Court, led by Chief Justice of India DY Chandrachud, unanimously decided against the legalizing of same-sex marriage in India, it was held that the right to marry is not a fundamental right for queer persons. The Chief Justice of India (CJI) in regard to this case concludes that the court cannot alter the Special Marriage Act to include homosexual couples but highlights the evolving nature of marriage. He emphasizes the equal right of queer individuals to form a "union," stating that the state's failure to recognize such relationships would disproportionately affect queer couples. The CJI suggests that the legislature should decide on the legal status of same-sex marriages but highlights that the state should not make inverse conclusion of the judgement and overlook or discriminate against the "union" or relationship of queer couples.

In opposition to the adoption rights of homosexual couples, the child rights body argues that children raised by same-sex parents might experience limited exposure to traditional gender role models or development as per the societal stanards aspect.[39] They also made a statement that 'Allowing Adoption To Gay Couples Endangers Children'. However opposite views and upbringing with different home environment and different parentinmg style is common among heterosexual parents as well, so making a statement on that basis is not justified. The upbringing and care of a child depends on the personal development of a child and the relationship quality between the parents.

INTERNATIONAL PERSPECTIVE

Brazil has a similar multi-ethnic and multi-religious population, it also encompasses diverse regions and cultures which are similar to that of India. Homosexuality was decriminalised in Brazil around 1830, and Homosexual marriage equality was legalised in 2013. The article, titled "Same-Sex Parents and Their Children: Brazilian Case Law and Insights from Psychoanalysis" by Helena Campos Refosco and Martha Maria GuidaFernandes, explores the legal recognition of same-sex parents and their children in Brazil. The authors here argue that both maternal and paternal functions can be effectively performed by same-sex parents from a psychological perspective. The article discusses the legal developments in Brazil, including the recognition of same-sex common-law marriage and the rights of same-sex couples in

[38] W.P.(C) No. 1011/2022 Diary No. 36593/2022
[39] National Commission for Protection of Child Rights

assisted reproduction techniques. The authors have emphasized the importance of recognizing both same-sex parents on their children's birth certificates, asserting that it aligns with the principles of human dignity outlined in the Brazilian Federal Constitution. They argue that the legal recognition of same-sex parents is not only constitutional but also psychologically appropriate. The article draws comparisons with the U.S. Supreme Court's decision in Obergefell v. Hodges[40], which affirmed same-sex marriage rights. The discussion covers the Brazilian legal context, highlighting the 2011 Supreme Court decision recognizing same-sex common-law marriage and subsequent resolutions allowing officials to celebrate civil marriages for same-sex couples. The article also addresses issues related to registering same-sex parents on their children's birth certificates.[41] From a psychological standpoint, the article contends that studies show same-sex couples can be good parents, with the quality of the parent-child relationship being crucial. The authors argue that legal non-recognition may contribute to feelings of inadequacy for children raised by same-sex parents.

In the case of Florida Department v. Adoption of X.X.G (2010), the constitutional validity of denying adoption rights to a same-sex couple was contested in the Florida Court of Appeal. The court affirmed the ruling of the district court, stating that denying adoption rights on the grounds of sexual orientation was deemed illegal.[42]

Research from the Netherlands, the pioneer in legalizing same-sex marriages, reveals that children, whether biological or adopted, raised in same-sex households exhibit superior educational performance compared to those raised by heterosexual parents. The researchers suggest that this outcome may be attributed to the older age, higher education levels, and increased incomes of same-sex families and also the time required for homosexuals to be parents gives preparatory headstart in mind to deal with children.

A similar situation is anticipated for LGBTQ+ parents pursuing adoption in India. The adoption process is protracted, costly, demands considerable patience, and involves navigating through a lott of government procedures. Due to these difficulties, prospective adoptive parents are subjected to heightened scrutiny

[40]Obergefell v. Hodges, 576 U.S. 644 (2015)

[41] The juridical recognition of same-sex parenthood is based on the Brazilian Civil Code and the direct incidence of constitutional principles. Código Civil [C.C.] art. 1.593 (2002) (Braz.).

[42]Florida Department of Children and Families v. Adoption of X.X.G, 45 So. 3d 79 (Fla. Dist. Ct. App. 2010).

regarding their capacity to upbring a child, as compared to the scrutiny faced by biological parents.

Spain is among the third country in the world to legitimize homosexual marriage in 2005 and it is the first country that granted homosexual couples the possibility of adopting[43]. Among the Asian countries, Israel and Lebanon allow adoption for same sex couples, while there are around 22 Eupopean and 16 Ameriancountires that do so. The constitutional court of South Africa passed judgement that it wont prevent a homosexual couple from treating an adopted child as their own child.[44] The groundbreaking United States Supreme Court decision, Obergefell versus Hodges (2015), which legalized marriage equality, acknowledged that many homosexual couples, whether raising biological or adopted children, provide affectionate and supportive homes.[45]

CONCLUSION

The study emphatically points towards the lack of proper legislations for LGBT+ people, and the difficulty pertaining with it to enjoy Parenthood. Several instances have been discussed in the paper, lack of legislation, problem with adoption, inability to avail the right of surrogacy and problems with stereotypes in society.

To remove these kinds of discriminatory practices from our country, the author suggests removing the word 'mother and father' from Juvenile Justice Act and replacing it with 'Parents' to make this right available even to Homosexuals and Transgender. And also to replace the term 'Husband and Wife' from HAMA and replace it with 'couple'; by widening the range of people and letting into consideration both homosexual and heterosexual couple.

LGBT parents are equally capable of being loving and supportive parents, in fact many children who Homosexual parents raise claim to have a loving and caring environment and they appreciate the diversity of their family. Family issues arise among family and creates problems for children but it is irrespective of the sexual orientation of an individual, as we have reportedly seen plenty of family disputes

[43]Imaz, E. (2017). Same-sex parenting, assisted reproduction and gender asymmetry: Reflecting on the differential effects of legislation on gay and lesbian family formation in Spain. Reproductive Biomedicine & Society Online, 4, 5-12. https://doi.org/10.1016/j.rbms.2017.01.002

[44] National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others (CCT10/99) [1999] ZACC 17; 2000 (2) SA 1; 2000 (1) BCLR 39 (2 December 1999)

[45] Du Toit and Another v Minister of Welfare and Population Development and Others (CCT40/01) [2002] ZACC 20; 2002 (10) BCLR 1006 ; 2003 (2) SA 198 (CC) (10 September 2002)

among heterosexual couples as well. Legal Recognition of marriage is important among any individual irrespective of sex, that will help people avail the basic rights in lives, including the right to parenthood, inheritance etc for the adopted children.
An important thing about parenting is the love, dedication, hard work and patience; and it is regardless of sexual identity or sexual orientation of an individual. Every family is unique and completely different in their own way having different strengths and challenges. The most important thing is having a supportive environment for children.
Although the argument regarding same sex couples not being able to procreate or have their own child naturally is true, but there is no scientific evidence to show that homosexual parents are incompetent to raise children. Infact it would be a positive step for those abandoned and orphaned children who do not have a home, as Gay marriage would increase adoption, and there are so many children who are in need of a loving family. The Homosexuals and Transgenders should no longer be considered as second-class citizens or of lower status in society. We are all equal and it includes everyone irrespective of their sexual preference. They should not be subjected to narrow-mindedness and should be accepted the way they are while giving them all the civil rights and parenthood rights that they deserve.

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MOHD ABDUL SAMADV.STATE OF TELANGANA

Dr. Pandhare Balasaheb Dashrath[•]

ABSTRACT

The Apex court of India, in a landmark judgement Mohd Abdul Samad delivered on 5TH JULY 2024 refused to entertain the plea and declared that even if Mohammedan wife has divorced by her husband applying triple Talaq cannot bar herself from claiming maintenance under section 125 of Cr.P.C. The petitioner had pleaded that the secular law of Section 125 CrPC should pave way for The Muslim Women (Protection of Rights on Divorce) Act, 1986. Case all the more in light of Muslim women to get maintenance u/s 125 CrPC, with a view to equality and letter as well spirit of the Constitution. All-in-all this judgment raises very serious doubts whether we need to use constitutionalism as a tool of take measures regressive religious fundamentalist thinking.

INTRODUCTION

India the largest democratic country and complete written constitution foundation on equality. Thus, there continues to exist a single uniform code in the constitution which applies equally on all citizens without any discrimination amongst them of religion and race etc. or place from where they have taken birth. But in matters that concern family disputes — marriage, divorce, maintenance and succession- there are different personal laws for various faiths one of the conflicts relevant to today is whether Sec 125 under the Code of Criminal Procedure should apply on a Muslim citizen.

Under the said section, a `First Class Magistrate could direct that her husband would allow to his wife/divorced spouse (that was not remarried) a monthly allowance when he refused to maintain them and they were can not keep themselves. The family court was powerless as the same act mandates Magistrates to deal with these subjects. The intention of the law was simply empowerment for women who were financially reliant on their men-a gentle human overture extended to put-upon housewives and dismissed divorcees. According to Sunni schools of Islam, a *mahr* is the gift that should be given by husband to his wife so she can have some 'comfort' (Qur'an 4:20) in her new role as a married woman.Mahr. Optionally, this can be paid immediately or at a future point (with the death of husband/beginning for divorce). What

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the Supreme Court judgment is primarily about, however, are acts passed to protect Mohammedan women who have been divorced by or obtained a divorce from their husband. Central law 125 CrPC provides maintenance after the *iddat* period or that incident had already happened with 1985 case of right to maintenance under CrPC does not standby provision of personal law.

FACTS

In 2019, Mohd Abdul Samad (Appellant) got married to Respondent (Wife). Marriage Consortium made on 15.11.2012 by the both parties. However, the respondent (wife) vacant from her shared household on 09.04.2016 as their relationship worsened trend Thus, Respondent (Wife) thereafter filed a criminal complaint against Mohd Abdul Samad in the form of FIR No. 578/2017 for offences under Sections -498Aand Section -406 IPC. In the counter blast, Mohd Abdul Samad (Appellant) on 25.09.2017 uttered triple talaq and also filed a petition for divorce before the office of *Quzath* seeking declaration to this effect, which was allowed ex parte by declaring legal separation (divorce) certificate on 28-09-20 17.

It is also alleged that he has tried to send Rs. 15,000/- (Rupees Fifteen Thousand only) in the nature of maintenance for *iddat* period but Respondent refused both allegations being denied by another party and not yet substantiated on record it leaves a greater question mark about his conduct? The Respondent (Wife) and child had first moved before the Family Court, under Section 125(1) of CrPC 1973 for grant of maintenance Rs.15, 000/- p.m., to wife; and that at the rate of `12,000/- p.m.

The Respondent (Wife) has averred that she stayed with the revision petitioner till December 2018 and thereafter even left him as he treated her cruelly alleging e-marital relationship. It is further stated that the Respondent (Wife) had also affected 'Khula' and under personal law she gives Khula a particular type of divorce, where wife gives or agrees to offer money as gain for her release from marriage tie) in favor revision Mohd Abdul Samad on his part, submitted that's he was handed over all expense-earned amount to the respondent (wife) and that sometime in 2018 there has been loss incurred by him business operations since then.He contended that the Respondent (Wife) had lived with him till December 2018 and thus moved out after he suffered a loss in his business.

It was also alleged by the revision petitioner that respondent wife entered into relationship with some other person which led to disintegration of marriage. The family court, held that the revision petitioner had failed to adduce any cogent evidence in support of his case regarding adultery except oral evidence and awarded maintenance at rate of Rs. 10,000/- per month each

against him for every petitioner. That further moved the High Court of Telangana and Mohd Abdul Samad (husband here-in) on that ground, thereby eventually passed impugned immediate order dated 13.12.2023.

The principal contention of the Appellant in this Court is that Section 125 CrPC, 1973 cannot be applied having regard to The Muslim Women (Protection of Rights on Divorce) Act, 1986(hereinafter referred to as "the aforesaid Act"). It is further argued that even in case a "divorced Mohammedan women" approached the court under the temporal provision of Section 125 of CrPC,1973; those would not be maintainable and instead required an application to be filed under section 5of1986 Act which evidently does not suffice here.

ISSUES

- The Supreme Court made clear the excruciating questions raised before it thus:
- Is there anything in the Muslim Personal Law which enjoins a liability to pay to wife 'on divorce'?
- Can an already married woman who has obtained Khula make a matrimonial suit for maintenance later on the ground that marriage was dissolved by holding of decree in this regard?

REASONING

Whether the spouses were Hindus or Muslims, Christians or Parsis, gentile of heathen is perfectly irrelevant. It means that the provision concerned applies to all persons of all religions no matter what their personal law may be. The Apex Court had also recently clarified in Danial Latifi on April 25, Section 125 CrPC would apply to not just married women (as has commonly been understood) but all woman. Please share unconditionally this provision.

Consequently, while the SC judgment endorses the rights of divorced Mohammedan women to sue for maintenance under Section 125 CrPC (legal parity and safeguard) as well as safeguards upon constitutional guarantees of equality including elimination from society's non-discrimination.

The Apex Court knocked the door to appeal, proving that Mohammedan women may apply for maintenance under section 125 CrPC even with a wont of act in 1986. This part in section 125 is the third proviso at that time it was held to be a drop-dead clause by Nazeem which cannot mean use of explicit bar under s. However, the Supreme Court has made clear this

considering Section 3 starting with non-obstante clause Muslim Women (Protection of Rights on Divorce) Act, 1986 does not take away application but they are additional remedy. Apex Court as financially empowers an Indian Man to the Sake of His Wife without Income Autonomy It drew the line between married or employed financially independent women. The court clarified that divorced Muslim women, including those who have been given triple talaq (now legally not recognized), could also seek maintenance under Section 125 of the CrPC irrespective of their personal laws. Triple talaq has been ruled null in void by the Apex Court and it made criminal offence under Muslim Women (Protection of Rights on Marriage) Act, 2019.

The personal law is for payment of mahr in *iddat* therefore, did not consider that divorced wife being unable to maintain herself after the period fixed as *iddat*. But employing deft interpretative tools, the court reconciled Muslim personal law and Sec 125. Submission of the Learned counsel with respect to release order passed by Director NVBDCP as one in violation of principle so far natural justice is not tenable: It may be noted that the director was only informed about such direction and it has been well settled law that a court cannot determine what an authority should do : Permissibility furthermore, since there are limbs within constitutional parameters ensuring Right to maintenance non obstante any provision thereof In other words Section 125 CrPC is clearly measure of social justices commonly benefitting women who need protection therefore under Art 15(1) and (3.)of Constitution read With Article39(e), let Justice Nagarathna says endorse.And say on adequacy and sufficiency of maintenance is the most important elements to be considered for deciding claims from wife part, adequate & sufficient (maintenance) Law 28/2004 Article 7 paragraph (1), Mrs. can live decently, called respective casualty met her hand husband there shall lawful marriage resume it end differently; The intricacies of our pluralist legal culture and personal laws are not a subject which is usually discussed within the realm of maintenance amount These issues have social protection dimension also for deserted women, Justice also observed that the judgement of former Justice Krishna Iyer, in case--***Bai Tahira vs. Ali Hussain FidaalliChothia***[1], is equally illuminating on this aspect. A Mohammedan Women Vice Versa The Application of Section 125 From Ha Lafa Filed by Divorce Decree This Court Has Prisoned. Thereafter, the husband had contested the award of maintenance before IV Additional Sessions Judge on ground that Magistrate has no jurisdiction to determine Posted in Articles Tagged 125 CrPC, criminal lawyers Delhi, lineal descendentSince the Session Judge's view did not wire, High Court had deprived on and ultimately Supreme Court also agreed that a divorcee undergoing neglect who is destitute would come within protective catalog of Section 125.

Opinions of the two Judge Bench concurring haply were that "Sec 125 CrPC is comfortable

[1]Bai Tahira vs. Ali Hussain Fidaalli Chothia (1979) 2 SCC 316

provision applicable to all regardless religion".
Secondly, a Divorced Mohammedan Woman who is not able to maintain herself may demand maintenance from sec 125 of CrPC until she does not get remarried. 3rd in case a Mohammedan married woman has been divorced and she cannot support herself, she shall be entitled to maintenance over the period of *iddat*.

Lastly, for claiming maintenance If Mohammedan women are married and divorced under the law of Mohammedans then Section 125 CrPC as well as provisions of Act, 1986 will apply. It is an option available to the divorced women against divorcee Muslim husband that either she could seek remedy under Muslim Family Law Ordinance 1961 or under of this law. Muslim Women (Protection of Rights on Divorce) Act, 1986 not in derogation of Section 125 CrPC.

DISPOSITION

Concurring with the two-judge bench, agreeable opinions were that firstly Section 125 of CrPC is a secular provision which applies to all citizens irrespective their religion. Secondly, a divorced Mohammedan woman who is unable to maintain herself can claim maintenance under sec 125 of CrPC till she gets married. Divorced Mohammedan woman maintains self - entitled to maintenance up to period of *iddat*. Finally, if Mohammedan women are married and divorced under Mohemmadan law Sect 125 of the CrPC as well as provisions equivalent to that in the 1986 Act will apply. It is with the Muslim divorced women to choose both laws in redressal. And Muslim Women (Protection of Rights on Divorce) Act, 1986 is not in derogation of Section 125 of the CrPC.

CRITICALANALYSIS

Following the judicial proclamation in Mohd Abdul Samad case, a juggernaut of reactions ensued. This provision of the act was sought to be struck down in 2001 also by a writ petition on file - ***Daniel Latifi & Others V Union of India***[2]; But A widely hailed constitutional bench judgement rendered upon this brought an end to any further controversy here and declared that these provisions do not offend Article 14, 15 or even part III per se! [Muslim Women (Protection of Rights on Divorce) Act, 1986].

It further held that the maintenance to be provided by Mohammedan women for their former husbands would extend beyond *iddat* up until they remarry. Section 3 and Section 4 which starts with a non-obstante clause, of the Muslim Women (Protection of Rights on Divorce) Act,1986 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being enforced. However, after a few years the Supreme Court in ***Iqbal***

[2]Daniel Latifi & Others V Union of India, (2001) 7 SCC 740

Bano vs. State of U.P and Anr[3]., has held that no Mohammedan women can maintain petition under Section 125 CrPC to be not sustainable.

Following two years, in ***Shabana Bano vs. Imran Khan***[4] also other Bench of the court observed that a divorced Muslim woman more exactly, every Muslim woman would be entitled to claim the maintenance under Section 125 CrPC after the expiry of *iddat* period, provided she did not marry. It was followed direct in the next year in ***Shamima Farooqui v. Shahid Khan***[5]also the Apex Court restored the Order of a Family Court of Maintenance and stated that divorce Mohammedan Women entitled to maintain a Section 125 CrPC for living. Same in ***Mohammed Ahmed Khan vs. Shah Bano Begum***[6] also in this legendary decision has on this issued, the Apex Court hailed that Section 125 CrPC applied to every human being, diverse of religion. CrPC is well a secular code, S 125 is as much part of CrPC accommodates everyone regardless of anything. CrPC does not curtail the statutory right of maintenance; so is under personal law. By seconding this suggestion majority of nativity will think me unsecular and tasteless as the constitutional bench criticized legislature for not enacting a Uniform Civil Code in pursuance to Article 44 but coming from so called male dominated court siding women on various matter with some praiseworthy innings is trashing truth!
In the aforesaid case, Senior advocate Gaurav Agarwal as the amicus curiae appointed for this matter on 09.02.2024 told bench comprising Justice Augustine George while mentioning Mohd Abdul Samad that "in my view, Section 125 are perfectly maintainable case “Agarwal also referred to recent Kerala High Court has held in favor of women and said both, petition under section3 /1986 Act and alternative relief by way section, CrPC Position would be maintainable, women can choose one out them.

However, he stated that the opinion is not right and Supreme Court will have to clarify this while appearing for husband Senior Advocate S Wasim Qadri contended that if Muslims were permitted by parliament under Section 125 of CrPC there would be no need for Muslim Women (Protection of Rights on Divorce) Act, 1986. The provisions of section 125 are very well known to the Parliament. Under doctrine of implied repeal, parliament cannot create confusion: the parliament is presumed to know pre-existing necessary law and won't try to make any confusedness by retaining conflicting provision.

In applying this doctrine. The Muslim Women (Protection of Rights on Divorce) Act,1986 has considered in the latter category and falls under special law because A part from maintenances provision relating to *meher* [dower] is also covered section 3[2](8), It treats of an irrelevant

[3]Iqbal Bano vs. State of U.P and Anr, (2007) 6 SCC 785
[4]Shabana Bano vs. Imran Khan (2010) 1 SCC 666
[5]Shamima Farooqui v. Shahid Khan (2015) 5 SCC 705
[6]Mohammed Ahmed Khan vs. Shah Bano Begum (1985) 2 SCC 556

matter in the context of Section 125 CrPC. While setting this observation on the court, Justice Augustine George Masib said that., "It is not prohibited under this Act to give choice of person who had applied or moved an application u/s.125 CrPC and there in no section 6(1) nowhere states expressly which so ever sub-section (B), shall be binding separate/exceptional any other Law including personal law by making void as contained Sec. and intermediary orders passed under impugned judgment requiring obligation from of Muslim Women (Protection rights divorce) act,1986.

Justice Nagarathna concurring with him said that nothing in the Muslim Women (Protection of Rights on Divorce) Act, 1986 prevented one remedy being granted in favor to another. She also says that even if Parliament had the desire to provide her right of choosing in Section 125 CrPC and Muslim Women (Protection of Rights on Divorce) Act,1986 Is there any absence of such thing can add limitation be added later by an Amendment to Act. To this, Amicus Curiae Gaurav Agarwal submitted that the Personal Law does not take away the eligibility of a woman to relief under CrPC. The appeal was dismissed by the Supreme Court, holding that "even if a personal law provides for maintenance rights-MAINTENANCE RIGHTS OF MUSLIM WOMAN WHICH SHE MAY SEEK UNDER SECTION 125" of CRPC wherever she demonstrates inability to maintain herself.

CONCLUSION

In the last, it would suffice that right from execution of Mohd Abdul Samad to its repercussions was a fight between Feminism vs Secularism; Central Law (CrPC) Vs Personal law (Muslim Women [Protection of Rights on Divorce] Act, 1986). Interpreting the Quranic paras, these Muslim clergymen accused that a constitutional bench under strict laws has followed Eurocentric approach. In the overall judgement, whenever maintenance is awarded, it cannot be a matter of charity and has to be accorded as right now. "Through the correct mines of religious frontiers, to consolidate likewise the guideline of sex correspondence and money related freedom upon all wedded ladies," it said.

"Several husbands do not realize that her wife is a homemaker and emotionally dependent on them as in many other things. This must be the time when each and every male of our nation realizes that Housewives are bound to play this role soon or later, it's a sacrifice made by housewives.

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JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION: BALANCING ADMINISTRATIVE EFFICIENCY AND PROTECTION OF FUNDAMENTAL RIGHTS

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ABSTRACT

Administrative law governs the activities of governmental administrative agencies, including rule-making, adjudication, and the implementation of public policy. It plays a pivotal role in ensuring that these agencies act within the legal framework, balancing governmental power and protecting individual rights. Administrative law helps manage the expansion of executive powers in modern welfare states, where governments now assume roles beyond traditional functions, such as economic control and social welfare. A key aspect of administrative law is judicial review, which empowers courts to oversee the legality and constitutionality of administrative actions. Through judicial review, courts ensure that administrative bodies do not exceed their legal authority (ultra vires), promoting fairness and accountability. Delegated legislation, a significant facet of administrative law, grants administrative bodies rule-making powers; however, these powers are subject to judicial and constitutional checks. The principles of natural justice, including fairness and impartiality, are vital in administrative proceedings to prevent arbitrary decisions. Administrative tribunals provide specialized forums for resolving disputes more efficiently and flexibly than traditional courts. Yet, tribunals must operate within the bounds of judicial oversight to maintain their independence. The principles of legality, rationality, and proportionality guide courts in scrutinizing administrative actions, safeguarding individual rights, and maintaining the rule of law. Thus, administrative law serves as a cornerstone for maintaining balance in governance by ensuring that the exercise of public power is checked and transparent.

Keywords*: Judicial Review, Administrative Discretion, Delegated Legislation, Administrative Tribunals, Natural Justice.*

INTRODUCTION

Administrative law is the body of law that governs the activities of administrative agencies of the government, which comprise of rule-making or legislation when delegated to them by the Legislature as and when the need be adjudication to pronounce decisions while giving judgments on certain matters and implementation or enforcement of public policy[1].The executive performs many quasi-legislative i.e. law-making functions of ordinary courts of law but today being the government control have increased, many judicial functions are performed by the executive such as- imposition of fines, levy penalties, confiscation of contrabands, etc. The legislature not only exercise sovereign functions but seeks to ensure social security and social welfare for the people. It regulates the industrial relations, control over production, and overtakes enterprises. The issues arising there from are not purely legal issues. This led to the establishment of the social welfare state. The functions of the state today may be put in five broad categories, namely, as a protector provider, entrepreneur, economical controller and arbiter. Administration law helps in balancing public power and personal rights. If exercised properly the administrative powers could lead to a well-functioning welfare state and if not exercised properly, it would lead to administrative despotism. Administrative law determines the organisation powers and duties of administrative authorities the emphasis of administrative law is on procedures for formal adjudication based on the principles of natural justice and for rule making. The concept of administrative law is founded on the principles of- powers conferred on the administration by law, no power is absolute or uncontrolled howsoever broad the nature of the same might be, and there should be reasonable restrictions on the exercise of such powers depending on the situation. Administrative law is very significant Because if it did not exist, then the very concept of having a democracy and a government to work for the people would be self-defeating because this case, there would be no responsibility or accountability of the public officials to anybody, they would run arbitrarily, thus creating a huge monster that would eat up the very system. There would be disturbance in the balance of such areas, such as police control, international trade manufacturing, environmental issues, taxation, broadcasting, immigration and transportation. Control over administrative action also becomes extremely necessary in this context. The government machinery cannot be excused under the statutory immunities against any wrongs on the people. Administrative law provides various aid measures that citizens can seek against high-handedness decisions of the administrative authorities these kinds of remedies are available against wrongful actions. Several laws provide guidelines and benchmarks that the administration must adhere to. Speaking of administrative control, judicial review is the cornerstone of administrative law, representing the mechanism through which courts assess the legality and constitutionality of administrative actions. This process ensures that public authorities adhere to the rule of law

[1]Ranney, A. (2000). Governing: An Introduction to Political Science, United Kingdom: Prentice Hall.

and act within their legal powers and provide fair treatment to individuals affected by their decisions.

Keywords: Judicial Control, Administrative Discretion, Judicial Review, Delegated Legislation, Administrative Tribunal.

BALANCING ADMINISTRATIVE FLEXIBILITY WHILE ENSURING FAIRNESS AND ACCOUNTABILITY

Judicial review is the fundamental remedy in administrative law that allows individuals to challenge the legality of administrative decisions in the Court of law. Individuals can seek judicial review when they believe that an administrative decision is illegal, unreasonable or in violation of procedural fairness. The courts can declare administrative actions as ultra wires that is beyond its legal authority and quash or set aside the decision. This remedy ensures that administrative bodies act within their delegated powers. The Constitution of India provides exclusive grants to the powers of the judiciary for reviewing legislative and executive actions Article 13, 32 and 226 form the bedrock of judicial review, empowering courts to strike down laws or action that violate the constitution. The judiciary, primarily the Supreme Court and the high court exercise judicial review, to ensure the supremacy of the constitution It interprets the constitution and safeguards individual rights, making judiciary the ultimate arbiter of constitutional matters.

Delegated Legislation: Restraints on delegation of legislative powers

According to the doctrine of separation of powers, the three organs, that is, legislative, executive and judiciary, are carrying three different functions so as to avoid concentration of all the powers in one organ to prevent exploitation and corruption. The function of executive is to administer the law enacted by the Legislature and Legislative Power must be exercised exclusively by the Legislature But with the growth of administrative process, the administrative authorities are given the law-making power, which is known as delegated legislation. Today. Delegated legislation has assumed tremendous importance because of the bulk of the law which governs people comes not from the legislature but from the executive.

The power of delegation is a constituent element of the power as a whole, under Article 245 of the Constitution and other relative Articles. Delegation of some part of legislative powers has become a compulsive necessity due to the complexities of modern legislation. The Essential Functions cannot be delegated by the legislature. Essential functions mean laying policy of the Act and enacting that policy into a binding rule of conduct. In other words, the legislative must lay down legislative policy and purpose sufficient to provide a guideline for advice study rule making. The policy of law may be expressed or implied and can be gathered from the history, preamble, title scheme of the act or object and reason, clause, etc. After the Legislature has exercised legislative functions, it can delegate non-essential functions however numerous and significant they may be. In order to determine the constitutionality of the delegated

legislature every case is decided in its special setting Codes have travelled to determine in holding every broad general statements as sufficient policy of the Act to determine the question of unconstitutionality there are various forms of administrative rule making. However, the parameter for determining the question of constitutionality is the same, namely, the Legislature must lay down the policy of the Act. Delegated legislature must be consistent with the Parent Act and must not violate legislative policy and guidelines Delegate cannot have more legislative powers than that of the delegator. Sub delegation of legislative powers in order to be valid must be expressly authorised by the Parent Act.

It is one of the important principles that dedicated authority must be exercise strictly within the authority of the law. Delicate legislation cannot be held valid only if it confirms exactly to the power granted. This principle is accepted in India also. In *Chandrababu v. R (1952)*the validity of certain rules framed under the Northern India Ferries Act1878[2], was questioned The Act authorised the rules for purpose of maintaining order and ensuring safety of passengers and property. The delegate, however, framed rules forbidding the establishment of private failures within a distance of two miles from the boundaries of another ferry. The court held that the rules are outside the scope of delegated power, and therefore ultra vires.

It may happen sometime that a parent act or delegated statute may be constitutional and valid and delegated legislation may be consistent with the parent Act. Yet delegated legislation may be invalid on the ground that it contravenes with the provision of the constitution. The Supreme Court in *Narendra Kumar vs Union of India(1960)*[3] questioned the validity of the Non-Ferrous Metal Control Order (1958) issued under Section 3 of the Essential Commodities Act 1955[4],as unconstitutional. The petitioners had not challenged the validity of the parent Act. It was argued that if the enabling Act was not considered unconstitutional, the rules made there under could not be held to be unconstitutional. The Supreme Court rejected this argument and held that, even though parent Act might not be unconstitutional, an order made there under can still be constitutional and can be challenged as violative of the provision of the constitution.

Safeguards and Control on the delegated legislature and judicial control

The judiciary plays an important role in exercising judicial review to ensure the supremacy of the Constitution its safeguards, and individual rights, making the judiciary the ultimate controller of constitutional matters. While the principle of parliamentary sovereignty is upheld, the judiciary can review legislative action to ensure they conform to constitutional norms. The doctrine of basic structure established in the *Kesavananda Bharti v. State of Kerala (1973)*[5], limits the parliament's power to amend the constitution. Article 32 of the Indian

[2]Northern India Ferries Act 1878, Act of the Parliament, Govt. of India
[3]Narendra Kumar vs Union of India AIR 1960 SC430
[4] Section 3, *Powers to control production, supply, distribution, etc., of essential commodities,* Essential Commodities Act, 1955
[5]Kesavananda Bharti v. State of Kerala AIR 1973 Supreme Court

Constitution empowers the Supreme Court to issue Writs for the enforcement of fundamental rights. Innovatively expanding the scope of judicial review. Public interest litigation allows individuals or organizations. To petition the courts on behalf of those unable to approach directly, thereby addressing systematic issues and ensuring broader public welfare.

The Supreme Court in *E.P. Royappav. State of Tamil Nadu (1974)*[6] held that administrative actions must not be arbitrary, unfair or unreasonable. This laid the groundwork for reviewing the reasonableness of administrative decisions. *In M.P Sharma v, Satish Chandra (1954)*[7] the apex court adapted the Doctrine of Legitimate Expectations, this doctrine protects the individual's legitimate expectations based on a public authorities' promise or consistent past practices. Cases like *Maneka Gandhi v. State of Kerala (1978)*[8] and *Olga Tellis v. Bombay Municipal Corporation (1985)*[9]established that the right to equality includes the right to equal protection of the laws and prohibits arbitrary and discriminatory state actions.

While judicial is interested with the power of judicial review, ensuring own accountability remains a challenge. Mechanisms for addressing judicial misconduct are still evolving Judicial review in India stands as a robust and dynamic mechanism for upholding the rule of law, protecting fundamental rights and ensuring the constitutional balance of power as the nation evolves. Judiciary continues to play a pivotal role in interpreting and refining the contours of judicial review, enforcing the commitment of justice, fairness and constitutional principles that guide the Indian democracy.

