

ADMINISTRATIVE LITIGATION IN ASIA WITH SPECIAL REFERENCE TO INDIA

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SUMMARY: I. *Preliminary Remarks*. II. *The Asian Panorama*. III. *Basic Features of Administrative Litigation in India*. IV. *Foundations of Administrative Litigation*. V. *Scope of Judicial Review of Administrative Action*. VI. *Grounds for Judicial Review*. VII. *Remedies Against Administrative Action*. VIII. *Conclusion*.

I. PRELIMINARY REMARKS

My brief association with some of the academic activities of the Institute of Legal Research, National Autonomous University of Mexico gives me the impression that the Institute is set on expanding its horizons beyond the two Americas and Europe and especially towards Asia. My association with it also happens to be a part of that expansion. As I have also been ignorant of the legal systems in the Latin American countries, which may equally be the case with most of the students of law in India, I also

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Surya Bala, then a student of BALLB (Hon.) 3rd year, now in 4th year, at the National University of Juridical Sciences, Kolkata, India, who joined me as research apprentice for about a month, prepared a long draft of the paper which I used for my presentation. He also prepared a revised draft for this revised version of the paper, which at places I have extensively used. But for the fact that I have drastically changed the scheme and subject matter of the paper he would have been a co-author with me. I gratefully acknowledge his contribution to this paper and look forward to his contribution to legal scholarship. I also thank Surya Deva for providing me a few valuable references.

grabbed the opportunity to learn something about it in this process. Therefore, I have accepted all invitations from the Institute requiring relevant legal information on Asia, especially India. As I was asked to suggest a suitable person to comment upon the administrative law in Asia, with my limited contacts with scholars on that continent and otherwise, I could not locate any albeit there must be many. With my Indian background of common law and some familiarity with German law as well as with the law of a few Asian countries, I offered myself to do the job knowing full well that not only it is daunting but almost impossible. Thinking, however, that Asia should not go unrepresented in the Institute's efforts of reaching out to that continent I took up the theme of this paper for my presentation out of the three themes of the conference. This paper is the revised version of the outlines I presented at the International Conference on Administrative Law held at the Institute of Legal Research, National Autonomous University, Mexico from 6 to 9 June 2006.

II. THE ASIAN PANORAMA

There are societies in the world having common legal traditions and also societies having different legal traditions. While to our understanding almost all societies on the vast South American continent are governed by the civil law tradition and those in the neighbourhood on the North American continent are governed by the common law system or some combination of civil and common law systems, most of the societies on the Asian continent do not share that kind of commonality of legal traditions. Firstly, Asia is a vast continent extending from Turkey in the North West up to Nauru in the South East and from Russia in the North East to Indonesia in South containing scores of countries. Secondly, these countries are so diverse from one another and within themselves that they hardly share any common legal traditions. Leaving aside the Middle East and Central Asian countries which are highly influenced by Islamic laws, the countries of the South and South East Asia also provide a panoramic divergence. Some of them were colonized by Britain in the course of seventeenth to nineteenth centuries and remained under its rule until mid or even late twentieth century. Among them are India, Pakistan, Bangladesh, Sri Lanka, Malaysia, Singapore, Hong Kong, Thailand and several islands in the Pacific Ocean. They have received com-

mon law traditions of Britain. Some others were colonized by other European powers and remained under their rule for almost the same period. Among them are parts of India, Cambodia, Vietnam, Indonesia, Macau, etc. They have received civil law traditions. Some others like China, Japan, Nepal, Korea, Bhutan escaped colonization as such and have their indigenous legal systems influenced by common law or civil law systems. Again, some others like Burma have their obscure legal systems not fully accessible to outsiders.

Western nationalism with single nationality and monoculture within a country has never been realized in these countries and, therefore, they remain very diverse within their own territories. They have more than one set of family laws and customary laws for different communities and regions. They are also at different levels of development. A few of them like Japan, Singapore, Malaysia, South Korea and Hong Kong are highly developed while many of them are at the bottom of development index. Accordingly their legal systems are also at different stages of development.

In this situation it is difficult, if not impossible, to know and encapsulate the administrative law or any part of it in all these countries in a paper like the present one. But because of the similarity in the fundamentals of the laws and common language in the former British colonies and having got the opportunity of visiting universities and teaching the subject in some of them and also because of some familiarity with the civil law system I decided of presenting something on the subject. However, in my presentation I have basically confined to the former British colonies including Pakistan, Bangladesh, Sri Lanka, Malaysia, Singapore and Hong Kong represented by India. Nepal does not fall exactly in that category but follows almost the same system as in India.

Among some of the other countries of Asia, China is still in the process of subjecting the administration to law and follows a legal tradition which is a combination of their indigenous, civil law, common law and socialist traditions. It does not have separate administrative courts but it has also not reached the stage of recognizing the supremacy of the rule of law and separation of powers particularly at the highest levels of its political structure. Until its new constitution in 1984 administration was almost completely free from the legal controls. Since then, however, with the change of China's economic policies towards liberalization and

market economy, it felt the need of ensuring traders that in case they were unfairly treated by the administration in matters of trade or otherwise they could seek appropriate legal remedy. Therefore in 1989 China enacted the famous Administrative Litigation Law followed by several other legislations in the subsequent years. The Law of 1989 is not an exhaustive code of administrative law but makes a good beginning in that direction. It specifies the cases in which and the persons who can seek remedy. It also specifies the cases in which individual cannot seek any remedy against the administration. Broadly speaking though the remedies against the administration can be sought restrictively and a general power to entertain any matter outside the Law does not exist with the courts, by and large similar grounds as in any advanced legal system are being slowly developed by the courts for ensuring justice to the individual against the wrongs of the administration. It may, however, be remembered that Chinese legal system is heavily influenced by socialist legality giving primacy to public over private interests and, therefore, generally the courts take the view that the administration must be acting in public interest and its action must be sustained. Moreover, the courts in China are not yet so independent from the administration as the courts in the Western legal systems. They are also not yet fully trained in the liberal legalism. But China is well set on the road towards administrative justice and may in course of time develop similar principles and procedures as in any other advanced legal systems.¹

Until the adoption of its present constitution, Japan too did not make administration subject to law though after the Meiji revolution a law of 10 October 1890 provided for administrative review against administrative action. This law, however, remained ineffective in providing relief against the administration because the king and his administration were deemed to be in a privileged position placing them above the law. It is only after the adoption of the new constitution that the public power was vested in the people and their basic rights were recognized. With the recognition of these rights the legislature as well as the executive became subject to law. The executive was subjected to the jurisdiction of ordinary courts. The law of 1890 was improved and supplemented by two laws of 1962 one on administrative procedure and the other on adminis-

¹ For details, including the relevant legislations, see, Feng, Lin, *Administrative Law Procedures and Remedies In China*, 1996.

trative action. These laws provide for direct action in ordinary courts against the decisions of the administration. But traditionally and under the present law too the administration is in such an advantageous position against the individual that the system of administrative justice is quite unfavorable to the individual vis a vis the administration. Judicial attitude of deference towards administration continues and the administration is allowed to wield wide discretionary powers free from or subject to limited judicial scrutiny.² But going by the economic success and efficiency of the administration at every level, one can also say that Japan's legal system is *sui generis*. For peace and progress a society need not follow the Western model of law and legal systems.

