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CONSTITUTIONALIZING ADMINISTRATIVE LAW IN THE INDIAN SUPREME COURT: FUNDAMENTAL RIGHTS & NATURAL JUSTICE

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ABSTRACT

Fundamental rights are the basic structure of our constitution. It acts as a mandatory obligation between the state towards its citizens. It needs to be protected by every authority may it be private, administrative, constitutional or judicial. Administrative authorities are very different from judicial authorities. Administrative authorities are delegated some judicial authorities and functions which helps in supporting the judiciary of India. As these adjudicating bodies are being given judicial functions to be carried out, it is very necessary to perform such functions while keeping in mind the application of safeguarding fundamental rights and hearing every issue in consonance with natural justice. As the aspect of Administrative law is a concept of common law and not yet codified it has to be based on the principle of equity, justice and good conscience. Therefore, this paper focuses on the interplay between natural justice and fundamental right. It also examines how the concept of natural justice came into being in administrative law and also showcases some light on the how judicial review plays an important role once there is an abuse of natural justice.

KEYWORDS: *Administrative tribunal, Adjudicating authorities, fundamental rights, natural justice, judicial review, administrative desecration, executive and judiciary.*

INTRODUCTION

Administrative law is the duty of the executive to perform the functions of legislature or the judiciary. In this paper, the researcher will focus on the executive performing judicial activities. There are many reasons as to why administrative adjudicating authorities are important. Firstly,

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they lessen the burden of the traditional judiciary, secondly it provides expertise for a particular subject of law and thirdly, leads to variety of remedies being available in comparison to fine or imprisonment. It orders to understand the link between administrative authorities and fundamental rights vis-à-vis natural justice, it is very important to create a link between constitutional law and administrative law, as the principle of natural justice and fundamental rights gets its enforceability from the Constitution itself.

Constitution lays down the formation of organs and Administrative law is one such organ or a sub-set of constitutions. Constitutional law keeps a check on administrative decisions and discretion viz judicial review. It should be noted that principles of natural justice and safeguarding of fundamental rights are much more prevalent when there is no codified law. The main question was if principles of natural justice will be applicable to administrative law while performing judicial or quasi-judicial authority's and functions?

LINK BETWEEN NATURAL JUSTICE AND FUNDAMENTAL RIGHTS

Principles of natural justice are a set of common law procedural constraints or objectives needed to be applied while pronouncing judicial or quasi-judicial decisions. They are the fundamental rules which are not prescribed by any code. Though nowhere mentioned in in the text of the Constitution it should be noted that the concept of natural justice can be seen to be flowing down from the text of the Indian Constitution through Articles 14[1], 19[2], 21[3] and 22[4]. The above-mentioned Articles lay down different concepts of natural justice which are equality before law, equal protection of law, right to life and liberty and life with dignity and opportunity of fair hearing. The same if violated also provide constitutional remedies are guaranteed under Art 32[5], 226[6], and 136[7] in the matters pertaining to the violation of any of fundamental rights as well as in the cases of deprivation of the principles of natural justice.

[1] *Article 14, The Constitution of India.*
[2] *Article 19, The Constitution of India.*
[3] *Article 21, The Constitution of India.*
[4] *Article 22, The Constitution of India.*
[5] *Article 32, The Constitution of India.*
[6] *Article 226, The Constitution of India.*
[7] *Article 136, The Constitution of India.*

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Therefore, there is a direct nexus between natural justice and fundamental rights, it can be said if any concept of natural justice is violated by the administrative authority, it can directly be said that there has been violation of constitutional and fundamental rights under Article 14[8],19[9] and 21[10] mainly.

In the case of Hindustan petroleum corporation v. H.L. Trehan[11], it was held by the SC that if any decision is made without hearing, it would be arbitrary to Act without hearing and thus violative of Article 14[12] of the Constitution and would also constitute to violation of natural justice of a person as well. Which proves that natural justice acts as a sub set of fundamental rights. Another important case which can prove the same is D.K. Yadav v. J.M.A. Industries Ltd[13], in which SC held that a termination of an employee without a hearing would be violative of Article 21[14] and cannot be just, fair and reasonable which therefore also goes against the principles of natural justice. It is also an established fact that principles of natural justice are attracted or violated only when there is a violation of any fundamental right.

Article 14[15]: This Article focuses on equality before law and equal protection of all and forbids any kind of discriminatory law and administration action. Its objective is to remove arbitrariness in administrative action and guarantees fairness and equality of treatment. There have been many cases which connects Article 14[16] to natural justice.