PRINCIPLES OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTIONS AND DISCRETIONARY POWERS

Judicial review of discretionary powers is a fundamental aspect of administrative law that ensures administrative authorities act within the boundaries of legality, reasonableness, and fairness. Judicial review is a supervisory function exercise by the judiciary over administrative bodies. It allows courts to scrutinise the legality and fairness of the adversity decisions, actions or omissions. The authority for judicial review can be statutory where specific legislation grants the power to courts or constitutional emanating from the constitution's principle of rule of law and separation of powers. Judicial review aims at connecting errors of law, ensuring that administrative decisions align with the governing statutes legal principles and separation of power Judicial review aims at connecting errors of law and ensuring that administrative decisions align with the governing statutes legal principles and constitutional provisions. The court also review whether administrative action fall outside the scope of the authority of the law and beyond legal powers granted are considered ultra vires and subject to invalidation. Judicial review, whether proper procedures, including principle of natural justice and fair

[6] E.P. Royappa v. State of Tamil Nadu 1974 AIR 555
[7] M.P Sharma v, Satish Chandra Writ Petition (Criminal) 372/1953
[8] Maneka Gandhi v. State of Kerala 1978 AIR 597
[9] Olga Tellis v. Bombay Municipal Corporation 1986 AIR 180

hearing, were followed in the decision-making process Irrationality and unreasonableness indicates the departure from rational decision making and illegality encompasses errors of law such as misrepresentation of statutes, improper exercise of discretion or failure to consider relevant factors.

The courts traditionally employ certain principles to scrutinize the exercise of discretion, including the doctrines of legality, irrationality, and procedural fairness. The principle of legality requires that public authorities act within the scope of powers conferred by law. In *Council of Civil Service Unions v Minister for the Civil Service* (1985)[10], commonly known as the *GCHQ case*, the UK House of Lords articulated three primary grounds for judicial review: illegality, irrationality (also known as Wednesbury unreasonableness), and procedural impropriety. Under the "irrationality" ground, a decision will be struck down if it is "so outrageous in its defiance of logic or accepted moral standards" that no reasonable authority could have made it, as seen in *Associated Provincial Picture Houses v Wednesbury Corporation*(1948)[11].

The principle of proportionality, more prominent in European jurisdictions and now gaining traction in common law countries, requires that administrative actions do not go beyond what is necessary to achieve the legitimate aim. In the case of *R (Daly) v Secretary of State for the Home Department*(2001)[12], the House of Lords applied the proportionality test in a human rights context, holding that a prison policy allowing officers to search prisoners' legal correspondence was disproportionate and breached Article 8 of the European Convention on Human Rights. Similarly, in India, *Maneka Gandhi v Union of India* expanded the scope of judicial review by ruling that administrative actions must not only be legal but also reasonable and non-arbitrary, thus incorporating the principle of reasonableness as a constitutional mandate.

In a recent case of *M/S N.G Projects Limited v. M/S Vinod Kumar Jain &Ors. (2022)*[13] the Supreme Court held that it is not for the court to determine whether a particular policy or decision taken in the fulfilment of that policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the matter in which those decisions have been taken.

"...The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

Irrationality, namely, Wednesbury unreasonableness.

[10] Council of Civil Service Unions v Minister for the Civil Service (1984) UKHL 9
[11] Associated Provincial Picture Houses v Wednesbury Corporation (1948) 1 KB 223
[12] R (Daly) v Secretary of State for the Home Department (2001) UKHL 26
[13] M/S N.G Projects Limited v. M/S Vinod Kumar Jain &Ors. Civil Appeal No. 1846 of 2022.

Procedural impropriety. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention..."
(Emphasis Supplied)

In another recent case the Supreme Court, in its judgment in *Amarendra Kumar Pandey v. Union of India (2022)*[14], addressed the issue of subjective satisfaction of administrative authorities and the judicial review of such actions. The Court observed that while administrative authorities are conferred with discretionary powers, particularly where decisions are based on subjective satisfaction, such actions are not beyond the scope of judicial scrutiny. The Court held that the satisfaction of the authority must be based on relevant facts and circumstances that are supported by evidence. It cannot be arbitrary or based on insufficient grounds. In this case, the appellant, a Rifleman in Assam Rifles, was discharged from service based on four Red Ink entries. The Court emphasized that while the entries were a minimum requirement for such action, they could not automatically warrant discharge without further analysis of the gravity of the misconduct leading to those entries. The Court found no evidence to indicate that the misconduct was of such an egregious nature that the competent authority had no option but to discharge the appellant to prevent indiscipline in the force. As a result, the discharge order was set aside, and the Court allowed the appeal, ruling that the subjective satisfaction of the authority did not have a reasonable nexus to the facts and circumstances of the case.

ADMINISTRATIVE ADJUDICATION: ADDRESSING THE INADEQUACIES OF THE JUDICIAL SYSTEM

The concept of administrative adjudication has emerged as a vital mechanism to address the limitations of the traditional judicial system, which often struggles with delays, formalism, and technical complexities. The rapid expansion of government functions in the modern welfare state has led to the rise of administrative agencies vested with quasi-judicial powers to resolve disputes, particularly those involving public law and specialized domains. Administrative tribunals are at the core of this adjudicatory system, providing a faster, more flexible, and expert resolution to issues that the regular courts may not be well-equipped to handle due to their intricate technical nature.

Role of Administrative Tribunals

[14] Amarendra Kumar Pandey v. Union of India, Civil Appeal Nos 11473-4 of 2018.

Administrative tribunals play a pivotal role in addressing the inadequacies of the formal judiciary by offering specialized forums to adjudicate disputes, especially in areas like taxation, labor, service law, and consumer protection. The tribunals are designed to handle cases where expertise in specific fields is required, providing a more informed and nuanced decision-making process. One of the most prominent examples is the establishment of the Central Administrative Tribunal (CAT) in India under the Administrative Tribunals Act, 1985, which addresses disputes related to service matters of public employees, thereby reducing the burden on regular courts.

These tribunals ensure a more accessible form of justice by simplifying procedures and reducing the formality typical of regular courts. For instance, in tribunals like the Income Tax Appellate Tribunal (ITAT) and the National Company Law Tribunal (NCLT), the proceedings are streamlined, focusing more on resolving the core issues rather than procedural technicalities. Moreover, tribunals offer cost-effective remedies, making justice affordable for individuals who may otherwise be discouraged by the time-consuming and expensive nature of regular court processes.

Another significant advantage of administrative tribunals is their ability to expedite decisions. The backlog of cases in the Indian judiciary is well-known, and tribunals are seen as a key solution to reduce the pendency of cases. Tribunals such as the National Green Tribunal (NGT) have been instrumental in providing speedy environmental justice, where timely intervention is crucial to prevent further environmental degradation.

However, the role of administrative tribunals is not without its challenges. Critics argue that these tribunals, being part of the executive branch, may lack the same level of independence and impartiality as traditional courts. To address this, courts in India have upheld the principle of judicial review over tribunal decisions, ensuring that they remain subject to the scrutiny of the judiciary. In *L. Chandra Kumar v. Union of India* (1997)[15], the Supreme Court ruled that while administrative tribunals serve as effective adjudicatory bodies, their decisions can still be reviewed by the High Courts, thus maintaining the balance between administrative efficiency and judicial oversight. In conclusion, administrative tribunals have become indispensable in the contemporary legal landscape, providing a necessary alternative to the conventional judicial system. By delivering specialized, expeditious, and cost-effective justice, tribunals address the inadequacies of the judiciary while also contributing to the effective functioning of governance.

ROLE OF NATURAL JUSTICE IN REVIEWING ADMINISTRATIVE DISCRETION

The word natural justice is derived from the Roman word 'Jus Naturale'. Which means the principles of natural justice, equity and good conscience. Natural justice is not something derived from laws of nature, law of nature, promote the survival, rather than justice. Therefore, natural justice is not just as found in nature. It is a compendium of concepts which

[15] L. Chandra Kumar v. Union of India AIR 1997 SC 1125

must be naturally associated with justice whether these concepts are incorporated in law or not Natural justice is also known as substantial justice, fundamental justice and universal justice, or fair play in action. Rule of natural justice are minimum standards of fair decision making imposed on the persons or bodies acting in judicial capacity, rule of federal justice are not rules embodied in any statute.The principle of natural justice is the foundational concept of administrative law that seeks to ensure fairness, impartiality and justice in administrative proceedings. Rooted in the principles of equity and procedural fairness, doctrine of natural justice serves as a safeguard against arbitrary and unjust administrative actions.

Essential ingredients of natural justice includes rules against bias. This rule originates from the Latin Maxim '*Nemo Judex inCausa Sua*', which means that person will not judge a case in which he is himself interested. This also includes right to be heard and fair hearing. The rule has its origin in the Latin Maxim *'Audi AltermPartem'* of which means here the other party. According to this rule, any person who writes or interest is being affected should be given reasonable opportunity to defend him. In India, there is no such territory requirement of keeping reasons An order passed by the inquiry officer or administrative agency must be a speaking order. If the order is not supported by reasons, it will be amount to violation of the rules of natural justice.

While the principle of natural justice is considered fundamental, there are situations where their application may be subject to certain exceptions and variations. In cases of urgent your emergency wear immediate action is necessary. The strict application of natural justice may be relaxed. However, such exceptions are generally subject to subsequent review some statues explicitly exclude the application of natural justice in certain circumstances. However, these exclusions are subject to interpretation by the courts and must be clear and unambiguous Administrative bodies may have discretion in determining the appropriate procedures based on the nature and context of decision, flexibility is allowed, as long as it does not compromise the essence of natural justice. The principle of natural justice encompasses both procedural and substantive fairness Procedural fairness leads to the fairness of the decision-making process. This includes the right to be heard, adequate notice, opportunity to present evidence and a fair and impartial tribunal. The aim is to ensure that individuals are treated fairly in the process, leading to a decision. Sustain the fairness concerns the fairness of the decision itself. This involves ensuring their decisions are rational, reasonable and made in accordance with the law. The focus is on the fairness and the outcome, and whether it aligns with the legal principles and standards both procedural and substantive fairness are interconnected, and the lack of fairness is either aspect can result in a decision being considered unjust. The judiciary plays a pivotal role. In upholding the principles of natural justice through the mechanism of review. Courts act as guardian of fairness during that damage to decisions comply with the standards of natural justice. Key aspect of judicial review related to the natural justice include ultra vires review where the court assess whether the decision-maker has acted within the scope of their

legal authority and in compliance with the principles of natural justice. The reasonableness of a decision is evaluated considering both procedural and substantive fairness. The courts will scrutinize decisions for errors of law including breaches of natural justice principles. Courts have the authority to quash or set-aside decisions that fails to meet the standards of natural justice, providing a remedy to aggrieved parties.

Rule of Law and Indian Constitution

The doctrine of Rule of Law is a cornerstone of the Indian Constitution, representing the idea that the law governs the land, and no one, regardless of rank or authority, is above the law. This concept was famously articulated by A.V. Dicey, who emphasized three main principles: the supremacy of law, equality before the law, and the predominance of legal spirit. The Indian Constitution reflects these principles in various provisions, especially through its Preamble, Fundamental Rights, and the independence of the judiciary.

Article 14 of the Constitution embodies the principle of "equality before the law" and "equal protection of the laws," ensuring that the state cannot arbitrarily discriminate between individuals. In *E.P. Royappa v. State of Tamil Nadu* (1974), the Supreme Court expanded the scope of Article 14 by holding that arbitrariness is anathema to equality, and any state action that is arbitrary violates the Rule of Law. Similarly, Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted to include a range of rights essential to human dignity. In *Maneka Gandhi v. Union of India* (1978), the Court reinforced that any law or procedure depriving a person of their liberty must be just, fair, and reasonable, thereby embedding the Rule of Law in the interpretation of constitutional rights.

The independence of the judiciary, as envisaged in Part V and VI of the Constitution, further strengthens the Rule of Law by providing a robust mechanism for the protection of fundamental rights and ensuring that executive or legislative actions remain within constitutional limits. The principle of judicial review, granted under Articles 32 and 226, empowers the judiciary to strike down laws or actions that contravene constitutional provisions, thus acting as a safeguard against the abuse of power. The Basic Structure Doctrine, propounded in *Kesavananda Bharati v. State of Kerala* (1973), further underscored the importance of the Rule of Law by holding that even constitutional amendments cannot alter the basic structure of the Constitution, of which the Rule of Law is an integral part.

In essence, the Rule of Law is woven into the very fabric of the Indian Constitution, ensuring that governance is conducted within the framework of legal authority, with the protection of individual rights and freedoms at its core. Through judicial interpretation and constitutional mechanisms, the doctrine continues to guide the exercise of state power, preventing arbitrariness and ensuring accountability.

CONCLUSION

Balancing administrative flexibility with fairness and accountability is a complex yet essential aspect of modern governance. Administrative bodies, empowered with discretionary authority, play a vital role in efficiently addressing the complexities of contemporary regulatory needs. However, this authority must be exercised within the framework of legality, reasonableness, and adherence to the principles of natural justice to prevent arbitrary actions. Judicial review serves as the crucial mechanism that maintains this balance, ensuring that administrative decisions remain subject to legal scrutiny. It acts as a check on potential abuses of power, providing individuals with the recourse to challenge decisions that are illegal, unreasonable, or procedurally unfair.

The increasing delegation of legislative powers to administrative authorities, though necessary for effective governance, must always be accompanied by appropriate safeguards. Delegated legislation must conform to the parent Act and constitutional provisions, and the judiciary's role in reviewing such actions is indispensable in preserving the rule of law. Courts have consistently upheld the necessity of maintaining constitutional norms through doctrines such as ultra vires, procedural fairness, and the principles of natural justice. As India continues to evolve as a constitutional democracy, the judiciary's role in balancing the need for administrative flexibility with the demands of fairness and accountability becomes even more critical. Judicial review remains a dynamic tool to prevent arbitrary governance and protect individual rights, ensuring that the principles of justice, fairness, and rule of law guide the actions of the administrative state. This careful balance allows administrative authorities to function effectively without compromising the fundamental principles that underpin democratic governance.

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NAVIGATING THE CROSS-BORDER INSOLVENCY: LEGAL FRAMEWORK AND VALUATION OF INSOLVENT

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ABSTRACT

The rapid growth of industrialization had not only lead to the transaction between the countries but also outside the country. Therefore it is crucial to have a cross-border insolvency as it will benefit for the creditors as well as the state jurisdiction. Cross-border insolvency was first initiated by the UNICTRAL model and the India is influenced by that therefore they came up with Draft Z. To measure the cross-border insolvency we have three approaches. First approach is territorialism approach, in this approach the insolvency will be solved based on the domestic laws which the particular country has. The second approach is Universalism approach, this approach is considered an effective method since it reduces the cost which is incurred when the multiple proceedings happen in different jurisdictions. The third approach is the Modified Universalism approach, this approach is a combination of territorialism and universal approach. In this approach the court will ask the other competent court to do the proceedings in their respective jurisdiction. However in India there are Insolvency and Bankruptcy Code (IBC) 2016 which has a major reference to UNCITRAL Model Law. Beyond this the major issue to calculate the insolvent is also covered through Z score and P score model.

INTRODUCTION

In the 21st century the growth of industrialization has rapidly increased and due to which the transaction not only takes place within the country but also outside a country. The rapid growth of business and corporate bodies in which cross-border insolvency plays a vital role in today's reality. There are countries which have their own laws to govern the insolvency which take place within the state itself. The drawback for these countries is that foreign investors may or may not be aware of their domestic laws. Then what should the foreign investor do, should they not invest in the companies. Well to answer this question, there is a general principle that states the private or the domestic laws will not be applicable to resolve the conflicts where the

creditor and debtor are from different parts of the world. Now the question which arises is how these conflicts are going to be solved. There could be three ways to solve the problem in the case of cross border insolvency.

Firstly, the foreign creditor can claim on the assets of the debtor. Secondly, the debtor should have the assets not only in the country where the proceeding is taking place but also in different countries. Third if the debtor is subjected to multiple proceedings,however the proceedings may vary from country to country depending on the system they are involved in. There are three approaches which countries follow.

[1]First is the territorialism approach, in this approach the insolvency will be solved based on the domestic laws which the particular country has. This approach focuses on sovereignty and the sole authority of a jurisdiction. The countries which follow this approach include Brazil, Russia, and Singapore.

The second approach is [2]Universalism approach, this approach is considered an effective method since it reduces the cost which is incurred when the multiple proceedings happen in different jurisdictions. Under this approach the proceedings which happen across jurisdictions will take place as a single proceedings. Sometimes the courts have to give up their jurisdiction based on the assets of a debtor to solve the bankruptcy therefore this approach could be effective. This concept has been derived from a case [3]*Cambridge Gas Transport Corporation V. The Officials* Committee of Unsecured Creditors (2006).

The third approach is the Modified Universalism approach, this approach is a combination of territorialism and universal approach. In this approach the court will ask the other competent court to do the proceedings in their respective jurisdiction. The reason behind is that the court can distribute the assets of the debtor as per the relevant principles. The country which follows the approach is the United States.

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[3] Cambridge Gas Corp v. Official Committee of Unsecured Creditors (of Navigator Holdings PLC), UKPC 26 (2006).

This article focuses on cross-border insolvency and the valuation of the insolvent. Dr. Sandeep Kaur's paper, "Comparative Analysis of Bankruptcy Prediction Models: An Indian Perspective,"[4] offers an extensive analysis. Its main aim is to construct and assess the performance of different bankruptcy prediction models in relation to Indian listed Companies. It is worth noting that the Indian Insolvency and Bankruptcy Code, which is currently operational, provides a context in which it becomes imperative to examine all the relevant details regarding insolvency.

The prediction of bankruptcy has found a variety of literature spanning from financial to strategic management with some of the first studies being based on some fundamentally powerful ratios comparing bankrupt and non-bankrupt companies. The first predictor of corporate bankruptcy was MDA as unveiled by Altman (1968), logistic regression-oriented analyses came to being in the 1980s (Ohlson, 1980). Of late, many scholars profess the utility of bankruptcy neural networks since they can predict complex data patterns . Kaur's review suggests however that there has been a great concentration of studies by having a systematic approach in the developed countries, most of those studies excluded smaller or emerging countries like India. In this context, the present study attempts to address this issue by assessing the predictive ability of these models solely in the Indian scenario.

This article is different from the other research paper since it provided the difference between the UNCITRAL Model and Draft Z and how there are challenges faced by Draft Z. Apart from this there is measuring insolvent through three approaches as well as methods. The Z-score and P-score methods help the creditors, and investors to invest in a particular business as it serves as an early warning signal. Lastly, there is a comparison between both the models with the help of the case study of the aviation industry to understand the concept.

CROSS BORDER INSOLVENCY IN INDIA

[5]The cross border insolvency in India can be understood in three instances, firstly if an Indian company or Indian debtor owes money to any foreign creditor and if the debtor has assets outside the country then the creditors can claim on those assets. Secondly, if a foreign company has operations in India and owes money then the creditors can claim

[4] https://dias.ac.in/wp-content/uploads/2020/03/19-28_Comparative-Analysis-of-Bankruptcy.pdf
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on the Indian assets to cover the debt. Lastly, if any foreign company borrows money from an Indian creditor then the creditor can claim on the assets through legal means with respect to the foreign jurisdiction. However this was not the case earlier. In India there was not a proper codified law for the cross border but there was reference in the British era. In *P. Macfayden& Co. Ex parte Vizinagaram Co. Ltd (1908)* this case was held in Madras High Court where India faced for the first time the problem of Cross-border insolvency. In this case Anglo-Indian partnership deed was formed, later one of the partners died and when the distribution of assets came it was challenged in Madras High Court. Later both the London and Madras trustees came to a common point where the sums would be remitted to other proceedings for a global distribution. Later this decision was challenged in the English Court where this decision was criticized and it was stated that the decision was 'clearly a proper and common-sense business arrangement' and that it was "manifestly for the benefit of all parties interested". [6]It was clearly understood that insolvency law was underdeveloped; the act such as Provincial Insolvency Act 1920 and the Presidency Towns Act was not sufficient therefore it was a big disadvantage for the foreign investor to invest in India which led to the economic crisis. Even the Sick Industrial Companies Act, 1985 which was established by the Board of Industrial and Financial Reconstruction to identify financially distressed companies, but it had a drawback because the corporate debtors often misused the process to obtain a stay on security enforcement by creditors. Additionally the Companies Act 1956 and 2013 was not enough to solve the problem of cross-border Insolvency. There were instances where the Indian judiciary has addressed the cases of cross-border without a formal law. One of the cases was Intesa*Sanpaulo S.P.A v. Videocon Industries*. The Italian Bank IntesaSanpaolo, in this case, was trying to liquidate Videocon Industries, which operated and had subsidiaries on an international scale. This highlighted the difficulties of managing insolvency cases in various countries, especially with respect to external creditors. This situation also illustrates the importance of having a strong legal framework in place in the context of India's growing economy to deal with cross-border insolvency as the current laws were inadequate to handle the complexities of the case at hand.

These proceedings in respect of the insolvency of Videocon Group also demonstrate these challenges, with the National Company Law Tribunal (NCLT) applying the

[6] W. P. No. 2021-04-01 The Role of Insolvency Tests: Implications for Indian Insolvency Law M. P. Ram Mohan

doctrine of substantial consolidation. Substantial consolidation is a permissive doctrine which permits the combining or merging to occur of the assets and liabilities of separate but related corporations in a single course as part of one plan of reorganization. This is done because it is considered beneficial to maximize asset recovery and minimize the resolution for the creditors in situations which involve the crossing of borders and more than one jurisdiction.

Therefore in order to bridge the gap India came up with a new law that is Insolvency and Bankruptcy Code (IBC) 2016 which has a major reference to UNCITRAL Model Law. Now the question arises what is the UNCITRAL Model and how does India apply this model based on their situation?

UNCITRAL MODEL LAW

[7]The abbreviation for UNCITRAL is United Nations Commission on International Trade Laws. The origin of UNCITRAL was made in May 1992 at the platform of Congress on International Trade law in New York to address the issue of international insolvency. Further this lead to the adoption of model law on cross-border insolvency in May 30, 1997. The objective of this law was to assist the country in developing their insolvency law. In other words it acts as a guidance for the countries. It sets out the framework which is effective to solve the issue of insolvency. The advantage of this law is that it focuses on the cooperation and the coordination between the countries unlike multilateral convection which focuses on unification and respecting the differences in national laws. This law has been adopted by 47 countries across 50 jurisdictions.

These countries include developed as well as developing countries such as USA, UK, Chad, Uganda. The model is based on the core principles, firstly, the foreign investors can directly approach domestic courts. Secondly, It allows for the recognition of foreign insolvency proceedings. Additionally, it establishes a framework for cooperation between the insolvent debtor and the judiciary across the world. Not only this it will also ensure coordination in concurrent proceedings. In the case *China Nanhai Oil Joint Service Corporation, Shenzhen Branch v. Gee Tai Holdings Co. Ltd* this case revolves around a commercial dispute between the parties which later took place

[7] Clift, J. (2004). UNCITRAL Model Law on cross-border insolvency: A legislative framework to facilitate coordination and cooperation in cross-border insolvency. *Tulane Journalof International and Comparative Law Review*, *12*, 307.
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in arbitration proceedings. The arbitration took place under the auspices of the Shenzhen branch of the China International Economic and Trade Arbitration Commission (CIETAC). In this case the UNCITRAL model played a vital role. This case was decided in Hong Kong in 1994 where the country has adopted UNCITRAL Model law.[8] Gee tai was not satisfied with the decision made by the Hong Kong court; they claim that the arbitration was not held according to the agreement. On the other hand the Hong Kong court refused to give them the award. Therefore this matter was referred to UNCITRAL's CLOUT system where they collectively shared the court decision. Therefore UNCITRAL Model Law provides a framework for this arbitration case in Hong Kong, and the court's rulings contributed to the understanding of how the Model Law should be interpreted and applied.

[9]Despite so many advantages this model has certain limitations as it did not consider the individual country jurisdiction it only focuses on worldwide. Therefore the aspects to determine specific operational details, lacking mechanisms to resolve differences in implementation among countries, are not noticed. Even, the absence of widespread adoption by key economies creates legal uncertainty in cross-border insolvency cases, affecting creditor rights and international business operations.

HOW DOES UNCITRAL MODEL HAD INFLUENCED INDIAN LAWS?

[10]The UNCITRAL Model plays a vital role in India. Earlier the scope of cross- border insolvency was limited, there were no codified laws for it therefore India came up with a new law Insolvency and Bankruptcy Code 2016. IBC deals with both the domestic insolvency as well as cross-border insolvency. The main concern is about the cross-border insolvency. To solve this concern, section 234 and 235 of IBC deals with the cross-border insolvency. S.234 gives power to the central government that they can enter into a bilateral agreement with the foreign countries to manage the issue of international insolvency. For instance, if a debtor has assets in a different country that has an agreement with India, then in this case, the provision of IBC will be applicable. Apart from this S. 235 of IBC gives permission to liquidators dealing with a bankrupt company to ask National Company Law Tribunal (NCLT) for getting the evidence or

[8]CROSS BORDER INSOLVENCY IN INDIA - A NEW REGIME IN THE MAKING
[9] Mohan, S. C. (2012). Cross-border insolvency problems: Is the UNCITRAL Model Law the answer? *InternationalInsolvency Review*, *21*(3), 12–18.
[10] Kumar, D. (2017, 16 May). Indian insolvency regime without cross-border recognition – A task half done? A Cyril AmarchandMangaldas Blog. https://corporate.cyrilamarchandblogs. com/2017/05/indian-insolvency-regime- without-cross-border-recognition-task-half-done

taking necessary actions to locate the assets of the company in foreign countries. Provided that this will only be applicable if India has a reciprocal agreement with those countries mentioned in S.234. There are several benefits for adopting the UNCITRAL Model. Firstly it will enhance legal certainty as it will provide a clear framework for international insolvency which will lead to the less of transaction cost. Secondly, it improves international cooperation and relations.

Furthermore it increases the confidence of the investor. Lastly it will help in harmonizing its practice with global standards which will efficiently lead to international trade efficiency.

In order to bridge the gap between the cross-border insolvency, the Insolvency Law committee came up with a proposal and recommended a draft chapter known as "Draft Z" This Draft Z will give rights to the foreign creditors as equivalent to domestic creditor. Now let's further elaborate on the topic of Draft Z

DRAFT Z IN INDIA

As discussed earlier the proposal of [11]Draft Z was initiated by the [12]Insolvency Law committee. This was recommended to be included in IBC where it comprises 29 sections which include various aspects such as recognition and relief, corporation and coordination etc. however this may be influenced by UNCITRAL Model but the clauses and the subject has been changed based on the Indian preference. There are certain guidelines which need to be taken into consideration which include, firstly this will be only applicable to corporate debtors and it excludes the individual debtor, pre-packaged insolvency and personal guarantors. Additionally when it comes to reciprocal agreement it will be only applicable to those jurisdictions who have adopted UNCITRAL Model law. Lastly with respect to the Center of Main Interest where the corporate debtor wants the proceedings to be held. It is generally presumed by COMI the jurisdiction will be held in the registered office geographical location unless it is moved within the period of three months.

The main features of Draft Z includes that there will be recognition of foreign insolvency proceedings. In other words it means that if any foreign courts have stated

[11]https://www.mca.gov.in/Ministry/pdf/PublicNoiceCrossBorder_20062018.pdf
[12] Insolvency Law Committee. (2018a, March). *Report of the Insolvency Law Committee.* http://www.mca.gov.in/Ministry/pdf/ReportInsolvency Law Committee_12042019.pdf
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the proceedings then the Indian courts can look at this matter and recognize and can cooperate with those proceedings. Additionally the need for communication and cooperation between the foreign courts and the Indian courts has been emphasized. The draft also allows the Indian government to enter into bilateral agreement where they can mutually coordinate and the proceedings can be done where the debtor has assets or liabilities in those countries. However the role of Draft Z can be explained with a case that is [13]*Jet Airways (India) Ltd. V. State Bank of India and Anr.* In this case the SBI has filed a complaint against the Jet Airways which was undergoing the insolvency proceedings in India but they were declared bankrupt in Netherland. The NCLT recognized both proceedings as "parallel proceedings" and allowed a cross-border insolvency protocol between the Indian resolution professional and the Dutch trustee**.** The NCLAT determined that the Centre of Main Interests (COMI) for Jet Airways was India, given its incorporation and primary business operations there. This case is significant as it marked India's first instance of cross-border insolvency, highlighting the need for a structured legal framework, such as Draft Part Z, to effectively manage similar situations in the future. Draft Part Z aims to establish clear guidelines for cross-border insolvency, drawing from international practices like the UNCITRAL Model Law.

DIFFERENCE BETWEEN UNCITRAL MODEL AND DRAFT Z

The Part Z is based on the UNCITRAL MODEL but there are certain provisions where they are different. The UNCITRAL Model does not follow the reciprocal agreement when it comes to foreign proceedings. The example of this is the UK, univeUS where they do not follow the principle of reciprocal agreement. On the other hand Draft Z follows the principle of reciprocal agreement that is it will only recognize those foreign proceedings that recognize India's insolvency proceedings. This might have a drawback since it can limit the scope of law. Apart from this the scope of application is also different. The UNCITRAL Model covers the aspect of debtors which not only include the company but also the individual. Whereas Draft Z only covers the aspect of companies debtor and not the individual debtor. Furthermore the geographical location of proceedings also differs. In the UNCITRAL model the jurisdiction of the proceedings will be held in the debtors office location however, the

[13] Jet Airways (India) Ltd. v. State Bank of India, CA (AT) (Insolvency) No. 707 of 2019, before the National Company Law Appellate Tribunal (2019, 26 September).

location has not been changed within the three months of the period.while the Draft Z is still developing therefore it has not defined the procedure of the jurisdiction.

However there are similarities between them in the aspect of giving rights and equal access to both foreign as well as domestic creditors and the most important both ensure the cooperation, communication, coordination between the different jurisdictions across the country. Well this might seem easier but in reality this is not the case. While making or changing a law it requires a procedure and therefore there are difficulties in implementing. [14]Therefore there were quite challenges that were faced by the Draft Z which is highlighted by the CBIRC report.

Capacity of NCLT is one of the challenges because already NCLT deals with a lot of domestic cases and if a cross-border insolvency case came then it would lead to the burden on the judiciary. Even for multinational corporations like Global Corp, which have their registered office in one country but operate mainly from another, determining where the main interests lie can be complicated. This affects which country's laws apply during insolvency proceedings, potentially leading to disputes among creditors. Therefore the Draft Z proposal is still having issue in implementing the laws but there might be a possibility that it overcomes the problem and solve the gap of cross-border insolvency in India.

Till now the concept focuses on what will happen if a company is insolvent and how cross-border insolvency law will be applicable. But now the query which occurs is how these companies are regarded as insolvent and what the ways to calculate insolvency are. Therefore there are different approaches to evaluate insolvent.

VALUATION OF INSOLVENT

[15]Valuation refers to a process which identifies the assets and liabilities of a company. It is an essential part since the creditors need to evaluate the efficiency of the debtors company.

Valuation plays a vital role in solving the cross-border insolvency. If the valuation is not done correctly then it can lead to two major problems. Firstly, when a company is calculate as under valuate then it is loss for the creditors on the other hand if a

[14] Cross Border Insolvency Rules/ Regulations Committee (CBIRC) Ministry of Corporate Affairs Government of India
[15] 20170203_msh_edits_simkovic_the_evolution_of_valuation_in_bankruptcy_v2.pdf

company is overvalued then this can lead to the slower process when it comes to selling of the assets. Therefore comparing both the situation the valuation of insolvent plays a crucial role and for that valuation there are different approaches.

APPROACHES TO EVALUATE INSOLVENT

[16]While evaluating the insolvent there are certain methodologies which should be kept in mind. Since there is no single method which is universally applicable then the nature of the assets, data which is provided is trustworthy or not, understanding the strength and weakness of each method and lastly considering the approach which the market participants favor. To measure the insolvent there are three types of approaches which include market approach, Income approach, and Cost approach.

I. Market approach is a way to measure the company which has a similar transaction or assets compared to the other company. In this approach the books of accountancy are not looked at and just evaluate the process of insolvent by comparing to the other similar companies. This approach mainly focuses on monopolistic markets where the companies have the homogeneous goods and similar transactions. This approach is applied only when the assets are traded in the active market, in other words if a company is not selling or purchasing the goods then this approach cannot be considered. Secondly there should be a recent transaction. It should not be like that the transaction took place a year ago. Lastly there should be a frequent transaction in similar assets. However this approach has criticism such as it is not applicable in monopoly markets, it does not consider the capital of the company.

II. Income approach is a way to measure the insolvency by considering the company's future profit which they might generate. In this approach future cash flow is forecasted and then they are adjusted into the risk and then the calculation of cash flow is done based on their worth in present time. This approach can be used when there is no market comparable variable which means that there is no recent sales. Secondly the asset is income producing. This approach also have certain criticism since it is based on future prediction it is difficult to evaluate and it is even based on discount rate and if there is a slight change then the result may vary and lastly certain small scale business does not maintain the cash flow.

[16]Valuation Disputes In Corporate Bankruptcy Author(s): Kenneth Ayotte and Edward R. Morrison Source: University of Pennsylvania Law Review, Vol. 166, No. 7 (June 2018), pp. 1819-1851 Published by: The University of Pennsylvania Law Review

III. Cost approach is a way to identify the value of an asset by calculating how much it cost will require to build or to replace it from scratch. This approach is suitable for unique properties which are not sold frequently such as custom made items. However this approach has a disadvantage since the current cost of material, labor, or any outdated feature might reduce the value of the assets.

The three different approaches can be distinguished on the various basis which include the basis of valuation. In case of market approach the value of the assets is measured as the similar assets in the market whereas in income approach it is based on the ability to generate future profit and in the case of cost approach it is based on the cost to replace the asset. It can be further classified into the basis of using for instance in market approach it is best to use in active market whereas in the case of income approach it is best to use where the cash flow can be estimated. On the other hand it is appropriate to use a cost approach when the asset is unique. Therefore depending on the situation and the availability of the data the insolvency can be measured.