Among other Asian countries, about the two Koreas I have no information. Some other countries like Cambodia and Vietnam are still in the process of establishing a system of administrative justice on the lines of French system. Indonesia was for long time a colony of one of the civil law countries, namely, Holland it was not so heavily influenced by that system as the former British colonies by common law system and, therefore, it also has a complex legal system not easily accessible. The civil law and indigenous legal traditions seem to be operating simultaneously. It is not very clear if the administration is yet subject to law and if so what are its structures and mechanisms.³ It is difficult to access relevant information on several other countries including Bhutan, Myanmar and several pacific islands. Many of the countries in Asia have also been politically instable falling quite often in the category of failed states. That also adds to the difficulty of understanding and describing their legal systems with any certainty.

² For details see, Muroi, T. (ed.), *Introduction to Contemporary Japanese Administrative Law*, vols. I & II, 1985. Also see, Toshiro Fuke, "Constitutional impact on administrative law in Japan – post-war developments and recent problems", in Singh, M. P. (ed.), *Comparative Constitutional Law: Festschrift in honour of Professor P.K. Tripathi*, 1989. Also, Yosiyuki Noda, *Introduction to Japanese Law*, 112 ff, 1976.

³ See, Paulus E. Lotulung, "Judicial Review in Indonesia" in Zhang, Yong, (ed.), *Comparative Studies on the Judicial Review System in East and Southeast Asia*, 1997, 167; and Bedner, Adriaan, "Administrative Courts in an Executive-Dominated State: The Case of Indonesia" in Zhang, (ed.), 183. Also, Bernard Quinn, "Indonesia: Patrimonial or Legal State? The Law on Administrative Justice of 1986 in Socio-Political Context", in Timothy Lindsey (ed.), *Indonesia: Law And Society*, 1999, 258; and Linnan, David, "Decentralisation versus Administrative Courts: Which Path Holds Greater Promise?", in Lindsey (ed), 221.

In this scenario India has definitely been in a distinct position which is not shared by any of its neighbors or any other country in Asia. Having acquired its independence in 1947 from Britain legally and having made its Constitution through an elected constituent body as a sovereign country in 1949 which recognizes the continuation of existing laws unless found in conflict with the Constitution or changed by competent legislature, India has been able to maintain a consistently stable legal system which even the state of Pakistan which was carved out from it at the time of independence and later gave birth to Bangladesh can also not claim.⁴ As Pakistan and Bangladesh are created out of the same territory which was earlier British India they share similar legal traditions with India and have been discussed together in some of the literature on administrative law.⁵ The fact of constitutional and political instability in these countries has, however, definitely impacted the operation of their laws. In this and several other respects, however, India stands in a unique position among Asian countries. It has a stable constitution operating since January 1950 without any break. It establishes a democratic republic which sets the example of the largest functioning democracy in the world operating on the liberal principles of constitutionalism, rule of law, independence of the judiciary and guarantee of fundamental rights. Even though some other former British colonies such as Malaysia, Singapore or Hong Kong have better record of law enforcement than India, they cannot make the same claim for democracy, constitutionalism, independence of the judiciary and protection human rights as India can. They are more concerned about the efficiency of the administration than its legal control. Speaking about Singapore a keen legal scholar observes:

Singapore courts are generally conservative in their approach towards administrative law, drawing heavily from English case law in some respects but not engaging in innovative elaboration of the existing heads of judicial review. Not surprisingly, the shaping of administrative law in the Singapore context is heavily influenced by government policy and the priority this accord to development-oriented goals, especially the communitarian emphasis on order and security *e.g.* a hard-line criminal policy directed towards drug related crimes. The focus on efficiency often entails the judi-

⁴ For the continuance of the existing laws see, The Constitution of India, article 372.

⁵ For one such writing see, Fazal, M. A., *Judicial Control Of Administrative Action in India, Pakistan and Bangladesh*, 3rd ed., 2000.

ciary validating pre-emptive administrative action such as the imposition of a blanket ban on all publications, regardless of content, of a certain publisher which has links with a religious group which has been deregistered as a society for being a threat to public order. Legislative attempts have also been made to exclude judicial review from what the government considers to be politically contentious areas.⁶

Though the Malaysian legal scene may not be exactly the same but it is also not very different. It follows the fundamentals of British legal system but has made many adjustments in it in the light of the requirements of efficiency for a fast growing economy.⁷ Hong Kong has been under the British rule until 1997 with several judges and lawyers of British origin and training. As the colony did not establish a democratic rule and did not provide for individual rights until few years before its handing over to China the subjection of the administration to law was not as complete as in Britain though it was the British legal system enforced primarily through British judges. After the handing over the judges in line with Chinese tradition have to show greater deference to the administration and, therefore, in theory the administrative litigation is governed by the same principles as in UK in practice the results are not the same.⁸ But as in all former British colonies administrative litigation is organized along the common law principles, it can broadly be represented by outlining the position in India.

III. BASIC FEATURES OF ADMINISTRATIVE LITIGATION IN INDIA

As the Indian administrative law is based on British legal traditions it is a late comer in India too as in UK. Until a decade after the independence it was not a subject in the curriculum of law schools in the country

⁶ Also Li-Ann, Thio, "Law and administrative state", in Tan, Kevin YL, (ed.), *The Singapore Legal System*, 2nd ed., 1999, pp. 160 and 167.

⁷ For administrative law in Malaysia and Singapore see, Jain, M. P., *Administrative Law of Malaysia and Singapore*, 1989. For the Hong Kong position see, Halsbury's Laws of Hong Kong, vol. 1 (Butterworths) and for a critical constitutional analysis see, Yash Ghai, *Hong Kong's New Constitutional Order*, 2nd ed., 1999 and the famous immigration cases overruled by the Standing Committee of PRC in 1998.