In **Delhi Transport Corporation v. DTC Mazdoor Union[17]**, the SC held that "*the audi alteram parterm rule"*, in essence, enforce the equality clause in Article 14[18] of the Constitution, is applicable not only to quasi-judicial bodies but also to an administrative order adversely affecting the party unless the rule has been excluded by the Actin question."

[8] *Supra 1.*
[9] *Supra 2.*
[10] *Supra 3.*
[11] *Hindustan petroleum corporation v. H.L. Trehan, 1989 AIR 568*

[12] *Supra 1.*
[13] *D.K. Yadav v. J.M.A. Industries Ltd, 1993 SCR (3) 930.*

[14] *Supra 3.*
[15] *Supra 1.*
[16] *Ibid.*
[17] *Delhi Transport Corporation v. DTC Mazdoor Union, 1991 AIR 101*

[18] *Article 14, The Constitution of India.*

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Similarly in **Maneka Gandhi v. Union of India**[19] the Supreme Court was of an opinion that Article 14[20] makes natural justice an integral part of the guarantee of equality assured by Article 14[21] an order depriving a person of his civil right passed without affording him an opportunity of being heard suffers from the vice of violation of natural justice. There are several cases in which Article 14[22] of the Constitution of India is invoked in order to protect the individuals from the violation of natural justice.

Article 19[23]: This lays down specific grounds on which reasonable restriction to fundamental rights can be imposed. This is done in the view of natural justice. Article 19 (2) to (6) also includes procedural restrictions determining validity of natural justice.

Article 21[24]: This Article lays down procedure established by law. In many decisions of SC it was held that the word "law" in this Article will not include natural justice due to its vagueness but later, Late Mr. Bhagawati J. stated, "***the principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades art 14 like a brooding omnipresence"***[25]. Therefore, the procedure laid in Article 21[26] "must be right, just and fair" and shall not be arbitrary, oppressive, otherwise, it would be no procedure at all and the requirements under Art. 21[27] would not be fulfilled thereby violating natural justice.

Article 22[28]: This Article lays down protection ta an arrested person from arrest and detention and their fundamental rights. This also carves out the ambit of natural justice as this lays down the following points:

- Person needs to be told grounds for arrest.
- Rights to consult and be defended.
- No rights to be detained without authority of magistrate.

[19] *Maneka Gandhi v. Union of India,1978 AIR 597*
[20] *Supra 1.*
[21] *Ibid.*
[22] *Ibid.*
[23] *Supra 2.*
[24] *Supra 3.*
[25] *https://acadpubl.eu/hub/2018-120-5/2/158.pdf*
[26] *Supra 3.*
[27] *Article 21, The Constitution of India.*
[28] *Article 22, The Constitution of India.*

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RELATION BETWEEN NATURAL JUSTICE AND ADMINISTRATIVE LAW

There have been many decisions which affected natural justice and subsequently fundamental rights as well. A lot of decisions taken by the court have formed a specific opinion about natural justice and its application. It is an irony that a parliament can make a law excluding the principles of natural justice, which later can be challenged on the basis of violation of principles of natural justice and fundamental rights. Principles of natural justice has three main principles included in its ambit:

1. Nemo judex in causa sua – one cannot be a judge in his own cause also known as the rule against bias. This rule focuses on elimination of bias. A bias need not be always direct or proved. Even a probability or assumption is enough to understand that there might be a bias present. There are many types of biases pecuniary bias, official bias, personal bias etc. The same can be understood via cases. In a case named **Mohapatra and Co. v State of Orissa**[29] it was held that authors of books cannot preside over a committee set up to choose book for curriculum, this shows possible bias and it's against natural justice. In another case it was held that a member of selection committee himself being a candidature also amounts to bias, as he can affect the candidature results of others[30]. In the case of **West Bengal v Shivanand Pathak**[31] this is a very unusual case which shows judicial obstinacy where a judge passed a decision which was overruled by a different bench. A new and fresh petition was filed regarding the same matter via a petition and the judge validated his own order passed earlier. This shows another kind of bias very prevalent.