So this was the way in which insolvency can be measured. Now the main question arises how to calculate this. So there are different models to calculate insolvency

MODELS TO EVALUATE INSOLVENT

The models serve as early warning signals for the creditors as well as the investor to invest in the companies. This can be done through models like Z score and P score models

[17]Z-Score Model or Atlaman Z-score model was developed by Edward Atlaman in 1958. This model refers to a quantitative model which is used to predict based on the various financial ratios of the firm.

The formula for calculating this model is
:Z=0.012X1+0.014X2+0.033X3+0.006X4+0.999X5Z=0.012X1+0.014X2+0.033X3+0.006X4+0.9

[17] Distressed Firm and Bankruptcy Prediction in an International Context: A Review and Empirical Analysis of Altman's Z-Score Model Edward I. Altman, New York University, Stern School of Business Salomon Center, Henry Kaufman Management Center, 44 West Fourth Street, New York, NY 10012, USA

99X5 where,

X1 = Net Working Capital / Total Assets (Liquidity Ratio) X2 = Retained Earnings / Total Assets (Profitability Ratio) X3 = Operating Profit / Total Assets (Profitability Ratio)

X4 = Market Value of Equity / Book Value of Debt (Leverage Ratio) X5 = Operating Revenues / Total Assets (Turnover Ratio)

[18]This model classifies the company into three zones which include Z ≤ 1.10 in this there is a high degree of financial crisis and the company can go bankrupt. Secondly 1.1 < Z < 2.60 this is known as the grey zone where there is less prediction. Lastly Z ≥ 2.60 this suggests that there is a low chance of financial risk. However this model is only limited to the aviation sector

[19]Using Z score model in evaluation of the case of Jet Airways and Indigo

carrier	year	X1	X2	X3	X4	Z" Score
Indigo	2015	(0.135)	0.225	0.153	0.117	0.999
Indigo	2016	(0.003)	0.180	0.225	0.906	3.032
Indigo	2017	(0.118)	0.183	0.147	1.578	2.464
Indigo	2018	(0.111)	0.194	0.171	3.158	4.368
Jet airways	2015	(0.213)	0.572	(0.049)	(1.207)	(4.856)
Jet airways	2016	(0.215)	0.5096	0.069	(1.062)	(3.720)
Jet airways	2017	(0.569)	0.945	0.079	(0.897)	(7.222)

[18] Financial Distress Prediction: A Comparative Study of Solvency Test and Z-Score Models with Reference to Sri Lanka
[19] Predicting airline corporate bankruptcies using a modified Altman Z -score model

Jet airways	2018	(0.566)	0.970	0.0538	(1.368)	(8.675)

By comparing Jet Airways and Indigo through Z-Score model it can be clearly undeJetrstood that jet airways has a financial crisis where the airline can go bankrupt whereas on the other hand Indigo is on the safer side.

[20]P-Score Model or Pilarski Model was developed by Pilarski and Dinnah in 1999. This model is particularly useful for assessing the financial condition of major U.S. air carriers and has been adopted by the U.S. Department of Transportation for monitoring the financial health of airlines. It is considered as a superior model because of its higher prediction accuracy which is estimated to be about 85.1%. The P-Score calculated in two steps.

Calculation of W,
$W = 1.98X1 - 4.95X2 - 1.96X3 - 0.14X4 - 2.38X5 W = -1.98X1 - 4.95X2 - 1.96X3 - 0.14X4 - 2.38X5$

Where,

X1 = Operating Revenues / Total Assets X2 = Retained Earnings / Total Assets X3 = Equity / Total Debt Obligations

X4 = Liquid Assets / Current Maturities of Total Debt Obligations X5 = Earnings Before Interest and Taxes / Operating Revenues

[21]Calculation of P, $P = 11 + e - WP = 1 + e - W1$ where, ee is the mathematical constant approximately equal to 2.718

[22]Case study of Jet Airways and Indigo through P-Score Model

CARRIERS	YEARS	W	P	PERCENTAGE
Indigo	2015	(4.48)	0.011	1.120

[20] Analysing the determinants of insolvency risk for general insurance firms in the UK
[21] http://www.scielo.org.co/scielo.php?pid=S0124-46392021000100067&script=sci_arttext&tlng=en
[22] The strange case of the Jet Airways bankruptcy: a financial structure analysis Matteo Rossi, Giuseppe Festa, AshutoshKolte and S. M. Riad Shams

Indigo	2016	(6.02)	0.002	0.2418
Indigo	2017	(7.641)	0.00048	0.048
Indigo	2018	(10.710)	0.000022	0.002
Jet Airways	2015	3.899	0.980	98.01
Jet Airways	2016	2.608	0.931	93.14
Jet Airways	2017	3.036	0.954	95.42
Jet Airways	2018	4.074	0.983	98.32

COMPARISON OF BOTH THE MODELS

This paper represents the consolidated result for both the models, In which Indigo has performed the best and found more stability than airways. Hence the data presented in the balance sheet also confirms the same. The Operating Revenue of Indigo has improved consistently from INR13, 925.3 crore14 in March 2015 to INR 23,020.9 crore in March 2018. The company remained profitable continuously on year to year basis with a profit of INR 1,304.2 crore in March 2015 to INR 2,242.4 crore in March 2018.

Carrier	year	Z" Score	P" Score
Indigo	2015	0.999	0.01119
Indigo	2016	3.032	0.00241
Indigo	2017	2.464	0.00041
Indigo	2018	4.368	0.00002
Jet Airways	2015	(4.865)	0.980
Jet Airways	2016	(3.720)	0.931

Jet Airways	2017	(7.222)	0.954
Jet Airways	2018	(8.675)	0.983

CONCLUSION

In conclusion the cross border-insolvency plays an important role in the insolvency sector. It is required to solve the issue not only between the parties but also between the states and the jurisdiction. The UNCITRAL Model serves as a framework which acts as guidelines for cross-border insolvency. While keeping UNCITRAL Model in mind India drafted a Draft Z which helps India to solve the problem of insolvency. There might be challenges in the implementation but the final proposal is yet to be finalized. Furthermore to measure the insolvent the approaches as well as the methods are crucial and base of the cross-border. While analyzing the two airlines sector it was quite easy to evaluate the insolvent airline and the secured airline. However, ongoing challenges highlight the need for continuous refinement and adaptation to ensure that the legal framework remains effective in addressing the complexities of international insolvency proceedings.

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DELEGATED LEGISLATION: THE CONUNDRUM OF UIDAI AND THE AADHAR CASE

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ABSTRACT

The Aadhar Bill, 2016, introduced by the Government of India, plays a crucial role in administering the Aadhar number, which has become an essential tool for accessing various services, particularly for the marginalized sections of society. Despite its significance, the Bill raises significant concerns regarding the delegation of powers to the Unique Identification Authority of India (UIDAI), the authority responsible for overseeing the Aadhar project. This paper critically examines the issue of excessive delegation of legislative authority to the UIDAI, highlighting the potential risks and governance challenges that arise from this practice. Key functions, including grievance redressal mechanisms, the definition of biometric and demographic information, and authentication processes, are left to the discretion of the UIDAI, bypassing adequate parliamentary oversight. This delegation of authority without clear accountability raises concerns about the transparency, fairness, and inclusivity of the Aadhar system, especially in delivering subsidies and essential services to the poor and underprivileged. The research argues for a more robust framework of legislative oversight to prevent the misuse of power, ensure democratic accountability, and protect the rights of vulnerable citizens.

KEYWORDS: *Delegated legislation, Unique Identification Authority of India, Aadhar, biometric information.*

INTRODUCTION

Delegated legislation refers to the process by which legislative powers are transferred from the legislative body to an executive authority or an agency, allowing it to make detailed rules, regulations, or laws under the framework of a primary statute. While such delegation is often necessary to manage the complexities of modern governance, it can pose serious concerns when excessive or unchecked. Ideally, delegated legislation should be limited in scope and subject to adequate legislative oversight to prevent the concentration of unchecked powers in the hands of unelected authorities.

Delegated legislation is not a theoretical concept, it has a wider implication in the practical world, In India context, legislature delegate their power to the authorities or agency to lessen their burden, some of the examples for the same are, The Right to

Information (RTI) Act, 2005, whereby the law delegated the power to individual public authorities to set rules on how RTI applications would be submitted. This led to several high courts setting prohibitively high application fees, frustrating the purpose of the Act, similarly another example is The Information Technology (Intermediaries Guidelines) Rules, 2011, in which the rules were made under the IT Act, delegating substantial powers to the government to regulate online content.

While in the context of the Aadhar Bill, 2016, the issue of delegated legislation takes on heightened significance. The Unique Identification Authority of India (UIDAI), established to administer and oversee the Aadhar project, is vested with substantial powers under the Bill to regulate crucial aspects of the system. From defining critical terms like "biometric" and "demographic" information to setting grievance redressal mechanisms and authentication processes, the UIDAI has been granted broad discretion in areas that directly impact the rights and access of Indian residents, particularly the poor.

OBJECTIVE

The objective of this research is to critically examine the practice of excessive delegation of legislative authority to the Unique Identification Authority of India (UIDAI) under the Aadhar Bill, 2016, focusing on its implications for governance, accountability, and the protection of citizens' rights. It argues that this extensive delegation undermines the core democratic principles of transparency and accountability, making it essential to reconsider the balance between administrative flexibility and legislative oversight in the Aadhar system.The research aims to highlight the risks associated with unchecked executive authority and propose recommendations for a more robust legislative framework to ensure transparency, accountability, and inclusivity in the Aadhar system.

RESEARCH METHODOLOGY

A comprehensive review of existing scholarship on delegated legislation and administrative law forms the foundation of the research. Key texts such as EC Governing by Numbers and various Indian legislative frameworks (e.g., the Right to Information Act, Information Technology Act, and Aadhar Bill) are analysed to understand the broader implications of delegated authority.

HISTORY OF UIDAI AND THE AADHAR

On March 11, 2016, the LokSabha passed the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Bill, 2016. The legislation, tabled by Finance Minister ArunJaitley on March 3, 2016, aims to provide a legal framework to manage the Aadhar number scheme, which was implemented by the UPA government in 2010 as a means of providing a unique identity for each person. The identity's uniqueness stems

from the notion that the biometric data required for identification, such as fingerprints and iris scans, are nearly impossible to copy, ensuring that no single person can obtain multiple Aadhar numbers. When the Planning Commission first proposed the idea in 2006, the Aadhar number was viewed as a surefire solution to plug leaks in subsidy distribution. A federal government organisation, the Unique Identification Authority of India (UIDAI), was established to coordinate data collecting, verification, and issuance of Aadhar numbers. The potential applications of UIDAI have grown exponentially over time, with numerous states requiring an Aadhar number as verification for things like land registration and marriage. The Aadhar Bill is based primarily on the former United Progressive Alliance government's draft National Identification Authority of India Bill, 2010, which was rejected in 2011 by a parliamentary standing committee headed by the BJP leader Yashwant Sinha.

AADHAR PROJECT DREW CRITICISM

The Aadhar project has faced criticism from both the ideological right and left. The right accused the scheme of jeopardising national security by not asking potential candidates to provide citizenship documentation. Critics suggested that this may allow illegal immigrants to obtain a valid government-issued identity card, granting them access to a variety of government services. During the election campaign against NandanNilekani, the first chairperson of the UIDAI (Nilekani resigned in 2014, three days after joining the Congress), his opponent for the Bangalore South seat, Ananth Kumar of the BharatiyaJanata Party, criticised the project. "If you illegally enter another country, you will be shot at or imprisoned. However, if someone illegally enters India, he becomes a citizen. "This is Aadhar's contribution," Kumar explained. "Bangladeshis occupy half of Assam." "Aadhar is the largest fraud in the country." Civil society activists on the left expressed serious concerns about the privacy implications of the project—that collecting personal data was an invasion of privacy and subject to the danger of misuse—as well as the viability of the technology, which had never been validated on a billion people scale.The Supreme Court heard public interest litigation over the privacy issue. That litigation directly led to the current Aadhar Bill, which raised questions about the usage of the Aadhar number, which the government relied on as a crucial part of its Jan-Dhan-Aadhar-Mobile (JAM) platform of governance. However, the bill's current form, like many other laws approved by the Indian parliament, is beset by the issue of unduly returning legislative authority to the central government and its designated bureaucrats.

EXCESSIVE DELEGATION TO UIDAI

Aadhar and the Problem of Grievance Redressal

One of the most vital functions in any large-scale governmental project, especially one as far-reaching as the Aadhar scheme, is the establishment of a robust and accessible grievance redressal mechanism. With Aadhar being central to accessing essential services like government subsidies, benefits, and even financial services, it is imperative that individuals have a clear, reliable process to address issues when the system fails. Unfortunately, the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits & Services) Bill, 2016, falls short of providing such a mechanism.

Clause 23(2)(s) of the Bill delegates the entire process of establishing grievance redressal mechanisms to the Unique Identification Authority of India (UIDAI), a decision that raises significant concerns. A system like Aadhar, which directly affects millions of people, particularly the underprivileged, demands a grievance redressal process that is transparent, accountable, and independent. Yet, by giving the UIDAI the responsibility to create its own grievance redressal procedures, the Bill places this critical function in the hands of the very agency responsible for administering the Aadhar project, creating a potential conflict of interest.

When an agency tasked with delivering a service is also responsible for resolving complaints about its own failures, there is a heightened risk of biases, inefficiencies, and lack of transparency. In cases where an individual is denied an Aadhar number, faces authentication failures, or is wrongfully excluded from accessing subsidies due to technical issues, the absence of an independent, external body to adjudicate grievances could lead to prolonged delays or inadequate resolutions. The current structure also does not provide sufficient guarantees that grievances will be resolved impartially, especially for vulnerable populations like the poor, migrant workers, the elderly, and those without adequate digital literacy or access to legal support.

The poor, rural populations, migrant workers, and individuals without permanent addresses or stable documentation are particularly vulnerable to errors or failures in the Aadhar system. For instance, a biometric failure, such as when fingerprints do not match due to wear and tear from manual labour which can prevent individuals from accessing essential services. For daily wage workers, this might mean losing access to Public Distribution System (PDS) food rations, or for elderly citizens, being denied their pensions. In the absence of a well-defined and easily accessible grievance redressal system, such individuals are left with no recourse and may continue to be unjustly excluded from these critical services.

Expansive Powers over Definitions

Another issue is the Bill's delegation of authority to the Unique Identification Authority of India (UIDAI) to define and expand the scope of critical terms such as "biometric information" and "demographic information." These definitions play a foundational role in determining what data the Aadhar system collects, how it is stored, and how it is used for authentication and verification purposes. By granting the UIDAI the power to modify these definitions without the need for parliamentary approval, the Bill opens the door to overreach, arbitrary changes, and potential violations of individual privacy rights.

The Bill defines "biometric information" to include photographs, fingerprints, and iris scans, core elements used in the creation of a unique digital identity for each resident of India. However, the UIDAI is also empowered to include "any other biological attributes of an individual as may be specified by regulations." This provision allows the UIDAI to expand the scope of biometric data it collects without consulting Parliament or gaining public approval.

This unchecked power raises significant concerns. For example, future additions to the category of biometric information could include sensitive data such as DNA, voiceprints, or even behavioural biometrics (e.g., gait or typing patterns). Each of these data types carries its own set of privacy risks, especially when collected at a national scale. The absence of a requirement for parliamentary scrutiny before adding such categories could lead to serious overreach by the executive authority, potentially infringing on citizens' right to privacy.

While the current definition explicitly excludes sensitive personal information like race, religion, caste, and other socially and politically significant attributes, the power vested in the UIDAI to alter the definition creates a loophole. In the future, the UIDAI could theoretically amend the definition to include more sensitive data, such as economic status, education level, or even political affiliation. Such overreach could lead to profiling or discriminatory practices, especially in a country as socially and economically diverse as India, where demographic data can be politically charged.

Moreover, the collection and storage of such expansive biometric data raise questions about data security. As seen with previous breaches and data leaks in the Aadhar system, more sensitive information in the hands of unauthorized individuals could have devastating consequences, from identity theft to the misuse of personal data by private or even state actors. The provision to expand biometric categories without oversight thus presents a risk not only to personal privacy but also to national security.

The risk of misuse of these expansive powers is not theoretical. The Cobrapost sting operation provides a stark example of how procedural loopholes can be exploited. In this

operation, investigative journalists revealed that corrupt officials were issuing Aadhar numbers to illegal immigrants using fraudulent documents. The process exploited weaknesses in the Aadhar system, which, due to its vaguely defined rules and lack of stringent checks, allowed unauthorized individuals to gain legal identity status in India.

The lack of a comprehensive data protection framework exacerbates these concerns. India's data protection regime is still evolving, and while the Personal Data Protection Bill, 2019, aims to address some of these issues, it has not yet been enacted into law. Without sufficient safeguards in place, the Aadhar system could easily be used to build an extensive surveillance apparatus that compromises citizens' fundamental right to privacy, as guaranteed under Article 21 of the Indian Constitution following the Supreme Court's ruling in Justice K.S. Puttaswamy v. Union of India. Supreme Court unequivocally recognized privacy as a fundamental right and stressed the importance of safeguards to protect personal data from arbitrary state intrusion.

Authentication and Exclusion Concerns

Authentication of Aadhar numbers is at the heart of the system's functionality, determining whether individuals can successfully access services tied to their Aadhar identity. Under Clause 8 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits & Services) Bill, 2016, various methods of authentication are outlined, including biometric and demographic verification. However, the Bill delegates the authority to determine the exact processes, methods, and associated fees for authentication to the Unique Identification Authority of India (UIDAI). This delegation of power, while allowing for flexibility in how authentication is carried out, raises serious concerns about exclusion, particularly for marginalized groups who lack access to necessary technology or face other barriers.

The Aadhar system currently supports multiple forms of authentication, such as:

Biometric verification: Using fingerprints or iris scans.

Demographic verification: Matching demographic details like name, age, or address with the Aadhar database.

One-Time Password (OTP): A password sent to a registered mobile phone or email address for verification.

Multi-factor authentication: Combining an OTP with biometric or demographic verification for added security.

While these methods aim to provide flexibility in verification, the practical challenges of implementing them in a country as vast and socio-economically diverse as India are considerable. Biometric verification, for example, may not be reliable for certain individuals—manual labourers, elderly people, or persons with disabilities—whose

fingerprints may be worn or difficult to capture accurately. Iris scans may also present difficulties in cases where access to specialized technology is limited.

Demographic verification, though less invasive, requires consistency in personal details, which may be difficult to maintain for migrant workers, homeless individuals, or rural populations with limited access to proper documentation. Any errors or mismatches in their demographic data could lead to authentication failures, thus preventing access to essential services like food subsidies under the Public Distribution System (PDS), government scholarships, or healthcare programs.

The OTP method further compounds the exclusion problem, as it relies heavily on mobile phone access. According to a 2021 survey, only around 50% of women in rural India have access to a mobile phone, and the number is lower for other vulnerable groups like the elderly and persons with disabilities. Moreover, many marginalized populations do not have reliable mobile or internet connectivity, particularly in remote or rural areas, rendering OTP-based authentication unfeasible for large sections of the population.

One of the main objectives of Aadhar is to streamline and ensure the targeted delivery of essential services and subsidies, such as food rations through the PDS, pensions, and other welfare benefits. However, the very authentication processes designed to make Aadhar secure and efficient may end up excluding those who need these services the most.In cases of failed authentication, whether due to biometric mismatch, demographic discrepancies, or inability to access an OTP, individuals are often denied immediate access to services. For someone dependent on daily rations from the PDS, a single authentication failure could mean going without food. These exclusions disproportionately affect the poor and marginalized, including women, the elderly, migrant laborers, and individuals without fixed identities or permanent residences.

A major challenge in implementing Aadhar-based authentication is the lack of proper infrastructure and reliable connectivity, especially in rural or remote areas. Biometric and multi-factor authentication methods require specialized equipment and internet connectivity to link the local service provider to the central Aadhar database. In areas with unreliable electricity or poor internet penetration, Aadhar authentication becomes impractical, further exacerbating exclusion.According to a report by the Telecom Regulatory Authority of India (TRAI), as of 2021, around 38% of the rural population does not have access to the internet, and even those with access often face connectivity issues.

Central Government's Power over Benefits and Services

Clause 7 of the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits & Services) Bill, 2016, delegates' significant authority to the central and state governments to decide which services, subsidies, or benefits require mandatory Aadhar authentication. This provision, while initially designed to streamline the targeted delivery of government benefits, raises critical concerns about the breadth of discretion it grants to the executive branch. By permitting the government to mandate Aadhar authentication for a wide range of services, without parliamentary approval, Clause 7 opens the door to excessive delegation of power, potentially infringing on fundamental rights and creating significant barriers to accessing essential services.

The delegation of power in Clause 7 is limited to services and benefits funded by the Consolidated Fund of India (CFI), which covers a broad spectrum of public services and welfare programs, including education, healthcare, food security, pensions, and more. However, this provision does not provide clear legislative safeguards or oversight mechanisms to ensure that the government's decisions align with constitutional principles and public interest. Instead, the government is granted broad discretion to expand the range of services that require Aadhar authentication, with little to no input from Parliament or independent bodies.

This sweeping delegation of authority is particularly concerning in a democratic system, where the legislative branch is responsible for making and scrutinizing laws that affect citizens' rights. By allowing the executive to make unilateral decisions about the scope of Aadhar's mandatory use, Clause 7 diminishes the role of Parliament in overseeing the delivery of essential public services. This lack of oversight increases the risk of arbitrary or disproportionate decisions that may disproportionately impact vulnerable populations.

One of the most contentious issues surrounding the delegation of power in Clause 7 is its potential to infringe on fundamental rights. While the Aadhar system was initially envisioned as a tool for ensuring more efficient and transparent delivery of welfare benefits, the scope of its mandatory use has expanded far beyond its original purpose. The possibility of making Aadhar authentication mandatory for services as essential as voting, healthcare, education, and food rations poses significant risks to citizens' access to these rights.

For example, during the early stages of Aadhar implementation, there were proposals to link Aadhar to voter identification cards, effectively making Aadhar mandatory for voting in elections. In Telangana, the Chief Minister even announced that the state would use the Aadhar number to delete 15 lakh bogus voters from the electoral rolls. While this plan was eventually abandoned following a Supreme Court ruling that limited

the scope of Aadhar, the proposal itself highlights how excessive delegation can lead to overreach, threatening citizens' constitutional right to vote. The ability to link Aadhar to services as fundamental as voting would have created serious barriers to electoral participation, particularly for marginalized groups who might face difficulties in obtaining or authenticating their Aadhar numbers.

In addition to voting, making Aadhar mandatory for accessing welfare programs funded by the Consolidated Fund of India could have profound effects on citizens' ability to obtain basic services. Programs such as the Public Distribution System (PDS), the Midday Meal Scheme, and various healthcare and pension schemes are crucial lifelines for millions of low-income families. For many of these individuals, authentication failures, incorrect data entry, or other technical issues related to Aadhar could result in denial of benefits.

One of the core arguments in Favor of the Aadhar system is that it helps reduce fraud and ensures that benefits are delivered to the rightful recipients. However, the reality is that mandatory Aadhar authentication can sometimes have the opposite effect, leading to exclusion rather than inclusion. Numerous reports have documented cases where citizens have been denied access to food rations, pensions, or healthcare services because of Aadhar authentication failures. In rural areas where digital infrastructure is often lacking, the requirement for biometric or OTP-based authentication can create additional hurdles for people already struggling to meet their basic needs.

For example, in the state of Jharkhand, cases of starvation deaths were linked to individuals being unable to access food rations due to Aadhar authentication failures. These cases underscore the risks associated with mandating Aadhar authentication for essential services without providing robust alternatives or fallback mechanisms for individuals who may face difficulties in using the system. If the government continues to expand the scope of services requiring Aadhar authentication, as authorized under Clause 7, the potential for widespread exclusion and denial of rights will likely increase.

Weakening of Political Accountability

In democratic systems, the principle of political accountability is central to ensuring that government policies and programs are implemented fairly, efficiently, and transparently. Elected representatives, who are directly accountable to the people, are tasked with overseeing executive agencies and ensuring that these bodies act in the public interest. The Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits & Services) Bill, 2016, however, undermines this democratic principle by delegating significant powers to the Unique Identification Authority of India (UIDAI) while limiting the political oversight that typically governs executive agencies.

This structural flaw weakens the role of elected officials in ensuring that the Aadhar system operates within democratic norms, reduces transparency, and concentrates significant authority in a technocratic body that is not directly accountable to the public or its elected representatives.

In most democracies, executive bodies and agencies operate under the watchful eye of elected representatives, ensuring that public policies are enacted in line with the electorate's needs and concerns. By insulating the UIDAI from regular political scrutiny, the Bill effectively limits the ability of Parliament to provide the checks and balances necessary to safeguard citizens' interests. For instance, critical decisions, such as expanding the definition of "biometric information" or determining the exact methods of authentication, can be made by the UIDAI without requiring the approval or input of Parliament. This absence of legislative oversight enables the UIDAI to wield its power with minimal accountability, allowing it to implement policies that may not fully reflect the needs or rights of the people, particularly the most vulnerable segments of society.

The structure of the UIDAI as outlined in the Aadhar Bill further entrenches this lack of accountability. The Bill allows for the appointment of professionals to the posts of the UIDAI chairperson and its members for fixed terms, typically three years, with the possibility of reappointment. While fixed terms are often used to ensure continuity and independence in governance, in the case of the UIDAI, they serve to isolate the leadership from daily political scrutiny, which is an essential component of democratic governance.

Once appointed, these officials operate with significant autonomy, and their removal is difficult, limiting the ability of the government or Parliament to intervene even when the agency's decisions conflict with public interest. This arrangement, intended to grant the UIDAI a degree of independence from political interference, paradoxically undermines the democratic process by removing the agency from the realm of political accountability altogether.

CONSEQUENCES OF EXCESSIVE DELEGATION

The excessive delegation of legislative power to executive bodies such as the Unique Identification Authority of India (UIDAI) can lead to a host of negative consequences that undermine democratic governance, transparency, and fairness. These consequences are not hypothetical; they pose real risks to the functioning of the Aadhar system and the broader legal framework in India.

Erosion of Accountability:

In a democratic system, elected representatives are responsible for making laws and overseeing their implementation. However, when significant legislative powers are delegated to an executive body like the UIDAI, elected officials lose control over critical decision-making processes. This delegation weakens democratic accountability, as decisions on key issues—such as biometric data collection, authentication methods, and grievance redressal—are made without the involvement of Parliament. The absence of regular political scrutiny or the need for parliamentary approval creates a governance vacuum in which the UIDAI can exercise vast powers without being held accountable by the electorate.

Violation of Separation of Powers

Excessive delegation also violates the principle of the separation of powers, which is a cornerstone of democratic governance. In a healthy democracy, the legislature makes laws, the executive implements them, and the judiciary adjudicates disputes. This system of checks and balances ensures that no single branch of government becomes too powerful. When excessive legislative power is delegated to executive agencies like the UIDAI, it blurs the lines between these branches. The UIDAI, which is part of the executive, is granted law-making authority through its power to define key terms, establish procedures, and determine how Aadhar is implemented.

Risk of Abuse of Power

When an executive body is granted broad discretionary powers with minimal oversight, the risk of abuse of power becomes significant. Without clear limits on its authority or mechanisms for holding it accountable, the UIDAI or similar agencies can make arbitrary or unfair decisions that impact the rights and access of citizens. In a broader sense, the risk of abuse extends beyond individual cases of corruption. The unchecked expansion of the UIDAI's powers could lead to the imposition of more invasive data collection practices or the mandatory linking of Aadhar to essential services without sufficient consideration of the potential harm to citizens' privacy and freedoms.

UNCONSTITUTIONALITY OF EXCESSIVE DELEGATION

Several landmark Supreme Court judgments have underscored the limits of delegated legislation, emphasizing that while delegation is permissible to a certain extent, there are critical boundaries that must not be crossed. In In Re Delhi Laws Act, 1951, the Supreme Court made it clear that while Parliament may delegate some functions, such delegation must remain within reasonable limits. The Court ruled that Parliament cannot delegate essential legislative powers, such as the authority to frame core policies or principles of legislation. This precedent establishes that executive bodies like the UIDAI should not be

given broad powers to define or change fundamental aspects of a law without proper legislative involvement.

Further reinforcing these limits, the Supreme Court in VasanlalMaganbhaiSanjanwala v. State of Bombay, 1961 held that the delegation of legislative power must not be so extensive that it allows the executive to make substantial changes to the law without the approval of Parliament. The case reaffirmed the idea that essential legislative functions cannot be delegated, and any delegation must be accompanied by sufficient oversight. In the context of the Aadhar Bill, the delegation of critical powers to the UIDAI, such as the authority to define "biometric information", without parliamentary oversight appears to breach this principle. Allowing the UIDAI to unilaterally define or expand the scope of biometric data collection creates a dangerous precedent, giving the executive branch undue control over citizens' personal information without democratic checks.

In a more recent judgment, K. T. Plantation Pvt. Ltd. v. State of Karnataka, 2011, the Supreme Court emphasized that delegation of legislative power must be guided by clear principles and policies laid down by the legislature. The Court insisted that without such guidelines, the delegation of power could become arbitrary and unconstitutional. In the Aadhar Bill, however, the legislature has failed to provide sufficient guidelines to control the UIDAI's discretion, effectively granting the agency unbridled power to shape key elements of the Aadhar project, such as authentication procedures and data collection methods.

CONCLUSION

The Aadhar Bill, 2016, highlights the dangers of excessive delegation of legislative powers. By transferring critical functions to the UIDAI without clear parliamentary oversight, the Bill risks undermining democratic accountability and the separation of powers. This unchecked delegation can lead to exclusion of marginalized populations, violations of privacy, and a potential abuse of power. To prevent these outcomes, it is essential to ensure a more balanced approach to delegated legislation, where legislative functions remain within the purview of the elected representatives, and executive agencies are subject to strict oversight and accountability. The Aadhar project, while valuable for delivering subsidies and services, must operate within a framework that upholds the Constitution's principles of democracy, transparency, and justice.

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ADMINISTRATIVE FAILURES AND UNLAWFUL ENCOUNTERS: A LEGAL AND ETHICAL CRITIQUE OF GUJARAT ADMINISTRATION

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ABSTRACT:

The present Research article entitled "Administrative Failures and Unlawful Encounters: A Legal and Ethical Critique," focuses on the highly valued Right to Life, which is not only a fundamental right but also central to the preservation of humanity.Unlawful police encounters, commonly referred to as extrajudicial killings, remain a pressing issue in India, casting doubt on the effectiveness of the country's justice system and administrative oversight mechanisms

Although legal frameworks exist to prevent such abuses, recent instances reveal significant shortcomings within India's administrative and legal systems. This research aims to analyze the increasing occurrence of unlawful police actions and the role that administrative law plays in addressing these violations.

The current research endeavours to elucidate the rise in recent instances of Police Encounters within India, a nation known for its democratic principles. This research article investigates the oversight tools available, such as judicial reviews, inquiry commissions, and the functions of human rights institutions, while underscoring their limitations in curbing police misconduct. The study examines critical case law and institutional practices, revealing how political pressures, administrative failures, and insufficient enforcement mechanisms contribute to the ongoing impunity for law enforcement agencies.

KEYWORDS:*Encounters, right to life, Human rights, Administration, Law, Gujarat Administration, Police Trial.*

INTRODUCTION:

The Constitution of India provides a broad spectrum of human rights through the fundamental rights enshrined in Part III. Article 21, which focuses on the

protection of life and personal liberty, has been widely interpreted by the Supreme Court of India. Over time, Article 21 has evolved into an umbrella provision, encompassing various rights through judicial interpretation, and expanding its scope. Human rights jurisprudence has become an integral part of these fundamental rights within the Indian Constitution. The Supreme Court's interpretation of human rights has gained significant recognition and acceptance within civilized society. Another critical pillar of any democratic society is the Rule of Law, which forms the foundation of governance and is essential to the functioning of the state. This principle is enshrined in Article 14[1] of Part III of the Indian Constitution, ensuring that the Rule of Law governs all aspects of the state, providing a framework for justice, equality, and fairness in a democratic setup. It is the one of the principle of the law is that there shall equality before law and equal protection of law. In the current context, where the Rule of Law is a well-established principle and the Indian Constitution clearly affirms that no person shall be deprived of life or personal liberty except through due legal process, the occurrence of extrajudicial executions in Indian society is particularly troubling. This thesis examines the grave implications of such unlawful actions, highlighting the contradiction between the legal safeguards in place and the continued prevalence of fake encounters in Gujarat, as in other parts of India. Such incidents raise critical concerns regarding the misuse of power by law enforcement agencies and the failure of administrative oversight mechanisms designed to prevent such abuses. While the Constitution of India, particularly Article 21, guarantees the Right to Life, incidents of unlawful encounters illustrate the growing gap between constitutional principles and on-the-ground realities. (Singh, 2017)

Gujarat has seen several high-profile cases of alleged fake encounters, where individuals have been killed under suspicious circumstances by state forces. These encounters are often justified as actions taken in self-defence or during counter-terrorism operations. However, numerous cases have revealed a troubling pattern of fabricated evidence, politically motivated actions, and attempts to bypass the due process of law. This poses significant legal and ethical questions about the state's role in upholding fundamental rights.

