**AN ANALYSIS ON THE MODERN GROUNDS ON JUDICIAL REVIEW OF ADMINISTRATIVE ACTION IN SRI LANKA**

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Introduction

Judicial Review of administrative actions is based on various principles in administrative law.Doctrine of ultra vires is not the basis of judicial review. (Marsoof, 2005) The basic acceptance is that public power should be subjected to some control in the process of judicial review (Gomez, 2001). The judiciary has played a creative and imaginative role in developing the grounds of judicial review. Simultaneously, it has paid its attention on both upholding the principle of rule of law in the country and protecting the substantive rights of the individuals. Grounds of judicial Review are varying in Sri Lanka according to the gradual development of the core principles underpinning administrative law. Sri Lanka handles this matter with a written constitution and concepts like rule of law are enshrined in the constitution although the same wordings are not included. This paper explores about the modern grounds on judicial review of administrative action with regard to Sri Lankan context.

Methodology

The extended literary review methodology is used as the research methodology of this research**.**

RESULTS AND DISCUSSION

Doctrine of Ultra Vires and Judicial Review

In the judicial review argument, some scholars like A.V. Dicey, Wade and Forsyth (Wade & Forsyth, 2009) have mainly focused on upholding the sovereignty of parliament and ultra vires as the only ground for judicial review while the scholars like Paul Craig (Craig, 1998) T.R.S Allan (Allan, 2011), Mark Elliot (Elliott, 1999), Lord Woolf and John Laws argue that there are some more grounds and principles that could be applied and may have already been used by the court, apart from the doctrine of ultra vires for judicial review like rule of law, legitimate expectation and proportionality in the light of its commitment to secure principles of constitutionalism. It has very clear diverged path namely the writs and fundamental rights. Writs are descriptively mentioned in Article 140,154.P (4) in the Constitution. Fundamental rights guaranteed by the chapter III of the constitution with Article 126 of the constitution regarding the breach of fundamental rights. Sri Lanka has developed various grounds for judicial review from time to time namely public trust doctrine and public interest litigation, proportionality, legitimate expectation, natural justice and right to equality by the active and creative contribution of the judiciary. Mainly it is also focusing on the right based approach in judicial review. In the next parts of this paper it will be discussed that how the basis of judicial review has changed in Sri Lanka, development of the grounds for it independently but with the ultimate purpose of ensuring the rights of the people by controlling the administrative actions for a fair and good administration.

History of the Judicial Review in Sri LankaThe origin of judicial review of Sri Lanka goes back to Ceylon charter of 1802. Subsequently, it could be found with Ceylon Charter of Justice in 1833 and Administration of Justice Ordinance No.11 of 1868 and Courts Ordinance. The ultimate purpose of these Ordinances was to confer power to the Supreme Court to examine whether the inferior courts or other decision-making quasi judiciary institutions have given their decisions "according to the Law."

This is done by the Court of Appeal by issuing writs namely Certiorari, Prohibition, Procedendo, Mandamus, and Quo-warronto. That means court of Appeal has full power to and authority to inspect and examine the records of inferior courts or institutes or persons who are engaged in that task. Then the question about above mentioned "according to the Law" arose and that was solved in two main cases, Abdul Thasim vs. Edmond Rodrigo (1947) and Nakkuda Ali vs. Jayarathna (1950). As per those two cases cited "according to the Law", the “Law” signifies the English Law. Accordingly, the court was under the responsibility of issuing writs according to English Law.

The next turning point of writs deals with the Sri Lankan Constitute in 1978. It clearly provides provisions related to writs. Article 140 empowers the High court and article 154(P)4 empowers the Provincial High Court with the power to issue writs.

Development of grounds of Judicial Review in Sri Lanka

1. Public Trust and Public Interest Litigation.

It is an accepted principle that the government holds property as a public trust on behalf of all the citizens in that country. In Mundy vs. Central Environmental Authority and others (2004) it has stated that "Administrative acts and decisions contrary to the "public trust" doctrine and/or violative of fundamental rights would be in excess or abuse of power, and therefore void or voidable."