2. Audi alteram partem – Hear the other side/party or an opportunity for fair hearing must be given before passing any order. This means every party must be given a notice to prepare their side and present their side. A non-adherence to send a notice will amount to violation. The case named **Laxmi Narayan v Commissioner of sale**[32] also mandated the sending of notice to the dealer if any miscalculation. In This case there was a notice sent but it went to another person by mistake, this mistake was also held to be a violation. The second part of this maxim is hearing, there should always be a hearing conducted to hear both the parties. A notice should be followed by a

[29] *Mohapatra and Co. v State of Orissa, 1984(4) SCC 103.*

[30] *A K Kraipak v UOI, 1969.*

[31] *West Bengal v Shivanand Pathak,1998.*

[32] *Laxmi Narayan v Commissioner of sale, 1964 15 STC 618 MP.*

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hearing. A hearing can be a personal hearing or a written hearing[33] In a very important case named **Cooper v Wandsworth board of works**[34] in this case the board had the power to demolish a building without giving an opportunity to the aggrieved person to explain his stance and so a building was demolished. It was held that board's decision was not legally invalid as the statute itself gave the power to demolish. But it did violate natural justice of the aggrieved and fundamental rights. A hearing should be fair in every manner which discloses all the material facts. A person who presides over a hearing is the person who is entitled to decide.[35] It should be noted that a right to cross examine[36] during the hearing and a right to have a counsel [37] does not come under the ambit of natural justice.

3. Reasoned order or speaking order: This is also an essential part and it means the orders speaking for itself. A party should always know the reasoning for a court's desecration. This excludes chances of arbitrariness. It helps in a party argue in appeal and also satisfies the aggrieved party. Non-existence of reasons and non-disclosure are very different in nature.

LINK BETWEEN PREVENTIVE DETENTION AND ADMISTRATIVE LAW

The researcher also wants to concentrate on this part as it makes the most essential part of the research paper. There are certain laws in India which have to made or established to protect the internal security of the country and have been a part pf our legal system since the time of pre-independence. Due to increased political vengeance and propagation of various kinds of ideologies' there has been an increase in the communal violence, which puts the national security as a higher risk. There are many central principles the Indian Constitution lays down some of them being equality, national security and human freedom. The Indian Constitution under Article 21[38] guarantees a life with dignity which is irrevocable or cannot be taken away at any cost. As the research spoke about the security of the Nation due to such violence, it has been observed

[33] *Cantonment Board v Mohan Lal, 1991 (1) BomCR 363.*

[34] *Cooper v. Wandsworth board of works, (1863) 14 CB (NS) 180.*

[35] *Gullapalli Nageswar Rao v APSRTC, 1959 AIR 308.*

[36] *Hira Nath Mishra v Rajendra Medical College, AIR 1973 SC 1260*

[37] *A K Roy v UOI (1982), 1982 AIR 710, 1982 SCR (2) 272*

[38] *Article 21, The Constitution of India.*

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time and again that the states behavior towards the criminal or even a suspicion has always been very harsh, depressing and suppressing and therefore the creators or the farmers of the Constitution came up with an idea of preventive detention in the best interest of the general public.

The basic meaning of preventive detention is custody of a person without a trial, which is supposedly justified one and not a punitive one. It is very different from or normal or regular criminal arrest. The Indian Constitution gives a normal arrest safeguard measures mentioned under Article 22[39] The provisions for preventative detention is also mentioned under the same Article from clauses (4) to (7).

The law is made, but still is unsettled as to how the Act safe guard's detainee's interest. But it has been seen time and again that there has been a constant arbitrary abuse and exercise of powers by the executive authority who has been given the power to detain on the basis of suspicion. It has been in several ways that the detaining officials may abuse and misuse authority and power which directly as well as indirectly harms the fundamental rights of personal liberty of the detenu. Preventive detention's power given to the administrative not only violative of fundamental rights but also principles of natural justice, as mentioned above that both are connected to each other. To regulate this there is an absolute need for the judicial perspective, as coercive power is used by the executives during the preventive detention. To understand the interplay between administrative law and preventive detention and its effects on fundamental rights and principles of natural justice it is very important to understand the basics of preventive detention.

In the case of **Union of India v. Paul Nanickan and Anr** [40], it was rightly held by the Supreme Court that, "*the purpose of the preventive detention isn't to punish any person for doing something but to obstruct him before he does it and deter him from doing so. The reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof."*[41]

[39] *Article 22, The Constitution of India.*
[40] *Union of India v. Paul Nanickan and Anr,*

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In another important case it was mentioned that, "*the aim of detention and its laws is not to punish anyone but to stop certain crimes from being committed."*[42]

Preventive detention is also governed by Section 151[43] of The Code of Criminal Procedure, 1973[44] which explains that the police officer who is a state's machinery and comes under the ambit of executive has the power to detain someone on the basis of suspension, where the information of the crime is cognizable in nature and which cannot be prevented in any other manner.