[1] Article 14 of the Constitution of India, 1950

Under the umbrella of administrative law, various legal mechanisms and institutions, including judicial review, commissions of inquiry, and human rights bodies, are intended to monitor and hold accountable the actions of law enforcement agencies. Yet, the persistence of unlawful encounters suggests that these systems are either insufficient or improperly enforced in preventing such abuses. In Gujarat, the political context and the administrative response to these encounters have often been scrutinized for either facilitating or failing to address the unlawful use of force by the police.

This article seeks to critically analyse the occurrence of unlawful encounters in Gujarat, focusing on the failure of administrative mechanisms in ensuring accountability. It will examine the legal framework governing the use of force, the role of administrative oversight bodies, and the broader implications of these encounters for the Rule of Law. Furthermore, the paper will highlight the need for legal reforms and stronger enforcement of existing laws to safeguard the rights enshrined in the Indian Constitution.

ORIGIN OF PROBLEM:

Unlawful police encounters, often justified under the guise of maintaining public order and combating terrorism, have increasingly come under scrutiny in India, particularly in Gujarat. The issue gained significant attention following high-profile cases such as the IshratJahan encounter (2004), the Sohrabuddin Sheikh encounter (2005), and a series of anti-Muslim encounters during the tenure of police officer DG Vanzara, who led Gujarat's Anti-Terrorism Squad. These cases exposed a troubling pattern of extrajudicial killings by law enforcement, allegedly sanctioned by the state, which has raised serious concerns regarding human rights violations, misuse of power, and the erosion of the Rule of Law.

In the IshratJahan case, a young college student was killed along with three others in an alleged fake encounter, with the police claiming they were terrorists plotting to assassinate political figures. However, subsequent investigations revealed that the encounter may have been staged. Similarly, the Sohrabuddin Sheikh encounter involved the killing of Sheikh, an alleged gangster, and his wife, Kauser Bi, in a

supposed counter-terrorism operation, later revealed to be a fake encounter driven by political motivations.

The role of DG Vanzara, a senior police officer, has been central to many of these controversial encounters. Vanzara and his team were accused of targeting individuals, particularly from the Muslim community, under the pretext of counterterrorism efforts, raising questions about communal bias, political influence, and the integrity of law enforcement in Gujarat.

These encounters have revealed deep systemic flaws in Gujarat's law enforcement and administrative structures, where the lack of accountability, political interference, and misuse of power have allowed such unlawful killings to persist. While administrative law provides mechanisms to regulate the actions of law enforcement and ensure adherence to legal procedures, these cases highlight significant gaps in oversight and enforcement. (Baweja, 2016)

OBJECTIVE:

Analyze the Legal Provisions:

To examine the legal safeguards, especially Article 21 (Right to Life) and administrative law, that regulate the use of force by law enforcement in India, with a focus on their application or bypass in Gujarat cases like the IshratJahan and Sohrabuddin Sheikh encounters.

Assess Administrative Oversight:

To evaluate the effectiveness of administrative mechanisms, including judicial reviews, inquiry commissions, and human rights bodies, in addressing unlawful encounters in Gujarat, and how these institutions have managed to handle or fail to hold law enforcement accountable.

Examine Key Case Studies:

To analyse major cases like IshratJahan and Sohrabuddin Sheikh, highlighting patterns of abuse of power, political motivations, and law enforcement failures under DG Vanzara.

Recommend Legal Reforms:

To propose legal and policy reforms aimed at strengthening transparency, accountability, and the Rule of Law, based on lessons from Gujarat's encounters and the systemic failures that allowed them.

REASONS BEHIND FAKE ENCOUNTERS:

There are various reasons for the police administration's lack of trust in the judiciary. One major factor is the judiciary's perceived hostility towards police actions during investigations. In many cases, while the police know who the culprit is and manage to apprehend them, the judicial process takes too long, often delaying justice. A prime example is **the *Nirbhaya* case,** where justice was only delivered after eight years. This long wait frustrates both the public and police, who often feel let down by the slow judicial system.

Recent incidents, such as the Tis Hazari Court clash**,** where lawyers and police fought over perceived bias in the adjudication of violence, demonstrate this tension. In this case, lawyers were shielded from arrest, while police officers were not, further straining relations between the two groups.

Public frustration is also evident in cases like the ***Hyderabad encounter***, where the police killed four accused in a rape case. The public and the victim's family celebrated the police action, indicating a lack of trust in the judicial process. The slow pace of trials and the delay in justice lead to widespread support for such extrajudicial killings. Similarly, in the ***VikasDubey*** case, the gangster, who killed eight police officers, was shot dead in an encounter while being transported by the police. The recurring justification given by police in such cases is that the accused "tried to escape," which raises questions about the legitimacy of these actions under the law.

Encounters often occur in remote locations, raising suspicion about the accused's actual intent to escape. Given the opportunity to flee in a crowded area, it is questionable why the accused would attempt to escape in isolated locations. This leads to concerns about whether these encounters are genuine acts of self-defense or if they are, in fact, extrajudicial killings.

The Supreme Court has addressed such concerns in cases like **People's Union for Civil Liberties (PUCL) v. State of Maharashtra**, where guidelines were established for investigating police encounters. However, impatience with the

judicial system, coupled with delays in trials, continues to fuel public approval of police executions, as seen in these high-profile cases. Political pressure on the police to deal with repeat offenders, particularly those involved in heinous crimes, adds to the likelihood of encounters. Many of these criminals manage to evade justice due to their political influence, leading to situations where the police feel that encounters are the only solution, reflecting deeper systemic failures within the legal system.

Gujarat Landmark Encounter cases:

IshratJahan encounter case

The IshratJahan encounter case is a significant and controversial event in India's legal and political landscape. On June 15, 2004, 19-year-old IshratJahan, along with three men—Javed Sheikh (Pranesh Pillai), Amjad Ali Rana, and ZeeshanJohar—were killed by the Gujarat Police in what they claimed was an encounter in the outskirts of Ahmedabad. The police alleged that Ishrat and the others were members of the Pakistan-based terror group Lashkar-e-Taiba (LeT) and were planning to assassinate then Gujarat Chief Minister NarendraModi. They justified the killings as a pre-emptive strike against terrorists.

However, the case soon sparked controversy, with questions being raised about the authenticity of the encounter. It was alleged that the encounter was staged and that the victims were killed in cold blood. Several human rights activists, Ishrat's family, and political opponents demanded an investigation into the case, alleging that it was a case of extrajudicial killing.

Key Developments in the Case:

Magestrial and CBI Enquiry: A magisterial inquiry in 2009 concluded that the encounter was fake, stating that the victims were killed in police custody and then their bodies were planted at the scene. Subsequently, the Central Bureau of Investigation (CBI) took over the investigation, confirming that the encounter was staged and implicating several senior Gujarat police officers and officials.(IshratJahan encounter case: CBI's report gives chilling account of murders, 2013)

The case took on a political dimension, with accusations that the encounter was part of a larger political agenda. The involvement of senior police officers like D.G. Vanzara and allegations of political pressure on the police further fueled suspicions. Vanzara, who was also involved in other controversial encounter cases, was arrested but later released on bail. Over the years, the case saw several twists, including claims of witness coercion, changing testimonies, and debates over whether IshratJahan was indeed linked to terrorist activities.

While David Headley, a key conspirator in the 26/11 Mumbai attacks, claimed in 2011 that Ishrat was part of the LeT, this statement was met with skepticism and further debate. No conclusive evidence directly linked Ishrat to terrorist activities.

The IshratJahan case became a landmark event that led to stricter scrutiny of police encounters in India. In 2014, the Supreme Court of India issued guidelines for handling encounter killings, ensuring independent investigations and the filing of FIRs in all such cases to prevent abuse of power by law enforcement.

The IshratJahan case highlighted the issue of fake encounters and extrajudicial killings in India, raising concerns about the misuse of power by law enforcement agencies. It also underscored the challenges in balancing counter-terrorism efforts with the protection of human rights and due process under the law. The case remains a symbol of the ongoing struggle between state security and the rule of law in India, particularly in Gujarat during that period.

Sohrabuddin Sheikh Encounter Case:

The **Sohrabuddin Sheikh encounter case** revolves around the alleged extrajudicial killing of Sohrabuddin Sheikh by the Gujarat Police on November 26, 2005. The police claimed that Sheikh was a notorious gangster with ties to organized crime and terrorism, allegedly plotting to assassinate key political figures, including then-Gujarat Chief Minister NarendraModi. The police asserted that Sheikh was killed in an encounter while trying to escape. (Bose, 2019)

Controversy and Allegations

The encounter quickly became mired in controversy, with accusations that it was staged. Reports emerged that Sheikh's wife, Kausar Bi, was also murdered by the police to eliminate any potential witnesses to the encounter. It was alleged that her

body was disposed of, further complicating the case and raising concerns about police conduct.

Legal Proceedings

Due to the mounting public outcry and the serious allegations, the Supreme Court of India intervened in 2010, ordering the Central Bureau of Investigation (CBI) to take over the case. This transfer aimed to ensure an impartial investigation, as there were widespread concerns regarding the state police's ability to conduct a fair inquiry.

CBI Findings

The CBI's investigation revealed that the encounter was a fake killing, leading to the indictment of several senior police officials, including D.G. Vanzara, who was linked to other controversial encounter cases in Gujarat. The investigation found that the police had acted in collusion, leading to charges of murder, criminal conspiracy, and abuse of power against the involved officers.

Implications for Administrative Law

The Sohrabuddin case underscored the need for judicial oversight in police encounters, emphasizing the importance of ensuring accountability within law enforcement agencies. The case contributed to the establishment of guidelines requiring strict protocols for police encounters, mandating that FIRs be filed and independent investigations conducted in all cases of alleged extrajudicial killings.

The incident severely impacted public trust in the police and the judicial system, highlighting the challenges of balancing state security with the protection of individual rights. This case also revealed the potential politicization of police forces and raised questions about the influence of political power on law enforcement actions, necessitating reforms to maintain the integrity and independence of the police.

The Sohrabuddin Sheikh encounter case remains a landmark example of the issues surrounding extrajudicial killings in India. It has sparked critical discussions on police accountability, the need for reform in law enforcement practices, and the importance of upholding the rule of law and human rights. The case continues to serve as a cautionary tale regarding the consequences of abuse of power by state

authorities, highlighting the imperative for transparency and accountability within the police force.

Characteristic Features of Alleged 'Fake Encounter' Killings

The following are common characteristics of alleged "fake encounter" killings:
These encounters typically take place early in the morning, ensuring that police officers are the only witnesses to the event.
The police often claim they fired in self-defense, stating that the suspect was killed in retaliatory gunfire.
In some instances, officers assert that there was an exchange of fire because the suspect was attempting to escape arrest.
Another scenario presented by the police is that they shot the suspect while he was either fleeing custody or was found hiding at a secure location.
In most of these encounters, police officers themselves rarely suffer any injuries.
The targets of such alleged fake encounters are often individuals facing criminal charges or their family members.*(Sharma, 2023)*

Accountability and Administrative Law: Systemic Weaknesses

A. Lack of Oversight

The absence of robust oversight mechanisms within the police system is a significant contributor to the perpetuation of unlawful encounters in India. Administrative laws designed to regulate law enforcement often fall short in curbing abuses of power. The problem arises when police officers misuse these laws to justify extrajudicial actions under the guise of self-defense or the pursuit of justice.
For instance, Section 46 of the **Criminal Procedure Code (CrPC)**[2] allows law enforcement to use force, including lethal force, if the suspect resists arrest. However, this provision has been misapplied in many cases of alleged fake encounters, where the accused are killed in police custody or shortly after arrest under dubious circumstances. The lack of transparency in these situations is

[2]B. M. Prasad and manishmohan, ratanlal&dhirajlal; the code of criminal procedure (as amended by the criminal procedure code, 2013), 60 (Lexis Nexis 2013).

exacerbated by the police's internal handling of such incidents, where fellow officers often conduct inquiries, leading to a significant conflict of interest. This absence of independent and impartial oversight fosters a culture of impunity among law enforcement officials.

Additionally, administrative loopholes enable the manipulation of police logs, witness accounts, and forensic evidence to fit the narrative of an encounter. Although the Supreme Court's 2014 guidelines[3] demand an independent investigation and the filing of an FIR in every encounter killing, the practical enforcement of these guidelines has been weak, allowing police officers to sidestep accountability.

B. Political Influence

One of the most pervasive factors that shield police officers involved in fake encounters is political interference. In many high-profile cases, law enforcement actions are often directed by political motives. The police are either coerced into carrying out encounters by political leaders or find themselves under political pressure to protect individuals involved in unlawful killings.

For example, in the **Sohrabuddin Sheikh encounter case**, investigations revealed that senior police officers were allegedly acting on instructions from political figures who had vested interests in eliminating the accused. The case demonstrated how political influence can not only lead to encounters but also obstruct the course of justice by delaying investigations, destroying evidence, or providing cover to the police officers involved.

This intertwining of politics and law enforcement weakens the accountability structures, as police officers act with the assurance that their actions will be protected by political patronage. This phenomenon is more prevalent in cases involving organized crime, terrorism, or politically sensitive targets, where the elimination of the accused serves a political agenda. The political power dynamics often result in compromised judicial processes and delayed investigations, further shielding the police from legal repercussions.

C. Corruption and Lack of Independence

[3] 1PUCL &Anr v. State of Maharashtra, Supreme Court of India, Criminal Appeal No. 1255/1999 (Sept. 23, 2014), available at http://supremecourtofindia.nic.in/outtoday/ar12551999.pdf, 3, 10, 12.

Corruption within the police and judicial systems also plays a critical role in enabling fake encounters. Financial incentives, promotions, and rewards for successful encounters create an environment where extrajudicial killings are not only tolerated but often encouraged. The promise of quick promotions or gallantry awards for officers involved in encounters incentivizes this dangerous practice, as officers view it as a fast track to career advancement.

Moreover, the lack of independent investigative bodies exacerbates the problem. Although the National Human Rights Commission (NHRC) and the judiciary have repeatedly called for independent inquiries into fake encounters, the investigation process often remains in the hands of the police themselves. This self-regulation leads to biased investigations, with evidence tampered, witnesses intimidated, and reports fabricated to protect the officers involved. The Central Bureau of Investigation (CBI) is often entrusted with high-profile cases, but political interference and the slow pace of investigations frequently dilute the impact of these inquiries.

The creation of truly independent commissions or specialized agencies tasked with overseeing police conduct and investigating encounters without political or administrative bias is crucial. Such bodies must have legal authority and independence to carry out investigations and prosecutions to restore public trust in the system.

Guidelines issued by supreme court for investigation of encounter killings

The **Supreme Court of India**, in the case of ***PUCL v. State of Maharashtra***, established a comprehensive set of guidelines for investigating deaths resulting from police encounters. These guidelines were formulated with inputs from the Bombay High Court, various counsels, the **National Human Rights Commission (NHRC)**, and other stakeholders. The primary aim was to ensure transparency and accountability in cases of police encounters, which often result in the death of the alleged offenders. *(Lath, 2020)*

The key points of these guidelines include:

Recording Tip-offs: Any information received regarding criminal activity, particularly involving grave offenses, must be recorded in writing or electronically to maintain transparency.

Mandatory FIR in Encounter Deaths: If an encounter results in death, an FIR must be immediately registered, and the police must follow the proper procedures as outlined in the Code of Criminal Procedure (CrPC), particularly Sections 157 and 158.

Independent Investigation: An impartial investigation must be conducted by the CID or a police team from a different station, under the supervision of a senior officer of higher rank than the one involved in the encounter.

Magisterial Inquiry: Every case involving police firing leading to death must undergo a magisterial inquiry as per Section 176 of the CrPC, with the report submitted to the Judicial Magistrate.

Informing Human Rights Commissions: Details of the encounter must be forwarded to the NHRC or State Human Rights Commission. While NHRC involvement is not necessary in every case, it becomes crucial where impartiality of the investigation is doubted.

Informing the Family: In the event of death, the family or next of kin of the deceased must be notified at the earliest.

Medical Aid: If the victim is injured during the encounter, medical assistance must be provided immediately, with their statement being recorded by a magistrate or medical officer.

No Delays in Documentation: All legal documents such as the FIR, panchanamas, police diary entries, and sketches must be submitted to the appropriate court without delay.

Cooperation by Involved Officers: Police officers involved in the encounter must surrender their weapons for forensic analysis and cooperate fully with the investigation.

Court Reporting: After the investigation, a report must be submitted to the competent court under **Section 173** of the CrPC, followed by a trial if necessary.

Biannual Reporting: The **Director General of Police (DGP)** of each state must submit a six-monthly report on all encounter deaths to the NHRC by January 15 and July 15 each year.

No Immediate Promotions or Awards: Officers involved in encounters must not be granted promotions or awards until a thorough investigation clears their actions.
Disciplinary Action: If an encounter is found to be unlawful, disciplinary action against the involved officers must be initiated immediately, and the officer may face suspension.
Legal Recourse for Victims' Families: If the victim's family is dissatisfied with the investigation or suspect's bias, they can file a complaint with the Sessions Judge having jurisdiction over the incident.

Guidelines framed by National Human Rights Commission (NHRC)

In addition, the NHRC, in its 1997 guidelines issued by Justice M.N. Venkatachaliah (then NHRC Chairperson and former Chief Justice of India), emphasized that the police do not have the authority to take a person's life without due process. The only exceptions to this rule are situations of self-defense and under Section 46 of the CrPC, which permits the use of lethal force only in cases involving offenses punishable by death or life imprisonment.
Further updates to these guidelines in 2010, under acting NHRC Chairperson Justice G.P. Mathur, reiterated that police cannot avoid accountability for extrajudicial killings. A mandatory magisterial inquiry within three months of any police action resulting in death was introduced. Additionally, the Senior Superintendent of Police (SSP) or District Superintendent must report all such deaths to the NHRC within 48 hours, along with relevant reports, such as the post-mortem and inquest reports.
To ensure transparency, the NHRC mandated the video recording and photographing of post-mortem examinations in such cases, with these materials being submitted to the NHRC for review and further action.
These guidelines aim to promote accountability and prevent misuse of power by the police during encounters, ensuring that such incidents are thoroughly investigated and that justice is served fairly. (Mathur, 2010)

Separation of Powers in Administrative Law and Its Link to Fake Encounters

The principle of separation of powers is central to democratic governance and ensures that the three branches of government—executive, legislature, and judiciary—function independently without overreach, maintaining a system of checks and balances. In the context of administrative law, this principle is crucial, particularly in cases involving fake encounters by law enforcement agencies.

Executive Overreach in Fake Encounters

In many fake encounter cases, the executive branch, represented by the police and other law enforcement agencies, may misuse its authority. Encounters are extrajudicial killings where the police, operating under the executive, act outside the framework of the law, often justifying these actions as self-defense or a necessity to curb crime. However, these actions bypass due process, violating fundamental rights like the right to life (Article 21) and the right to a fair trial.

Administrative law regulates how these executive bodies exercise their power, ensuring they function within the scope provided by the law. Fake encounters are a clear deviation from the rules governing executive actions, showcasing a breakdown of legal oversight.

Judicial Oversight and Accountability

The judiciary plays a critical role in curbing such abuses of power through its ability to review the actions of the executive. However, when there is a failure of judicial oversight or delayed interventions, it can contribute to a culture of impunity. The judiciary, through administrative law, is tasked with ensuring that law enforcement operates within legal boundaries, but political influence or internal collusion may hinder this process.

For instance, the Supreme Court's guidelines for the investigation of encounter deaths, as issued in *PUCL v. State of Maharashtra*, are aimed at holding the executive accountable. These guidelines, including mandatory FIR registration, independent investigations, and judicial oversight, are meant to prevent extrajudicial killings and ensure that encounters are properly scrutinized.

Despite these safeguards, political pressure often leads to selective enforcement, with officers involved in encounters sometimes receiving protection from prosecution due to political patronage. This creates a situation where the executive

can operate with little fear of legal consequences, weakening the judiciary's role as a check on executive power.

Legislative Failures and the Need for Reform

The legislature is responsible for creating laws that govern the conduct of law enforcement. However, weaknesses in existing legislation or the absence of comprehensive laws regulating police encounters can lead to misuse of power by the executive. There is a need for clearer laws and reforms that explicitly define the limits of police action in encounters and provide for stringent accountability mechanisms.

For example, police reforms and laws to regulate encounters have been recommended by several commissions, but these have often faced delays in implementation due to political resistance. The failure to enact such reforms reflects a gap in legislative oversight and contributes to the continuation of unlawful practices.

Political Influence and Administrative Independence

The separation of powers is also compromised when the executive (police and law enforcement) acts under the influence of politicians, bypassing judicial and administrative checks. Many encounter cases, such as the IshratJahan and Sohrabuddin Sheikh encounters in Gujarat, have shown how political motives can drive law enforcement actions, undermining the independence of the police. When law enforcement becomes a tool for political ends, the principle of separation of powers collapses, and the administration of justice suffers.

In such cases, administrative law becomes a critical tool for restoring the balance of power. Through judicial review and legal accountability mechanisms, the judiciary must act to reassert the principle of separation of powers, ensuring that the executive is held to account for extrajudicial actions and that no one is above the law.

Conclusion

The separation of powers is essential to upholding the rule of law, particularly in cases of police encounters. When law enforcement overreaches its authority and political influence interferes with judicial oversight, it creates systemic weaknesses

that erode the accountability framework. Strengthening administrative law through judicial review, legislative reform, and independent oversight is necessary to prevent fake encounters and ensure that the right to life and right to a fair trial are protected in India.

Another point of view to this extra judicial killings are, And also the common view of people of nation that both Police and the common person knows who the culprit is but due to slow procedural of Indian courts also lack of evidence makes police unable to produce the accused and Judiciary fails to provide justice, It has ben seen in the NIRBHAYA CASE. That Indian judiciary failed to provide justice on time and there was huge pressure on police that they do something but there they couldn't do anything due to principle of Separation of power, which doesn't allowed executive to interfere with judiciary.

It is a well said quote in judicial activism that "Justice delayed is Justice Denied."

But there is still a question that is this only way to get justice if already there is system is place to deliver a justice and doesn't it violates the Fundamental rights guaranteed by the law. In this research article we are going to critically examine the role of police administrations also the executive dept. which is headed by the top Government officials and also top leadership in selected state government as According to the constitution police, law and Order comes under the purview of State Government.

The Gujarat encounters underscore the failure of the administrative framework in preventing extrajudicial killings and ensuring justice for the victims. The inability of the system to effectively hold accountable those responsible for these unlawful acts demonstrates a broader crisis in the state's commitment to upholding the Right to Life and the Rule of Law, as guaranteed by the Indian Constitution. These cases serve as a foundation for exploring the root causes of unlawful encounters and assessing the role of administrative law in addressing such violations in India.

The IshratJahan case highlighted the issue of fake encounters and extrajudicial killings in India, raising concerns about the misuse of power by law enforcement agencies. It also underscored the challenges in balancing counter-terrorism efforts with the protection of human rights and due process under the law. The case remains a symbol of the ongoing struggle between state security and the rule of law in India, particularly in Gujarat during that period.

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THE ROLE OF ADMINISTRATIVE TRIBUNALS IN ADJUDICATING DISPUTES IN INDIA AND A COMPARATIVE ANALYSIS

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ABSTRACT

Administrative tribunals play a crucial role in resolving disputes between individuals and the state, particularly in areas where specialized expertise is required. This paper provides a role of administrative tribunals in adjudicating disputes in India and a comparative analysis of the role of administrative tribunals in different jurisdictions, focusing on their structure, powers, procedural safeguards, and the extent of judicial oversight. By examining the functioning of tribunals in the United State, France, UK, Australia, and India, this research explores the need and challenges of administrative adjudication as a means of achieving efficiency, fairness, and accessibility in public administration.

KEYWORDS: *Administrative tribunal, judicialreview, Administrative Tribunal act 1985,*

INTRODUCTION

Administrative tribunals are quasi-judicial bodies established to resolve disputes involving administrative decisions made by government agencies. They serve as an alternative to traditional courts, providing a more specialized, efficient, and accessible forumfor individuals to challenge administrative actions. These tribunals are particularly important in areas like tax, immigration, labour, and social welfare, where specialized knowledge is essential for resolving disputes.

The purpose of this paper is to explore the role of administrative tribunals in adjudicating disputes in India by conducting a comparative analysis of tribunal systems in the United States, France, u.k. Australia and India

Methodology

Primary Sources:

Study statutes, regulations, and constitutional provisions governing administrative tribunals in India (e.g., the Administrative Tribunals Act, 1985, and relevant articles of the Constitution).

Analyse landmark judicial decisions that have shaped the functioning and oversight of administrative tribunals.

Secondary Sources:

Refer to legal commentaries, academic articles, and textbooks that discuss administrative tribunals.

Review government reports, Law Commission of India reports, and parliamentary debates related to administrative tribunals.

Examine the legal frameworks and structures of tribunals in UK, USA France Australia.

Objective of This Research

To Examine the Evolution and Purpose of Administrative Tribunals in India: Understanding the historical background, legal framework, and the rationale behind establishing administrative tribunals for resolving specific disputes.

To Analyse the Effectiveness of Administrative Tribunals: Evaluating how tribunals have contributed to efficient dispute resolution, especially in reducing the burden on regular courts, and ensuring specialized justice in areas like taxation, labour, and environmental issues.

To Compare the Role of Administrative Tribunals in India with Other Jurisdictions: A comparative analysis of administrative tribunals in other countries (such as the UK, USA, and Australia) to understand similarities, differences, and best practices that could be adopted in India.

To Assess the Constitutional Validity and Judicial Oversight: Exploring how the Indian Constitution permits the establishment of tribunals, their independence, and the judicial control or oversight exercised by higher courts.

Overview of Administrative Tribunals

Administrative tribunals are designed to adjudicate instances in which the government and private parties disagree. They serve as fact-finding organizations and frequently rely on specialized knowledge in fields including social security benefits, labour conflicts, tax law, and environmental protection. Tribunals are usually more accessible and flexible than regular courts, which are constrained by rigid legal procedures, which enables quicker resolutions.

NEED FOR ADMINISTRATIVE TRIBUNALS

In India, administrative tribunals are now an essential part of the legal system because of the country's increasingly complex governance, need for specialized adjudication, and need for quick conflict settlement.The expansion of the welfare state and the expanded role of the government in numerous sectors of society and the economy have resulted in a major increase in the number of litigations involving the government. Due to their backlogs and procedures, traditional courts frequently find it difficult to handle the large volume of cases, which causes delays in the administration of justice. Administrative tribunals provide specialized, quick, and easily accessible dispute resolution processes in order to satisfy these issues.[1]

Specialization and Expertise-Administrative tribunals are designed to handle particular legal topics, like labour, tax, and environmental disputes as well as public service issues. Because modern administration comprises highly technological and sophisticated aspects of government, specialization is necessary. Conventional courts might not have the specialized knowledge needed to decide these kinds of matters quicklyandcorrectly.Tribunals such as the National Green Tribunal (NGT) and the Income Tax Appellate Tribunal (ITAT) handle environmental and tax-related matters, respectively. These groups, which include professionals in a variety of disciplines like economics, environmental science, and tax law, enable well-informed and technically sound conclusions.

Reducing the Burden on Courts-The backlog of cases in the Indian judiciary is a well-known issue. The number of cases in civil and criminal courts frequently overwhelms them, contributing to the overcrowding of the traditional legal system. Prolonged delays result in unhappiness among litigants and impede the accessibility of justice. Administrative tribunals handle a lot of issues that would normally be under the purview of civil courts, which lessens this load for instance, the Central Administrative Tribunal (CAT) now handles disputes pertaining to service matters, which were previously the responsibility of the High Courts. This ensures that cases pertaining to services are resolved more quickly while freeing up High Courts to concentrate on more difficult and urgent situations.

Efficient and Expeditious Justice-The demand for a quicker and more effective way to deliver justice is the main driver behind the creation of administrative tribunals. Unlike traditional courts, tribunals are less formal and have flexible processes that allow conflicts to be resolved more quickly. They are made to bypass the drawn-out formalities of civil

[1]Administrative tribunal in India – law Bhoomi

courts, which cuts down on the amount of time needed to decide cases. This effectiveness is especially noticeable in tribunals such as the Civil Appeals Tribunal (CAT), where government workers can contest employment-related judgments without having to go through the formal, drawn-out procedures of traditional courts. Rapid dispute settlement is crucial, particularly when hasty decisions—like those pertaining to social security or environmental conservation—need to be made.

Access to Justice-Administrative tribunals are intended to increase access to justice, especially for those who do not have the financial means to participate in drawn-out legal proceedings in conventional courts. It is simpler for individuals to present their arguments before tribunals because to its informality and procedural flexibility, frequently without the necessity for professional assistance. This is especially crucial in situations involving labour disputes, social security, or pensions, as the parties involved do not have the resources to fight long-term legal fights. Tribunals serve as an accessible means of settling conflicts and assisting in the communication of the public with the legal system

Cost-Effective Dispute Resolution-It can be costly to use the traditional court system, especially for those with little money. Litigation costs are raised by court procedures, such as the need for substantial legal documents and the involvement of attorneys. Conversely, administrative tribunals offer a more economical way to settle conflicts.Tribunals typically have more straightforward procedures, enabling parties to defend themselves without the need for pricey legal counsel. This lowers the total cost of litigation, increasing the accessibility and affordability of justice for a larger segment of the population.

Flexibility in Procedures-One of the key reasons for the establishment of administrative tribunals is the need for procedural flexibility. Unlike traditional courts, which are bound by strict rules of evidence and procedure, tribunals have the freedom to adopt a more informal approach, focusing on the substance of the dispute rather than procedural technicalities. This flexibility is particularly beneficial in areas like environmental law, where scientific evidence may need to be evaluated, or in tax disputes, where technical financial details are critical. Tribunals can adopt procedures that are better suited to the specific nature of the dispute, allowing for more effective and tailored resolutions.

Promoting the Principle of Natural Justice-Administrative tribunals guarantee the respect of natural justice's tenets, including the right to a fair trial, the ability to submit evidence, and the right to an unbiased judgment. These tribunals are intended to level the playing field for all parties, guaranteeing that public decisions are scrutinized and that people can contest administrative measures that impinge on their rights. Tribunals, for

instance, make guarantee that government workers are not unfairly treated or fired arbitrarily in matters involving public sector employment. Tribunals contribute to the advancement of accountability and openness in governmental acts by offering a venue for the evaluation of administrative judgments.

Growth of Administrative Tribunals in India

Part XIV-A of the 42nd Amendment to the Constitution established tribunals for administrative matters and other subjects, as outlined in Articles 323A and 323B. These sections of the Constitution mandate that tribunals be set up and arranged in a way that ensures they uphold the principles of the judicial system as outlined in the document, which serves as the framework for the entire document.

Categories of Administrative Tribunals

Administrative Tribunals for service matter [Article 323A] -In accordance with Article 323A, Parliament may establish administrative tribunals by law to settle disagreements and grievances regarding the hiring practices and working conditions of public employees employed by both the federal government and state governments. It covers workers for any local or other authority operating in India or under the jurisdiction of the Indian government, as well as workers for any company that the government owns or controls.The establishment of such tribunals must be at the centre and state level separately for each state or for two or more states

Tribunals for other matters [Article 323B]-Article 323B gives the Parliament and State Legislature the authority to set up tribunals to decide any disagreement or grievance pertaining to the subjects listed in Article 323B clause (2). A few of the topics covered under clause (2) include the assessment, collection, and enforcement of any taxes, foreign exchange and export, labour and industrial conflicts, the production, purchase, distribution, and supply of food, rent regulation and control, and tenancy concerns, among other things. Such a statute must specify the authority and jurisdiction of such tribunals as well as the steps that must be taken.[2]

Key developments in Indian tribunal system[3]

[2]Tribunals in India – by Neha gurani
[3]https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india-3750

1941: The first tribunal to be constituted in India was the Income Tax Appellate Tribunal. The aim was to decrease the amount of work that courts had to do, resolve disputes more quickly, and increase the Tribunal's knowledge of tax-related issues
1969: In 1969 Administrative Reform Commission also recommended for the establishment of civil service tribunals both for the Central and State civil servants. Central Government appointed a committee under the Chairmanship of Justice J.C. Shah of the SC of India in 1969 which also made similar recommendation.
1975: Swarn Singh Committee again recommended for the setting up of service tribunals. The idea of setting up service tribunals also found favour with the SC of India which in K.K. Dutta v. Union of India advocated for setting up of service tribunals to save the courts from avalanche of writ petitions and appeals in service matters. The Constitution's forty-second amendment was approved. The amendment gave Parliament the authority to establish: (i) administrative tribunals (federal and state) to decide cases pertaining to public servant hiring and benefits,
1976: Public servant service cases were a burden for the High Courts, according to the Swaran Singh Committee (1976). It suggested creating the following tribunals to decide cases pertaining to labour courts and industrial tribunals: (i) administrative tribunals (national and state levels) to decide cases pertaining to terms of service; (ii) an all-India Appellate Tribunal for cases involving labour courts and industrial tribunals; and (iii) tribunals for cases pertaining to different sectors (such as revenue, land reforms, and essential commodities). The recommendation also suggested that the Supreme Court should examine the tribunals' rulings.

The Administrative Tribunals Act, 1985
The Administrative Tribunal Act, 1985 was passed by Parliament in compliance with the stipulations of Article 323A and covered all the topics covered by Article 323-A clause (1). This Act mandates that each state have a State Administrative Tribunal (SAT) at the state level and a Central Administrative Tribunal (CAT) at the federal level the tribunal has the authority to rule on the validity of the pertinent statutes and laws. The Act extends to, in so far as it is related to the Central Administrative Tribunal, to the whole of India and in relation to the administrative tribunals for states, it is applicable to the whole of India except the State of Jammu and Kashmir (Section 1).

