

Judicial Review of Administrative Action

AMITA DHANDA

NALSAR UNIVERSITY OF LAW

HYDERABAD

Scheme of the lecture

- Administrative law and various model to realise its goals
- Significance of the Green Light Model
- What is meant by the Red Light Model
- What is administrative action and judicial review
- Review of conferral and exercise
- Fundamental rights touchstone for both conferral and action
- Principles guiding the exercise of administrative action
- Procedures guiding the exercise of administrative action
- Relevance of this information to your job

What is Administrative law and what are the various approaches to realise its goals

- Administrative law is concerned with the rightful exercise of power
- **Administrative Law is generically codified**
 - How a power is to be exercised is laid down in a legislation and across statutes and sectors the conferred power is to be exercised in accordance with
- Requirements of Administrative law are woven into each statute
- Administrative Law has no fixed terrain
 - Grievances are addressed
 - through a green light model
 - Or a red light model

Significance of the Green Light Model

- **In the Green Light Model**

- the administrators have anticipated the fact of conflict, disagreement grievance

- and have woven a way of addressing it within the system

- The effort here is to act in such manner that

- as far as be let a dispute not arise

- if it does let it be resolved within the system

- watch the fire

- instead of fire-fighting

The Red Light Model

- When power is wrongfully exercised
- The aggrieved person goes to an external system like the courts and asks for reprieve
- We do not have a Code so the demands of Administrative Law are spelled by the Courts
- It is this articulation of judge made law is what we study when we look at judicial review of Administrative Action

What is administrative action?

- Those powers that need to be exercised to perform generic role responsibilities
- Exercise of discretion
- No set answer for every situation
- Principles not rules guide the exercise of the power

What is meant by judicial review?

- Distinction between review and appeal?
- Why review?
- Oversight not substitution
- Limitation of judicial review
- Judgement of the person on the spot is critical

Judicial Review

- Happens at two junctures
 - in the manner in which power has been conferred on an authority
 - in the manner in which a power is exercised
- One way of testing these powers in courts by examining if they breach fundamental rights
 - any law in breach of fundamental rights is bad in law
 - fundamental rights place the limitations of the rights on the exercise of power
- The other is the principles and procedures set out by the Courts

Principles Guiding the Exercise of Power

- Based on relevant not irrelevant considerations
- For proper purpose
- Not malafide
- Using your own judgement , not acting under dictation
- Discretion must be exercised not fettered

Procedure Informing the Exercise of Power

- The question of bias
- The obligation to providing hearing
- Duty to provide reasons

Relevance of Information to your job

- This is what the law requires and expects you to do
- Whether to do it or not always remains your choice
- There will be a lot of structural constraints in acting according to the law
- At the same time singular choices are possible
- Those singular choices can be self-serving or serving the most powerless.