⁸ For details see, Wesley-Smith, Peter, *Constitutional and administrative law in Hong Kong*, 2nd ed., 1994; Clark, David and McCoy, Gerard, *Hong Kong administrative law*, 2nd ed., 1993; *Halsbury's laws of Hong Kong*, Administrative Law, vol. 1(1), 2003.

and no text books on the subject were available. However, soon after the independence need of developing this subject was felt and the Indian Law Institute took a lead in this regard after its establishment in 1956. Some of these initiatives were taken under the guidance of American scholars and institutions but as the American system is also not fundamentally far from the British the developments in Indian administrative law took place on the same lines as in the common law tradition. Accordingly, unlike the civil law systems, in India though the difference between the public and private law is not unknown it hardly plays any part in the practical application of laws and creation of legal institutions. India does not have separate administrative courts to adjudicate upon administrative matters or to develop any distinct principles of public law. Even though many administrative tribunals have been established by law and provision has also been made for their establishment in an amendment of the Constitution, they are subject to the supervisory jurisdiction of the High Courts and appellate jurisdiction of the Supreme.⁹ Exclusion of the supervisory jurisdiction of the High Courts in this amendment was invalidated by the Supreme Court.¹⁰ Thus the unity of law has been maintained by vesting legal finality in all matters in the same courts, i.e. in the High Courts and finally in the Supreme Court of India. For this reason principles of administrative law have generally been evolved through court decisions and not from any legislation. In accordance with the common law principles the courts in India claim an inherent jurisdiction to decide all legal issue brought before them. Therefore, a person can approach the courts against the administration in the same way as against any private individual in the ordinary courts. The courts may provide appropriate remedy against the administration in the same way as they can provide against a private individual. The remedies against the government are rather more effective and expeditious. Therefore, unlike the civil law system where administrative law has been developed through theories as to its need, nature and scope, in India it has developed through court decisions as that law which the courts can enforce against the administration to ensure its conformity with law. It is considered a mechanism of keeping the government within law rather

⁹ See, The Constitution, articles. 323-A & 323-B introduced by the Const. (42nd Amendment) 1976.

¹⁰ Chandra Kumar v. Union of India, AIR 1997 SC 1125.

than a general framework of running an efficient administration through rule of law.

IV. FOUNDATIONS OF ADMINISTRATIVE LITIGATION

Administrative litigation is invoked in the regular courts under the general principles of common law that determination of law in specific disputes is the function of the courts which inherently belongs to them apparently under the doctrine of separation of powers. Under that doctrine the administration also may and does claim non-intervention in its functions. Under the Constitution of India executive power of the Union of India is vested in the President of India and of the States in the Governor of the State.¹¹ The executive power of the President and Governor is coterminous with the legislative power of the Union and the States respectively.¹² Therefore, in theory the executive may exercise all powers of the executive without legislative support. In the exercise of those powers the courts are not expected to interfere. However, under the general principle of the rule of law the executive is not expected to interfere with the rights and liberties of the individual without the authority of law and the Constitution of India expressly incorporates several fundamental and other constitutional rights of the individual which cannot be taken away or restricted without the authority of law. The executive is completely powerless in interfering with them without the authority of law. Moreover, even in those areas where executive requires no law for the exercise of its powers the legislature may decide to lay down law for the guidance of the citizen as well as the administration. Today almost in all areas such laws have been laid down. Once the law has been so laid down the executive is expected to exercise the power in accordance with that law. This is so because the rule of law insists that the individual should know in advance the limits which the law puts on him and therefore law must be enacted in all those areas where the individual comes in contact with the administration. Secondly, the democratic principle insists that laws or norms laid down by the elected representatives of the people must bind the executive in the exercise of its powers. From this requirement of law several subsidiary principles of legality emerge which the

¹¹ The Constitution, articles 52 and 154 respectively.

¹² *Ibidem*, articles 173 and 162.

administration must observe in the exercise of its powers, which we shall discuss. Let me, however, consolidate the above points under separate heads:

1. *Principle of Constitutionality*

The Constitution of India is the fundamental law of the land and foundation of the Indian state. All state power emanates from it and is, therefore, subject to it. No organ of the state can exercise any power which the Constitution does not grant to it and definitely it cannot exercise it in defiance of the Constitution. If it does, a person or body adversely affected by the exercise of that power can approach the courts through appropriate proceedings which can determine the constitutionality of the action and may declare if it is in accordance with the Constitution or not. If it is found against the Constitution the executive cannot move ahead with it and may also be ordered to remedy the wrong already done. Under this principle administrative actions taken under the Constitution which the executive is entitled to take without the authority of law as well as actions taken under the law may be challenged in the courts – former on the ground of unconstitutionality of the action and latter on the ground of unconstitutionality of the law under which it is claimed to have been taken.

2. *Principle of Legality*

Almost all powers of the administration these days are regulated by legislation. The legislation may confer legislative, executive and judicial powers on the administration. Apart from the requirement that such conferment must be in accordance with the Constitution, as has been noted under the preceding head, the administration must also exercise these powers in accordance with the law. In the exercise of powers both the substantive as well as procedural requirements of the law must be observed. Although, as we have already noted, in the foundation of this rule lies the democratic principle, the courts resort to the general legal principle of ultra-vires. Any act of the administration which is not in accordance with the law is ultra-vires and must be so declared as having no legal force. The principle of ultra-vires is not limited only to what is written in

the legislation but also covers several implied legal requirements read into the law by the courts in the course of interpretation of the exercise of their powers by the administration.

3. *Power of the Courts*

The courts in India have the power to determine all legal disputes unless in rare cases they find any dispute non-justiciable. The power of the courts comes from the common law tradition and has been fully entrenched in the Constitution. Whatever doubts could be entertained in this regard have been removed by the Supreme Court through its interpretation of the constitutional provisions relating to the independence of the judiciary as well as its power of judicial review by holding both of them as basic features of the Constitution indestructible even by its amendment.