EFFECTIVENESS OF ADMINISTRATIVE TRIBUNAL IN INDIA

Section 29 of the Administrative Tribunal Act, 1985 allowed the Tribunal to receive 13,350 pending cases that were transferred from High Courts and subordinate Courts after it was established in 1985. Up of June 30, 2022, the Tribunal had received around 8,82,085 cases since its founding in 1985. 8,04,272 of such cases have already been resolved. That represents a 91.18% disposal rate. The average time taken for a case to be resolved in CAT is typically 1-2 years, but complex cases can take significantly longer.[4]
However, some tribunals have even faced the large backlog of cases. Tribunals are being established to provide for speedy disposal of cases, and thus reduce the pressure on the Civil Courts. Once such a tribunal is established, the jurisdiction of the Civil Court to entertain cases falling within the jurisdiction of tribunals is barred.
One of the main reasons favouring their creation is the delay in the proceedings in the High Courts. The Standing Committee on Personnel, Public Grievances, Law and Justice (2015) had noted that several tribunals (such as Cyber Appellate Tribunal and Armed Forces Tribunal) have vacancies which makes them dysfunctional. As of March 3, 2021, there were 23 posts vacant out of total 34 sanctioned strength of judicial and administrative members in Armed Forces Tribunal. The Committee stated that NTC being a dedicated independent agency for providing resources (includes infrastructural, financial, and human resource) to tribunals would help in resolving such issues.[5]

Judicial Review of Administrative Tribunals

Judicial review is a fundamental feature of the Indian Constitution, allowing the judiciary to review and, if necessary, invalidate laws, regulations, or decisions of administrative bodies, including tribunals that violate the Constitution or exceed the scope of legal authority. Administrative tribunals, established to resolve disputes related to administrative actions, operate as quasi-judicial bodies to provide specialized adjudication. However, to prevent potential misuse of power or violation of fundamental rights, these tribunals are subject to judicial review by the courts. This review ensures that tribunals function within their constitutional and statutory limits and uphold the principles of natural justice. Judicial oversight of administrative tribunals is essential to maintain a balance between administrative efficiency and the protection of individuals' right[6]

[4]Central Administrative Tribunal report
[5]https://prsindia.org/billtrack/prs-products/the-tribunal-system-in-india-3750

[6]Judicial Review of Administrative Action in India- -Justice K Chandru

The Constitutional Framework for Judicial Review

Judicial review in India is derived from several constitutional provisions:

Article 13: Ensures that any law inconsistent with or in derogation of fundamental rights shall be void.

Article 32 and Article 226: Provide citizens with the right to approach the Supreme Court and High Courts, respectively, for the enforcement of fundamental rights and other legal remedies.

Article 136: Empowers the Supreme Court to grant special leave to appeal against any order, decree, or judgment passed by any court or tribunal in India.

Article 227: Grants the High Courts the power of superintendence over all courts and tribunals within their respective jurisdictions.

These provisions establish the judicial power to review the functioning of administrative tribunals to ensure that their decisions comply with constitutional principles, particularly in matters concerning fundamental rights and due process.

Reasons for Judicial Review of Administrative Tribunals[7]

Protection of Fundamental Rights- Tribunals handle cases pertaining to individual rights, including work, taxes, and social security benefits. The process of judicial review guarantees that the rulings made by these tribunals do not violate the fundamental rights of persons, as protected by the Constitution.

Preventing Abuse of Power- Tribunals exercise substantial administrative powers, and without judicial oversight, there is the risk of overreach or abuse of these powers. Judicial review ensures that tribunals remain within their statutory mandate and do not exceed their jurisdiction.

Ensuring Procedural Fairness- Judicial review ensures that administrative tribunals follow the principles of natural justice, such as giving both parties a fair opportunity to be heard and ensuring impartial decision-making.

Maintaining Accountability- Judicial review helps ensure that administrative tribunals remain accountable to the judiciary and operate in accordance with the law. This is critical for safeguarding public confidence in the administrative justice system.

Scope of Judicial Review of Administrative Tribunals

[7]I.P Massey-book on administrative law

Error in Jurisdiction: Courts look at whether the tribunal acted within its authority or beyond what the statute gave it. Courts have the authority to overturn the tribunal's ruling if it operates outside of its authority or neglects to exercise its authority.

Violation of Fundamental Rights- Courts review tribunal decisions to ensure that fundamental rights, such as the right to equality (Article 14), the right to life and liberty (Article 21), and other constitutional protections, are not violated.

Irrationality-Irrationality, as a ground of judicial review, plays a vital role in ensuring that administrative authorities do not act arbitrarily or unreasonably.Irrationality as a ground of judicial review is rooted in the concept of unreasonableness, which was first articulated in the Associated 4.

Provincial Picture Houses Ltd. v. Wednesbury Corporation (1948) case. In this case, Lord Greene stated that a decision could be challenged for unreasonableness if it was:

So absurd that no sensible person could have arrived at it,

Taken in disregard of relevant considerations, or,

Based on irrelevant or improper factors.

Failure to Follow Due Process-Tribunals are supposed to follow natural justice and procedural protections. Courts have the authority to examine whether the tribunal behaved impartially, gave both parties a sufficient chance to submit their cases, and made a decision that was supported by pertinent facts.

Error of Law-In the event that the tribunal misapplies or misinterprets the law, courts have the authority to step in. Nonetheless, unless there is an obvious mistake in the application of the law to the facts, courts typically defer to tribunals when it comes to fact-finding.

CASE LAWS

L. Chandra Kumar vs. Union of India (1997)[8]: This is one of the most significant cases concerning the judicial review of administrative tribunals. The Supreme Court held that tribunals cannot completely exclude the jurisdiction of the High Courts and Supreme Court in matters of judicial review. The Court ruled that Articles 32, 136, 226, and 227 of the Constitution form part of the basic structure, and the power of judicial review vested in the Supreme Court and High Courts cannot be taken away by the legislature.

[8]L. Chandra Kumar vs. Union of India (1997)-Indian Kanoon

The Court emphasized that while tribunals can serve as alternative forums for the resolution of disputes, their decisions must be subject to judicial scrutiny by the High Courts. The decision in L. Chandra Kumar reasserted the role of the judiciary in safeguarding the rights of individuals and ensuring that tribunals operate within their legal boundaries.

R.K. Jain V. Union of India (1993)[9]: In this case, the Supreme Court highlighted the importance of independence and impartiality in the functioning of administrative tribunals. It observed that tribunals, being quasi-judicial bodies, must operate independently of the executive to ensure fair adjudication. The Court stressed that judicial review was necessary to prevent tribunals from being influenced by executive control and to maintain the rule of law.

Union of India V. Madras Bar Association (2010)[10]: This case dealt with the validity of the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT). The Supreme Court held that although the legislature has the power to create tribunals, such tribunals cannot replace High Courts. The Court underscored the need for judicial review to ensure that tribunals function within constitutional limits and comply with principles of natural justice.

Administrative tribunal and Doctrine of Res Judicata: Sec 11 of CPC provides for this doctrine. It means that if an issue has already been decided by the competent court between the same parties and on the same matter the same cannot be decided by the subsequent court.

Bombay Gas Ltd. V. Shridhar1961[11]: Supreme Court held that an award pronounced by the industrial tribunal operates as res judicata between the same parties and the payment of wages authority has no jurisdiction to entertain the said question again

Administrative tribunal and Doctrine of Precedent: Article 141 of the constitution declares the law declared by the supreme court shall be binding on all the courts with the territory of India therefore there is no doubt as to scope of Article 141 and it would apply to ordinary courts as well as administrative tribunals. The high court is the apex court of the state and generally same principle of article 141 applies to the judgement of the high court. The high court like the Supreme Court has also the supervisory jurisdiction over all subordinate. Therefore, if any tribunal acts without the jurisdiction

[9]Case Analysis of R.K. Jain v/s. Union of India 1993 Air 1769
By Tejaswini Kaushal
[10]Union of India V. Madras Bar Association (2010)-IPleader blog
[11]Case mines

or exceed its power or seeks to transgress the law laid down by the high court the high court can certainly interfere with the action of the tribunal.[12]

Jain Exports V. Union of India (1988): Supreme Court stated that there is no doubt in a tier (hierarchy) system, decision of the higher authorities is binding on lower authorities and quasi-judicial tribunal are also bound by this principle

Ajit Babu V. Union of India(1997): Supreme Court held that doctrine of precedent is applied to administrative tribunals

COMPARATIVE STUDY OF ADMINISTRATIVE TRIBUNAL AMONG THE VARIOUS COUNTRIES

USA: In the United States, administrative adjudication is largely governed by the Administrative Procedure Act (APA) of 1946, which established a framework for the functioning of federal administrative agencies. Administrative Law Judges (ALJs) preside over hearings in agencies such as the Social Security Administration, the Environmental Protection Agency, and the Federal Communications Commission. These tribunals handle a wide range of cases, from disputes over disability benefits to environmental compliance. The APA provides procedural safeguards to ensure fairness, including the right to a hearing, the right to present evidence, and the right to appeal. ALJs are required to make decisions based on the record of the proceedings, and their decisions are subject to internal agency review before they can be appealed to federal courts. The APA also ensures transparency by requiring agencies to publish their rules and procedures.Judicial review of administrative tribunal decisions is an important aspect of the U.S. system. Courts apply the "arbitrary and capricious" standard to assess whether agency decisions were reasonable. Under the Chevron doctrine, courts often defer to the expertise of administrative agencies when interpreting statutes, provided the agency's interpretation is reasonable. However, courts can overturn decisions that violate due process or exceed the agency's authority.[13]

FRANCE: A unique tribunal called the Tribunal des Conflicts is established by the French legal system to resolve disputes involving both judicial and administrative duties. Most of the matters that comesto this Tribunal are very complex and are also governed by the complicated rules of procedure as France is having a dual legal system. France differs from the English-speaking nations in having two distinct legal systems.[i] However, because some administrative acts are excluded from judicial scrutiny, judicial review is

[12]I.P. Massey -Principles of Administrative law.
[13]Wikipedia

not absolute in France. Furthermore, there are time constraints in France for the judicial review of administrative acts[14]

U.K: In UK, tribunals are different from other countries considering its structure and its approach to accessibility. The UK's tribunals are designed to be more user-friendly which promotes informal procedures that allow anyone to represent themselves more easily. Further, the UK's two-tier system, comprising First-tier and Upper Tribunals, allows for a clear pathway for appeals, although the grounds for these appeals may be narrower compared to some jurisdictions that permit merits reviews. In the twentieth century, tribunals became the only judicial body in England when the Old Age Pensions Act of 1908 established the Local Pension Committee and the National Insurance Act of 1911 established the Umpire. Since then, as the Tribunals have grown into unique entities, there has been a growing acknowledgement of their judicial standing.[15]

AUSTRALIA: A significant component of the Australian legal system are tribunals. They offer the public an unbiased and independent assessment of government choices that impact their interests. Additionally, they lessen the strain on the overworked Civil Court system. They allow Australian people and corporation's relatively easy, affordable access to a prompt and equitable justice service[16]Other Administrative Tribunals established by the Commonwealth include the Social Security Appeals Tribunal, the Veterans Review Board and the Migration and Refugee Review Tribunals, National Native Title Tribunal and the Superannuation Complaints Tribunal.[17]

OBSERVATION

Administrative tribunals are essential institutions within many legal systems worldwide, offering specialized adjudication in disputes involving public administration. The structure, powers, and role of these tribunals vary across countries, but they generally share the goal of providing accessible, efficient, and expert resolution of administrative disputes.From a comparative study of administrative tribunals in various countries, several key conclusions can be drawn:

Tribunals are designed to provide a more efficient and specialized forum for resolving disputes involving public administration. In countries like the United Kingdom, tribunals like the First-Tier Tribunal handle a wide range of administrative matters,

[14]Supra 19 at p. 190.
[15]Creyke, Robin, Tribunals in the Common Law World, The Federation Press, United Kingdom, 2008 at p. 20
[16]The Development of Tribunals in Australia, available at: https://www.mcgirrtech.com/development of-tribunals-in-Australia/ (last visited on 07-08-2017).
[17]Tribunals in Australia: Their Roles and Responsibilities

benefiting from sector-specific expertise. Similarly, India's Central Administrative Tribunal (CAT) and Australia's Administrative Appeals Tribunal (AAT) aim to expedite the resolution of complex administrative disputes, ensuring that technical or policy-based decisions are reviewed by knowledgeable bodies.

To function effectively, tribunals must maintain a degree of independence from the executive branch, ensuring impartiality in their decisions. Countries like the United States, with its system of independent administrative law judges (ALJs), and France, through its Conseil d'état, emphasize this separation to safeguard judicial independence.

However, in some countries, concerns about the influence of the executive branch on tribunals remain. For instance, India's CAT has faced periodic scrutiny regarding its autonomy from the government

CONCLUSION

Administrative tribunals are a necessary and effective mechanism for resolving disputes involving the government and public administration. They provide a more specialized, efficient, and accessible forum for adjudication compared to traditional courts. In a country like India, where the judiciary is overburdened with cases and the complexity of governance is ever-increasing, administrative tribunals play a critical role in ensuring justice is delivered in a timely and cost-effective manner. Despite challenges such as ensuring independence from the executive, tribunals remain an essential feature of India's legal system, providing a crucial balance between efficiency and fairness in administrative justice.

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SEPARATION OF POWERS AND ADMINISTRATIVE TRIBUNALS: A TUSSLE BETWEEN JUDICIAL AND QUASI-JUDICIAL BODIES

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ABSTRACT

The doctrine of Separation of Powers, a cornerstone of constitutional governance, mandates a distinct division of authority among the legislature, executive, and judiciary. In India, the increasing role of Administrative Tribunals—quasi-judicial bodies established to reduce the burden on traditional courts—has sparked significant debate on the encroachment of executive functions into the judicial domain. This paper explores the evolving dynamics between judicial bodies and administrative tribunals, scrutinizing their jurisdictional overlaps, constitutional validity, and impact on the judicial independence guaranteed by the Indian Constitution. A critical analysis of landmark Supreme Court judgments is provided to evaluate the extent to which tribunals align with the Separation of Powers principle. The paper further delves into the potential tensions arising from the tribunals' adjudicatory powers, and the efforts by the judiciary to regulate tribunal functioning without overstepping its role. By examining the shifting balance between administrative efficiency and judicial oversight, this study highlights the challenges posed to democratic governance and suggests reforms to reconcile these competing forces.

Keywords: *Separation of Powers, Administrative Tribunals, Quasi-Judicial Bodies, Judicial Independence, Constitutional Law, Judicial Review, Bureaucratic Accountability.*

INTRODUCTION

The doctrine of Separation of Powers, introduced by Montesquieu, is fundamental to democratic governance, emphasising the distinct roles and responsibilities of the three branches of government—the legislature, executive, and judiciary. The Indian Constitution, while not strictly adhering to this doctrine, adopts a system of checks

and balances to prevent any concentration of power in a single branch[1]. However, the increasing reliance on Administrative Tribunals—quasi-judicial bodies created to adjudicate specialized disputes, particularly in administrative mattershas blurred the lines between the executive and the judiciary. Administrative tribunals were established to reduce the judiciary's caseload and offer a faster, specialized resolution of disputes, particularly in service and tax matters[2]. They possess both adjudicatory and administrative functions, creating a unique intersection of executive and judicial roles. This raises pertinent constitutional questions, particularly concerning the independence of the judiciary and the potential overlap of functions between traditional courts and these tribunals.

The Supreme Court of India, through various landmark decisions, has grappled with the issue of the constitutional validity and scope of tribunals, notably in cases like *L. Chandra Kumar v. Union of India*[3] and *R. Gandhi v. Union of India*[4]. These cases reflect the judiciary's efforts to preserve its authority and uphold the balance of power, while recognizing the necessity of specialized adjudicatory bodies for effective governance. This paper seeks to explore the complex relationship between judicial bodies and administrative tribunals, analysing how the delegation of adjudicatory powers to quasi-judicial bodies challenges the traditional understanding of Separation of Powers. It examines whether tribunals, in exercising judicial functions, undermine the authority of the judiciary or provide necessary relief to an overburdened court system.

The paper also discusses the constitutional safeguards, judicial oversight mechanisms, and potential reforms necessary to harmonize the tribunal system with democratic principles.The growing tribunalization of justice in India presents a critical point of discussion on the balance between administrative efficiency and judicial independence, underscoring the need to safeguard the democratic fabric of governance while ensuring timely and effective dispute resolution.

Separation of Powers: Constitutional Foundations in India

HISTORICAL ORIGINS

The concept of Separation of Powers has a deep-rooted historical legacy, originating from the works of ancient philosophers and gaining prominence through the

[1]Nayak, R., Administrative justice In India, Butterwoths : New Delhi, 1989, p.3.
[2] Thakker, C.K., Administrative Law, Eastern Book Company, Lucknow, 1996, p.226.
[3] L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.
[4] R. Gandhi v. Union of India, AIR 1989 MAD 205.

writings of modern political theorists. The principle was first conceptualized by Aristotle, who distinguished between the "deliberative", "executive", and "judicial" functions of government in his work Politics[5]. However, it was the French philosopher Baron de Montesquieu, in his seminal book The Spirit of the Laws[6], who provided the most influential modern formulation of the doctrine. Montesquieu argued that liberty could be safeguarded only if the powers of government were divided among three distinct organs—the legislature, executive, and judiciary—each functioning independently of the others[7].

The core idea behind this doctrine is that the concentration of power in one body inevitably leads to despotism and tyranny. By creating a system where each branch of government checks and balances the other, the separation of powers serves as a safeguard against authoritarianism. This theory had a significant influence on the framers of modern constitutions, especially the Constitution of the United States in 1787, which explicitly adopted a tripartite system of government. The U.S. Constitution entrenched this separation, giving distinct roles to the Congress, the President, and the Supreme Court. In colonial India, however, the British rulers followed a centralized system of governance with limited separation between the executive and judiciary[8]. The Government of India Act, of 1935, which formed the basis for India's Constitution, also established a relatively centralized system of governance, with minimal focus on the doctrine of separation of powers[9].

When India achieved independence in 1947, the framers of the Indian Constitution sought to create a system of governance that was democratic and fair, based on a blend of parliamentary supremacy and judicial independence. While the doctrine of separation of powers was not explicitly mentioned in the Constitution, its principles were embedded in the constitutional framework to ensure that no one organ of the state could overstep its bounds. The framers recognized that in a parliamentary system, some degree of overlap between the branches of government is inevitable, but they also sought to ensure that each branch had sufficient checks on the others[10].

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[5] Natural Justice Doctrine, Black's Law Dictionary (11th ed. 2019).
[6] Montesquieu, The Spirit of the Laws 154-58 (Thomas Nugent trans., Hafner Press 1949) (1748).
[7] Ibid.
[8] Justice G.P. Singh, Principles of Statutory Interpretation 144-47.
[9] D.D. Basu, Introduction to the Constitution of India 129-32 (24th ed. 2019).
[10] Ibid.

CONSTITUTIONAL PROVISIONS AND JUDICIAL INTERPRETATION

Although the Indian Constitution does not explicitly provide for a rigid separation of powers, it contains various provisions that ensure the division of functions among the three branches of government—legislature, executive, and judiciary[11]. These provisions reflect the intention to create a system of governance where no branch can dominate the other two, and where a delicate balance of power is maintained.

The Legislature

The legislature in India is responsible for law-making, which is enshrined in Articles 79[12] to 122[13] of the Constitution. The Parliament consists of the Lok Sabha and Rajya Sabha, and its primary function is to enact laws. While the legislature exercises law-making powers, it is limited by constitutional provisions and judicial review, ensuring that it does not exceed its authority. Article 122 specifically prohibits the courts from questioning the proceedings of Parliament, reinforcing the independence of the legislative process. However, judicial review of legislation, especially on grounds of constitutionality, remains one of the judiciary's core functions[14].

The Executive

The executive comprises the President, the Prime Minister, and the Council of Ministers. The executive's primary role is to enforce and implement laws passed by the legislature. Articles 52[15] to 78 deal with the powers and functions of the executive. Though the executive is theoretically distinct from the legislature, in practice, under the parliamentary system, the executive is drawn from the legislature. The Prime Minister and other members of the executive are typically members of Parliament, leading to some overlap between the two branches. Article 123[16] grants the President the power to issue ordinances during times when Parliament is not in session, which are temporary laws that must later be ratified by Parliament. Thisblending of legislative and executive functions is one of the areas

[11]Serwai, HM, Constitutional Law of India Law and Justice Publishing Company 105-108 (4th Edition 2018)
[12]INDIA CONST. arts. 79.
[13]INDIA CONST. arts. 122.
[14] D.D. Basu, Introduction to the Constitution of India 141 (24th ed. 2019).
[15]INDIA CONST. arts. 52.
[16]INDIA CONST. arts. 123.

where the strict separation of powers is not followed in India's parliamentary democracy[17].

The Judiciary

The judiciary in India, especially the Supreme Court and High Courts, is entrusted with the duty of interpreting the laws and safeguarding the fundamental rights of citizens. Articles 124[18] to 147 outline the structure, functions, and independence of the judiciary. One of the most significant features of the judiciary in India is its power of judicial review, which allows courts to strike down laws and executive actions that are in violation of the Constitution. This power ensures that neither the legislature nor the executive can act beyond their constitutional limits.

Judicial independence is central to maintaining the separation of powers, and the Constitution safeguards this through various provisions. Article 124 provides for the appointment of judges to the Supreme Court, ensuring their independence from executive influence. Judges of the Supreme Court and High Courts have security of tenure and cannot be removed except through a rigorous process of impeachment under Article 124(4)[19]. This process ensures that judges are not unduly influenced by the executive or legislature. The principle of judicial review, a vital tool in upholding the doctrine of separation of powers, is enshrined in Article 13[20]. This Article declares that any law inconsistent with the provisions of the Constitution shall be void. This enables the judiciary to review laws passed by the legislature and executive actions, ensuring that they comply with the Constitution's principles. Judicial review is fundamental to maintaining checks and balances, as it allows the judiciary to nullify unconstitutional actions by the other branches of government.

Emergence of Administrative Tribunals in India

The concept of administrative tribunals in India is a relatively recent development, introduced to address the growing burden on regular courts and to provide specialised expertise for handling administrative disputes[21]. Prior to the establishment of tribunals, such disputes were often dealt with by regular courts, which often lacked the necessary domain knowledge to adjudicate these matters

[17]Serwai, HM, Constitutional Law of India Law and Justice Publishing Company 112 (4th Edition 2018)
[18]INDIA CONST. arts. 124.
[19]*supra* note 17.
[20]INDIA CONST. arts. 13.
[21]Nayak,R., Administrative justice In India, Butterwoths : New Delhi, 1989, p.55.

effectively. The constitutional framework for the establishment of administrative tribunals was laid down in the 42nd Amendment Act of 1976, which introduced Articles 323A and 323B into the Constitution. These articles empowered the Central and State governments to establish tribunals for specific matters, such as those related to the recruitment and conditions of service of government employees[22].

One of the most significant developments in the field of administrative tribunals was the establishment of the Central Administrative Tribunal (CAT) in 1985. The CAT was set up under the Administrative Tribunals Act, 1985, and has since become a crucial institution for resolving disputes between the Central government and its employees[23]. The CAT has jurisdiction over a wide range of matters, including recruitment, promotions, disciplinary proceedings, and pension benefits[24].

The establishment of administrative tribunals has had several positive effects. It has helped to reduce the backlog of cases in regular courts, thereby improving access to justice. Tribunals also provide specialized expertise, which can lead to more efficient and informed decision-making. Moreover, tribunals are often considered to be more accessible to litigants than regular courts, as they are located closer to the people they serve. Furthermore, Article 323B empowers both Parliament and state legislatures to create tribunals for a wider range of matters, such as taxation, foreign exchange, industrial and labor disputes, land reforms, and elections. Tribunals created under Article 323B are intended to provide speedy redress for specialized matters[25].

However, the tribunal system in India has also faced some challenges. One of the major criticisms is that tribunals are not fully independent from the executive branch of government. This has raised concerns about the impartiality of tribunal proceedings. Additionally, some critics argue that the quality of justice provided by tribunals is not always as high as that provided by regular courts[26].Despite these challenges, the tribunal system in India remains an important component of the country's legal system. As the volume of administrative disputes continues to grow,

[22] "Tribunalisation in India" http://legalsutra.org/1446/tribunalisation-in-india/ as on 16th October, 2011.
[23]Ibid.
[24]Sathe, S.P., Administrative Law, 6th. Edn., Butterworths, New Delhi, 1999, pp. 245-252.
[25] R. Nayak, Administrative justice In India, 38 (1989).
[26] Ibid.

it is likely that the role of tribunals will become even more significant in the years to come.

The Judicial Role and Powers of Administrative Tribunals

Administrative Tribunals, introduced as specialized institutions to resolve disputes involving administrative and public law matters, perform functions akin to courts. These bodies offer a quicker, more accessible, and less expensive mechanism than conventional courts. Tribunals in India were established to alleviate the burden on courts by adjudicating cases that require technical expertise and administrative discretion. However, their evolving role raises pertinent questions about their judicial powers, quasi-judicial nature, and overlap with the functions of the traditional judiciary. The scope and powers of tribunals are enshrined in constitutional provisions like Articles 323-A and 323-B of the Indian Constitution, and their functioning is often evaluated in light of the separation of powers principle.

A. QUASI-JUDICIAL NATURE OF TRIBUNALS

The quasi-judicial nature of administrative tribunals is a cornerstone of their functioning. They are empowered to exercise certain judicial functions, such as hearing evidence, examining witnesses, and rendering decisions based on the principles of natural justice. However, they differ from regular courts in several respects. Tribunals are typically established by executive authority under statutory provisions, and their jurisdiction is often limited to specific subject matters[27]. Moreover, their procedures may be less formal than those of regular courts, aiming for efficiency and expediency. The concept of quasi-judicial powers was upheld in the landmark case of *Union of India v. T.R. Varma*[28], where the Supreme Court affirmed the quasi-judicial nature of administrative tribunals and emphasized their role in providing specialized expertise and reducing the burden on the regular judiciary.

Tribunals possess a quasi-judicial character, meaning they do not merely administer laws but adjudicate upon rights and obligations of individuals in specific domains, such as tax, labour, and service matters. Unlike purely administrative bodies, tribunals have the authority to conduct hearings, take evidence, and issue binding

[27] Mathew and Agarwal, Judicial Review andAdministrative Tribunals, 25 Indian Bar Review 112 (1998).
[28] Union of India v. T.R. Varma, 1958 SCR 499.

decisions, similar to courts. Their decisions impact the rights of parties involved, often blurring the line between administrative and judicial actions. Article 323-A empowers Parliament to set up tribunals to adjudicate service disputes, while Article 323-B allows the creation of tribunals for other areas, such as taxation, labour, and rent control.

A key judgment elaborating on the quasi-judicial nature of tribunals is *SP Sampath Kumar v. Union of India*[29]. The Supreme Court ruled that tribunals under Article 323-A must function as an effective substitute for the High Courts and ensure judicial independence. Additionally, the court emphasized that though tribunals are distinct from traditional courts, they must adhere to principles of natural justice, including fair hearings and reasoned decisions.Another relevant case is *Union of India v. Madras Bar Association*[30], where the Supreme Court reaffirmed the necessity for tribunals to function autonomously without executive interference, given their quasi-judicial role. The decision highlighted that tribunals, while being specialized bodies, must uphold the standards of justice expected of courts.

B. ADJUDICATORY POWERS AND THE BLURRING OF LINES WITH JUDICIARY

The adjudicatory powers of administrative tribunals often extend into areas traditionally reserved for courts, creating a complex interaction between the judiciary and these quasi-judicial bodies. Tribunals are empowered to resolve disputes involving public servants, taxation, consumer rights, and environmental matters, using technical expertise to deliver decisions that affect public and private interests. While tribunals offer procedural flexibility and subject-matter specialization, their decisions are often subject to judicial review under Articles 136 and 226 of the Constitution. This interplay raises concerns about the encroachment on the judiciary's domain and the potential dilution of constitutional safeguards.

In *L. Chandra Kumar v. Union of India*[31], the Supreme Court clarified that the powers of judicial review, an essential feature of the Constitution, cannot be ousted by tribunals. The Court held that while tribunals have the authority to adjudicate disputes, their decisions must remain open to scrutiny by the High Courts. This landmark ruling reasserted the primacy of judicial review and placed tribunals

[29] SP Sampath Kumar v. Union of India, (1987) 1 SCC 124.
[30] Union of India v. Madras Bar Ass'n, (2014) 10 SCC 1.
[31] *supra* note 3.

under the purview of the judiciary, ensuring checks and balances between the two.However, the decision in *Rojer Mathew v. South Indian Bank Ltd.* reflects the judiciary's evolving stance on the administrative independence and functioning of tribunals. The Court highlighted the lack of uniformity in tribunal appointments and expressed concerns about executive interference in the appointment process, thus questioning the independence of these adjudicatory bodies. It recommended the establishment of an independent oversight mechanism, like the National Tribunals Commission, to ensure impartiality and consistency across tribunals[32].

The blurring of lines between the judiciary and tribunals has led to debates on whether tribunals exercise judicial powers autonomously or merely assist the judiciary. As tribunals handle more complex matters, the judiciary must strike a balance between allowing autonomy to specialized bodies and ensuring compliance with constitutional principles. This delicate balance becomes crucial in preventing the dilution of justice while maintaining the efficiency and technical competence that tribunals offer.While the administrative tribunals provide valuable support to the judiciary through their specialized focus, concerns about autonomy, judicial oversight, and executive interference persist. Landmark judgments like *L. Chandra Kumar* and *SP Sampath Kumar* emphasize the need for judicial independence and natural justice within the functioning of tribunals. Thus, the judiciary continues to play a crucial role in supervising these bodies, ensuring that the rule of law and constitutional principles are upheld.

Tension between Judicial Independence and Tribunal Autonomy

The Indian legal system seeks to balance judicial independence with the autonomy of administrative tribunals. Tribunals were introduced as specialized adjudicatory bodies to ease the burden on courts and deliver quicker, expert decisions on technical matters. However, the growing influence of tribunals has sparked a debate over whether they encroach upon the judiciary's domain. This tension revolves around the need to maintain the constitutional principle of judicial independence while ensuring that tribunals retain the autonomy necessary for efficient functioning. The interaction between these two forces has shaped significant

[32] Mathew and Agarwal, Judicial Review andAdministrative Tribunals, 25 Indian Bar Review 125 (1998).

developments in constitutional law, raising issues about the separation of powers, judicial review, and the appointment process.

CONSTITUTIONAL FRAMEWORK AND RATIONALE FOR TRIBUNALS

Administrative tribunals derive their authority from Articles 323-A and 323-B of the Indian Constitution. Article 323-A allows the establishment of tribunals to adjudicate disputes related to public services, while Article 323-B empowers both Parliament and State Legislatures to create tribunals for specific matters, such as taxation, labour, and consumer affairs. The rationale behind creating these tribunals was to reduce the backlog of cases in conventional courts and provide expert decisions in specialized fields where technical knowledge is essential[33].

However, this delegation of adjudicatory power to tribunals raises concerns about judicial independence. India's judiciary is constitutionally mandated to remain free from executive control, ensuring impartial and fair decisions. This principle is central to maintaining the rule of law, but the proliferation of tribunals has complicated the equation by transferring certain adjudicatory powers traditionally exercised by courts to these administrative bodies.

JUDICIAL REVIEW AND THE SUPREMACY OF CONSTITUTIONAL COURTS

The first point of friction between judicial independence and tribunal autonomy arises from the issue of judicial review. Judicial review is a basic feature of the Indian Constitution, and the power of High Courts under Article 226[34] and the Supreme Court under Article 32[35] to review the constitutionality of executive and legislative actions cannot be abrogated. The L. Chandra Kumar judgment was a watershed moment in this debate, as the Court declared that tribunals could not oust the jurisdiction of constitutional courts. It upheld the principle that judicial review is part of the basic structure of the Constitution and, therefore, cannot be taken away even through constitutional amendments. The judgment also clarified that the establishment of tribunals does not undermine the powers of the judiciary but provides an additional forum for dispute resolution. However, this ruling also

[33] *supra* note 14.
[34] INDIA CONST. arts. 226.
[35] INDIA CONST. arts. 32.

reinforced the idea that tribunals function under judicial supervision, limiting their autonomy.

A critical aspect of the tension between judicial independence and tribunal autonomy is the process of appointing members to tribunals. The independence of the judiciary is protected by the collegium system, which minimizes executive interference in judicial appointments. However, appointments to tribunals are often made by the executive branch, raising concerns about the impartiality and independence of these bodies.In Union of India v. R. Gandhi[36], the Supreme Court held that tribunals dealing with matters that were earlier adjudicated by courts must possess similar independence and autonomy. It emphasized that appointments to such tribunals should be free from executive control, and a proper mechanism must be established to maintain judicial standards in tribunal appointments. Despite these observations, executive interference in the appointment process remains a persistent issue, creating concerns that tribunal members may not always act independently.