HISTORICAL PERSPECTIVE ON PREVENTIVE DETENTION

Very few countries support the cultural of preventive detention. It is said by many critics that such a provisions is without any safety measures and do not safeguard any basic human rights. The below mentioned pointers will prove that since a long time many organisations have been against the said concept of preventive detention.

1. European Court on Human Rights[45]
2. National Commission for the Review of the Functioning of the Constitution(NCRWC) in August, 2000[46]
3. The South Asia Human Rights Documentation Center (SAHRDC).[47]

During the British Rule, the government was allowed to arrest anyone on the basis of even the slightest suspicion under the statute named Bengal State Prisoners Regulation, III of 1818.[48] Furthermore, The statue named The Defence of India Act, 1939[49] also allowed detaining any individual is essential to nations security. Now there are a lot of laws which support preventive detention.

[42] *Mariappan v. The District Collector and Others*

[43] *Section 151,The Code of Criminal Procedure,1973.*
[44] *Section 151, The Code of Criminal Procedure, 1973.*
[45] *European Court on Human Rights.*
[46] *National Commission for the Review of the Functioning of the Constitution(NCRWC), August, 2000.*

[47] *South Asia Human Rights Documentation Center (SAHRDC).*

[48] *Bengal State Prisoners Regulation, III of 1818.*
[49] *the Defence of India Act, 1939*

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In India the first Preventive Detention Act[50] was made in 1950 for national security and defence. It had an expiry of 2 years but it was renewed till the year of 1971. When this Act was abolished in 1971 another Act was formulated to serve the same purpose named Maintenance of Internal Security Act[51], MISA was instituted to establish internal security in India. This Act was in controversy as the administrative officials were detaining and harassing people who were opposing and challenging the governance of congress and other opposition parties. This Act was amended numerous times but was abolished eventually by the Janta Party in 1977.

In the further years in 1985 Terrorist and disruptive (Prevention) Act, TADA[52] was formulated this was to be only for 2 years but in 1987 it was revised and reinstated. It was said by many experts that it was the more powerful and restrictive law for preventive detention but due to its violation of fundamental rights and principles of natural justice it was abolished and Prevention of Terrorism Act, 2001[53] was formulated in place of TADA for terrorists attacks. The same was again repealed and in 2004 by an ordinance.

Though in 1967, UAPA[54] was first passed in regards to unlawful groups to separate groups. In this many groups were termed to be null and void, this was formulated specially in the times of destruction of babari masjid and during the terrorists movements in Kashmir. This Act was amended in 2004 and in 2008 as well during the attacks in Mumbai, Maharashtra. Many of the provisions of TADA as well as POTA were applied to UAPA. "*These changes allowed the government to hold suspicious individuals in detention for long periods without the possibility of obtaining bail.*" The latest amendment added to UAPA is that the administrative/executive authority NIA has the power to "*individuals, besides organizations, as 'terrorists' on the ground of suspicion that they have links to Act of terrorism."*

CONSITUTIONAL VALIDITY OF PREVENTIVE DENTETION CHALLEGED?

The constitutional validity of preventive detention was first challenged in **A.K Gopalan V State of Maharashtra**[55], in this case a communist leader since 1947 had been under detention under

[50] *Preventive Detention Act, 1950.*
[51] *Maintenance of Internal Security Act, 1971.*
[52] *Terrorist and disruptive (Prevention) Act, 1985.*
[53] *Prevention of Terrorism Act, 2001*
[54] *Unlawful Activities (Prevention) Act, 1967.*

[55] *A.K Gopalan V State of Maharashtra,(AIR 1950 SC 27)*

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the Section 3 (1)[56] of the particular Act, which confers upon the State or Central Government. The Act was made by the state government of Madras in consonance with the Preventive Detention Act of 1950. A.K Gopalan challenged the Madras Acton the basis of violation of fundamental rights under Article 22[57] and whether the preventive detention Act is in consonance with the provisions of Constitution or not. The SC in this case held particular Sections as void but did not consider the elimination of the whole act. In this case the SC took a limited view od Article 21[58] and 22[59] and took a view that each provision of the Constitution should be seen in autonomy. It disregarded all the contentions based on procedural accuracy.

Later in, in the case of **Maneka Gandhi v Union of India[60]** it was laid down that the procedure laid down in Article 21[61] should be in consonance with the other Articles of the Constitution mainly Article 13[62] and 19[63] and all fundamental rights are to read together with the principles of natural justice. The judgement in this case led to a wider scope of interpretation.

