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CHAPTER 14

Types of Controls over Administrative Power

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It is a **fundamental principle of modern democratic governments** that "the governing power, wherever located, must be subject to the fundamental constitutional limitations." While Parliament theoretically could exercise control over administrative powers, in practice, it often does not, primarily due to time constraints. Consequently, it has become the **duty of judges**—though unelected—to act as representatives of the people, ensuring that executive authorities do not abuse their powers and instead use them in the public interest.

However, judges themselves are not permitted to act arbitrarily. Therefore, a body of legal principles has been established—largely through judges' rulings rather than parliamentary enactment—dictating how judges should exercise their powers of **judicial review** over administrative actions based on established principles rather than arbitrarily.

The objectives of judicial control over administrative actions are twofold: to serve as a **Control Mechanism** to curb administrative abuse of power and to provide **remedies and relief** to those affected by administrative actions.

In **Tata Cellular v. Union of India**, the Supreme Court laid down the following **basic principles relating to administrative law**:

1. The modern trend points to **judicial restraint** in administrative action.
2. The Court does not act as an appeal court over administrative decisions but merely reviews how decisions were made.
3. The Court lacks the expertise to correct administrative decisions. A review might lead to the Court substituting its decision without the necessary expertise, which could be fallible.
4. **Fair play** in the administrative functioning is necessary.
5. However, the administrative decision can be tested by applying the **Wednesbury principle of reasonableness**, and must be free from arbitrariness, bias, or malafides.

Statutory controls are specified in the statute (or rules or regulations made under the statute). Any executive action violating these will be declared illegal by the courts using the **ultra vires** doctrine. For example, when the London County Council had statutory powers to purchase and operate tramways, the House of Lords held that it had no power to run omnibuses, which was not incidental to running tramways. Similarly, a local authority with the power to acquire land other than "park, garden or pleasure house" acts in excess of jurisdiction in acquiring land which is part of a park (White and Collins v. Minister of Health).

An executive authority may also act unlawfully if it fails to perform a duty imposed upon it by statute, such as maintenance of civic services (e.g., sewerage, drainage, water supply) by Municipalities or other local bodies whose duty under the statute is to maintain such services. Here, a **mandamus** will issue from the courts to compel such authority to perform its statutory duty.

Where the statute delegates power to a particular authority, that authority cannot subdelegate that power to another authority or person unless the statute permits such sub-delegation.

Similarly, discretion exercised by the prescribed authority on the direction of a higher authority would be illegal. When the statute prescribes the manner of doing an act, the authority must do it in that manner alone.

Subjective Discretion

Difficulty arises with what is termed "subjective discretion" conferred by the statute. An example of such subjective discretion is where the statute states that an executive authority can take such decision "as it deems fit." Another example is where the statute allows action to be taken or an order passed where the authority has "reasonable grounds to believe" to take that action or pass such order, e.g., Section 132 of the Income Tax Act which confers power on the Commissioner of Income Tax to order search and seizure where he has "reason to believe" that someone is concealing their income.

In **Liversidge v. Anderson**, the Defence (General) Regulations, 1939 provided: "If the Secretary of State has reasonable cause to believe any person to be of hostile origin or association, he may make an order against that person directing that he be detained." The majority of the House of Lords, except Lord Atkin, held that the Court could not interfere because the Secretary of State had stated in his order that he had reasonable cause to believe Liversidge was of hostile origin or association. This case was decided during the Second World War when the executive had broad powers to detain individuals without disclosing the basis for such beliefs. However, British courts later accepted Lord Atkin's dissenting view that there must be relevant material on which the Secretary of State's satisfaction could be based. Additionally, the discretion must be exercised in view of the purpose for which it was conferred and the objective sought to be achieved, and must be exercised within the four corners of the statute.

Sometimes, a power is coupled with a duty. Thus, limited judicial review against administrative action is always available to the courts.