The issue was further examined in *Rojer Mathew v. South Indian Bank Ltd.*[37], where the Supreme Court expressed concerns about the lack of uniformity and transparency in tribunal appointments. The Court noted that the executive's role in selecting tribunal members compromises the independence of these bodies, leading to recommendations for establishing an independent oversight body, such as the National Tribunals Commission. This proposal aims to ensure that appointments to tribunals are made transparently, minimizing executive influence and enhancing tribunal autonomy.

Another area of contention lies in the difference in procedural standards followed by courts and tribunals. Courts are bound by strict rules of evidence and procedure, ensuring fair trials and adherence to due process. In contrast, tribunals are given procedural flexibility, which helps them resolve disputes more efficiently but sometimes raises concerns about the erosion of fundamental legal principles. The lack of uniformity in the procedures followed by different tribunals has led to criticism that such bodies may bypass essential legal safeguards. This procedural flexibility is a double-edged sword, providing efficiency but also raising doubts about the consistency and fairness of tribunal decisions.

AUTONOMY OF TRIBUNALS AND OVERLAP WITH THE JUDICIARY

[36] *supra* note 4.
[37] Rojer Mathew v. South Indian Bank Ltd., (2019) 20 SCC 1.

Tribunals enjoy autonomy in their respective domains, but their decisions are often subject to judicial review, creating overlaps between the judiciary and tribunals. While autonomy allows tribunals to use specialized knowledge to resolve disputes, judicial intervention ensures that tribunals do not violate fundamental rights or deviate from constitutional principles.The Madras Bar Association v. Union of India judgment further clarified the boundaries between the judiciary and tribunals. The Supreme Court struck down provisions of the National Tax Tribunal Act, 2005, on the grounds that transferring the jurisdiction of High Courts in tax matters to a tribunal undermined the independence of the judiciary[38]. The Court held that while tribunals can handle specialized matters, they cannot completely replace the judicial function of constitutional courts.This case highlighted the importance of maintaining a clear distinction between the judiciary and tribunals. It reinforced the principle that tribunals must function as complementary bodies rather than substitutes for courts, ensuring that the judiciary retains its independence and supremacy in matters of constitutional interpretation and fundamental rights[39].

Recommendation

The tension between judicial independence and tribunal autonomy has led to calls for structural reforms to harmonize their functioning. A key recommendation has been the establishment of a National Tribunals Commission, an independent body to oversee the appointment, functioning, and performance of tribunals. This proposal aims to ensure transparency in appointments and enhance the independence of tribunal members by reducing executive influence.Another suggested reform is to standardize procedures across tribunals, ensuring that they adhere to principles of natural justice while retaining the flexibility necessary for efficient dispute resolution. Additionally, clearer guidelines on the scope of judicial review can help minimize overlaps and conflicts between the judiciary and tribunals.

The overlapping jurisdiction between courts and tribunals creates confusion and delays in the administration of justice. Codifying these boundaries would prevent litigants from engaging in forum shopping, ensuring that disputes are resolved

[38] D.D. Basu, Introduction to the Constitution of India 221 (24th ed. 2019).
[39]Mathew and Agarwal, Judicial Review and Administrative Tribunals, 25 Indian Bar Review 142 (1998).

efficiently at the appropriate forum. Additionally, statutory frameworks governing tribunals should explicitly limit their jurisdiction to the areas intended by the legislature, reducing the potential encroachment into judicial territory. Tribunals, given their quasi-judicial nature, must strictly adhere to procedural safeguards and principles of natural justice, such as the right to be heard, reasoned decisions, and transparency. To achieve this, procedural guidelines for all tribunals should be standardized, ensuring consistency across different bodies. Additionally, regular training of tribunal members in judicial ethics and procedural fairness is recommended to maintain high standards of justice. The judiciary can play a supervisory role by setting guidelines for tribunals and ensuring compliance through periodic audits or inspections.

Reducing executive control over tribunal administration can also be one of the addition in solving this tussle. Executive involvement in the administration and functioning of tribunals has been a major source of concern. It is recommended that the financial and administrative control of tribunals be shifted from the executive to an independent authority, such as the NTC. Additionally, appointments to tribunals should be made by selection committees that include members of the judiciary to maintain impartiality. To complement the work of tribunals and reduce their caseload, the government should promote alternate dispute resolution (ADR) mechanisms, such as mediation, conciliation, and arbitration. Tribunals can integrate ADR frameworks into their procedures, encouraging parties to settle disputes amicably and reducing dependency on formal adjudication. This approach aligns with the broader objective of achieving swift and cost-effective justice while ensuring that tribunals focus on complex cases requiring specialized expertise.

Conclusion

The evolution of administrative tribunals in India reflects the growing need for specialized adjudication, but it has also exposed tensions between tribunal autonomy and judicial independence. While tribunals were established to reduce the burden on conventional courts and offer efficient dispute resolution, their expanding scope has led to concerns about executive interference and overlap with judicial functions. Landmark cases like L. Chandra Kumar v. Union of India and Madras Bar Association v. Union of India underscore the judiciary's role in

safeguarding constitutional principles through oversight mechanisms, while also affirming the necessity of tribunals in modern governance.

This paper has highlighted the importance of balancing the autonomy of tribunals with judicial accountability. A key challenge is ensuring that tribunals remain free from executive control while functioning efficiently in their specialized domains. Recommendations, such as establishing the National Tribunals Commission (NTC) and creating clear jurisdictional boundaries, aim to harmonize the relationship between tribunals and courts. Strengthening procedural safeguards, standardizing tribunal operations, and promoting transparency in appointments will also enhance the effectiveness and credibility of these adjudicatory bodies.

Ultimately, maintaining a delicate balance between tribunal autonomy and judicial independence is crucial for ensuring access to justice while preserving the democratic fabric of governance. The judiciary, through limited yet effective review, can ensure that tribunals adhere to constitutional norms without compromising their efficiency. With thoughtful reforms and coordinated efforts, India's legal system can achieve a sustainable equilibrium where tribunals complement, rather than compete with, the judiciary—upholding both administrative efficiency and the rule of law. In conclusion, the Indian legal system must carefully navigate the delicate balance between tribunal autonomy and judicial independence. Administrative tribunals are an indispensable component of modern governance, providing specialized adjudication in technical areas. However, to maintain public trust and ensure justice, their autonomy must not come at the cost of constitutional oversight. With the judiciary retaining its supervisory role through limited but effective review, tribunals can function independently while remaining accountable to the rule of law.

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ADMINISTRATIVE ADJUDICATION: PRINCIPLES, PROCESSES, AND CONTEMPORARY ISSUES

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ABSTRACT:

Administrative adjudication is essential in contemporary governance as it offers a systematic and specialized approach to resolving disputes among individuals, businesses, and government entities. In contrast to the conventional court system, administrative adjudication involves tribunals, boards, or agencies equipped with the knowledge to manage specific types of regulatory or administrative disputes. This article examines the core principles of administrative adjudication, including procedural fairness, the rule of law, specialization, and efficiency. Employing a qualitative research approach that encompasses case law examination and statutory assessments, this write-up investigates the advantages and disadvantages of administrative adjudication, particularly focusing on procedural hurdles, judicial monitoring, and ongoing reforms aimed at improving transparency and accountability within the system. Furthermore, it analyzes the effects of globalization and digitalization on administrative adjudication, offering a forward-looking perspective on how these elements will influence future advancements in the field.

Keywords: *Administrative adjudication, tribunals, procedural fairness, judicial review, administrative law, reforms, governance, specialization.*

1. INTRODUCTION

Administrative adjudication plays a crucial role in the contemporary administrative landscape. It acts as the means by which individuals, companies, and various entities contest and settle disputes arising from the actions of administrative agencies. Administrative bodies, boards, and commissions address a broad array of issues, such as regulatory conflicts, licensing matters, social security claims, immigration issues, and environmental protection challenges.

The necessity for administrative adjudication arises from the intricacies of modern governance. As governments take on greater regulatory roles across sectors—

spanning commerce, public health, labour relations, and environmental standards—the incidence of disputes between regulatory bodies and the public has increased. Conventional courts, frequently inundated by the volume and complexity of these cases, are not always the most appropriate venues for their resolution. Specialized administrative tribunals provide a more effective and suitable approach to adjudication due to their focus on particular areas of law.

This article offers a comprehensive analysis of the legal and procedural frameworks that govern administrative adjudication, emphasizing its benefits compared to traditional court systems. It also explores the challenges encountered by administrative tribunals, such as concerns regarding their independence, procedural uniformity, and the extent of judicial oversight. Additionally, the article reviews the development of administrative adjudication, with an emphasis on reforms designed to promote fairness, transparency, and efficiency in the process.

2. RESEARCH METHODOLOGY

This article utilizes a qualitative research methodology to explore the various dimensions of administrative adjudication. The research is primarily based on doctrinal legal analysis, which involves the systematic study of legal principles, case law, statutory frameworks, and judicial decisions. This approach is supplemented by comparative analysis, examining how different jurisdiction's structure and manage their systems of administrative adjudication.

Sources of Data:

- Primary Sources: Statutes governing administrative tribunals and agencies, judicial decisions concerning the legality and fairness of administrative adjudications, and relevant constitutional provisions.
- Secondary Sources: Academic literature, law review articles, policy papers, and expert commentary on the effectiveness and challenges of administrative adjudication.
- Case Studies: Real-world examples and case studies of administrative tribunals in action, highlighting both successful and problematic instances of administrative adjudication.

By adopting this research methodology, the article provides a comprehensive examination of administrative adjudication and its role in modern legal systems.

3. PRINCIPLES OF ADMINISTRATIVE ADJUDICATION

Administrative adjudication relies on various fundamental legal principles that guarantee it operates as a just, efficient, and effective method for resolving disputes. These principles are essential to the credibility and efficacy of the administrative adjudicative process.

- Rule of Law: The principle of the rule of law is essential in any process of administrative adjudication. It mandates that administrative agencies and tribunals operate within the limits of the authority bestowed upon them by the legislature. These administrative entities must refrain from exceeding their legal powers or acting outside of their statutory responsibilities. Their decisions must be based on legal standards, and any discretionary actions should be justified within the established legal framework.

  For instance, in the influential case of Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. (1984), the U.S. Supreme Court affirmed the concept of judicial deference toward administrative agencies, stating that courts should respect agency interpretations of vague statutes if those interpretations are reasonable. This case exemplifies the equilibrium between permitting agencies to use discretion and ensuring they function within the legal constraints.

- Procedural Fairness (Natural Justice): One of the key principles that supports administrative adjudication is procedural fairness, commonly known as the principles of natural justice. These principles guarantee that individuals impacted by administrative decisions are entitled to a fair hearing and an impartial decision-maker. Procedural fairness consists of two primary components:

  The Right to Be Heard (Audi AlteramPartem): Those involved in administrative adjudication must be allowed the chance to present their arguments, address evidence against them, and make submissions concerning the relevant issues. Administrative tribunals must ensure that

all pertinent facts and arguments are taken into account before reaching a decision.

The Rule Against Bias (NemoJudex in CausaSua): Adjudicators should remain neutral and devoid of any conflicts of interest. The mere appearance of bias can jeopardize the credibility of an administrative decision. Adjudicators are required to base their decisions solely on the evidence and legal arguments provided, without any outside influence or prejudice.

- Reasoned Decision-Making: Administrative bodies are required to provide reasoned decisions, explaining the basis for their conclusions. This principle is vital for transparency and accountability, as it allows affected parties to understand why a decision was made and how the adjudicator arrived at that conclusion. A reasoned decision also facilitates judicial review by higher courts, ensuring that there is a clear record of the administrative process.

  In the case of *Matthews v. Eldridge* (1976), the U.S. Supreme Court ruled that due process requires not only a fair hearing but also a clear explanation of the administrative decision, particularly in cases where an individual's rights or entitlements are at stake.
- Specialization and Expertise: One of the key features of administrative adjudication is the specialized knowledge held by adjudicators. Administrative tribunals usually consist of individuals who possess particular expertise and experience relevant to the areas they oversee. This specialization enables them to arrive at more informed conclusions regarding intricate technical matters compared to generalist judges in conventional courts. For instance, environmental tribunals may comprise experts in environmental science, whereas labour dispute tribunals may have practitioners highly experienced in labour law.

  This emphasis on specialization is a significant factor in why administrative adjudication is perceived as more efficient than traditional judicial systems. Nevertheless, it also prompts concerns about the risk of "agency capture," where adjudicators may become overly aligned with the industries or government sectors they oversee.

- Efficiency and Accessibility: Administrative adjudication aims to be more efficient and user-friendly compared to conventional court systems. Tribunals generally feature streamlined processes, quicker timelines, and reduced expenses, facilitating individuals in obtaining resolutions for complaints against governmental bodies or other regulated organizations. This effectiveness is especially crucial in contexts where numerous disputes arise, such as in social security, immigration, and labour relations.

  For instance, in the UK, the First-tier Tribunal (Social Entitlement Chamber) addresses a significant volume of conflicts concerning social welfare benefits, offering a quicker and more affordable option than court litigation.

4. PROCESSES OF ADMINISTRATIVE ADJUDICATION

The procedural framework for administrative adjudication varies across jurisdictions and types of tribunals, but certain common features are shared by most systems. These processes are designed to ensure fairness, efficiency, and accessibility while maintaining the tribunal's expertise and specialization.

1. Initiation of Proceedings

Administrative adjudication is typically initiated when an individual or entity disputes a decision made by a government agency. This could involve a wide range of issues, such as the denial of a government benefit, the imposition of a fine or penalty, or the refusal of a business license.

For example, an individual may file an appeal with an administrative tribunal if they believe their social security benefits were wrongfully denied. The process usually begins with the filing of a written complaint or appeal, which outlines the grounds for challenging the agency's decision.

2. Notice and Hearing

Once a complaint or appeal has been filed, the parties involved must be given notice of the proceedings. In most cases, a hearing will be scheduled to allow the parties to present their arguments and evidence. The hearing process can vary significantly

depending on the type of tribunal, ranging from informal meetings to formal quasi-judicial proceedings.

In many jurisdictions, hearings are designed to be more accessible than traditional court trials, with less reliance on complex rules of evidence and procedure. For example, parties may be allowed to submit written statements or affidavits in place of live testimony, and hearings may take place over the phone or via video conferencing.

3. Evidence and Record-Keeping

During the hearing, parties present evidence to support their claims or defenses. Administrative tribunals typically have more flexible rules regarding the admissibility of evidence compared to traditional courts. This allows adjudicators to consider a broader range of information, including written submissions, expert reports, and other forms of documentary evidence.

The tribunal is responsible for maintaining a clear record of the proceedings, which includes all evidence presented, the arguments made by the parties, and the final decision. This record is crucial for any subsequent appeals or judicial review, as it provides a comprehensive account of how the decision was reached.

4. Adjudication and Decision

After the hearing, the tribunal will adjudicate the dispute and issue a decision. The decision must be based on the evidence and legal arguments presented during the hearing and must comply with the relevant statutory and regulatory framework. Administrative decisions are typically written and must include reasons for the conclusion reached. This ensures transparency and allows for the decision to be scrutinized by higher authorities if necessary.

The decision may include orders to take specific actions, such as granting a license, modifying a previous decision, or awarding compensation. In some cases, the tribunal's decision may be binding, while in others, it may serve as a recommendation to the relevant government agency.

5. Appeals and Judicial Review

Most administrative decisions can be appealed within the administrative system itself, either to a higher-level tribunal or a specialized appellate body. However, even after the internal appeals process has been exhausted, parties may still seek judicial review of the tribunal's decision by a court.

Judicial review is a key mechanism for ensuring that administrative tribunals operate within the bounds of their legal authority and that their decisions are fair and reasonable. Courts typically do not re-examine the merits of the case but instead focus on whether the tribunal followed proper procedures and made its decision in accordance with the law.

5. JUDICIAL REVIEW OF ADMINISTRATIVE ADJUDICATION

Judicial review serves as an essential check on the power of administrative tribunals, ensuring that they act within their legal mandate and adhere to the principles of procedural fairness. However, the scope and intensity of judicial review vary across jurisdictions and depend on the nature of the tribunal and the issues at stake.

1. Scope of Judicial Review

Courts exercising judicial review generally do not re-evaluate the substantive merits of an administrative decision. Instead, they focus on whether the decision was made lawfully and whether the tribunal acted within its statutory authority. The grounds for judicial review typically include:

- **Illegality**: The tribunal acted beyond its legal powers or failed to apply the relevant law correctly.
- **Procedural Impropriety**: The tribunal failed to follow proper procedures, such as giving the parties a fair hearing or providing adequate reasons for its decision.
- **Irrationality (Wednesbury Unreasonableness)**: The tribunal's decision was so unreasonable that no reasonable body could have arrived at the same conclusion, as established in the *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948) case.

2. Deference to Expertise

In many cases, courts are reluctant to interfere with the decisions of administrative tribunals, particularly when the tribunal has specialized expertise in a technical or regulatory area. This is known as the doctrine of deference, which acknowledges that tribunals are better equipped to handle certain types of disputes due to their specialized knowledge.

For example, in cases involving complex regulatory issues, such as environmental law or telecommunications, courts may defer to the tribunal's expertise and limit their review to procedural issues or questions of law. This approach is particularly evident in the *Chevron* doctrine in U.S. administrative law, where courts defer to reasonable agency interpretations of ambiguous statutes.

3. Proportionality Review

In some jurisdictions, particularly in Europe, courts have adopted the principle of proportionality as a standard for reviewing administrative decisions. Proportionality review involves assessing whether the administrative action was necessary and proportionate to the legitimate aim it sought to achieve. This standard is often applied in cases involving human rights or constitutional issues, where courts must balance the interests of the state against the rights of individuals.

For example, in cases involving restrictions on freedom of expression or privacy, courts may evaluate whether the government's action was proportionate to the public interest it sought to protect.

6. CHALLENGES FACING ADMINISTRATIVE ADJUDICATION

Despite its many advantages, administrative adjudication faces several challenges that can undermine its effectiveness and legitimacy. These challenges are often related to issues of independence, procedural consistency, access to justice, and the tension between administrative autonomy and judicial oversight.

1. Lack of Independence

One of the most significant challenges facing administrative adjudication is ensuring the independence of adjudicators. In some cases, administrative tribunals may be

perceived as too closely aligned with the government agencies they oversee, raising concerns about impartiality and fairness. This problem is particularly acute in cases where the tribunal is part of the same department or ministry that made the original decision.

For example, in some jurisdictions, immigration tribunals are part of the executive branch of government, leading to concerns that adjudicators may be influenced by government policy or political considerations. To address this issue, some countries have implemented measures to ensure the structural and operational independence of administrative tribunals, such as appointing adjudicators for fixed terms or establishing separate, independent oversight bodies.

2. Inconsistent Procedures

Another challenge facing administrative adjudication is the lack of consistency in procedures across different tribunals. While procedural flexibility allows tribunals to adapt to the specific nature of the disputes they handle, it can also lead to discrepancies in how cases are processed and decided. This inconsistency can create perceptions of unfairness, particularly when similar cases are treated differently by different tribunals.

To address this issue, some jurisdictions have introduced procedural guidelines or codes of practice that set minimum standards for administrative adjudication. These guidelines aim to ensure that all parties receive a fair hearing and that decisions are made in a transparent and consistent manner.

3. Limited Access to Legal Representation

Although administrative adjudication is designed to be more accessible than traditional court processes, many individuals still face difficulties in navigating the system without legal representation. Legal aid is often unavailable for administrative cases, leaving individuals, particularly those from disadvantaged backgrounds, at a disadvantage when facing well-resourced government agencies or corporations.

For example, in social security or immigration cases, individuals may struggle to understand complex legal rules and procedures without the assistance of a lawyer. Some jurisdictions have introduced measures to improve access to legal

representation in administrative proceedings, such as providing legal aid for certain types of cases or allowing non-lawyers to represent parties before administrative tribunals.

4. Delays and Backlogs

Despite the goal of efficiency, many administrative tribunals face significant delays and backlogs, which can undermine the effectiveness of the adjudicative process. These delays are often due to resource constraints, increasing caseloads, or the complexity of the disputes being adjudicated. For example, immigration tribunals in many countries are overwhelmed by the large number of asylum claims and visa appeals, leading to lengthy delays in resolving cases.

To address this issue, some jurisdictions have introduced procedural reforms aimed at streamlining the adjudicative process. These reforms include measures such as case management systems, time limits for resolving cases, and the use of alternative dispute resolution mechanisms.

5. Judicial Overreach

While judicial review is an essential safeguard against arbitrary or unlawful administrative decisions, there are concerns that courts sometimes overstep their role by delving too deeply into the merits of administrative decisions. This can undermine the autonomy of administrative tribunals and disrupt the balance between the executive and judicial branches of government.

For example, in some cases, courts have been accused of "second-guessing" the decisions of specialized tribunals, particularly in areas where the tribunal has expertise that the court lacks. This tension between judicial oversight and administrative autonomy is a recurring issue in administrative law, and it raises questions about how to strike the right balance between ensuring accountability and respecting the expertise of administrative bodies.

7. REFORMS IN ADMINISTRATIVE ADJUDICATION

In response to the challenges facing administrative adjudication, many jurisdictions have undertaken reforms aimed at improving the fairness, transparency, and

efficiency of the system. These reforms are designed to address issues such as the independence of adjudicators, procedural consistency, access to justice, and the relationship between administrative tribunals and the courts.

1. Enhancing Independence

One of the key reforms aimed at improving administrative adjudication is enhancing the independence of adjudicators. Many jurisdictions have implemented measures to ensure that administrative tribunals operate independently of the government agencies they oversee. For example, in the United Kingdom, the Tribunals, Courts and Enforcement Act 2007 established a unified system of administrative tribunals that are structurally independent of government departments. This reform was intended to ensure that adjudicators are free from political or administrative influence and can make impartial decisions based solely on the evidence and the law.

Other jurisdictions have introduced similar measures, such as appointing adjudicators for fixed terms, creating independent oversight bodies, and ensuring that tribunals have separate budgets and administrative staff from the agencies they regulate.

2. Streamlining Procedures

Another important area of reform is streamlining the procedures used in administrative adjudication. Many jurisdictions have introduced procedural guidelines or codes of practice to ensure that administrative tribunals operate in a consistent and transparent manner. These guidelines set out minimum standards for how cases should be handled, including requirements for providing notice, holding hearings, and issuing reasoned decisions.

In some cases, reforms have also focused on simplifying the adjudicative process to reduce delays and improve efficiency. For example, some tribunals have introduced electronic case management systems, time limits for resolving cases, and alternative dispute resolution mechanisms such as mediation or arbitration. These measures are designed to reduce the burden on tribunals and ensure that cases are resolved more quickly and efficiently.

3. Improving Access to Justice

Improving access to justice is another key focus of reform efforts in administrative adjudication. Many jurisdictions have introduced measures to ensure that individuals have access to legal representation or other forms of assistance when navigating the administrative adjudication process. For example, some tribunals allow non-lawyers, such as lay advocates or community representatives, to assist parties in presenting their cases.

In addition, some jurisdictions have expanded the availability of legal aid for administrative cases, particularly in areas where individuals are challenging decisions that have a significant impact on their rights or entitlements. For example, legal aid may be available for individuals challenging immigration decisions, social security denials, or housing-related disputes.

4. Balancing Judicial Review and Administrative Autonomy

Reforms aimed at balancing judicial review and administrative autonomy have also been a focus of administrative law reforms. Courts and legislatures have sought to clarify the scope of judicial review, ensuring that courts play a supervisory role without overstepping into the merits of administrative decisions. In some jurisdictions, legislatures have codified standards of review, specifying the level of deference that courts should give to administrative decisions.

For example, in Canada, the *Dunsmuir v. New Brunswick* (2008) case established a more streamlined approach to judicial review, emphasizing that courts should defer to administrative tribunals on questions of fact and discretion, while retaining the ability to intervene in cases where tribunals make errors of law or fail to follow proper procedures. Similar reforms have been implemented in other jurisdictions, seeking to strike a balance between ensuring accountability and respecting the expertise of administrative tribunals.

5. Globalization and Technological Advancements

The impact of globalization and technological advancements on administrative adjudication is another area of reform. As more disputes arise in cross-border contexts, administrative tribunals are increasingly dealing with issues that transcend

national boundaries, such as trade disputes, environmental regulations, and international human rights. To address these challenges, some jurisdictions have developed specialized tribunals or mechanisms for handling international disputes, such as the World Trade Organization's dispute settlement body.

Technological advancements, such as online dispute resolution (ODR) and digital case management systems, have also transformed administrative adjudication. These technologies have made it easier for parties to access administrative tribunals, particularly in remote or underserved areas, and have improved the efficiency of the adjudicative process. Some tribunals now offer virtual hearings, electronic filings, and automated decision-making processes, reducing the need for in-person appearances and streamlining the resolution of disputes.

8. CONCLUSION

Administrative adjudication is a vital component of modern governance, providing a specialized and efficient means of resolving disputes between individuals, corporations, and government agencies. It is based on key principles such as the rule of law, procedural fairness, specialization, and efficiency, which ensure that administrative decisions are made fairly and transparently.

However, administrative adjudication also faces significant challenges, including concerns about independence, procedural consistency, access to justice, and the balance between judicial oversight and administrative autonomy. In response to these challenges, many jurisdictions have undertaken reforms aimed at improving the fairness, transparency, and efficiency of administrative adjudication. These reforms include measures to enhance the independence of adjudicators, streamline procedures, improve access to legal representation, and clarify the scope of judicial review.

As globalization and technological advancements continue to shape the landscape of administrative law, the future of administrative adjudication will likely involve further innovations aimed at improving the accessibility and efficiency of the system. By addressing these challenges and embracing new opportunities, administrative adjudication can continue to play a crucial role in ensuring that

individuals have a fair and effective means of resolving disputes with government agencies and other regulated entities.

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A CRITICAL EVALUATION OF INDIA'S FEDERAL SYSTEM

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ABSTRACT

This research paper aims to explore the characteristics of India's federal structure. After analyzing its current status, the paper seeks to address whether India should continue to follow a federal system by providing reasons for and against it. India's federal structure is not a static framework; it has evolved over time. To assess the present state of India's federal system, the paper will examine the concept of federalism and its evolution, the challenges the country faces, the root causes of those issues, judicial interpretations of federalism, and how effectively this system supports governance in a developing nation like India. Evaluating its efficiency requires a careful analysis of the strengths and weaknesses of the existing federal structure. Dr. Ambedkar observed that the Indian Federation did not emerge through an agreement among states, asserting that the union is indissoluble and no state can secede from it.[1] There is ongoing debate about whether India's system of governance can truly be considered federal, and this research paper attempts to determine its status by examining articles from various authors, judicial rulings, interviews with experts, and more.

INTRODUCTION

In simple terms, government refers to a group of people that officially governs or controls a country. Wherever there is a sovereign state, there is a form of government. Different types of governments exist, such as monarchies, aristocracies, polities, and federal governments. Since this research paper focuses on a critical assessment of India's federal structure, the discussion will be centered solely on the federal form of

[1]Cheluvaraju, K.H., "Dr.B. R. Ambedkar and making of the Constitution", Indian Journal of Political Science, Vol.
52, No.2, April - June, 1991, Pp. 153 – 154

government.

India is a diverse country, home to various cultures, religions, and languages, making it inevitable that certain challenges or shortcomings will arise in its governance. The country's cultural, linguistic, and religious diversity presents potential threats to the unity of the nation. Therefore, it is essential to explore whether these differences undermine the federal structure of India or pose a risk to the union characteristic of the country.

To critically assess India's federal structure, it is important to first understand the concept of federalism and how it has evolved in the Indian context. The determination of whether a state is unitary or federal depends on the federal characteristics it exhibits.

OBJECTIVE OF THE RESEARCH

The primary objective of this research is to critically evaluate the characteristics and current status of India's federal structure. It aims to analyze the evolution of federalism in India, explore the challenges faced within the federal system, assess the implications of judicial interpretations, and determine whether the existing framework effectively supports governance in a diverse and developing nation. By examining arguments for and against the continuation of a federal system in India, the research seeks to provide a comprehensive understanding of the federal principles at play and their impact on the governance of the country.

SIGNIFICANCE OF THE STUDY

This study holds significant importance for several reasons:

1. Understanding Federalism in India: It provides insights into the unique features of India's quasi-federal structure and how it deviates from conventional federalism, helping to clarify the complexities of Indian governance.

2. Addressing Contemporary Challenges: By identifying and analyzing the challenges faced by the federal system, the research contributes to ongoing discussions about the balance of power between the central and state governments, which is crucial for maintaining national unity amidst diversity.

3. Judicial Perspectives: The examination of judicial interpretations highlights the role of the judiciary in shaping India's federal framework, offering valuable insights into how legal frameworks adapt to political realities.

4. Informing Policy and Governance: The findings of this research can inform policymakers, scholars, and practitioners about the strengths and weaknesses of the federal system in India, guiding future reforms and governance strategies to enhance effective federalism.

5. Cultural and Regional Dynamics: Given India's vast cultural, religious, and linguistic diversity, the study emphasizes the need for a federal system that accommodates regional identities while promoting national cohesion, thus contributing to a more equitable governance model.

FEDERALISM

Federalism, in general terms, refers to the division of power between different levels of government. It is designed to ensure both regional autonomy and national unity[2]. Federalism is often understood as a political system that unites separate states or political entities under a larger political framework, allowing each to retain its own distinct identity and integrity. One of the main reasons why defining a country as "federal" is challenging is due to the lack of an agreed-upon definition of federalism itself.

[2]Patil, S.H., Central Grants and State Autonomy, Atlantic Publishers, New Delhi, 1995, P.13

Many scholars and writers attempt to define federalism by comparing other countries to the United States, as it is the oldest model of federalism. The U.S. system has historically shaped the way federalism is understood around the world. However, various countries, including India, also follow the federal form of government, though the details of their governance structures may differ. Despite these differences, certain key features or characteristics are typically associated with federalism, such as a written constitution, multiple layers of government, and a division of power. Federalism, therefore, is not rigidly defined but is identified by these common principles that exist across federal governments.

Given that this research paper focuses on the federal structure of India, it is necessary to examine the concept of federalism within the Indian context. Although India has a federal form of government, the Indian Constitution does not explicitly declare this. Article 1(1) of the Indian Constitution refers to India as a "Union of States," indicating the unionist nature of the country. In India, states do not have the authority to secede from the Union, a feature that differentiates Indian federalism from traditional definitions of federalism.

Indian political theorists often describe India's political system as "quasi-federal." This view suggests that while India possesses federal features, it also embodies unitary characteristics. The political system is, therefore, a mixture of both unionist and federal elements. K.C. Wheare, a noted constitutional scholar, observed that India is "a unitary state with subsidiary federal principles rather than a federal state with subsidiary unitary principles[3]." This interpretation underscores the distinctive nature of Indian federalism.

This division of power is not created by ordinary legislation passed by the central government but by a more permanent source, namely, the Constitution.

[3]Wheare KC. Federal Government, London:New York, Oxford University Press, 1946, p-278

Federalism is a dynamic and evolving concept. It does not necessitate an equal division of powers between the different levels of government. In some cases, the central government may have a greater role than the states, but this does not mean that the federal structure is compromised.

In conclusion, the essence of federalism in India is rooted in an agreement between the central and state governments, and their respective powers are derived from a shared source—the Constitution. Though India's federal structure has unique characteristics, particularly in comparison to traditional models, it remains based on principles of shared governance, ensuring both unity and regional autonomy.

HISTORICAL EVOLUTION OF FEDERALISM IN INDIA

Every concept has its origins, followed by a process of gradual development, and the same applies to federalism. The roots of federalism in India can be traced as far back as the Regulating Act of 1773, up to the Government of India Act, 1935. During this period, power was concentrated in the hands of the central authority due to British imperial dominance, which necessitated a strong centralized government. There were no significant efforts to reconfigure India's governance along federal lines until after the First World War. The Indian Rebellion of 1857 also contributed to the political and administrative centralization of British rule in India.[4]

The idea of decentralizing power in India first emerged with the Montagu-Chelmsford Reforms of 1919, which introduced elements of federalism. These reforms were a response to the Declaration of August 20, 1917, which promised the gradual introduction of responsible government in India. The Montagu-Chelmsford Reforms suggested that federalism might be the appropriate model

[4]Kabbur, A.S., "The Federal Polity in India", Third Concept, Vol.18, No.213, November, 2004, P.49.

for India's future governance, laying the groundwork for federalism in the country.[5]

Before the formation of the Drafting Committee for India's Constitution, many of the basic laws governing India were found in statutes enacted by the British Parliament, notably the Government of India Act, 1919. A key feature of this Act was the introduction of a dual system of governance, though the distribution of power remained limited at the provincial level (now referred to as state governments). The provincial governments had relatively little autonomy compared to the central government.

However, the Government of India Act, 1935, marked a significant step forward in terms of decentralization. Under this Act, provincial governments were granted greater autonomy, and the dual governance system was abolished. The Act also provided for the establishment of an All-India Federation[6], although this was never fully implemented. The Act proposed a federation composed of both provinces and princely states, with powers divided between the central government and the provincial governments based on three lists: the Federal List, the Provincial List, and the Concurrent List. However, this proposed federation never came to fruition because the princely states did not join it.

Despite the failure to implement the federal system fully, the 1935 Act introduced essential elements of federalism, such as the establishment of a written constitution. This constitution could not be altered by either the central or provincial governments; only the British Parliament had the authority to amend it. Additionally, the Act established a federal judiciary, which was tasked with ensuring that both the central and provincial governments operated within their defined powers.