Justice Chandrachud in the case of **Justice K. S. Puttaswamy (Retd.) and Anr. v Union Of India[64]** And Ors. Mentioned and explained a threefold condition in regards to personal liberty, *"(i) validity, which presupposes the presence of law; (ii) need, identified as a valid purpose of the State; and (iii) proportionality, which guarantees a fair relationship between the objects and the ways pursued to attain them."*

PREVENTIVE DETENTION AND PRINCIPLES OF NATURAL JUSTICE

As reiterated previously, preventive detention means custody of a person on the bases of suspicion. It involves taking a person into custody without a criminal trial. Such preventive detention is done by police officers, CBI officers or any other regulatory officer. Such officers both central and state come under purview, control and superintendence of the political executive. Such police officers are from the executive sector who are given the responsibility to maintain law and order in the country and investigate crimes. But such powers have been

[56] *Section 3, Cl.1, The Madras Preventive Detention Act, 1950.*
[57] *Article 22, The Constitution of India.*
[58] *Article 21, The Constitution of India.*
[59] *Article 22, The Constitution of India.*
[60] *Maneka Gandhi v Union of India, 1978 AIR 597*
[61] *Article 21, The Constitution of India.*
[62] *Article 13, The Constitution of India.*
[63] *Article 19, The Constitution of India.*
[64] *Justice K. S. Puttaswamy (Retd.) and Anr. v Union Of India, 2018.*

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constantly misused by ministers for their personal as well as political reasons. Therefore such powers need to be kept in check.

Such preventive detention decision taken by police officer who are a part of political executive harm the principles of natural justice as well as fundamental rights. Therefore, there needs to be a check on such system. Therefore in the case of **Prakash Singh vs Union of India**[65]**.** In 1996, a petition was filed before the Supreme Court that raised various instances of abuse of power by the police. The Supreme Court issued guidelines for police functioning, evaluate police performance, decide postings and transfers, and receive complaints of police misconduct.

CONSITUTIONAL SAFEGUARD

Article 22[66] is the constitutional safeguard provided against preventive detention. This helps one to uphold its fundamental rights as well violation of natural justice by administrative and executive bodies. Article 22[67] clause 2 speaks bout producing the person detained before the magistrate within 24 hours. This helps the person, who is detained to know the charges levied on him and gets an equal opportunity to present his side as well.

Article 22[68] clause 4 refers to preventive detention. It expresses that no one can be preventively detained for more than 3 months unless and until the advisory panel claims a reasonable justification for such a detainment. The panel here acts as a high court jury.

Article 22[69] clause 5 showcases that the reason for detention should conveyed to the individual as quickly as possible by any official who has detained the person. This involves the principles of natural justice which should not be violated. The detention reason should be plausible and reasonable enough and should be in connection to the states security and not for personal reasons. It should not be just a simple assertion. This will harm the fundamental rights as well as violate the principles of natural justice. These are the restrictions make a notes for the protection of the detainee and the state does not exceed its authority and/or surpass its power.

[65] *Prakash Singh vs Union of India,2006.*
[66] *Article 22, The Constitution of India.*
[67] *Article 22, Cl. 2, The Constitution of India.*
[68] *Article 22, Cl. 4, The Constitution of India.*
[69] *Article 22, Cl. 5, The Constitution of India.*

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MISUSE OF PREVENTIVE DETENTION

As seen above to minimise the negligent utilisation of preventive detention and sheer misuse of the law in practice, our Constitution has provided the country with Article 22[70] which acts as a safeguarding detainee. The provisions are just a minimising strategy, but it is time and again seen that such provision are being misused and the fundamental rights as well as the principles of natural justice have been raped to its full extent. The process of preventive detention is made without any procedural fairness if and when compared to regular criminal law. This deficiency poses a fundamental challenge to the legality of the provisions of preventive detention.

I have not only signed also ratified the International Convent on Civil and Political Rights in 1979[71] which lays down and regulates and also recognises the dignity of each individual and promotes enjoyment or civil and political rights. It also lays down the provision that anyone who has been unlawfully arrested or detained should have an in foreseeable right to compensation. The ICCPR applies to all types of unlawful detention. The ICCPR ambit goes through the detention which are unlawful under ICCPR or detention which are unlawful under the state on the mystic law. Many Supreme Court rulings have laid down that people are effectively entitled to compensation. India is under the obligation to follow the ICCPR guidelines and include the constitutional provision guaranteeing the right to compensation.

