

Judicial Control of Administrative Action towards Administrative Justice in Bangladesh

Taslima Khanam 

International Islamic University Chittagong (IIUC), Kumira, Chittagong, Bangladesh
Email: Law4humanity@gmail.com

How to cite this paper: Khanam, T. (2022). Judicial Control of Administrative Action towards Administrative Justice in Bangladesh. *Beijing Law Review*, 13, 97-110. <https://doi.org/10.4236/blr.2022.131006>

Received: February 8, 2022

Accepted: March 8, 2022

Published: March 11, 2022

Copyright © 2022 by author(s) and Scientific Research Publishing Inc.

This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

Since its emergence as a nation-state, Bangladesh has been trying hard to re-shape its administrative actions to meet citizens' needs, maintain social order and attain the goals of human society. Now, public administration is to play a pivotal role, exercising a huge bulk of power and actions related to the aspect of individual's life. It is today not concerned with only pure administrative functions, it occasionally also discharges a large volume of quasi-legislative and quasi-judicial functions. Consequently, there are numerous occasion of failure of fair acts and decisions that arbitrarily affects the citizen. In this sphere, development in the administrative justice system is desirable. Following the qualitative method through the textual analysis of laws and cases, to explore a multitude of principles for regulating the functions of the administrative bodies, this study critically reviews the mechanism of judicial control of administrative action in Bangladesh and seeks to find out the problems and prospects of judicial review as the major means for controlling administrative action towards the establishment of administrative justice in Bangladesh.

Keywords

Administrative Action, Judicial Review, Tribunal, Administrative Justice

1. Introduction

Improving an administrative justice system can make a nation fairer and more equal. How a country enables people to seek redress against public bodies is an indicator of its approach to the values of equality and dignity. It is something which becomes crucially evident when an administrative justice system fails. Hence, two important aspects that administrative law deals are firstly, the control mechanism over the administration and secondly, reliefs when the legal right of an individual is infringed by any administrative action. To ensure con-

trol and relief, judiciary plays a significant role in any legal system. Bangladesh is not an exception to this, which adopts a system of Administrative Tribunal as a separate branch expecting to take the load off from not only ordinary Courts but also from Higher Court. However, nowadays, a large number of administrative actions are also being reviewed by the higher courts through writs under article 102 of the Constitution and also in the name of Public Interest Litigation (PIL). Hence, how judicial control over administrative actions prevents the exercise of arbitrariness and ensures the application of rule of law in Bangladesh is the study area of this paper. Findings of the study unearth some defects or imperfections of such control and suggest some effectual measures that are needed to prevent miscarriage of administrative justice; and protect and promote people's rights and liberty. Hence, this study is assumed to help future researchers and assist in doing further research on administrative justice in Bangladesh perspective.

Objective of the study is in general: to evaluate the judicial activism controlling administrative actions in prevention of the arbitrary exercise of power. In this study, qualitative method is followed through case studies to explore a multitude of principles put forward by the courts for regulating the functions of the administrative bodies in different dimensions that has greatly contributed to the growth of administrative law in Bangladesh. The study is descriptive in nature and also a pure legal study (Kritikal & Kehakiman, 2018) which is based on extensive literature review on administrative law including Statutes, case laws, and secondary sources in this regard. Rules of interpretation of statutes, documents analysis and personal observations are applied as data analysis strategy.

2. Background of the Study

The research method adopted is a critical textual analysis of the relevant literature (Goldswain, 2017). Literature reviewed constituting the background for this study is presented thematically and includes nature of administrative actions, administrative tribunals in Bangladesh and the mechanism of judicial review of administrative action in Bangladesh.

2.1. Nature of Administrative Action

Administrative action, according to Robson, consists of those activities which are directed towards the regulation and supervision of the public affairs and the initiation and maintenance of public services (Willis, 1935: pp. 53-81). In *A. K. Kraipak Vs. Union of India* the court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see the nature of power conferred, to whom power is given, the framework within which power is conferred and the consequences.¹ The bulk of the administrative action is statutory because a statute or the Constitution gives it a legal force but in some cases it may be non-statutory, such as issuing directions to subordinates not having force of law but its violation may

¹(1977) 3 SCC179.

raise disciplinary actions.

2.2. Administrative Authorities and Tribunals in Bangladesh

Administration is a method for the fulfillment of ends laid down by political authorities. The administrative process is a seamless web of discretion and action, which involves the whole government organism, right from the people and parliament from the lowest employee at the base.