In Environmental Foundation Limited vs. Urban Development Authority (the Galle Face Green case) (2005), and Sugathapala Mendis and Others v. C.B. Kumarathunga and others (Waters Edge Case) (2009) this concept is well applied. In former case Bennet Rathnayake vs. Sri Lanka Rupawahini Corporation (1999) it is clearly stated that when it holds a trust for the public it has to be exercised for the benefit of the public. In Premachandra vs Major Montague Jayawickrama (1993) the same idea is emphasized.

Public Interest Litigation discusses about standing and filing a case on behalf of the aggrieved party or a person is accepted by the court. Having special link with matter bringing to the court is not necessary to file this type of case. In Bulankulama vs. Secretary, Ministry of Industrial Development (2000) the respondents argued that this case has the nature of public interest litigation and according to our constitution there is no permission to file such kind of cases. But the court did not accept this and has paid its attention towards the rights of a common group, breached by the decision taken by the government. Here we have to concentrate on the prior decision taken by the court in Durayappa vs Fernando (1969) about 'standing'. So the Bulankulama case is a very good example for the changing of the articulation of law towards rights based approach through widening one of the bases of judicial review. And Bulankulama case was the first case which interpreted that sovereignty was borne by the public authorities for the sake of people and they are only temporary bearers of those powers. Therefore, such powers must be exercised for the well-being of the people.

1. Legitimate Expectation

In this, the court will seek if there is a breach of the reasonable expectation of a citizen by a decision of a public authority. Although this is considered as a ground for the judicial review legitimate expectation for unlawful past practice is not recognized by the judiciary. It was emphasized in Surani Sahabandu vs, Professor S Thilakarathne (1999). But on the contrary, Piyadasa vs. Land Reform Commission (1998) the court has proclaimed when there is accepted process and it must be preceded without any unfair, unjust procedure. And if the public authority has not followed that process there is a violation of legitimate expectation of the public. Similarly, it was decided in Dayarathna vs. Minister of Health (1999) that abruptly changing the accepted policy is a violation of the legitimate expectation of the ones who made trust on the prior policy. Therefore, the Judiciary has always given the priority to the legal legitimate expectations of the people as a ground of judicial review.

1. Proportionality

Lord Diplock in R vs. Goldsmith has stated "You must not use a steam hammer to crack a nut if a nut cracker would do"

As this statement correctly spells out, the decision maker should not use the discretionary power in an excessive way in decision making. In Premarathne vs. University Grants Commission (1993) the idea of proportionality between the offence and punishment is highlighted. Again in Caldera vs. University of Peradeniya (2004) on the basis of the gravity of the offence the given punishment to suspend the studentship for three years was reduced to one year. In Premawathie vs Fowzie (1998) it was decided that the punishment was disproportional. In recent cases like Niendra Fernando vs. Ceylon Tourist Board (2002) Justice Gunawardhana has stated "...there has been and remains some uncertainty as to the extent to which the notion of 'proportionality' may or should be considered to be a ground of review." More similarly in N.V.Gunarathna vs. Sri Lanka Land Reclamation and Development Corporation and others (2007) Justice Anil Gunarathne has accepted this as a ground of judicial review by stating " ...the petitioner's submission on proportionality is a recognized principle in Administrative Law…………"

In many fundamental rights cases this ground is used very progressively to examine whether the public body has taken the decision in the right manner. Thus, this is a developing ground of judicial review as Justice Anil Gunarathne stated in above case.

1. Natural Justice

This is related with the procedural fairness. “Audi alteram partem rule" must be applied there. In the history of Sri Lankan judiciary former cases like Nakkuda Ali vs. Jayarathne (1951), Hassan vs. Controller of Imports (1967), Fernando vs Jayarathne (1974), it was decided natural justice is a very narrow way. In first two cases, decision was that only the judiciary or quasi judiciary bodies have the responsibility to follow natural justice. But this narrow view of judiciary has widened by series of cases like Dissanayake vs. Kaleel (1993), Nanayakkara vs. University of Peradeniya (1985) and Amarasinghe vs. Board of Directors. In the present context it is accepted that all the bodies which exercise power and discretion must take decisions according to natural justice. According to Sirisena Cooray vs. Tissa Dias Bandaranayake (1999) and many other cases have adopted that there is nothing like untrammelled or unfettered discretion in public law.