[5] CHAPTER-II NATURE OF THE INDIAN FEDERAL SYSTEM

[6] https://www.jagranjosh.com/general-knowledge/government-of-india-act-1935-main-features-1443011759-1

The debates within the Constituent Assembly over the nature of India's federal structure were extensive. Key figures like AlladiKrishnaswamiAyyar and Dr. B.R. Ambedkar played crucial roles in shaping the federal framework. In light of the traumatic partition of India, they argued that residual powers should be assigned to the central government. Ambedkar emphasized that the term "Union" was deliberately chosen to signify that India's federation was not the result of an agreement between independent states, unlike in other federations such as the United States[7]. Consequently, no Indian state would have the right to secede from the Union. Ambedkar further clarified that while the Union itself was indestructible, the identities and boundaries of individual states could be altered or even abolished by the central government.

CHALLENGES WITHIN THE INDIAN FEDERAL STRUCTURE

India is known for its unique and complex federal system, which has been largely successful in maintaining the country's vast diversity. However, over the years, various challenges have emerged that impact the balance of power between the central government and the states. These challenges are shaped by political, economic, and territorial dynamics, which have led to significant debates on the nature and functioning of Indian federalism. The issues primarily stem from the division of powers, the rise of regionalism, the centralization of power, and economic disparities between states. These factors collectively highlight the inherent tensions in India's federal system, influencing how it operates and evolves.

Reasons why Challenges Exist in the Indian Federal System?

The Indian federal system faces challenges due to its evolving nature, where political and economic shifts, territorial changes, and disparities in power-sharing between the central government and states have raised concerns. While India is often recognized as a successful federal model, this success comes with inherent issues that arise from the unequal distribution of power and resources, leading to conflicts between the central and state governments. Political scientists and experts have offered differing opinions on the character of India's federalism, noting that it leans toward a centralized structure, despite the formal division of

[7] https://www.livemint.com/Opinion/JUxSr3117sxWXdOl2jWpgL/The-state-of-the-Indian-federation.html
The state of the Indian federation

powers between the center and the states. This imbalance of power has led to significant struggles over authority, governance, and the functioning of federalism in India.

Challenges in the Indian Federal System

Some of the key challenges under the Indian federal system include the division of powers, regionalism, centralization of power, and economic disparities. These issues highlight the complexities and contradictions inherent in India's federal structure, leading to tensions between the central government and the states.

Division of Powers

One of the most persistent issues in Indian federalism is the division of powers between the center and the states. According to the Seventh Schedule of the Indian Constitution, powers are divided into three lists: the Union List, the State List, and the Concurrent List. However, this division is often skewed in favor of the central government. Over time, through constitutional amendments, the central government has gained more authority over subjects that were originally under state jurisdiction. This centralization of power has created significant friction between the central and state governments.

The Concurrent List, which includes subjects like criminal law, forest management, and economic planning, often becomes a point of contention. In case of conflict over legislation, the center's laws take precedence over state laws, further diminishing the autonomy of states. The misuse of Article 356, which allows the center to impose President's Rule in states, has also been a source of tension. This provision, intended to ensure compliance with constitutional norms, is often viewed as a tool for political interference by the center in state affairs, leading to a weakening of the federal structure.

Regionalism

Regionalism presents both positive and negative aspects, but in the context of Indian federalism, it often emerges as a challenge to national unity. The rise of regional political parties, identity politics, and demands for greater autonomy have fueled tensions between the center and certain states. Regionalism becomes a problem when states prioritize their own interests over national concerns, leading to fragmentation.

The northeastern states, in particular, have long felt marginalized due to their geographical isolation and underdevelopment compared to larger states like Delhi or Maharashtra. This sense of neglect has given rise to strong regional movements that challenge the central government's authority. For instance, the demand for Gorkhaland from West Bengal or the division of Uttar Pradesh into multiple smaller states are examples of aggressive regionalism that can destabilize the federal structure.

Centralized Power

Despite the formal federal structure, India operates with a strong central bias. The central government retains significant control over crucial areas of governance, limiting the powers of states in many aspects. This centralization of power stems

from the belief that a strong center is necessary to manage the country's vast diversity and prevent fragmentation. During the drafting of the Constitution, leaders like Jawaharlal Nehru emphasized the need for a powerful central authority to maintain peace, coordinate national concerns, and represent India effectively on the international stage.

One of the most contentious aspects of this centralized power is the use of Article 356, which allows the President, at the recommendation of the central government, to impose President's Rule in a state if its constitutional machinery fails. While intended to address political crises, the frequent use of this provision has been criticized for undermining state autonomy. The power to suspend state governments without a clear breakdown of constitutional machinery has led to a perception that India's federalism is highly centralized, with the states having limited authority to challenge central decisions.

Economic Incompatibilities of the States

Economic disparity between states is another major challenge to Indian federalism. In a successful federation, both the central government and states should have adequate financial resources to fulfill their constitutional responsibilities. However, in India, the central government controls much of the nation's wealth and revenue distribution, creating an economic imbalance between states.

This imbalance is further exacerbated by the fact that states vary widely in their economic development. Some states, such as Maharashtra and Gujarat, are economically prosperous, while others, particularly in the northeast and central India, are struggling with poverty and underdevelopment. This inequality creates significant challenges for achieving uniform economic growth and development across the country.

Effectiveness of India's Federal Structure in Governance

No state can achieve complete independence regarding natural resources, financial assets, and defense against external threats. Consequently, coordination and cooperation among states are essential, and federalism serves as a framework for governance in this regard. Senator Benjamin Cardin, a senior member of the U.S. Senate Foreign Relations Committee, emphasized this point during a lecture titled "Role of Good Governance in International Relations," organized by the U.S. embassy and the Observer Research Foundation (ORF). He remarked that "Good governance is challenged by India's federalism system" and noted that the current federal structure in India undermines the effectiveness of national policies aimed at combating corruption and human rights violations. Although India has made significant progress, it still faces numerous challenges, making it difficult to assert that its governance system is entirely efficient. This situation is compounded by the fact that India is not a purely federal state but is often referred to as a unitary federal government due to its hybrid characteristics.

Judicial Analysis and Interpretation

The framers of the Indian Constitution engaged in extensive debates to define the nature of governance in the country. Dr. B.R. Ambedkar encapsulated this sentiment by explaining that the term "Union" was intentionally chosen to signify that India is a federation not formed by an agreement among states. Therefore, no state has the right to secede, emphasizing the indestructibility of the Union and the alterable nature of the states' identities.

One of the landmark cases addressing the interpretation of India's federal characteristics was The Automobile v. State of Rajasthan. Justice S.K. Das noted that the Constitution identifies India as a Union of States and that interpreting it must consider the essential structure of a federal constitution, where both the Union and its constituent units have certain powers.

In KeshavanandaBharati v. State of Kerala, the Supreme Court ruled that even though Parliament has extensive powers, it cannot destroy the Constitution's basic structure, with federalism being recognized as one of these foundational elements.

The Supreme Court reiterated in Ganga Ram Moolchandani v. State of Rajasthan that the Indian Constitution is fundamentally federal, marked by characteristics like the supremacy of the Constitution, a division of powers between the Union and the states, and an independent judiciary.

In the 1965 Reference Case, Chief Justice Gajendragadkar highlighted that, like other federal states, the Indian Constitution distributes powers between the Union and the states. He stated that the judiciary serves as the sole interpreter and protector of this distribution, which cannot be altered through ordinary legislation.

However, a significant shift occurred with the State of West Bengal v. Union of India case, where the court held that the Indian Constitution does not espouse absolute federalism. It explained that while authority is decentralized, this decentralization primarily exists to facilitate the governance of a vast territory. The court underscored that there is no separate constitution for each state, which is a typical requirement in a federal structure. The ruling concluded that the relationship between the Union and the states is characterized by the superiority of the Union, with states having no legal rights that could challenge the Union's paramount powers.

In State of Rajasthan v. Union of India (1977), the court acknowledged that the extent of Indian federalism is often diluted by the requirements for national progress, development, and integration.

These cases illustrate how the judiciary has interpreted India's governing system over time, recognizing that the Constitution intends to establish a federal structure centered on a strong Union to ensure the integration of various federal

units. The quest for affirming federalism and restoring democratic decentralization has gained traction, with significant commissions like the Rajamannar and Sarkaria Commissions underscoring the Constitution's federal essence.

CONCLUSION

K.C. Wheare characterizes the Indian Constitution as "quasi-federal" due to its departure from conventional federal systems. Features that deviate from federalism include single citizenship, a tendency toward centralization, and economic disparities among states, which collectively result in a union-oriented framework where federal structures serve as a secondary means of governance. While there is a prevailing argument regarding the centralization of power, the Indian Constitution also empowers states. Most scholars describe India's constitutional framework as quasi-federal, as federal principles are applied to ensure effective governance across its diverse cultural, religious, linguistic, and ethnic landscape.

In the landmark Bommai case, the court remarked that the Constitution grants greater authority to the Centre compared to the states; however, this does not imply that the states are merely extensions of the Centre. Instead, the states maintain their own independence and significance within the federal structure.

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A CRITICAL ANALYSIS OF THE NEED FOR AN ADMINISTRATIVE JUSTICE SYSTEM IN INDIA

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Ballb

ABSTRACT

This paper examines the critical need for a robust administrative justice system in India. It explores the current landscape of administrative law and justice in the country, highlighting the challenges and shortcomings of the existing system. The research delves into the historical context, constitutional provisions, and judicial interpretations that have shaped the administrative justice framework in India. Through a comparative analysis with other jurisdictions, particularly the United Kingdom and the United States, the paper identifies potential models and best practices that could inform reforms in India. The study argues that a well-structured administrative justice system is essential for ensuring good governance, protecting citizens' rights, and maintaining the delicate balance between administrative efficiency and judicial oversight. The paper concludes by proposing recommendations for comprehensive reforms to strengthen the administrative justice system in India, emphasizing the need for accessible, transparent, and efficient mechanisms to address administrative disputes.

KEYWORDS: *Administrative Justice, Tribunals, Good Governance, Judicial Review, Public Administration*

1. INTRODUCTION

The concept of administrative justice lies at the heart of modern democratic governance. It encompasses the principles, mechanisms, and institutions that ensure fair, transparent, and accountable decision-making by public authorities. In India, a country with a vast and complex administrative machinery, the need for an effective administrative justice system has never been more pronounced.

As the world's largest democracy, India faces unique challenges in balancing the demands of rapid development with the principles of good governance. The exponential growth of the administrative state in post-independence India has led to an unprecedented expansion of governmental functions and powers. This expansion, while necessary for the nation's progress, has also increased the potential for administrative excesses, arbitrary decision-making, and infringement of citizens' rights[1].

The Indian Constitution, recognizing the importance of administrative justice, enshrines principles of natural justice and provides for judicial review of administrative actions. However, the practical realization of these constitutional ideals remains a significant challenge. The existing system of administrative justice in India is characterized by a patchwork of tribunals, commissions, and traditional court-based judicial review mechanisms. This fragmented approach has often resulted in delays, inconsistencies, and a lack of specialized expertise in dealing with complex administrative matters[2].

This paper aims to critically analyze the need for a comprehensive and cohesive administrative justice system in India. It examines the historical evolution of administrative law in the country, assesses the current state of administrative justice mechanisms, and explores comparative models from other jurisdictions. Through this analysis, the paper seeks to identify the gaps in the existing system and propose reforms that could enhance the effectiveness, accessibility, and fairness of administrative justice in India.

The research is guided by the following key questions:

1. What are the historical and constitutional foundations of administrative justice in India?

2. How does the current system of administrative justice in India function, and what are its primary shortcomings?

[1] Singh, M. P. (2018). Administrative Law in India: A Socio-Legal Perspective. Oxford University Press, p. 23.
[2] Baxi, U. (2007). The Rule of Law in India. Sur. Revista Internacional de Direitos Humanos, 4(6), 7-27.

3. What lessons can be drawn from administrative justice systems in other jurisdictions, particularly the UK and the US?

4. What reforms are necessary to establish a more effective, accessible, and fair administrative justice system in India?

By addressing these questions, this paper aims to contribute to the ongoing discourse on administrative reform in India and highlight the critical importance of a robust administrative justice system in ensuring good governance and protecting citizens' rights.

2. HISTORICAL AND CONSTITUTIONAL CONTEXT

2.1 Evolution of Administrative Law in India

The roots of administrative law in India can be traced back to the British colonial era. The growth of the administrative state in India was largely a product of the colonial government's need to manage a vast and diverse territory. The Government of India Act 1858 established a centralized administrative system, which laid the foundation for the modern Indian bureaucracy[3].

Post-independence, India adopted a constitutional democracy with a federal structure. The Constitution of India, enacted in 1950, incorporated principles of administrative law and justice, drawing inspiration from both British common law traditions and American constitutional principles[4].

2.2 Constitutional Provisions

Several provisions in the Indian Constitution form the bedrock of administrative justice in the country:

1. Article 14: Guarantees equality before the law and equal protection of the laws, which has been interpreted to include the principles of natural justice and reasonableness in administrative actions[5].

[3] Jain, M. P., & Jain, S. N. (2007). Principles of Administrative Law. LexisNexis Butterworths Wadhwa Nagpur, p. 15.
[4] Sathe, S. P. (2004). Administrative Law. Lexis Nexis, pp. 32-33.
[5] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

2. Article 19: Protects various fundamental freedoms, including the freedom to practice any profession or carry on any occupation, trade, or business, subject to reasonable restrictions imposed by the state[6].

3. Article 21: Guarantees the right to life and personal liberty, which has been expansively interpreted by the courts to include the right to fair administrative action[7].

4. Article 32 and Article 226: Empower the Supreme Court and High Courts respectively to issue writs for the enforcement of fundamental rights, providing a constitutional basis for judicial review of administrative actions[8].

5. Article 300A: Protects against arbitrary deprivation of property, ensuring that administrative actions affecting property rights are subject to legal scrutiny[9].

6. Article 311: Provides safeguards for civil servants against arbitrary dismissal, removal, or reduction in rank[10].

2.3 Judicial Interpretation and Development

The Indian judiciary, particularly the Supreme Court, has played a crucial role in shaping administrative law through its interpretations and judgments. Key developments include:

1. Expansion of Locus Standi: The Supreme Court's liberal interpretation of locus standi in cases like S.P. Gupta v. Union of India (1981) has allowed public interest litigation, making it easier for citizens to challenge administrative actions[11].

[6] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[7] Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[8]Sharma, S. K. (2015). Judicial Review of Administrative Action and Its Effectiveness in India. Satyam Law International, pp. 45-46.
[9]K.T. Plantation Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1.
[10]Union of India v. Tulsiram Patel, (1985) 3 SCC 398.
[11] S.P. Gupta v. Union of India, 1981 Supp SCC 87.

2. Doctrine of Proportionality: Introduced in Om Kumar v. Union of India (2000), this doctrine requires administrative actions to be proportionate to the objectives sought to be achieved[12].

3. Wednesbury Principles: Adopted from English law, these principles set the standard. English law, these principles set the standard for judicial review of administrative discretion, as seen in Tata Cellular v. Union of India (1994)[13].

4. Principles of Natural Justice: The courts have consistently upheld the principles of audi alteram partem (hear the other side) and nemo judex in causa sua (no one should be a judge in their own cause) as essential elements of administrative justice[14].

These judicial developments have significantly expanded the scope of administrative justice in India, providing a robust framework for challenging arbitrary or unfair administrative actions.

3. CURRENT STATE OF ADMINISTRATIVE JUSTICE IN INDIA

3.1 Structure of the Administrative Justice System

The current administrative justice system in India is characterized by a multi-layered structure:

1. Administrative Tribunals: Established under Article 323A and 323B of the Constitution, these specialized bodies adjudicate disputes related to service matters, tax, and other specific administrative areas[15].

2. Regulatory Bodies: Various sectors have dedicated regulatory authorities, such as the Securities and Exchange Board of India (SEBI) for capital markets and the Telecom Regulatory Authority of India (TRAI) for telecommunications[16].

[12] Om Kumar v. Union of India, (2001) 2 SCC 386.
[13] Tata Cellular v. Union of India, (1994) 6 SCC 651.
[14] A.K. Kraipak v. Union of India, (1969) 2 SCC 262.
[15] Chandrachud, A. (2016). Administrative Tribunals in India: Harnessing Expertise or Crippling the Judiciary? In S. Rose-Ackerman, P. L. Lindseth, & B. Emerson (Eds.), Comparative Administrative Law. Edward Elgar Publishing, pp. 328-329.

3. Ombudsman Institutions: The Lokpal at the central level and Lokayuktas in states are tasked with investigating allegations of corruption against public officials[17].

4. Departmental Appellate Mechanisms: Many government departments have internal appellate procedures for addressing grievances before they reach the courts[18].

5. Regular Courts: The High Courts and the Supreme Court exercise their writ jurisdiction to review administrative actions[19].

3.2 Challenges in the Current System

Despite this multi-faceted structure, the administrative justice system in India faces several significant challenges:

1. Delays and Backlog: The system is plagued by significant delays, with cases often pending for years. As of 2021, over 4.5 million cases were pending in various tribunals and regulatory bodies[20].

2. Lack of Specialized Expertise: Many administrative cases are complex and require specialized knowledge. Regular courts often lack the technical expertise to effectively adjudicate these matters[21].

3. Accessibility Issues: The centralized nature of many tribunals and the high cost of litigation make the system inaccessible to many citizens, particularly those from marginalized communities[22].

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4. Independence Concerns: There are ongoing debates about the independence of administrative tribunals, particularly regarding the appointment and tenure of members[23].

5. Fragmentation and Lack of Coordination: The multiplicity of forums and lack of a unified approach often leads to inconsistent decisions and forum shopping[24].

6. Enforcement Challenges: Even when decisions are made, their enforcement often remains a challenge due to bureaucratic resistance and lack of clear enforcement mechanisms[25].

3.3 Recent Reforms and Their Impact

In recent years, the Indian government has initiated several reforms to address these challenges:

1. The Tribunals Reforms Act, 2021: This Act aims to streamline the functioning of tribunals, but has been criticized for potentially compromising their independence[26].

2. E-Courts Project: This initiative aims to digitize court processes and improve access to justice through technology[27].

3. National Litigation Policy: Introduced in 2010 and revised in 2015, this policy aims to reduce government litigation and promote efficient dispute resolution[28].

While these reforms have shown some promise, their implementation and effectiveness remain subjects of ongoing debate and scrutiny.

[23] Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1.
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4. COMPARATIVE ANALYSIS: LESSONS FROM OTHER JURISDICTIONS

4.1 United Kingdom

The UK's administrative justice system offers several insights that could be relevant for India:

1. Unified Tribunal System: The Tribunals, Courts and Enforcement Act 2007 created a unified tribunal structure with clear appeal routes, improving consistency and efficiency.

2. Administrative Justice and Tribunals Council (AJTC): Although now abolished, the AJTC provided valuable oversight and recommendations for improving the administrative justice system.

3. Ombudsman System: The UK has a well-developed ombudsman system that provides an accessible avenue for citizens to seek redress against administrative grievances.

4.2 United States

The US administrative law system offers another model with potential lessons for India:

1. Administrative Procedure Act (APA): This comprehensive federal statute provides a framework for agency rulemaking and adjudication, ensuring consistency and fairness across different administrative bodies.

2. Office of Administrative Law Judges: Many US agencies have in-house administrative law judges who specialize in adjudicating agency-specific disputes, combining expertise with independence.

3. Strong Judicial Review: US courts have developed robust doctrines for reviewing administrative actions, balancing deference to agency expertise with protection of individual rights.

5. THE NEED FOR REFORM: A CRITICAL ANALYSIS

The analysis of the current state of administrative justice in India, coupled with insights from other jurisdictions, underscores the pressing need for comprehensive reforms. The following factors highlight why a robust administrative justice system is crucial for India:

5.1 Ensuring Good Governance

A well-functioning administrative justice system is essential for ensuring good governance. It provides a mechanism for holding the government accountable, promoting transparency, and ensuring that administrative decisions are made fairly and in accordance with the law. In India, where the government plays a significant role in various aspects of citizens' lives, from regulation to service delivery, an effective system of administrative justice is crucial for maintaining public trust in institutions.

5.2 Protecting Citizens' Rights

As the administrative state grows more complex, the potential for infringement of citizens' rights increases. A robust administrative justice system serves as a bulwark against arbitrary or unfair administrative actions, protecting fundamental rights enshrined in the Constitution. It provides citizens with accessible means to challenge decisions that affect their lives, livelihoods, and liberties.

5.3 Promoting Economic Development

Efficient and predictable administrative decision-making is crucial for economic development. Investors and businesses require certainty and fairness in regulatory processes. A strong administrative justice system can provide this assurance, potentially boosting economic growth by creating a more attractive environment for both domestic and foreign investment [^37].

5.4 Reducing Burden on Regular Courts

By providing specialized forums for resolving administrative disputes, an effective administrative justice system can significantly reduce the burden on regular courts. This is particularly important in India, where judicial delays are a major concern.

Specialized administrative tribunals and alternative dispute resolution mechanisms can handle many cases more efficiently than general courts

5.5 Enhancing Expertise in Decision-Making

Administrative decisions often involve complex technical or policy issues. A well-designed administrative justice system can ensure that these decisions are made or reviewed by individuals with the necessary expertise. This can lead to better-quality decisions and more effective implementation of government policies

5.6 Improving Access to Justice

Many citizens find the formal court system intimidating and inaccessible. A well-structured administrative justice system can provide more accessible, less formal, and potentially less costly avenues for seeking redress. This is particularly important for marginalized and vulnerable groups who may otherwise be unable to challenge unfair administrative actions

6. RECOMMENDATIONS FOR REFORM

Based on the analysis of the current system and lessons from other jurisdictions, the following recommendations are proposed to strengthen the administrative justice system in India:

6.1 Unified Administrative Tribunal System

Establish a unified system of administrative tribunals with clear hierarchies and appeal routes. This could be modeled on the UK's tribunal system, with a first-tier tribunal for initial adjudication and an upper tribunal for appeals. Such a system would promote consistency, reduce fragmentation, and improve efficiency.

6.2 Comprehensive Administrative Procedure Act

Enact a comprehensive Administrative Procedure Act, similar to the US model, to standardize procedures for rulemaking, adjudication, and judicial review across different administrative bodies. This would enhance predictability and fairness in administrative decision-making.

6.3 Strengthen Independence of Tribunals

Ensure the independence of administrative tribunals by reforming appointment processes, securing tenure, and providing adequate resources. This could involve creating an independent commission for the appointment of tribunal members and ensuring financial autonomy for tribunals.

6.4 Enhance Accessibility and Public Awareness

Improve access to administrative justice through measures such as:

- Decentralization of tribunal locations

- Use of technology for remote hearings and e-filing

- Provision of legal aid for administrative cases

- Public awareness campaigns about administrative rights and remedies

6.5 Develop Specialized Training Programs

Implement comprehensive training programs for tribunal members, judges, and administrative officials to enhance expertise in administrative law and related technical areas. This could involve collaboration with academic institutions and international experts.

6.6 Establish an Administrative Justice Oversight Body

Create an independent body, similar to the UK's former Administrative Justice and Tribunals Council, to oversee the administrative justice system, conduct research, and make recommendations for ongoing improvements[^46].

6.7 Strengthen Alternative Dispute Resolution Mechanisms

Promote the use of mediation, conciliation, and other alternative dispute resolution methods in administrative cases to provide quicker and more flexible solutions to disputes.

6.8 Improve Enforcement Mechanisms

Develop clear and effective mechanisms for enforcing tribunal decisions, including penalties for non-compliance by government bodies.

6.9 Regular Review and Reform

Implement a system of regular review and reform of administrative justice mechanisms to ensure they remain effective and responsive to changing needs.

7. CONCLUSION

The need for a robust administrative justice system in India is both urgent and critical. As the country continues its trajectory of rapid development and modernization, the role of the administrative state is likely to expand further. This expansion must be accompanied by effective mechanisms to ensure accountability, protect citizens' rights, and promote good governance.

The current system, while having a strong constitutional foundation, falls short in several key areas. Delays, lack of accessibility, concerns about independence, and fragmentation of forums all undermine the effectiveness of administrative justice in India. The experiences of other jurisdictions, particularly the UK and the US, offer valuable lessons in structuring a more cohesive and efficient system.

The recommendations proposed in this paper aim to address these shortcomings by creating a more unified, accessible, and expert system of administrative justice. Implementing these reforms would require significant political will, legislative action, and allocation of resources. However, the potential benefits in terms of improved governance, economic development, and protection of citizens' rights make this a worthwhile endeavor.

As India aspires to take its place as a global leader in the 21st century, a modern, efficient, and fair administrative justice system is not just desirable, but essential It is a critical component of the rule of law and a hallmark of a mature democracy. By undertaking comprehensive reforms in this area, India can set a new standard for administrative justice in developing nations and ensure that its governance structures are prepared to meet the challenges of the future.

The path to reform may be challenging, but it is a necessary journey. A robust administrative justice system will not only strengthen India's democratic foundations but also contribute significantly to its social and economic progress. As such, it should be a priority for policymakers, legal professionals, and citizens alike. The time for comprehensive reform of India's administrative justice system is now.

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AN ANALYSIS OF DOCTRINE OF PROPORTIONALITY WITH REFERENCE TO INDIAN ADMINISTRATIVELAW

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ABSTRACT

The Doctrine of Proportionality serves as a pivotal principle within Administrative Law, gaining significant traction in various legal systems worldwide. This doctrine stipulates that administrative decisions must align proportionately with the objectives they aim to achieve, thereby preventing actions by administrative authorities from being excessive, arbitrary, or unreasonable. Courts increasingly invoke this principle to evaluate administrative decisions that may violate individual rights or seem unjust.

This research paper conducts an in-depth examination of the Doctrine of Proportionality in the realm of Administrative Law, tracing its historical development and application across different jurisdictions. It begins by contextualizing the doctrine's origins and highlights critical judicial rulings that have influenced its interpretation. The paper further explores the foundational principles of the Doctrine of Proportionality, underscoring its significance in modern Administrative Law and its role in fostering accountability and transparency in governmental actions.

Moreover, the paper investigates the various tests utilized to evaluate the proportionality of administrative decisions, including the three-pronged model prevalent in European law and the four-pronged model commonly found in the United States. It analyzes essential factors that courts consider when applying the doctrine, such as the legitimacy of the objectives pursued, the rational connection between the means and ends, and the necessity of the measures taken.

Additionally, the research delves into the implications of the Doctrine of Proportionality on the administrative decision-making process, assessing its benefits in protecting fundamental rights while also addressing the challenges it faces. These challenges encompass the subjectivity and inconsistency in judicial interpretations, the complexities involved in balancing tests, and the potential influence of political factors on judicial review.

The paper also emphasizes the importance of public participation and the interplay between the Doctrine of Proportionality and other legal principles, including legality and reasonableness. By focusing on its application within the framework of Indian administrative law, the research highlights the doctrine's evolving role in safeguarding individual rights against arbitrary governmental actions.

INTRODUCTION

Administrative law is a vital branch of law that deals with the regulation of the relationship between the state and individuals. The administrative process involves decision-making by administrative bodies, which exercise a range of powers delegated by the legislature. These powers are used to make decisions that affect the rights and interests of individuals.

The Doctrine of Proportionality is a principle of administrative law that has gained increasing importance in recent years. The principle requires that any administrative decision should be proportionate to the underlying objective it seeks to achieve. This means that the administrative body must ensure that its decision is not excessive, arbitrary, or unreasonable.[1]

The Doctrine of Proportionality has been recognized by various courts around the world as an essential principle of administrative law. The doctrine has been used to review administrative decisions that are deemed unreasonable or unfair. It has also been used to ensure that administrative decisions do not infringe on the fundamental rights of individuals.

We live in an age in which administrative officials have been granted the right to use discretion. Position holders in government have vast discretionary powers that cannot be used arbitrarily; hence the concept of proportionality is used to keep them in check. While taking administrative action, the body should keep in mind the goal it is attempting to achieve and the means by which it is attempting to achieve it; if its actions deviate from the goal or are discriminatory or disproportionate, they will be overturned by the court under the proportionality doctrine.[2]

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[1] Admin AY, "The Doctrine of Reasonable Classification-an Exception to the Right to Equality: Carishma Bhargava" (ILSJCCLJuly 16, 2020) accessed October 15, 2024.

[2] Admin and others, "Doctrine of Proportionality: An Analysis of Supreme Court Cases" (RACOLB LEGAL) <https://racolblegal.com/doctrine-of-proportionality-an-analysis-of-supreme-court-cases/> accessed October 15,

RESEARCH QUESTION

"What is the effectiveness of the doctrine of proportionality as a principle of administrative law in protecting fundamental rights and ensuring proportionate government actions, with a particular focus on its application in Indian administrative law?"

DOCTRINE OF PROPORTIONALITY IN ADMINISTRATIVE LAW

The Doctrine becomes relevant in the realm of administrative law in two situations: If an administrative activity infringes on basic rights, courts scrutinise the administrative action and inquire into the validity of the authority's decisions. The court would also weigh the negative impact on the rights and objectives pursued.

When it comes to the level of penalty imposed by the administrative body, the court will not apply stringent scrutiny. Courts adopt the notion that, although the amount of penalty is within the administrative authority's power, arbitrariness must be avoided.

When examining administrative acts on the basis of proportionality, courts consider two major factors:[3]

Have the relative merits of various aims or interests been properly examined and reasonably balanced?

Whether the action under review was overly restrictive or imposed an undue hardship under the circumstances?

Union of India v. G Ganayutham Judgments[4]: The Supreme Court ruled that the notion of proportionality becomes fully relevant in constitutional adjudication only when the court must decide on the reasonableness of a limitation imposed during the exercise of basic rights. Yet, the doctrine's application in the sphere of administrative law is still in its infancy. Presently, the court lacks the jurisdiction to dispute the administrator's choices, therefore we may argue that the theory is still not being fully used in Indian administrative law.

Union of India v. Association of Registration, Plates[5]: In the case of *Association of Registration, Plates v. Union of India*, the court declared that any judicial review of

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2024.

[3] Singh AK, "Application of Doctrine of Proportionality in Administrative Law" (Black n' White Journal April 22, 2022) accessed October 15, 2024.

[4] Union of India v. G Ganayutham, (1997) 7 SCC 463.

[5] Association of Registration, Plates v. Union of India, (2004) 5 SCC 364.

any action taken by any administrative body has the jurisdiction to examine the legality of the decision but not its legitimacy. The mere possibility of a specific point of view cannot be used to justify action. As a result, the courts do not have the authority to intervene unless the decision is illogical, unconstitutional, or has defects in terms of proportionality.

General Medical Council v. Suresh Madan[6]: In a reasoning exam, there is a clear distinction between proportionality and increased inspection. The court determined that solving situations would be the same under either approach, but the strength of the analysis would be substantially stronger under the proportionality theory. Moreover, the proportionality concept not only establishes the fairness of judgements, but it also defines the balance of the decision-maker or administrator.

Sheo Shankar Lal Srivastava v. State of Uttar Pradesh[7]: In the case where the court ruled that "verbal abuse may result in penalty of removal from service," the theory is only applicable to a limited degree. As a result, in the current instance, the theory is gaining prominence in contrast to the Wednesbury test, which specifies that the administrative action must be exceedingly rigorous and invasive.

MODELS OF DOCTRINE OF PROPORTIONALITY:

Three-pronged model: This model is commonly used in European jurisdictions and has three prongs or stages of analysis. The three prongs are:[8]

Suitability: The means used must be suitable to achieve the legitimate aim or objective. This means that the means must be capable of achieving the desired end. To assess whether the means used are suitable, the court must consider whether there is a rational connection between the means and the objective sought. The test for suitability is whether the means used are reasonably capable of achieving the desired objective.

Necessity: The means used must be necessary, meaning that no other less restrictive means could achieve the same objective. If there are less restrictive means available, then the means used are disproportionate. To assess whether the means used are necessary, the court must consider whether there are any alternative means available that would achieve the same objective but with less harm or infringement

[6] Suresh Madan v. General Medical Council, (2001) A.C.D.
[7] State of UP v. Sheo Shankar Lal Srivastava, (2006) 3 SCC 276.
[8] R. v. Oakes, [1986] 1 S.C.R. 103.

on individual rights. The test for necessity is whether the means used are the least restrictive means available.

Proportionality strictosensu: This stage involves balancing the benefits of achieving the objective against the harm caused by the means used. The means used must be proportionate to the objective sought. If the harm caused by the means used outweighs the benefits, then the means are disproportionate. To assess proportionality strictosensu, the court must consider whether the benefits of achieving the objective outweigh the harm caused by the means used. The test for proportionality strictosensu is whether the harm caused by the means used is proportional to the benefits of achieving the objective.

Four-pronged model: This model is commonly used in the United States and has four prongs or stages of analysis. The four prongs are:

The importance of the government's objective: The objective must be important enough to justify the means used. To assess whether the government's objective is important, the court must consider whether it serves a legitimate purpose. The test for the importance of the government's objective is whether it is a legitimate aim or objective.

The relationship between the means and the objective: There must be a close relationship between the means used and the objective sought. To assess whether there is a close relationship between the means used and the objective sought, the court must consider whether the means used are rationally connected to the objective. The test for the relationship between the means and the objective is whether there is a rational connection between the means used and the objective sought.[9]

The means used must be narrowly tailored: The means used must be the least restrictive means available to achieve the objective. To assess whether the means used are narrowly tailored, the court must consider whether there are any less restrictive means available that would achieve the same objective. The test for whether the means used are narrowly tailored is whether there are any less restrictive means available that would achieve the same objective.