- **The Executive of Bangladesh:**

In Bangladesh, The president is the titular head of the executive although all executive actions of the Government shall be expressed to be taken in the name of the President (art.55.4). Because, article 48.2 runs as the President shall, as Head of State, take precedence over all other persons in the State, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law. But the latter clause (48.3) puts “In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister.”

The distinct and basic feature of the Bangladesh constitution is the introduction of the Cabinet or parliamentary form of government in the country. And under this system, the real executive (Islam, 2002: p. 301) is the Prime Minister and the Cabinet,² because the Cabinet is the real policy making organ with the council of Ministers (Mujibur Rahman vs. Bangladesh). The Cabinet is the core of our present constitutional system.

- **Administrative Tribunals:**

According to Article 117 (1) of the Constitution of Bangladesh, Parliament may by law establish one or more administrative tribunals. In pursuant to these provisions, the Administrative Tribunal Act, 1980 was passed by the parliament. An administrative tribunal consists of one member appointed by the government from among persons who are or have been District Judge. The first administrative tribunal was established in Dhaka in 1982, second tribunal established at Bogra in 1992. It is widely believed that they are one of the by-products of an age of intensive form of government. It is also provided that when any administrative tribunal is established, no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal provided that Parliament may by law, provide for appeals from, or the review of, decision of any tribunal.³ So, it envisages that “no court shall entertain any proceedings or make any order in respect of any matter falling within the jurisdiction of such tribunal” (Sampath Kumar .vs. Union of India).

A question, however, arises whether this proviso takes away the jurisdiction of the High Court Division to issue an order, in the nature of writ under art. 102. In the case of *Mujibur Rahman vs. Bangladesh*, it was held that the tribunals are not meant to be like the High Court Division of the Supreme Court or the subordi-

²Article 55 (1) of the Bangladesh Constitution.

³Article 117 (2) of the Constitution of Bangladesh.

nate court over which the High Court Division of the Supreme Court exercises both judicial review and superintendence. The tribunals are not in addition to the courts described...they are set a part, as *sui generis*, in a separate chapter. With regard to the jurisdiction of this tribunal, M.H. Rahman, J. observed that within its jurisdiction, the tribunal can strike down an order for violation of Principles of natural Justice as well as for infringement of fundamental rights, guaranteed by the Constitution, or any other law, in respect of matters relating to or arising of sub-clause (a), but such tribunal cannot, like the Indian Administrative Tribunal in exercise of a more comprehensive Jurisdiction, strike down any law or rule on the ground of its constitutionality.⁴ He further puts that “a person in the service of Republic who intends to invoke fundamental right to challenge the *Vires* of law will seek his remedy Under Article 102 (1), but in all other case he will be required to seek remedy under Article 117 (2)” (*Abdul Latif v. Bangladesh*). In another occasion, Shahabuddin Ahmed, C.J. with reference to the above case held that from the facts of this case that the question of fundamental right invoked therein has been so mixed up with the facts and statutory rules that the question of fundamental right cannot be extricated for exclusive consideration. In another episode (*Mujibur Rahman vs. Bangladesh*), a question was raised as to whether civilian employees in the Defense Services can file a case before the Administrative Tribunal. The Administrative Tribunal held that it had no jurisdiction to entertain the case. This contention was rejected in the higher judiciary wherein Mustafa Kamal, J. argued in the judgment that ‘they are civilian employees in the defense services. The administrative Tribunal was obviously not correct in holding in the cases filed by the petitioners that they belonged to defense services. Against the said mistaken order of the administrative tribunal, the petitioners were at liberty to prefer appeals before the administrative Appellate Tribunal within two months from the date of making of the orders. In explaining the power of “rehearing” by the tribunal, it was held that “as the decision pronounced on June 12, 1989 was not made as per sub-rule (9) of rule 6 of the Rules, it did not reach any finality. The Appellate Tribunal did not become *functus officio* on that date and it had the jurisdiction as an adjudicating body to recall that decision subsequently and order for rehearing.”⁵ Only the Appellate Division of the Supreme Court can modify, vary or set aside the decisions of the administrative appellate tribunal. However these tribunals are also to some extent overloaded and the rate of disposal of cases is very low. The disposal rate of the Appellate Tribunal is also not high.

2.3. Judicial Control of Administrative Actions in Bangladesh

In Bangladesh, there are two types of remedies against the administrative wrongs. They are public law remedy of judicial review through writs and private

⁴ibid.

⁵Sec. 6A, the Administrative Tribunal Act of 1980. However, the Administrative tribunal (Amendment) Act, 1991 added section 6A which allows the Appellate Division to hear and determine appeals from the decision of the Administrative Appellate Tribunal.

law remedy of suits. In this part, an analytical enquiry is attempted to dig into the means and ways of access to administrative justice of the country.