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v) Right to equality and equal protection of the law

Ensuring fundamental rights of the citizens is one of the main objectives of any government. If a fundamental right of a citizen is violated by an act of the public authority it must be ensured by the court immediately. Because public authorities are exercising the power which is given them by relevant acts. In addition to writs the contemporary trend is challenging the decisions of public authorities from the light of article 12(1) of the constitution. The concept of rule of law encompasses by the article 12(1) of the constitution. In most recent Visal Bhashitha Kavirathne (2012) case Chief Justice Dr. Shirani A. Bandaranayake has stated that "…which resulted in the failure to rank the most suitable candidates for admission to Universities is arbitrary, unreasonable, irrational, and unjustifiable and is in violation of the petitioners’ fundamental rights guaranteed under Article 12 (1) of the Constitution." Many decisions of the public authorities now question before the Supreme Court with the light of Article 12(1) of the constitution and it has become an emerging trend now. In those cases, all the bases we discussed in granting writs by judicial review are considered. Therefore, the base of that article 12(1) has become more significant and it has a value of discussing the above matter further.

After introducing the constitution of 1978 there was a clear foundation for judicial review going beyond the writs mentioned in article 140 and 154(P) (1). But the superior courts have paid attention on articulating the law related to using public power by the public authorities with the attention to protect fundamental rights. The fundamental rights chapter which is included in the constitution and the article 126 which includes the remedy for violation of fundamental rights give a very strong foundation to prove that Sri Lanka has already is drawn its attention towards the right based approach when reviewing the administrative actions. And another way this is a way to uphold the rule of law of the country through equality before law. In the case Perera vs Prof. Daya Edirisinghe (1995) it has mentioned that "Article 12 of the constitution ensures equality and equal treatment even where a right is not granted by common law…“In Dissanayake vs. Kaleel (1993) Supreme Court has driven its attention towards principles of natural justice from the light of article 12(1) of the constitution.

vi) Judicial Review and Private Entities

Special attention must be given to the expansion of the judicial review towards the private entities which are exercising the public power in Hemasiri Fernando vs. Mangala Samaraweera (1999). It was questioned about dismissal of the chairman of Sri Lanka Telecom. Although Sri Lanka Telecom is not a government body as it exercises public power and performing a public function expanding the writ jurisdiction to such entity was questioned. In Bulankulama vs. Secretary, Ministry of Industrial Development (2000) the power of the Supreme Court related to judicial review was widened towards the private entities. In Harjani vs. Indian Overseas Bank (2004), the writ jurisdiction was applied in the private sector and Justice Saleem Marsoof granted a writ to review a resolution passed by the Indian Overseas bank.

conclusions / RECOMMENDATIONS

This research reveals that Sri Lanka has moved to rights-based approach now. It has surpassed the idea that the sole ground for judicial review is ultra vires. Sri Lankan judiciary has developed various grounds for judicial review from time to time namely public trust doctrine and public interest litigation, proportionality, legitimate expectation, natural justice and right to equality by the active and creative contribution of the judiciary. But in this research, it is revealed that there are no common criteria for judicial review. As a country which is practicing constitutionalism with a written constitution, reviewing the constitutional articles by the judiciary in a rights - based approach is a very progressive step. But some disputes can be occurred in the future by not having a unitary code for judicial review such as the uncertainty as to whether the courts will always follow the same approach in order to ensure rights of individuals. For an example, expanding the power of granting writs to private entities was a new creation of judicial review. But if all judges are not depending on the same grounds there may be an ambiguity in the grounds of judicial review. Therefore, the trust of the people towards the judiciary will be weakened. Accordingly, it is important to establish a written guide on the rights-based review of administrative actions by courts in Sri Lanka. To improve this progressive trend, codifying these grounds as directive principles for the judiciary will be more useful for the future. But in that process, there is a risk of interrupting the creative and imaginative process of judiciary by imposing rigid restrictions upon judiciary.

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