V. SCOPE OF JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

In view of the fact that in common law ordinary courts of the land have evolved their jurisdiction to ensure compliance with law by the administration, unlike the power vested in special courts by special laws in civil law countries, the scope of judicial review in India is kept within the narrow limits that can be justified and legitimized by the courts as part of their domain. Accordingly, the courts instead of going into all questions of law and facts, as they can do in disputes between private parties, in matters of administration where law specifically empowers the administrators to take certain actions, they merely examine if the administration has the competence under the law of the land to take the action it has taken. If it comes to the conclusion that the administration has the competence to take the disputed action the court cannot sit in place of the administrator and examine if the action is right or wrong. The substantive issues of right or wrong are decided by the courts of appeal while the jurisdiction which the courts exercise against the administration is merely supervisory. Under the supervisory jurisdiction the court can merely check if the administration has acted within its powers or has exceeded them. Only in the later case it will intervene on the ground that the administration has exceeded its jurisdiction. Errors including legal errors commit-

ted by the administration while acting within its jurisdiction are not subject to judicial scrutiny. The only exception is in favour of errors of law apparent on the face of the record which can be checked by the courts even if committed within the jurisdiction. In civil law countries this kind of distinction is not drawn and all legal errors whether within or outside jurisdiction are subject to review by the courts.¹³

Since 1980s there have, however, been significant developments towards the convergence of the civil and common law systems, perhaps due to their interaction in the European Union. The law courts, including the courts in India, are taking the view that all legal questions fall within the jurisdiction of the courts for review and final determination and therefore no distinction need be made if a question of law is within or outside the jurisdiction of the administration. Accordingly the courts now tend to review all legal issues determined by the administration which is quite consistent with the unity of law recognized and maintained by the common law system.

VI. GROUNDS FOR JUDICIAL REVIEW

Although the foundations and scope of judicial review are also the grounds of judicial review, several specific subdivisions of the basis on which the courts review different actions of the administrative action have been formulated for a comprehensive view of the subject. The kinds of action which the administration may take are divided on the lines of the powers of the state, i.e. they may be either legislative or administrative or judicial. While a very clear division of grounds of review may not be made between the administrative and judicial functions of the administration such division is very well made in respect of legislative function and the rest. Let us deal with them accordingly.

1. *Grounds for judicial review of legislative action of the administration*

Administration may make rules and regulations for its internal management without authorization by legislation, i.e. so long as such rules and regulations do not affect outsiders they fall within the inherent po-

¹³ For a comparative view see, Singh, M. P., *German Administrative Law in Common Law Perspective*, 2nd ed., 2001, 119 ff.

wers of the administration. The scope of such inherent power of the administration is, however, slowly narrowing down with the recognition of rights of the persons within the administration and inclusion of several administrative relations within the scope of law which were earlier outside it such as police, defense and jail administration. Now legislative authorization is required in many aspects of these areas too. Any rules and regulations that affect outsiders can be made by the administration only with the authorization of the legislature, i.e. the legislature may delegate legislative powers to the administration. The exercise of legislative power by the administration is, however, subject to judicial review at two levels. Firstly, the legislative enactment delegating power to the administration may be challenged on the ground of excessive delegation. The courts have held that the legislative function essentially belongs to the legislature which must perform it. However, after performing the legislative function it may take help of the administration in matters of detail. The essential legislative function consists in laying down the policy and standards for the guidance of the administration within which it can make required rules and regulations. So long as the legislature has performed its essential legislative functions it can delegate its powers to the administration to any extent.¹⁴ As a matter of fact very rarely any legislation is declared invalid for having delegated excessive powers to the administration.¹⁵

More effective control by the Courts is exercised in respect of the delegated legislation made by the administration. Such legislation may be challenged on the ground of violation of any constitutional provision.¹⁶ Delegated legislation may also be challenged on the ground of violation of the enabling or parent legislation.¹⁷ It may also be challenged on the ground of unreasonableness,¹⁸ *malafides*,¹⁹ exclusion of ju-

¹⁴ See, e.g., Delhi Laws Act, 1912, Re, AIR 1951 SC 332; Edward Mills Co. v. State of Ajmer, AIR 1955 SC 25; Delhi Municipal Corpn. V. Birla Cotton S. & W. Mills, AIR 1968 SC 1232; Gwalior Rayon Mills v. CST, AIR 1974 SC 1660.

¹⁵ Perhaps the latest important case on the issue is Lohia Machines Ltd. v. Union of India, AIR 1985 SC 421.

¹⁶ See *Bharat Cooking Coal Limited v. State of Bihar*, 1990, 4 SCC 557.

¹⁷ See *St. John's Teachers Training Institute v. Regional Director, National Council for Teachers Training and Another* AIR 2003 SC 1533.

¹⁸ *Secretary Ministry of chemicals and fertilizers, Government of India v. Cipla* (2003) 7 SCC 1.

¹⁹ *Mittal v. Union of India*, AIR 1983 SC 1.

dicial review,²⁰ sub-delegation²¹ and retrospective operation.²² Delegated legislation may also be challenged for non-observance of procedural requirements such as publication before operation, laying before the legislature and consultation.²³

2. *Grounds for Judicial Review of Administrative Action*

There was a time until the beginning of nineteen-sixties when difference was made between the administrative and judicial functions of the administration for the purpose of judicial review. Since then, however, the difference has been abandoned and almost no distinction is drawn for challenging an administrative action before the court on the ground if it is judicial, quasi-judicial or administrative. The only exception is made occasionally for the observance of procedural requirements of hearing or giving of reasons in cases which on objective criteria deserve no such observance. Most of the administrative litigation, however, belongs to the general category of administrative action by which the individuals or their organizations are daily affected in a number of ways. The number of such actions is several times larger than what may be represented from judicial decisions.²⁴ This is not something peculiar to India but is the case with almost every modern state irrespective of its nature.

In the discussions on judicial review of administrative action often a distinction is made between the principles or grounds that apply to judicial review of all actions of the administration and grounds that apply specifically to the exercise of discretion. As we have already indicated the general principles of judicial review and their foundations above we need not draw such a distinction. Moreover, almost all legal issues arise with respect to the exercise of discretion by the administration. There is

²⁰ *Chief Inspector of Mines v. K.C. Thapar*, AIR 1961 SC 838.

²¹ See, *Mangulal Chunilal v. Manilal*, AIR 1968 SC 822.

²² *B.S. Yadav v. State of Harayana* AIR 1981 SC 561.

²³ See, e.g., *Harla v. State of Rajasthan*, AIR 1951 SC 411; *State of Maharashtra v. M.H. George*, AIR 1965 SC 722; *Govind Lal v. Agricultural Produce Market Committee*, AIR 1976 SC 273.