- **Public Law Review of the Administrative Actions through Writs:**

In Bangladesh, public law review of administrative action is exercised through writs under Article 102 of the constitution. However, these writs are possible only when there is no other efficacious remedy provided by the law. Writ means “A court’s written order, in the name of the state or other competent legal authority, commanding the addressee to do or refrain from doing some specified acts” (*Abdul Jalil v Sharon Lialy*). However, Article 102 of the constitution has conferred the HCD original jurisdiction to issue certain writs in the nature of *habeas corpus*, *mandamus*, *certiorari*, *quo-warranto* and prohibition.

Writ of Habeas Corpus

The phrase “*Habeas Corpus*” means “has his body” i.e. to have the body before the court. It is a judicial process by which a person who is confined without legal justification may secure a release from his confinement. Thus, the writ of “*Habeas Corpus*” is a process of securing personal liberty by releasing a person from unlawful detention of any higher administrative authority, whether in prison or “executive custody” or “private custody”.⁶ Article 102 (2) (b) (I) of the constitution of Bangladesh invests the High Court division with power and obligation to issue a writ in the nature of *habeas corpus* when a case of unlawful detention is made out. So, the writ will not be allowed if there is no illegal confinement. It also provides that on the application of any person, the court may direct the person having custody of another to bring latter before it so that it can satisfy itself that the detention is not being held in custody without lawful authority or in an unlawful manner. It is submitted that the High Court Division is empowered to issue the order of release of a person in custody under s. 491 of the Code of Criminal Procedure, 1898. Additionally, this power can also be exercised *suo moto* (*Islam, 2002: p. 547*). Bangladesh has constitutional and statutory provisions (*Ghulam Jilani v West Pakisthan*) for preventive detention in which it is clear that the communication of grounds by the detaining authority to the *dete-nu* is “not mere formality but intended as a *post facto* compliance of the principle of natural justice” (*Chunnu Chowdhury v DM.*). Most importantly, it is aptly argued that if the initial detention is illegal, the illegal detention cannot be continued by a subsequent valid and legal detention order. Supportively, it was held that the reasons state in the initial detention n order cannot be a substitute of the ground required to be communicated (*Sunil Batra II v. Delhi Administra-tion*). This remedy is intended to protect the liberty and freedom of people which is one of the core concepts of Bangladesh polity. By virtue of this instrument, law enforcement agencies or other such statutory authorities are empowered to bring the custody of the person who has been wrongfully detained by what so ever in order to let court know on what ground he has been confined; and to set him free if there is no legal justification for the confinement. It is also

⁶Art. 33 (3.b) of the constitution and s. 3 of the Special power Act, 1974.

to be made lucid that this remedy in case of illegal detention culminates in the payment of monetary compensation. Actually, it is widely thought that “*habeas corpus* writ has been favored as most effective weapon for the release of detainee detained under illegal order of the executive authority” (*Aruna sen v. Bangladesh*).

Writ of Mandamus

The term “*mandamus*” means “we command”. It is a judicial remedy issued in the form of an order to any constitutional, statutory or non-statutory agency to do that which is required by law to do. This writ is issued to the administrative authority also for keeping that authority within its scope and legal bounds. The second part of clause (2) (a) (1) of Article 102 of the constitution is the constitutional basis of the writ of *mandamus*. It confers the powers on the High Court Division to issue writs in the nature of *mandamus* to compel a person performing public function or statutory duty or a public authority to do something that he or that authority is required by law to do. Generally, this form of judicial remedy orders the Government, any Court, Corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing. It can, therefore, be invoked when these authorities entrusted with the public duties fail to discharge its obligatory duty. Purposively, it may even be applied when the government authorities vested with absolute powers fail to perform their administrative and statutory duties. Basically, *mandamus* is a summary writ issued from the proper court commanding the public authorities to which it is addressed to perform some specific legal duties and to which the party applying for the writ is entitled of legal right to have performed (*Nazmul Huq v. Deputy Commissioner*). It is submitted that art. 102 of the constitution do not require that the applicant for *mandamus* must have a specific legal right; the only requirement is that he must be an aggrieved party. Accordingly, under art. 31, any person being affected by the failure of public functionary to do a legal duty has a specific legal right to claim performance of that duty. This writ can also be issued against the public officials like police if they exercise their power *mala fide* and arbitrarily (*R. v Saint Martin’s Gaurdians*). In this regard, what is mandatory is that such a person must hold office of a public nature (*Abu Taher Mia vs. Faiz Uddin*). However, an alternate remedy is dissuasive to the courts while issuing *mandamus*. Besides, it is not issuable against a private individual or person working in ministerial capacity. The court will not enquire into the merit of the administrative discretionary decisions until and unless they are made without or excess of jurisdiction or are *mala fide* or based on extraneous consideration. Moreover, it is apt to state that albeit somewhat digressively that *Mandamus* cannot lie against legislature to enact certain laws or not to enact for which it is competent to enact.

