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Subject- Legislative and Quasi Judicial Powers of Administration

Class- LL.M. II Semester

Topic- Judicial Review

Judicial Review

I) **Judicial Review in England-** In England the administrative law is concerned with the actual working of the government machinery and the greater part of it has never come before the courts for interpretation. After the passing of the Administrative of Justice (Miscellaneous Provisions) Act, 1938, does not alter the principles of law upon which prerogative writs were issued.

II) Judicial Review in India-

In India the Courts occupy key position as regards the judicial control of administrative action. Our Constitution guarantees certain fundamental rights enumerated in Articles 13 to 35 of the Constitution. These rights provide a limitation on the legislative and executive powers as well as some effective dimensions of control over administrative discretion.

The Constitution of India contains express provisions for judicial review of legislation as to its conformity with the constitution unlike in America where the Supreme Court has assumed extensive powers of reviewing legislative acts under over the widely inter

prated “due process” clause in the Fifth and Fourteenth Amendments. If, when the courts in India face up to such important and none too easy task, it is not out of any desire to tilt at legislative authority in a crusader’s spirit but in discharge of a plainly laid upon them by the Constitution.

In India the Judicial Review of administrative actions falls into three distinct heads-

- (i) Public law review which is exercised through writs (For Detail please refer last preceding chapter).
- (ii) Statutory review which may be either by way of-
 - (a) Statutory appeals; and
 - (b) Reference to the High-Court or statement of case.
- (i) Private Law review which is exercised through suits for damages, injunctions.

Again where the decisions of administrative bodies are purely of administrative nature, the scope of judicial review is limited but it is not so where the decision of quasi-judicial nature. Judicial review of quasi- judicial action of administrative authorities has become of greater importance for the reason that there has been a tremendous increase of judicial functions of administrative authorities.

III) Grounds for Review of Quasi-Judicial Order- The quasi-judicial

orders of an administrative authority can be reviewed on the following

Grounds for Review of Quasi-Judicial Order

Jurisdictional errors, which includes absence of jurisdiction or refusal to exercise jurisdiction

Erroneous exercise of jurisdiction on a point of law which is apparent on the face of the record

Violation of the principles of natural justice

Unconstitutionally

IV) Exclusion of judicial Review- It should be noted that judicial review of an administrative action may be excluded by legislation. An administrative action cannot be reviewed judicially-

- (a) Where the statutes provide such administrative act or decision as final or, conclusive;
- (b) Where the same result is sought to be achieved more directly, by a negative provision barring particular remedies or providing that such administrative action or decision shall not be liable to be questioned in any court or in any legal proceeding.

V) Express Bar or exclusion of Jurisdiction of courts-

- (i) Where the tribunal was not properly constituted;
- (ii) Where the tribunal has abused its power under the state by acting in violation of its provisions
- (iii) Where the statute providing the finality clause is itself unconstitutional-Rayala Sena construction vs. Dy. C. T. O.
- (iv) Where the tribunal has acted in excess of its jurisdiction conferred upon it under the statute or where it was ostensibly failed to exercise a potent jurisdiction.
- (v) Where the tribunal has based its decision partly on conjures, surmises and suspicious-

- (vi) Where the tribunal gave a decision of fact by considering material which is irrelevant to the enquiry or by considering material which is partly relevant and partly irrelevant-Dhirajlal Girdhari Lal vs. Commissioner of Income Tax, Bombay
- (vii) Where the decision is given in violation of the principles of natural justice causing substantial and grave injustice to parties.