²⁴ In a Survey carried out in the early 1950's, it was found that among the reported cases of the Supreme Court of three years (1953, 1954 and 1955), about half of these dealt with the matters related to administrative law, specifically, the study found that of the 250 reported cases, 119 belonged to administrative law category. See Markose, *Administrative Law in India*, 1961, 257.

hardly any judicial dispute where the administration has to act without any discretion. The central question of administrative law is always the need of administrative discretion and keeping it within the legal limits in the matter of grant as well as exercise. In India legal limits are required to be observed both in the grant of discretion as well as its exercise.²⁵

A. Constitutional Limits on the Grant of Discretion

From the very beginning of its interpretation of Article 14 of the Constitution which provides for the right to equality the Supreme Court of India has taken the view that grant of unlimited discretion to the executive violates that right. Therefore, in granting discretion to the executive to make selection or classification between persons the legislature must clearly lay down the principle or policy that should guide the administration. Otherwise the law will be unconstitutional for giving unguided or unlimited discretion. Even as a general principle of law the Court has stated: "In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits".²⁶ Therefore, no discretion is unfettered; all discretion has to be exercised within the legal limits.

B. Legal Limits on the Exercise of Discretion

At the level of exercise of discretionary power by the administrative authorities the courts building upon the rule of ultra vires have developed several sub-heads which may be discussed on the following lines:

a. Substantive Ultra Vires

Any action of the administrative authority without the authority of law or in excess of it is ultra vires and therefore illegal and liable to be so declared by the courts. The action may become ultra vires for several rea-

²⁵ See, e.g., *State of West Bengal v. Anwar Ali*, AIR 1952 SC 75; *Dwarka Prasad v. State of UP*, AIR 1954 SC 224; *State of Punjab v. Khem Chand*, AIR 1974 SC 543; *Monarch Infrastructure Pvt Limited v. Ulhasnagar Municipal Corporation* (2000) 5 SCC 287.

²⁶ *Jaisinghani v. Union of India*, AIR 1967 SC 1427, 1434.

sons of which there are no definite categories some. We discuss them as follows:

1. *Excess of power*. As already noted all cases of ultra vires are cases of excess of power, but there are examples where the courts have so held in a specific way. Thus in *J.K. Chaudhuri v.R.K.Datta Gupta*,²⁷ the relevant law authorized the university to interfere in the action of college management committee against a “teacher” but not against a “Prinicipal” even though the same person was working in both capacities. To the extent the university interfered in the latter assignment, its action was found in excess of its powers. Again in *GES Corporation v. Employees Union*,²⁸ where the relevant rule provided for the claim of medical aid of employee only, granting of the same to family members of the employee was held to be without jurisdiction.

2. *Bad faith*. Although it is difficult to separate bad faith from several other wrongs, bad faith is quite a ground for striking down the exercise of administrative discretion. Thus in *Pratap Singh v. State of Punjab*²⁹ the order of suspension and a departmental inquiry passed against a civil servant was found to be in *malafide* exercise of power and was struck down as invalid by the Supreme Court because the order was passed not in public interest but because the civil servant did not oblige the family members of the Chief Minister of the State. In *Express Newspaper(P) Ltd. V. Union of India*,³⁰ a notice of re-entry upon forfeiture of lease granted by the State Government and of the threatened demolition of the building of the appellants was found to be a *malafide* exercise of power. The Court in *Delhi Development Authority v. UEE Electric Engineer Pvt. Ltd*³¹ held that the burden of proving malafide need not be proved by direct evidence and that it may be proved by circumstantial evidence alone. Thus, Court has made the burden of proving malafide in court less onerous and has made malafide a powerful ground of striking down arbitrary administrative action. In *Secretary, Ministry of Chemical & Fertilizers, Government of India v. Cipla*,³² the Supreme Court, in the context of a delegated legislation which was contrary to the policy laid down in

²⁷ AIR 1958 SC 722.

²⁸ AIR 1951 SC 1191.

²⁹ AIR 1964 SC 72.

³⁰ AIR 1986 SC 872.

³¹ (2004) 11 SC 213.

³² (2003) 7 SCC 1.

the delegating Act, ruled that policy framed by the administrative authority can be struck on the grounds of malafide.

3. *Improper Purpose*. Discretion conferred on an administrative authority must be exercised for the purpose for which it is conferred. Any exercise of it for any other purpose is liable to be struck down. Thus in *Bangalore Medical Trust v. Muddappa*³³ allotment to a private nursing home of a piece of land earmarked for a public park was invalidated by the Court. The allotment was defended on the ground that it was in the public interest and would provide for income to the local authority. But the Court held that the “exercise of the power is contrary to the purpose for which it was conferred under the statute”.

4. *Colorable or fraudulent exercise of discretion*. The general principle of law that what cannot be done directly cannot be done indirectly, equally applies to the exercise of discretion by the administration. Thus in *Vora v. State of Maharashtra*,³⁴ the State Government requisitioned the flat of the petitioner, but inspite of repeated request of the petitioner, it did not derequisition it. Declaring the action bad the Court observed that though the act of requisition was of transitory character, the Government in substance wanted the flat for permanent use, which would be a “fraud upon the statute”.

5. *Unreasonableness*. The Supreme Court of India has raised the principle of reasonableness to a constitutional principle applicable to all state action.³⁵ Therefore, unreasonable exercise of discretion by the administration is not just a question of violation of the statute under which that power is exercised but it is also a violation of the Constitution. The Court has not laid down any final guidelines as to what is reasonable and what is unreasonable, but it applies the same rule as is generally applied on *Wednesbury*³⁶ lines everywhere in the common law countries that it is exercise of power in a manner in which no reasonable man would have exercised it. In *Rothas Industries Ltd. V. S.D. Agarwal*,³⁷ an order of in-

³³ AIR 1991 SC 1902.

³⁴ AIR 1984 SC 866.

³⁵ See, *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487 and *M.P. Singh, The constitutional principle of reasonableness*, 1987, 3 SCC (Jour.) 31.

³⁶ *Associated Picture Houses Ltd. v. Wednesbury Corp.* [1948] 1 KB 223, 228-230. For the two meanings of *Wednesbury* reasonableness see, P.P. Craig, *Administrative Law* 5th ed., 2003.