Not only compensation in many instances where preventive detention acts as a way of administrative and executive body is treating the detainee in in in human manner. The inhuman treatment given to the prisoners have led to the violation of the human rights law is well and can also be charged under the ambit of bodily injuries in the Indian penal code. In the international law, the universal declaration of human rights are given many directives and measures to curb the problem of inhuman treatment given to the prisoners or the detainees. It is sad that the administrative in the executive bodies have not been sensitised about various personal liberties.

20 detention has been a pressing priority by the political as well as the judicial bodies. According to the statistical data it has been shown that 6,605 people were detained since August 2019 in the issue regarding Jammu and Kashmir. Therefore it is said that preventive detention adhere to the principles of natural justice and must not be inappropriately used for political and personal

[70] *Article 22, The Constitution of India.*
[71] *International Convent on Civil and Political Rights,1979*

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usage. There should be appropriateness and proportionality in detaining any person for preventive intuition.

ADMINISTRATIVE TRIBINALS AND PRINCIPLES OF NATURAL JUSTICE

As said before, administrative tribunals have the power to exercise judicial as well as quasi-judicial functions. The central feature of this tribunal is that they decide the dispute independently, judiciary, objectively and without any bias for or prejudice against any of the parties to the dispute. It is observed that the administrative tribunal must perform all of its quasi-judicial functions as well as judicial functions in accordance with the principles of natural justice. Openly, fairly and impartially siding or giving any decision in accordance. In the leading case of **Union of India v. TR Varma**[72], the Supreme Court had observed that the tribunals have to observe the rules of natural justice to conduct any kind of enquiry before them. If they're not adhering to the principles of natural justice the same judgement on the ground that procedure was not followed in accordance with the court of law can be dismissed and impeached.

I.Decisions of Tribunal and Judiciary

It is said that no appeal, revision or reference against the decision of an administrative Tribunal is maintainable if you said right is not conferred by the relevant statute. Though jurisdiction of the High Court under Article 226[73] and 227[74] and jurisdiction of the Supreme Court under Article 32 and 136 of the Constitution cannot be taken away by any statute. Review can only take place if there is any violation of principles of natural justice or violation of fundamental rights which can be filed under Article 226[75] or 32[76] in the High Court and Supreme Court respectively.

Article 141[77] of the Constitution declares that "the law declared by the Supreme Court shall be binding on all the courts within the territory of India. This Article has a very wide scope and it will also apply to ordinary courts as well as administrative Tribunal. But there is no provision as

[72] *Union of India v. TR Varma, 1957 AIR 882*

[73] *Article 226, The Constitution of India.*
[74] *Article 227, The Constitution of India.*
[75] *Supra 73.*
[76] *Article 32, The Constitution of India.*
[77] *Article 141, The Constitution of India.*

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such given in regards to high court. Therefore, in the absence of any specific provision the same principle applies to judgements of High Court is well. High Court is the apex court of the state and also has a right as well as supervisory jurisdiction over all subordinate courts and tribunals. Therefore, if any tribunal acts without jurisdiction or exceeds the power laid down by the High Court, the High Court does have the jurisdiction to interfere with the action of the tribunal.

II. Doctrine of Legitimate Expectation

This doctrine is very important when the principles of natural justice and fundamental rights are concerned. The doctrine of legitimate expectation has been recognized in English as well as Indian legal system. The doctrine has an important place in the development of the law judicial review in regards to administrative decisions as well as discretion.

Even though administrative authority does not have the legal right in a private law to receive any kind of treatment it is the legitimate expectation of a person or being treated in a certain way by the administrative authority. Where in decision of administrative authority adversely affects the legal rights of an individual duty to Act judicially and in the rightful manner is implicit. Even if a person does not have legal right there is still an expectation of receiving a benefit or a privilege such expectation arises either from a promise or existence of a president. In such cases the court may protect his expectation by invoking principles which are similar to natural justice and fair play in action. The researcher interprets it that the court might not force administrative authority to Act judicially but might expect the administrative authority to Act fairly. Principles of natural justice will apply in cases where there is some right it's likely to be affected by the administration.

This doctrine is a public law remedy and says that every action of the state should be in conformity with Article 14[78] of the Indian Constitution. That is why is comes under the concept of rule of law. Fair procedure and just treatment are the core of our jurisprudence. Hence the state declares and holds a policy which promises to adopt a particular code of conduct which is the doctrine of legitimate expectation. Therefore, principle of natural justice is followed in the doctrine of legitimate expectation. Doctrine of legislative expectation has become an evolved to be a procedural as well as a substantive right. It always considers a view of larger public interest.