The means used must leave room for alternative means: The means used must not preclude the availability of other means to achieve the same objective. To assess

[9] European Court of Justice. (1974). Case 4/73, Nold v. Commission, [1974] ECR 491.

whether the means used leave room for alternative means, the court must consider whether there are any alternative means available that would achieve the same objective. The test for whether the means used leave room for alternative means is whether they preclude the availability of other means to achieve the same objective. Overall, the doctrine of proportionality is used to assess whether the means used to achieve a legitimate aim or objective are proportionate to the end sought. Different models of the doctrine of proportionality may be used depending on the jurisdiction or context, but the principles are generally the same. The tests available for assessing proportionality can help courts and other decision-makers to make more objective and reasoned judgments in balancing the interests at stake.[10]

INDIAN MODEL OF DOCTRINE OF PROPORTIONALITY

The Indian approach to the doctrine of proportionality in administrative law is relatively new, but it is gaining acceptance as a useful tool to balance the competing interests of the state and the individual. The doctrine of proportionality is not explicitly mentioned in the Indian Constitution, but it has been incorporated through judicial interpretation and has become an essential part of the Indian legal system.

In India, the doctrine of proportionality is applied in administrative law cases to ensure that the actions of public authorities are proportionate to the objective sought to be achieved. The doctrine requires that the means employed by the public authorities to achieve a particular objective must be rationally connected to the objective, necessary to achieve the objective, and the least restrictive means of achieving the objective.[11]

The Indian approach to the doctrine of proportionality involves a four-stage analysis that includes the following elements:

Legitimacy: The objective sought to be achieved must be legitimate and fall within the scope of the authority's powers. This means that the public authority must have a clear legal basis for taking action.

[10]Boyron S and Marique Y, "Proportionality in English Administrative Law: Resistance and Strategy in Relational Dynamics" (2021) 14 Review of European Administrative Law 65.

[11] Ganesh Chavan A, "Administrative Actions in India and Doctrine of Proportionality Vis-a-Vis the Common Man" [2021] Paripex Indian Journal Of Research 4.

Rational connection: There must be a rational connection between the means employed by the public authority and the objective sought to be achieved. This means that the means must be capable of achieving the objective.

Necessity: The means employed must be necessary to achieve the objective, and there should be no other less restrictive means available to achieve the objective. This means that the means employed must be proportionate to the objective.

Proportionality strictosensu: The means employed must be proportionate to the objective sought to be achieved. This means that the benefits of achieving the objective must outweigh the harm caused by the means employed.

The Indian approach to the doctrine of proportionality has been applied in several administrative law cases, including cases related to environmental law, labor law, and competition law. The Supreme Court of India has also recognized the importance of the doctrine of proportionality in upholding the constitutional rights of citizens.

The Indian approach to the doctrine of proportionality in administrative law involves a fourstage analysis that seeks to ensure that the actions of public authorities are proportionate to the objective sought to be achieved. The doctrine has become an essential part of the Indian legal system and has been used in various administrative law cases to balance the competing interests of the state and the individual.[12]

FUNDAMENTAL FREEDOMS

In Indian Administrative Law, the inter-relation between fundamental freedoms and the doctrine of proportionality is a crucial one. The doctrine of proportionality is applied to ensure that the fundamental freedoms guaranteed under the Constitution of India are not unduly restricted by the government.

Indian citizens are given the right to free speech and expression, the right to gather peacefully and without weapons, the right to establish groups or unions, and the right to travel freely across the nation under Article 19 of the Constitution. These rights, however, are not absolute, and reasonable limitations may be put on them in the interests of public order, morality, or India's sovereignty and integrity.

[12] Sharma S, "Doctrine of Proportionality - an Explainer" (Live LawAugust 15, 2020) <https://www.livelaw.in/know-the-law/doctrine-of-proportionality-an-explainer-161433> accessed October 15, 2024.

The doctrine of proportionality is applied to determine whether such restrictions on fundamental freedoms are reasonable or not. The principle of proportionality requires that the government's actions must be necessary and proportionate to the objective it seeks to achieve. This means that if the government seeks to restrict a fundamental freedom, it must do so in a way that minimizes the restriction on that freedom

For instance, if the government seeks to restrict the right to free speech, it must do so in a way that is necessary and proportionate to the objective it seeks to achieve. The restriction must be the least restrictive means possible, and the government must provide a compelling reason for imposing the restriction.

The courts in India have applied the doctrine of proportionality in various cases related to the restriction of fundamental freedoms. In *Shreya Singhal v. Union of India* (2013[13]), the Supreme Court struck down Section 66A of the Information Technology Act, which imposed restrictions on the right to freedom of speech and expression online, stating that it was not proportionate to the aim of protecting national security or preventing public disorder.

Similarly, in *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India* (1985)[14], the Supreme Court held that the government's attempt to restrict the freedom of the press by imposing pre-censorship on news publications was not proportionate to the aim of preventing the publication of materials that would affect public order.

Thus, the doctrine of proportionality serves as a crucial tool in ensuring that the government's actions do not unduly restrict fundamental freedoms guaranteed under the Constitution. It ensures that any restrictions imposed on these freedoms are proportionate and necessary to achieve the legitimate aims of the government.[15]

When the government limits essential rights, the proportionality principle is used to establish the constitutionality of such restrictions. In *Om Kumar v. Union of India*, the Supreme Court said that constraints on basic freedoms have always been assessed on the "anvil of proportionality," and that this approach has been used to establish the legitimacy of administrative restrictions since 1950. When the administration limits basic rights by its acts, the idea of proportionality is used. In

[13] Shreya Singhal v. Union of India (2013)
[14] Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India (1985),
[15] "Mathews - Proportionality in Administrative Law" https://law.yale.edu/sites/default/files/area/conference/compadmin/compadmin16_mathews_proportionality.pdf accessed October 15, 2024.

these circumstances, the court considers whether the body's measures are the least restrictive way of achieving the purpose; if they are not, the limitation imposed is reversed. When administrative activities violate Article 19(1) and Article 21 rights, the courts function as the primary reviewer and apply proportionality legislation. This implies that the court may consider the merits of the case while adopting the proportionality doctrine in situations affecting basic rights.

CHALLENGES IN APPLICATION

Despite its significance, the application of the Doctrine of Proportionality faces numerous challenges that can hinder its effectiveness in safeguarding fundamental rights and ensuring equitable administrative practices.

Subjectivity and Inconsistency

A major challenge lies in the inherent subjectivity involved in assessing what constitutes a "proportionate" response. Judges may interpret the principles of proportionality differently, leading to inconsistent judicial outcomes. This variability not only affects individual cases but also creates a broader unpredictability in legal results, which can erode public trust in the judiciary. The lack of a uniform standard can result in disparate treatment of similar cases, raising concerns about fairness and equality before the law. Consequently, litigants may find it difficult to predict the outcome of their cases, which can deter them from seeking justice.

Complexity of Balancing Tests

The complexity of the balancing tests employed in proportionality assessments can further complicate matters. Courts often have to navigate multifaceted legal and factual issues, which can lead to prolonged litigation and uncertainty. This intricate process may discourage individuals from challenging administrative decisions, particularly if they perceive the legal system as overly complicated or inaccessible. Additionally, the requirement for courts to weigh competing interests can result in lengthy deliberations, delaying justice for those seeking redress. The challenge is exacerbated in cases involving multiple stakeholders, where the interests at stake can be diverse and conflicting.

Political Influences

Political factors can also play a significant role in the application of the Doctrine of Proportionality. Courts may exhibit reluctance to scrutinize government actions,

especially in politically sensitive cases, due to fears of political backlash or adverse public opinion. This hesitance can undermine the doctrine's effectiveness in protecting fundamental rights, as courts might prioritize political considerations over legal principles. Moreover, the influence of prevailing political ideologies can shape judicial interpretations, leading to inconsistent applications of the doctrine across different administrations or political climates.

FUTURE DIRECTIONS

Looking to the future, the Doctrine of Proportionality is expected to evolve in response to shifting societal values and legal frameworks. Several emerging trends may shape its application in administrative law.

Increasing Emphasis on Human Rights

As global awareness of human rights issues continues to rise, the Doctrine of Proportionality is likely to gain greater significance within legal systems globally. Courts are increasingly recognizing the importance of safeguarding individual rights against government actions, and the doctrine serves as a vital framework for ensuring that rights are not unduly restricted. This trend is particularly evident in jurisdictions where human rights litigation is on the rise, prompting courts to adopt a more robust approach to proportionality assessments.

Technological Advancements

The rapid advancement of technology and its implications for governance may significantly influence the application of the Doctrine of Proportionality. As governments increasingly adopt data-driven decision-making and automated processes, the necessity for rigorous proportionality analyses will become even more critical. Courts will need to assess whether technological interventions respect individual rights and freedoms, particularly in areas such as surveillance, data privacy, and algorithmic decision-making. This evolution may require the development of new legal standards tailored to address the unique challenges posed by technology.

Calls for Reform

There is likely to be a growing demand for reforms aimed at enhancing the clarity and consistency of proportionality analyses. Legal scholars and practitioners may advocate for standardized guidelines or frameworks that assist courts in applying the doctrine uniformly. Such reforms could involve the establishment of best

practices for proportionality assessments, training for judges, and the development of clear criteria for evaluating competing interests. By addressing the current challenges in implementation, these reforms could bolster the doctrine's effectiveness in protecting fundamental rights.

International Cooperation and Standards

As the global landscape becomes increasingly interconnected, there may be a push for international cooperation in developing standards for the application of the Doctrine of Proportionality. International human rights bodies and organizations could play a pivotal role in promoting best practices and facilitating dialogue among jurisdictions. Such collaboration may lead to a more unified approach to proportionality, enhancing its effectiveness as a tool for protecting rights across borders.

Greater Public Engagement

Finally, fostering greater public engagement and awareness regarding the Doctrine of Proportionality could enhance its application. Educating the public about their rights and the legal frameworks in place to protect them may empower individuals to challenge administrative actions more effectively. Increased public scrutiny of government actions can also encourage courts to adopt a more rigorous approach to proportionality assessments, ensuring that individual rights are upheld in the face of state power.

THE ROLE OF PUBLIC PARTICIPATION

Public participation has emerged as a fundamental aspect of applying the Doctrine of Proportionality. Involving citizens in the decision-making process not only enhances the legitimacy of administrative actions but also fosters transparency. When individuals engage in shaping policies and regulations that affect their rights, the chances of achieving outcomes that are proportionate and fair significantly improve.

Take, for example, the field of environmental law. Public involvement in project assessments ensures that the potential impacts on both communities and ecosystems are thoroughly considered. This inclusive approach allows for a more detailed evaluation of proposed measures against their intended objectives, thereby strengthening the application of the proportionality doctrine. Furthermore, when citizens have a platform to express their views, they can offer insights that may lead

to identifying less restrictive alternatives, ultimately improving the effectiveness of the decision-making process.

In India, the Right to Information Act of 2005 has played a pivotal role in enhancing public participation. By empowering citizens to request information from public authorities, this legislation promotes transparency and accountability. When citizens are well-informed about governmental actions and decisions, they are positioned more effectively to challenge measures that may be disproportionate and to advocate for their rights.

INTERACTION WITH OTHER LEGAL PRINCIPLES

The Doctrine of Proportionality does not operate independently; it interacts with various legal principles, creating a nuanced framework for judicial review. One such principle is the principle of legality, which requires that administrative actions have a legal foundation. This principle reinforces the doctrine of proportionality by ensuring that any limitations on rights are legally justified, thus emphasizing the necessity for a rational connection between the means employed and the objectives pursued.

Moreover, the principle of reasonableness is crucial in applying the Doctrine of Proportionality. While proportionality assesses the relationship between means and ends, reasonableness evaluates whether the means used are appropriate within the context of the specific circumstances. Courts frequently apply both principles together to scrutinize the validity of administrative actions. For instance, when administrative decisions infringe upon fundamental rights, courts may first verify the legality of the action (principle of legality) before examining whether it is reasonable and proportionate.

GLOBAL TRENDS AND INFLUENCES

On a global scale, the Doctrine of Proportionality is experiencing a trend toward greater harmonization across different jurisdictions. As nations face similar challenges related to governance, human rights, and administrative efficiency, there is an increasing exchange of ideas and practices concerning the application of proportionality. Many international human rights treaties and conventions incorporate proportionality as a guiding principle, prompting domestic legal systems to adopt similar frameworks.

For example, the jurisprudence of the European Court of Human Rights (ECtHR) has significantly shaped the understanding and application of proportionality in various member states. The ECtHR has consistently highlighted the importance of proportionality in balancing individual rights against state interests, establishing precedents that many jurisdictions reference when formulating their legal standards. This exchange of ideas contributes to more consistent and equitable applications of the doctrine, ultimately benefiting individuals and advancing the cause of justice.

CONCLUSION

From the examples discussed, it becomes evident that there is some confusion regarding the application of the Doctrine of Proportionality in India. The Supreme Court has frequently overturned High Court decisions when it found that they improperly assessed whether a penalty was excessive. The research indicates that the Doctrine is applied sparingly, primarily in instances where administrative penalties are grossly disproportionate to the offense at hand, thereby shocking the conscience of the court. Consequently, this doctrine should not be invoked lightly to challenge administrative decisions or to reduce penalties.

The use of the Doctrine of Proportionality in India is still evolving, presenting a significant opportunity to safeguard individual rights while ensuring that administrative actions fall within reasonable limits. Its future will largely hinge on ongoing judicial interpretations and the dynamic relationship between the state and its citizens. With the legal landscape continuously shifting—especially in light of technological advancements and a growing focus on human rights—the doctrine may become increasingly vital in ensuring that administrative actions are not only lawful but also fair and just.

In summary, although the Doctrine of Proportionality has made notable progress in Indian administrative law, its full potential has yet to be achieved. Active involvement from legal scholars, practitioners, and the judiciary will be crucial in determining how it is applied in the future, ensuring that it effectively upholds fundamental rights against arbitrary government actions. Striking a balance between state interests and individual liberties is a complex challenge, and the Doctrine of Proportionality offers a vital framework for addressing this issue. Therefore, it is essential to keep track of its development and application in the

coming years, ensuring it remains a key instrument for protecting individual rights within the administrative context.

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JUDICIAL CONTROL OF ADMINISTRATIVE ACTION

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BALLB (5^{h}YEAR)

ABSTRACT:

Judicial control of administrative action involves the mechanisms through which courts review the decisions of administrative agencies to ensure compliance with the law and protection of individual rights. This function is essential for maintaining checks on executive power, fostering accountability, and enhancing transparency within governmental operations. Courts evaluate whether administrative actions are lawful, reasonable, and procedurally fair, addressing issues such as abuse of discretion, lack of jurisdiction, and statutory violations.

Key principles such as natural justice and due process play a pivotal role in this oversight, mandating that agencies provide fair hearings and clear justifications for their decisions. Judicial review manifests in various forms, including appeals, statutory reviews, and constitutional challenges, all aimed at rectifying injustices and ensuring that administrative bodies adhere to legal standards.

Striking a balance between effective governance and the protection of individual rights is crucial. While excessive judicial intervention can impede administrative efficiency, insufficient oversight may allow for arbitrary decision-making. Ultimately, judicial control of administrative action embodies the rule of law, asserting that all state actions must be legally grounded, which in turn fosters public trust in the legal system. This dynamic relationship between the judiciary and administrative agencies is vital for upholding democratic governance and safeguarding civil liberties.

Keywords:*Judicial control, natural justice, issuance of writs, judicial review, Power of Superintendence.*

I. INTRODUCTION

Judicial control of administrative action is a cornerstone of democratic governance, ensuring that the powers exercised by administrative agencies align with the law and protect individual rights. As societies evolve and governments expand their regulatory functions, the complexities of administrative decision-making increase,

necessitating robust mechanisms to prevent potential abuses of power. Administrative agencies are tasked with implementing laws, formulating regulations, and executing policies that impact citizens' lives. Given the significant authority vested in these agencies, effective judicial oversight is crucial to uphold the rule of law and maintain public trust.At its essence, judicial control involves the process through which courts review administrative actions to determine their legality, reasonableness, and adherence to principles of procedural fairness. This oversight mechanism serves multiple purposes: it safeguards individual rights, ensures accountability in government actions, and promotes transparency in the administrative process. Courts assess whether agencies have acted within their jurisdiction and followed established legal standards, addressing issues such as abuse of discretion, failure to consider relevant factors, and violations of statutory provisions.

The principles of natural justice and due process are foundational to judicial oversight. These principles require that affected individuals be afforded fair hearings and that administrative decisions be accompanied by adequate reasoning. This not only enhances the legitimacy of administrative actions but also empowers citizens to challenge decisions that may adversely affect them. Judicial review can take various forms, including appeals, statutory reviews, and constitutional challenges, each designed to provide a remedy for grievances and ensure that administrative bodies remain accountable.

However, the interplay between judicial control and administrative action requires careful balance. While effective governance demands that administrative agencies operate efficiently and respond promptly to public needs, excessive judicial intervention can hinder their ability to implement policies effectively. Conversely, insufficient judicial oversight may lead to arbitrary or unjust outcomes, eroding public confidence in government institutions.

Judicial control of administrative action is essential for upholding democratic principles, ensuring that all government actions are grounded in law. This relationship between the judiciary and administrative agencies is vital for protecting civil liberties, fostering accountability, and maintaining the integrity of the legal system. By reinforcing the rule of law, judicial control not only enhances

governance but also cultivates a society where individual rights are respected and upheld.

II. ORIGIN

The origin of judicial control of administrative action can be traced back to the evolution of administrative law and the necessity for checks and balances within government systems. As modern states expanded their roles in regulating various aspects of social and economic life, the complexity of administrative functions increased. This growth raised concerns about the potential for abuse of power by administrative agencies, prompting the need for oversight mechanisms.

The roots of judicial control can be found in the principles of common law, particularly the writ system in England, which allowed individuals to seek redress from the courts against unlawful actions by the crown or its representatives. The development of the doctrine of judicial review in the United States, notably established in Marbury v. Madison (1803), further solidified the idea that courts have the authority to review the legality of governmental actions, including those by administrative agencies.

In the 20th century, the emergence of welfare states and regulatory frameworks led to an increase in the powers and responsibilities of administrative bodies. As these agencies made decisions affecting citizens' rights and livelihoods, the demand for judicial oversight grew. The establishment of specific statutes and administrative tribunals in various jurisdictions provided structured avenues for individuals to challenge administrative decisions, thereby formalizing the process of judicial review.

Internationally, various legal systems have adopted principles of judicial control, often influenced by democratic values and human rights norms. This evolution reflects a broader recognition of the importance of accountability and transparency in governance. As a result, judicial control of administrative action has become a fundamental component of modern legal systems, serving as a vital mechanism to ensure that government actions are lawful, fair, and just.

III. PRINCIPLE OF NATURAL JUSTICE

The principle of natural justice is a fundamental concept in Indian law that aims to ensure fairness and justice in administrative proceedings. It encompasses two key

rules: audialterampartem (the right to be heard) and nemojudex in causasua (no one should be a judge in their own cause).

Audi Alteram Partem: This rule mandates that a person must be given a fair opportunity to present their case before any adverse action is taken against them. It requires authorities to inform individuals of the charges or allegations against them and provide them the chance to defend themselves. This principle is essential in administrative decisions affecting an individual's rights, as it ensures transparency and accountability.

Nemo Judex in Causa Sua: This principle asserts that decision-makers must be impartial and not have a personal interest in the outcome of the case. This rule prevents conflicts of interest and ensures that decisions are made fairly, without bias.

The Supreme Court of India has consistently reinforced the significance of these principles. In Maneka Gandhi v. Union of India (1978)[1], the Court highlighted that any law or action affecting personal liberty must be just, fair, and reasonable, thereby embedding natural justice into the framework of Article 21 (Right to Life and Personal Liberty).

In addition to these foundational rules, the principles of natural justice also include the requirement for decisions to be made based on relevant evidence and reasons to be provided for administrative actions. This ensures that decisions are not arbitrary but are based on sound reasoning.

The application of natural justice extends beyond judicial proceedings to various administrative actions, including disciplinary proceedings, licensing, and regulatory decisions. In essence, the principles of natural justice serve as a safeguard against the misuse of power by authorities, promoting fairness, integrity, and public confidence in the legal system.

Union of India v. Rajendra Singh (2007) 6 SCC 1[2]- This case underscored the importance of following principles of natural justice and fairness in administrative actions.

IV. JUDICIAL REVIEW

Judicial review serves as a critical mechanism for the judicial control of administrative action, ensuring that governmental decisions and policies align with

[1]Maneka Gandhi v. Union of India, AIR 1978 SC 597
[2] Union of India v. Rajendra Singh, (2007) 6 SCC 191

legal principles and protect individual rights. This process allows courts to assess the legality, reasonableness, and fairness of actions taken by administrative agencies, thereby acting as a check on the exercise of executive power. As administrative agencies play an increasingly prominent role in governance, the importance of judicial review has become more pronounced in contemporary legal systems.

At its core, judicial review involves the examination of administrative decisions to determine whether they comply with statutory provisions and constitutional mandates. Courts evaluate various aspects of administrative action, including the scope of agency authority, adherence to procedural requirements, and the application of relevant laws. This scrutiny is essential for preventing arbitrary or capricious decision-making, which can arise from unchecked administrative power.

One of the key principles underpinning judicial review is the doctrine of separation of powers, which delineates the roles of the legislative, executive, and judicial branches of government. Judicial review ensures that administrative agencies operate within the boundaries set by the legislature and do not exceed their conferred powers. This serves not only to uphold the rule of law but also to protect individual rights against potential governmental overreach.

Judicial review can take various forms, including traditional appeals, statutory reviews, and constitutional challenges. In many jurisdictions, individuals aggrieved by administrative decisions can file petitions for review, prompting the courts to evaluate the legality of those actions. The courts may set aside decisions that are found to be unlawful, requiring agencies to reconsider their actions in accordance with legal standards. This process not only rectifies individual grievances but also contributes to the development of administrative law by establishing precedents that guide future agency conduct.

The principles of natural justice and due process are integral to the judicial review process. Courts assess whether administrative agencies have provided fair hearings, allowed for adequate representation, and given sufficient reasons for their decisions. By ensuring that administrative actions adhere to these principles, judicial review reinforces the legitimacy of the decision-making process and fosters public confidence in governmental institutions.

Despite its essential role, the exercise of judicial review must strike a delicate balance. While effective oversight is necessary to prevent abuses of power, excessive

judicial intervention can hinder the efficiency and effectiveness of administrative agencies. Courts must be cautious not to micromanage administrative functions or substitute their own judgments for those of specialized agencies, which possess expertise in their respective fields. Instead, judicial review should serve as a constructive dialogue between the judiciary and administrative agencies, promoting accountability while allowing agencies to fulfill their mandates.

Judicial review is a vital tool for controlling administrative action, ensuring that governmental decisions are lawful, reasonable, and fair. By providing a mechanism for individuals to challenge administrative decisions, judicial review safeguards individual rights and upholds the principles of democracy. As governance becomes increasingly complex, the importance of effective judicial review will continue to grow, reinforcing the foundational principles of the rule of law and accountability in public administration. This ongoing interaction between the judiciary and administrative agencies remains essential for the protection of civil liberties and the maintenance of a just society.

S.R. Tewari v. District Board, Agra AIR 1964 SC 1680[3] -The Supreme Court recognized the scope of judicial review in administrative matters and held that the courts could intervene in administrative decisions if they are arbitrary or capricious.

Babu Verghese v. Bar Council of Kerala (1999) 3 SCC 422[4] - The Court held that administrative authorities must act within the bounds of their authority, and failure to do so could be challenged in court.

V. DOCTRINE OF RES JUDICATA

The doctrine of res judicata is a fundamental principle in Indian law that prevents the same issue from being litigated more than once after a final judgment has been delivered. It ensures finality in legal proceedings, promoting judicial efficiency and avoiding contradictory judgments.

Key Principles:

Finality of Judgment: Once a matter has been adjudicated, the same parties cannot re-litigate the issue in any future proceedings.

Same Parties: The doctrine applies only to the same parties involved in the original case.

[3] S.R. Tewari v. District Board, Agra, AIR 1964 SC 1680
[4] Babu Verghese v. Bar Council of Kerala, (1999) 3 SCC 422

Competent Jurisdiction: The original court must have had the competent jurisdiction to adjudicate the matter.

Same Cause of Action: The subsequent suit must involve the same cause of action as the previous suit.

VI. ADMINISTRATIVE TRIBUNAL AND DOCTRINE OF PRECEDENT

Administrative tribunals are specialized bodies established to resolve disputes arising from administrative actions or decisions. They are designed to provide a quicker and more accessible forum for resolving issues related to public administration, often focusing on areas like service matters, taxation, and regulatory issues. Tribunals operate with a degree of informality compared to traditional courts, aiming to expedite justice and reduce the backlog of cases.

In India, the establishment of administrative tribunals is guided by the Administrative Tribunals Act, 1985. For instance, the Central Administrative Tribunal (CAT) handles service-related disputes involving central government employees. The advantage of these tribunals lies in their expertise in specific areas and their ability to offer relief more efficiently than regular courts.

The doctrine of precedent, or stare decisis, is a principle that requires courts to follow the legal precedents established in previous judgments when deciding similar cases. This doctrine ensures consistency, stability, and predictability in the law, enabling individuals and entities to rely on established legal principles. The interaction between administrative tribunals and the doctrine of precedent is crucial in shaping administrative law. Decisions made by these tribunals can be subject to judicial review, where higher courts may apply the doctrine of precedent to ensure that the tribunals operate within the bounds of law and adhere to established legal principles. This interplay helps maintain the integrity of the legal system while allowing tribunals to function effectively.

VII. JUDICIAL CONTROL THROUGH ISSUANCE OF WRITS

Judicial control of administrative action is a vital aspect of the legal framework in India, primarily exercised through the issuance of writs under Articles 32 and 226 of the Constitution. These provisions empower the Supreme Court and High Courts to issue various types of writs to enforce fundamental rights and ensure that administrative authorities act within their legal bounds.

Types of Writs

The five principal types of writs that can be issued are:

Habeas Corpus: This writ is used to secure the release of a person who has been unlawfully detained or imprisoned. It compels the authority holding the person to justify the detention. This writ is crucial for safeguarding personal liberty against arbitrary state action.

Mandamus: This writ is issued to compel a public authority to perform a duty that it is legally obligated to perform. For instance, if an administrative authority refuses to carry out a statutory duty, a writ of mandamus can be sought to enforce compliance. It ensures that public officials perform their functions as mandated by law.

Prohibition: This writ is directed at a lower court or tribunal to prevent it from exceeding its jurisdiction or acting contrary to the principles of natural justice. It serves as a check on inferior courts and administrative bodies, ensuring that they do not act beyond their authority.

Certiorari: This writ is used to quash the order or decision of a lower court or administrative body if it is found to be without jurisdiction, or if there is an error of law apparent on the face of the record. It acts as a safeguard against arbitrary and unjust administrative actions.

Quo Warranto: This writ is issued to challenge the authority of a person holding a public office. It seeks to inquire by what authority the person claims to hold the office, thereby ensuring that only those who are legally qualified occupy public positions.

Judicial Review and Administrative Action

Judicial review is a cornerstone of the writ jurisdiction. It allows courts to examine the legality of administrative actions, ensuring they adhere to principles of legality, reasonableness, and natural justice. Judicial review does not entail reviewing the merits of the administrative decision but focuses on whether the decision-making process was fair and lawful.

The Supreme Court has emphasized the significance of judicial review in various landmark cases. For instance, in Maneka Gandhi v. Union of India (1978)[5], the Court held that any law depriving a person of their liberty must be just, fair, and reasonable, thereby incorporating the principles of natural justice into

[5]Maneka Gandhi v. Union of India, AIR 1978 SC 597

administrative actions. This case underscored the necessity for administrative authorities to act within the legal framework.

Role of Writs in Ensuring Accountability

Writs serve as a mechanism for enforcing accountability and transparency in administrative actions. They protect citizens from arbitrary and unjust actions by the state, ensuring that administrative authorities do not exceed their powers or violate fundamental rights. The availability of writs acts as a deterrent against misuse of power by public officials.

The issuance of writs is not merely a legal remedy; it embodies the principles of democracy and rule of law. It empowers individuals to seek redressal and holds administrative bodies accountable for their actions.

VIII. WRIT OF CERTIORARI AND MANDAMUS

The writs of certiorari and mandamus are essential tools in controlling administrative action in India. Both writs serve different purposes but are integral to ensuring that administrative bodies act within their legal framework and adhere to principles of justice.The writ of certiorari is issued by a higher court to quash the order or decision of a lower court, tribunal, or administrative authority. It is used to review the legality of decisions made by these bodies.

Purpose:

Correcting Errors: Certiorari aims to correct errors of law that are apparent on the face of the record. This means the higher court does not assess the merits of the case but focuses on whether the lower body acted within its jurisdiction or followed due process.

Ensuring Fairness: By quashing unlawful orders, the writ protects individuals from arbitrary administrative action. It emphasizes the need for adherence to legal standards and procedures.

In Hari Vishnu Kamath v. Ahmed Ishaque (1959)[6], the Supreme Court held that a writ of certiorari can be issued to quash orders that are not supported by legal authority or violate principles of natural justice. This case underscored the importance of ensuring that administrative actions remain within the bounds of law.

[6]Hari Vishnu Kamath v. Ahmed Ishaque, AIR 1955 SC 233

The writ of mandamus is a command issued by a higher court directing a public authority or a lower court to perform a specific duty that it is legally obligated to perform.

Purpose:

Compelling Action: Mandamus is used to compel administrative authorities to act in accordance with the law, especially when they fail to perform a duty or refuse to act. It ensures that public officials fulfill their responsibilities.

Enforcing Rights: This writ helps protect the rights of individuals by ensuring that their legitimate claims are addressed by the authorities. It promotes accountability in public administration.

In R. v. The Secretary of State for the Home Department, ex parte Fire Brigades Union (1995)[7], the court ruled that a public authority cannot refuse to perform a duty imposed by law. This case demonstrated how mandamus can be employed to enforce compliance with statutory obligations.

IX. POWER OF SUPERINTENDENCE

The power of superintendence exercised by High Courts in India is a significant mechanism for controlling administrative actions, particularly through the issuance of writs. This power is enshrined in Article 227 of the Constitution, which grants High Courts the authority to oversee and ensure that lower courts and tribunals operate within the bounds of their jurisdiction. The High Court's power of superintendence is complemented by its authority to issue writs under Articles 226 and 32, enabling it to safeguard fundamental rights and maintain the rule of law.

Scope of Power

Supervisory Role: The High Court's power of superintendence allows it to review the functioning of subordinate courts and administrative tribunals. This supervisory jurisdiction ensures that these bodies adhere to the principles of justice, equity, and good conscience, preventing misuse of power and arbitrary actions.

Issuance of Writs: Under Article 226, High Courts have the authority to issue various writs, including habeas corpus, mandamus, certiorari, prohibition, and quo warranto. These writs serve different purposes, but collectively they provide a robust framework for judicial control over administrative actions.

Mechanisms for Control

[7] R. v. The Secretary of State for the Home Department, ex parte Fire Brigades Union, [1995] 2 AC 513 (House of Lords)

Writ of Certiorari: This writ is pivotal in quashing orders or decisions made by administrative authorities or tribunals that are found to be without jurisdiction, erroneous in law, or violating the principles of natural justice. For example, in the case of S.P. Gupta v. Union of India (1981)[8], the Supreme Court held that certiorari could be issued to ensure that administrative bodies do not exceed their authority, reinforcing the importance of legality in administrative actions.

Writ of Mandamus: This writ compels a public authority to perform a statutory duty. For instance, in R. v. The Secretary of State for the Home Department, ex parte Fire Brigades Union (1995)[9], the court used mandamus to enforce compliance with statutory obligations. This writ plays a crucial role in holding administrative bodies accountable for their actions.

Writ of Prohibition: This writ prevents inferior courts or tribunals from exceeding their jurisdiction or acting contrary to the law. It acts as a check on administrative decisions, ensuring that proper legal procedures are followed.

Writ of Habeas Corpus: This writ safeguards individual liberty by allowing the High Court to order the release of individuals who have been unlawfully detained. It serves as a powerful tool against arbitrary detention by administrative authorities.

Writ of Quo Warranto: This writ questions the authority of a person holding a public office, ensuring that only individuals who meet the legal requirements occupy such positions.

Importance of High Court's Power of Superintendence

The High Court's power of superintendence is essential for several reasons:

Protection of Fundamental Rights: By reviewing administrative actions and ensuring compliance with legal norms, High Courts play a vital role in protecting citizens' fundamental rights.

Promoting Accountability: The ability to issue writs serves as a deterrent against arbitrary and unlawful actions by administrative authorities, promoting accountability and transparency.

Legal Certainty: The High Court's oversight fosters consistency in legal interpretations and administrative practices, contributing to legal certainty.

[8] S.P. Gupta v. Union of India, AIR 1982 SC 149

[9] R. v. The Secretary of State for the Home Department, ex parte Fire Brigades Union, [1995] 2 AC 513 (House of Lords)

Judicial Independence: The power of superintendence reinforces the independence of the judiciary by allowing higher courts to intervene when lower bodies deviate from established legal principles.