³⁷ AIR 1969 SC 707.

vestigation was issued by the Central Government against the petitioner company under the Companies Act, 1956. The Supreme Court, after formulating the question: “whether any reasonable person much less an expert body like the Central Government could have reasonably made the impugned order on the basis of material before it” came to the conclusion that the “opinion formed by the Government was wholly irrational opinion” and accordingly set aside the order of investigation. In some civil law countries, especially in Germany the principle of reasonableness (*Verhaeltnismaessigkeit*) has, however, been more concretized even though its practical application may have the same difficulties as in the common law countries.³⁸

6. *Irrelevant considerations.* The administrative authorities must exercise their powers on considerations that are relevant for the exercise of that power. Otherwise its action is liable to be struck down. In *State of Madhya Pradesh v. Ramshanker*³⁹ services of a teacher were terminated on the ground that he had taken part in the activities of a particular political party. Setting aside the order on the ground of irrelevant considerations, the Court ruled that decision on irrelevant considerations would be arbitrary and would specifically violate equality clause in Article 14. Similarly, the Courts have also held that leaving out relevant considerations in deciding a matter would lead to invalidation of the administrative action in question. Thus, in *Ashadevi v. Shivraj*,⁴⁰ non-consideration of the fact whether the confessions recorded were voluntary or not in a proceeding of detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1947 (COFEPOSA), vitiated the proceedings for detention.

7. *Mixed Considerations.* If the administration takes into account relevant as well irrelevant consideration in the exercise of its powers, its action is not always invalid. In *Zora Singh v. J. N. Tandon*,⁴¹ the Court drew a distinction between actions based on subjective standards and actions based on objective standards. It held that in the former case a consideration of a irrelevant ground would be enough to quash the action while in the latter case if the relevant considerations would have justified the

³⁸ See, Singh, M. P., *German Administrative Law in Common Law Perspective*, 2nd ed., 2001, 160 ff.

³⁹ (1983) 2 SCC 145.

⁴⁰ (1979) 1 SCC 222.

⁴¹ (1971) 3 SCC 834.

action, it would not be quashed.⁴² Thus, in *Pyare Lal Sharma v. J & K Industries Ltd*,⁴³ where the services of the employee was terminated on the ground of unauthorized leave and taking active part in politics, the action was challenged on the ground of mixed considerations and it was argued that the second ground is wholly irrelevant. The Court however, rejected the contention holding that the first ground by itself was enough to take the action and that ground is relevant even if the second ground is irrelevant.⁴⁴

8. *Proportionality*. The doctrine of proportionality which is of French origin has been relied upon in India in constitutional issues from the very beginning, especially in the context of determining the reasonableness of restrictions on the fundamental rights guaranteed in Article 19.⁴⁵ For sometime it is now also being invoked in matters of administrative decisions. For example, in *Teri Oat Estate (P) Ltd. V. Union Territory of Chandigarh*,⁴⁶ the Supreme Court, confirming the operation of this principle stated that the exercise of statutory power of discretion by the administrative authority affecting fundamental rights should be in consonance with the doctrine of proportionality. In *Ranjit Thakur v. Union of India*,⁴⁷ an Army Officer, who did not obey the lawful command of his superior to eat food offered to him, was sentenced to one year's imprisonment by the court martial. On challenge in the court that the punishment was grossly disproportionate, the Court held that the "doctrine of proportionality as part of the concept of judicial review would ensure... that if the sentence is in outrageous defiance of logic it would not be immune from correction".⁴⁸ In *Sardar Singh v. Union of India*,⁴⁹ a soldier of the army was sentenced to three months rigorous imprisonment and also dismissed from service for illegally procuring more alcohol, than the quota permitted. The Court struck down the sentence as severe and arbitrary.⁵⁰

⁴² *Idem*.

⁴³ (1989) 3 SCC 448.

⁴⁴ *Idem*.

⁴⁵ See, e.g., *Chintaman Rao v. State of MP*, AIR 1951 SC 118; *Dwarka Prasad Lakshmi Narain v. State of UP*, AIR 1954 SC 224.

⁴⁶ (2004) 2 SCC 130.

⁴⁷ (1987) 4 SCC 611.

⁴⁸ *Idem*. at Para. 25.

⁴⁹ (1991) 3 SCC 213.

⁵⁰ *Idem*.

9. *Legitimate expectations.* The principle of legitimate expectation is still in the stage of making in India is “recognized as a very weak plea”.⁵¹ In *J.P. Bansal v. State of Rajasthan*⁵² observing that the doctrine of legitimate expectations is still in its evolutionary stages the Court laid down that “if a representation is made that a benefit of a substantive nature will be granted or if a person is already in receipt of the benefit that will be concluded and will not be substantially varied, then the same could be validly enforced”.⁵³ In *Supreme Court Advocates on Record Association v. Union of India*,⁵⁴ the Supreme Court held that in recommending appointment to the Supreme Court, due consideration of every legitimate expectation has to be observed by the Chief Justice of India, “Just as a High Court Judge at the time of his initial appointment has a legitimate expectation to become Chief Justice of a High court in his turn in the ordinary course, he has legitimate expectation to be considered for appointment to the Supreme Court in his turn, according to this seniority”. In *Navyyooti Coop Housing Society v. Union of India*,⁵⁵ land to housing society was to be given on the basis of “first come first serve” policy. The Court ruled that this created a legitimate expectation on the part of the societies that had duly applied for the land.

10. *Promissory estoppel.* Promissory estoppel which is an equitable principle in UK is embodied in Section 115 of the Evidence Act that lays down that when a person by his declaration, acts or omission, intentionally causes another person to believe in a thing to be true so as to make him act upon such belief, he cannot be in any subsequent litigation between himself and such other person be allowed to deny the truth of the thing. This rule for the purpose of law of evidence is also part of administrative law which operates as a check on arbitrary exercise of administrative discretion. This principle was first applied in *Union of India v. Anglo-Afghan Agency*,⁵⁶ where the administration was not allowed to go back on a scheme of import certificates, as regards the petitioner, who had acted on the scheme. It was fully elaborated in *M.P. Sugar Mills v.*

⁵¹ Jain, M. P., “Administrative Law”, *Annual Survey of India Law*, vol. XXXIX, 2003, p. 8.

⁵² AIR 2003 SC 1405.

⁵³ *Idem.* at Para. 26.

⁵⁴ (1993) 4 SCC 441.

⁵⁵ (1992) 4 SCC 477.

⁵⁶ AIR 1968 SC 718.