[78] *Article 14, The Constitution of India.*

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JUDICIAL REMEDIES

The administrative authorities have acquired a vast sense of discretionary powers and they generally exercise those powers to take decisions in the administrative Tribunal. The administrative body laid down statutory guidelines or impose conditions. The administration administers law is elected by the legislature and has performed executive functions. Therefore, they have all of the administrative discretion needed to provide for a welfare state. Administrative discretion and decision are up for judicial review. This means a procedure by which a court can pronounce on an administrative action by the public body this ensures that the authority does not abuse of power and every person and individual receives a just and fair treatment and the agenda if fulfilled. Shall review acts as a sober second thought for the actions and discretion of the administrative body. These reviews can be done by prerogative remedies or judicial remedies.

Remedies are given so that every person gets an adequate freedom to enable oneself to have an equal treatment in the eyes of law and to prevent any injustice from happening. As this research paper is in regards to principles of natural justice and fundamental rights of an individual by an administrative body the researcher will concentrate only on the constitutional remedies or the judicial remedies provided. Constitutional provisions have the locus stand die only when there is any enforcement of fundamental rights or any other legal rights. This can be done by the Supreme Court or the High Court who have the power to issue rates in the nature of Heabeas corpus, Mandamus, Prohibition, Quo Warranto and Certiorari. These are common remedies against violation of rights by state or statutory authorities and it is a remedy in public law. The research would like to lay down the basics of each writ.

I. Heabeas Corpus

The researcher would like to focus more on this particular writ as its related to the concept of preventive detention as discussed in the earlier chapters of this research paper. Writ of Heabeas Corpus is one of the most ancient writs. This Writ means order to call upon a person who has detained or arrested another person before the court to let the court know on what ground has been confined. The court may decide the validity, jurisdiction or justification in regard to such a detention. The object of this writ is effective remedy against illegal restraint and swift judicial

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review of illegal detention as spoken about in the chapters of preventive detention. "Finds that there is no reason to detail or particular person they might except the rate and maintain the rate and pass an order to set the particular person free. The main subject on which the writ of Heabeas corpus lies is if an individual was illegally detained or not? The most important case in this is ***ADM Jabalpur v Shivkant Shukla*** where the writ petition of Habeas Corpus was not allowed during emergency.

The application can be made of this writ by the person who has been illegally detained. It can also be made by any person who is close to the person has been detained however a person should not be a total stranger by filing an application. This application can be filed against any person or authority was illegally detained or arrested any person or an individual. It is also said that mere delay of applying the writ cannot take away the right of the petitioner to relief. In cases of preventive detention, the burden is on the authority to prove and justify the detention. Such cases should be done in a very expeditious manner as it is the matter of one's personal liberty under Article 21[79] of The Indian Constitution. While preventive detention, the court needs to strike a balance between the protection of the society and the liberty of a citizen. Heabeas Corpus is towards the Articles 14[80], 21[81] and 22[82].

II.Mandamus

Mandamus means a command. This command is issues by the supreme court or High court to Public authorities if they refuse to perform a public duty which is laid down in a statute. This refusal leads to violation of a legal right of a person. The main objective of this writ is to deliver justice and protect citizens by enforcing the duty created by the law. Mandamus is discretionary remedy and so the court may refuse to maintain this writ unless and until the main conditions aren't fulfilled. The main conditions for the grant of the writ of Mandamus are given down as follows:

[79] *Article 21, The Constitution of India.*
[80] *Article 14, The Constitution of India.*
[81] *Article 21, The Constitution of India.*
[82] *Article 22, The Constitution of India.*

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1) The petitioner must have a legal right, one cannot file this writ without having a prior writ. Person should have a legal right which has been violated by legal duty by someone who abstain from doing something.
2) Second requirement for this rate is that the opposite party must have a legal duty to be performed. A legal duty which is not discretionary or optional but a mandatory legal duty. Such duty must come out of a statute or Constitution or any other rule but should not be contractual in nature. Writ of mandamus can be issued only for an enforcement of a duty which is not performed and which is in public nature.
3) There should be a refusal to perform that legal duty which then affects the legal rights of a particular person. There also must be a demand made to fulfil the particular legal duty to attain one's legal right. Such denial can however be express or implied.
4) Location must've been made in good faith and not to fulfil any Alterio or personal motive.
5) This should be the last resort. The petitioner must extinguish all the other areas of attainting justice. There should be no alternative remedy.