State of UP⁵⁷ and several other cases.⁵⁸ Similarly in *Pawan Alloys v. UP State Electricity Board*,⁵⁹ notification as regards incentives for setting up a new industry was not allowed to be withdrawn, when certain companies acting on the notification had set up new units. The operation of this Principle requires a *bonafide* act on part of the person availing of this remedy. Thus, in *Central Airmen Selection Board v. Surendra Kumar Das*⁶⁰ the Supreme Court ruled that the doctrine of promissory estoppel is based on equitable principles and cannot be invoked in a situation where the petitioner has himself misled the authority in taking a decision by making a false statement. Even in respect of binding the government by policy declarations the position is still fluid because private business interests should not override public interest.⁶¹

11. Fettering of discretion. Discretion given to the administrative authorities is meant to be exercised by them. If in defiance of discretion the authorities decide every case according to fixed norms, it amounts to fettering of discretion by the administration. Such fettering is against the law and can be challenged in the courts. Thus in *Nagraj v. Syndicate Bank*,⁶² the issue of direction by the Ministry of Finance to all banks to accept punishment proposed by Vigilance Commission against law breaking officers, was found by the Supreme Court to be “completely fettered” discretion and was struck down as invalid.

12. Acting under Dictation. Under this principle an authority entrusted with power is required to exercise it himself and not under the dictation of a superior authority. In *Indian Railways Construction Co. v. Ajay Kumar*⁶³ the Court laid down that in general discretion must be exercised only by the authority to whom it is committed and the authority must itself genuinely attend to the matter, not attending to the dictates of a senior officer. In *Anirudhsighji Jadeja v. State of Gujarat*,⁶⁴ an offence was

⁵⁷ AIR 1979 SC 721.

⁵⁸ See, in particular, *Jit Ram Shiv Kumar v. State of Haryana*, AIR 1980 SC 1285 & *Union of India v. Godfrey Phillips India Ltd.*, AIR 1986 SC 806.

⁵⁹ (1997) 7 SCC 251.

⁶⁰ AIR 2003 SC 240.

⁶¹ See, *Sales Tax Officer v. Shri Durga Oild Mills*, (1998) 1 SCC 572 and *State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117. See also, M.P. Singh, *Estoppel against the government: Is equity running wild?*, 6 & 7 *Delhi L. Rev.* 154 (1978-79).

⁶² (1991) 3 SCC 219.

⁶³ (2003) 4 SCC 579.

⁶⁴ (1995) 5 SCC 302.

committed under the Terrorist and Disruptive Activities (Prevention) Act, 1987. The District Superintendent of Police did not give an approval of his own but requested the additional Chief Secretary to proceed under the Act, which was granted. The Court set aside the Order on the grounds of acting under dictation.⁶⁵ This principle has been extended by the Courts to a situation where the administrative authority is forced to act under dictation from the Courts. In *Mansuklal v. State of Gujarat*,⁶⁶ the Government did not give sanction to prosecute the Appellant under the Prevention of Corruption Act. The complainant filed a Petition in the High Court and the High Court directed the authorities to grant sanction. The appellant was subsequently prosecuted and convicted. The Supreme Court, however, set aside the conviction by observing that, “by issuing a directive to the secretary to grant sanction the High Court closed all other alternatives before the secretary [who was to give permission to prosecute] and compelled him to proceed in one direction”.⁶⁷ The conviction was set-aside on this ground.

13. Non-application of Mind. Non-application of mind on part of the administrative authority and acting mechanically is recognized as another ground of control of administrative discretion in India. In *Jaganath v. State of Orissa*,⁶⁸ in the order of detention six grounds were verbatim reproduced from the relevant section and it was proved in the Court that the Minister was “personally satisfied” only of two out of the six grounds mentioned in the statute. The Supreme Court ruled that the Minister had acted mechanically and quashed the order of detention.⁶⁹

b. Procedural Ultra Vires

Common law in general and administrative law in particular is dominated by procedural norms. Instead of emphasizing on substantive rules of justice common law insists on procedures that ensure achievement of justice. Principles of natural justice are one of such inventions of common law even though some scholars insist that they are not merely prin-

⁶⁵ *Idem*.

⁶⁶ (1997) 7 SCC 622.

⁶⁷ *Idem* at Para. 34.

⁶⁸ AIR 1966 SC 1140.

⁶⁹ *Idem*.

principles of procedure but also of substance. They consist primarily of two principles: (i) absence of bias, i.e. no one can be a judge in his own case and (ii) requirement of hearing, i.e. no one can be condemned without hearing. Additional principles such as fairness in action and requirement of giving reasons are also added to the two fundamental principles.

For some time in mid-twentieth century there was uncertainty if these principles apply only to judicial or quasi-judicial functions or all functions of the administration. The uncertainty was removed by *Ridge v. Baldwin*,⁷⁰ where the House of Lords in substance laid down that the principles have to be observed wherever adverse effects follow to an individual from the action of the administration. The Indian Supreme Court also in *A.K. Kraipak v. Union of India*⁷¹ took the same stand. In that case a candidate for selection to the Indian Forest Service was also one of the members of the selection board. Though at the time of consideration of his case he excused himself from the meeting of the board, he was finally selected. His selection was successfully challenged on the ground of bias. Rejecting the plea that the principles of natural justice applied only to judicial or quasi-judicial and not to the administrative functions of the kind involved in the selection process the Court held that that distinction had become outdated and the principles of natural justice apply to all administrative actions from which adverse civil consequences to an individual follow. Again in *Pramod K. Pankaj v. State of Bihar*⁷² the Court held that all administrative actions would have to comply with the rules of natural justice as long as there are adverse civil consequence flowing from and administrative decision. The Court in *Maneka Gandhi v. Union of India*⁷³ has raised the principles of natural justice to the level of fundamental rights guaranteed under the Constitution. Therefore, even a legislative exclusion of these principles may be subjected to judicial scrutiny.

The principle of hearing includes the right to notice specifying the charges in clear and unambiguous language.⁷⁴ But it does not include the right to oral hearing in all cases.⁷⁵ Similarly, right to be represented by a coun-

⁷⁰ (1964) AC 40.

⁷¹ AIR 1970 SC 150.

⁷² (2004) 3 SCC 723.

⁷³ AIR 1978 SC 597.

⁷⁴ *Board of Technical Education v. Dhanwantri* AIR 1991 SC 271.

⁷⁵ *M.P. Industries v. Union of India* AIR 1966 SC 671.

sel is not a part of right to fair hearing,⁷⁶ but right to a ‘speaking order’ is considered to be a part of right to fair hearing.⁷⁷ Justice should not only be done but it should also be deemed to have been done is the rule in respect of application of the principle of bias and any decision of the administration can be vitiated if there is shown to be pecuniary,⁷⁸ personal⁷⁹ or official bias.⁸⁰

Non-observance of the principles of natural justice makes an administrative action null and void.⁸¹ Courts have, however, sometimes let such nullity cured by post-decisional hearing.⁸² Further, in *Canara Bank v. Debasish Das*,⁸³ the Court considered the “useless formality theory” according to which in case of non-observance of the principles of natural justice the Court can refuse to interfere if it finds that the granting of relief would just be an empty formality if the matter does not have “real substance” or if there is no substantial possibility of success, or if the result would be in no way different even if the principles of natural justice were followed. In this case the petitioner was not given a hearing by the inquiry officer but on appeal the appellate body granted him personal hearing. Leaving the “useless formality theory” open the Court ruled that in the instant case, post-decisional hearing was afforded and hence, there was no violation of the rules of natural justice as such.⁸⁴

Beside the requirement of absence of bias and hearing the courts have also insisted on speaking orders or reasoned decisions and have invalidated administrative actions in their absence. In addition to these court-developed rules the legislatures may impose any procedural requirements on the administrators such as of enquiry, consultation, etc. The administrator is bound to observe them unless they are found to be recommendatory.

⁷⁶ *H.C. Sarin v. Union of India* (1976) 4 SCC 761.

⁷⁷ See, Singh, M. P., “Duty to Give Reasons for Quasi-Judicial and Administrative Decisions”, 21 *Journal of Indian Law Institute* 45, 1979.

⁷⁸ *Jeejabhoy v. Assistant Collector of Thanav* AIR 1965 SC 1096.

⁷⁹ *Rantan Lal v. Managing Committee* AIR 1993 SC 2155.

⁸⁰ *Krishna Bus Services (P) Ltd. v. State of Haryana* AIR 1985 SC 1651.

⁸¹ *Shrawan Kumar v. State of Bihar* AIR 1991 SC 309.

⁸² See, *Maneka Gandhi v. Union of India*, AIR 1978 SC 597. For a critical comment on this aspect see, Singh, M. P., “Administrative Action in Violation of Natural Justice Affecting Fundamental Rights: Void or Voidable?”, 2 *Supreme Court Cases (Journal)*, 1979, 1.

⁸³ AIR 2003 SC 2041.

⁸⁴ *Idem*.

VII. REMEDIES AGAINST ADMINISTRATIVE ACTION

In common law system when we talk of remedies we mean basically judicial remedies. The law which empowers the administrative authorities may also provide for administrative or any other remedies but they are considered to be interim measures. Ultimately the matter must be settled by the courts. For that reason administrative litigation in India is not much concerned about the non-judicial remedies which the law may provide. It is, however, concerned about the judicial remedies which the law may provide such as appeal or revision in courts against the administrative decision. But as these remedies are specific under specific laws they also do not fall within the range of general remedies available against all administrative action. The general remedies that are available against the administration are the historically inherent powers of the courts inherited from British tradition under which the superior courts exercise supervisory power over all subordinate courts or authorities making decisions or taking decisions under the law. In India that power has been vested in the High Courts under Articles 226 and 227 of the Constitution to have supervisory jurisdiction over all courts and tribunals within their territorial jurisdiction and to issue appropriate writs, orders or directions to any authority for any purpose. The Supreme Court does not have any formal supervisory jurisdiction over the lower courts and tribunals but it has original jurisdiction to entertain petitions against the violation of the fundamental rights and to award such remedy as it considers appropriate including the power to issue prerogative writs of habeas corpus, prohibition, certiorari, mandamus and quo warranto.⁸⁵ In addition to that it also has the power to hear appeals in its discretion against the decision of any court or tribunal in the country.⁸⁶ Being constitutional remedies they cannot be withdrawn or resort to them excluded by legislation. Moreover, as we have already noted they cannot be denied or curtailed even by constitutional amendments because they are considered part of the basic structure of the Constitution and the basic structure of the Constitution cannot be changed even by its amendment.⁸⁷

⁸⁵ The Constitution, article 32.

⁸⁶ *Idem*, article 136.

⁸⁷ See, generally, *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461 & *Minerva Mills v. Union of India*, AIR 1980 SC 1789. In the specific context of judicial power see, *Chandra Kumar v. Union of India*, AIR 1997 SC 1125.

In addition to these extra-ordinary or constitutional remedies resort can also be had to ordinary civil courts under the general law of the land for declaration, injunction or even damages.⁸⁸ Little resort is made to these remedies for the reason that they are subject to several procedural encumbrances and delays. Apart from that they can be ousted and are generally ousted by the legislation vesting powers in the administration.

While the extra-ordinary or constitutional remedies are the standard ones in almost all common law countries which need not be discussed in detail here, a few important developments may be mentioned in passing. One of the most important developments from the point of view of administrative law and litigation is the introduction and evolution of the public interest litigation. Unlike the private law matters where the plaintiff must have locus standi to approach the court, in administrative and constitutional law matters the Supreme Court has relaxed that requirement and any person having sufficient interest in the matter may approach the Supreme Court or the High Courts for the purpose of compliance with the Constitution or other laws by the administration. Under this approach the courts have allowed many public spirited persons and organizations to bring petitions before them of persons like under-trials, bonded labourers, tribals, children and women in protected homes, hutment and pavement dwellers, victims of gas leak, etc. The courts have also acted of their own without any one approaching them on the basis of newspaper reports and letters or postcards written to the Court or individual judges. In some cases they have also ordered payment by way of costs or otherwise to the person approaching the court in appreciation of his or her services as well as to meet the expenditure incurred in approaching the court. More and more petitions of this nature against administrative inaction or malfunctioning are pouring in the Supreme Court and High Courts everyday resulting in embarrassment to the administration. Such action is not only a check on the illegal actions of the administration but also an instrument of ensuring its efficiency by compelling it to do what is expected of it under the law.

VIII. CONCLUSION

This brief sketch of the legal issues concerning administrative litigation in India may not be adequate to give a total picture of all that hap-

⁸⁸ See, the Specific Relief Act, 1963 and the Civil Procedure Code, 1908.

pens between the administration and the individual or between different organs of the government or between public authorities. But it gives a fair idea that the relevant legal principles and institutions for the resolution of these issues are very well in place. Operation of these principles and institutions at the ground level depends not only on the existence of these factors but also upon the legal and political culture of the people. Legal and political culture in India may have not yet acquired its full maturity but it is definitely moving on that path. All organs of the government as well as people are in the process of managing their affairs according to fair principles and practices of law. Law makers, administrators, judges and other citizens are trying their best that consistent with principles of justice and fairness they are ruled by law that ensures peace, progress and happiness to all. That goal may never be achieved but so long as people are moving in that direction there is every hope of its achievement.