III.Prohibition

Deliberation is an extraordinary rate which is preventive in nature. It seeks to prevent colds Tribunal and other authorities from exceeding their jurisdiction. It is used against any judicial or Cosi judicial authority when they exceed the jurisdiction which they do not have. The High Court or the Supreme Court prevents the exercising of jurisdiction which is not in their own boundary. The objective of this writ is to restrain the courts Tribunal and other authority from exceeding their jurisdiction and exercising power which are not vested in them. It acts as a power of superintendence over the inferior court or the tribunal to keep them within the limits.

Prohibition can also be used violation of principles of natural justice. In fact, if principles of natural justice have not been observed for example if there is a bias or prejudice on the part of the judge then the court will have a new jurisdiction to proceed with such a matter. The same can also be used when there is any infringement of fundamental rights. Any important judgement which infringes or violates fundamental rights can be taken down on the basis of that being arbitrary and violative of constitutional fundamental rights.

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IV.Certiorari

This means to certify. The objective of this writ is to keep inferior court or any Quasi- judicial tribunal or authority is within the limit of their jurisdiction and if they Act against the jurisdiction the same can be quashed by the superior courts by issuing the said writ. The writ of prohibition and certiorari is very similar in nature. The principal difference between the two is one is filed before the decision and one is filed after the decision taken by the court. Both are very complimentary in nature and frequently go hand-in-hand in any particular case. Prohibition is a preventive writ whereas the other is a remedial or a corrective one. Certiorari applies once the decision has already been taken whereas prohibition is applied before any decision is taken. Certiorari is for quashing a decision which has already been passed whereas prohibition is for restraining any continuance of wrong jurisdiction. It can be filed when the court acts without any jurisdiction or excess of his jurisdiction. When there is an error of law on the face of the record by the decision taken by an inferior court or a tribunal. It can also be filed with this violation of principles of natural justice.

V.Quo Warranto

This writ is issues against a person who is an illegal occupant of a public office. This means this is issued against an intruder of a public office. This intruder misses used or abuse the office and so can be removed. It literally means what is your authority? By issuing this kind of a writ a person then called upon the person to show the code by what authority he holds the office. If the holder has no authority to hold the office you can be removed from such an enjoyment this also protects a person who is entitled to have their office but is deprived of the same. In many cases the court enquires the motive of the applicant before granting he relief. There are four basic conditions that needs to be fulfilled before filling for a writ of Quo Warranto. The conditions are herewith mentioned below:

1) Such office must be of public nature.
2) It must be of a substantive character.
3) It must be statutory or constitutional in nature.
4) The holder must be an actual occupation of the office and must have the right to claim it. The mayor working under someone is not to be under the ambit of actual occupation.

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The real test is when is a person holding the office is authorised to hold the same or not. Any delay in filing the said application does not harm the relief to be granted to the petitioner.

From the aforesaid discussion, it is clear that with a view to ensure that the adjudicating authorities and the executive wing of the state exercises power within the limit of law and do not abuse or miss use their jurisdiction the law of the land is provided sufficient safeguards. Any aggrieved party may invoke his or her statutory remedies if their fundamental rights, legal rights or principles of natural justice are violated.

CONCLUSION & SUGGESTION

As India is a welfare state, it is the responsibility of all the administrative adjudicating bodies to work in rapid pace and provide justice as per needs of people. Since principles of natural justice are not statutory in nature their interpretation changes form case to case basis. Under Article 14[83] and 21[84], they firmly and strongly deal with principles of natural justice and if violated leads to arbitrariness. The paper also proves how violation of natural justice is a subsequent violation of Article 14[85] under violation of equality. Therefore, it can be said that natural justice relates to a human behavior of good conscious and equality. If the state doesn't discharge its function in a just and fair manner the Rule of Law would lose its validity.

As India is a welfare state the administrative which is under the ambit of executive has a lot of discretion to make regulations and guidelines. Such administrative discretion is been challenged in the administrative tribunal. Though there is no guideline as to the principles of natural justice or fundamental rights being followed in such tribunal, it is implied that the tribunal is a quasi - judicial body and are akin to the judicial courts. It is their duty to follow principles of natural justice and uphold the fundamental rights of every individual. Though there are check and balances maintained by the judiciary towards the administrative discretion as well as tribunal in the said matter. These checks and balances are done in many ways as shown above by the way of writs. This is how administrative law has been constitutionalised in the Indian Supreme court via precedents if administrative tribunals failed to comply with the principles of natural justice and fundamental rights.

[83] *Article 14, The Constitution of India.*
[84] *Article 21, The Constitution of India.*
[85] *Supra 83.*