Writ of Quo-Warranto

The term “*quo-warranto*” means by what warrantor or authority. A writ of *quo-warranto* can be filled by any person to challenge the appointment of a person to a public office, whether or not he has a personal interest in it. It is a judi-

cial remedy against an occupier or usurper of an independent substantive public office of franchise or liberty. It was observed that such an office must be a public office of a substantive character created by the constitution, statute or statutory power (*Sonu Sampat Shewale v. Jalgaon*). By the writ, it is asked: “by what authority (*quo-warrantor*)” he is in such office, franchise or liberty. If the answer is not satisfactory to the court, the usurper can be ousted by an order of *quo-warranto*. In Bangladesh, art.102 (2) (b) (I) of the constitution is the constitutional basis of the writ of *quo-warrantor*. It provides that on the application of any person the High Court Division may inquire whether a person holding or purporting to hold any public office is holding it under a legal authority. Any person can challenge the validity of an appointment to a public office, whether any fundamental right of that person has violated or not (*Talukder, 2011: p. 93*). But it has to be satisfied that the application is made bona fide. It was observed that “if the appointment of an officer is illegal, every day that he acts in that office, a fresh cause of action arises and there can be therefore no question of delay in presenting a petition for *quo-warranto* in which his very, right to act in such a responsible post has been questioned.”⁷

Writ of Prohibition

Prohibition is another kind of writ intended to prevent any person or authority from doing the unlawful activities. It is a judicial order issuable to any constitutional, statutory or non-statutory agency to prevent these agencies from continuing their proceedings in excess of their jurisdiction or in contravention of the law of the land.⁸ Article 2 (a) (1) of the constitution of Bangladesh confers a jurisdiction roughly corresponding to the jurisdiction of issuing writs of prohibition. It is an efficacious and speedy remedy where a person does not desire any other relief except to stop the administrative agency. An alternative remedy does not bar the issue of this writ. It can be issued even when the matter is decided to stop the authority from enforcing its decision. The writ in the nature of prohibition lies where a tribunal proceeds to act without or in excess of jurisdiction, in contravention of some statute or the principles of common law, In violation of the principles of natural justice, under a law which itself is *ultra vires* or unconstitutional, and in contravention of fundamental rights.

Writ of Certiorari

The term “*certiorari*” means “to be certified” or to be more fully informed of. Wherever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority, they are subjected to the controlling jurisdiction of the HCD exercised in this writs. So, although a writ of *certiorari* can be issued only when the action is judicial or quasi-judicial and is no more valid, *Certiorari* can also be issued to quash actions which are administrative in nature (*Takwani, 2006: p. 280*). Art. 102 (2) (a) (ii) of the Constitution is the basis of writ of *certiorari*. According to this Art., the HCD may, if satisfied that no other efficacious

⁷ibid.

⁸AIR (1955) SC 233.

remedy is provided by law, on the application of any person aggrieved, make an order declaring that any act done or proceeding taken by a person performing any function in connection with the Republic or of a local authority has been done or taken without lawful authority and is of no legal effect. A writ of *certiorari* can be issued on the grounds of defect of jurisdiction, violation of principles of natural justice, error of law, vices of the statute and abuse of discretionary power etc. So issuing a writ of *certiorari* unlawful administrative actions are declared illegal. It is the judicial remedy which may, on certain grounds, declare a legislative enactment or delegated legislation unconstitutional or void. The grounds for which *certiorari* lies are more or less the grounds for the case of *mandamus*. They include, *inter alia*, the defect, excess, abuse, misuse or lack of jurisdiction, violation of principles of natural justice, error of law, *vires* of the statute etc. However, certain limitations are placed on the issue of writ of *certiorari*. In respect of substitution for a new order, Indian Supreme Court held that “the court issuing *certiorari* to quash, however, could not substitute its own decision on the merits or give directions to be complied with by the court or tribunal. Its work was destructive, it simply wiped out the order passed without jurisdiction, and left the matter there.”⁹ *Certiorari* is usually maintainable against inferior courts and not against equal or higher courts. In elucidating the ambit of it, one of the most crucial things ought to be un-equivocated that the authority against whom a *Certiorari* order is made must exercise judicial or quasi-judicial functions, not purely administrative functions. Since today’s administrative bodies are conferred with a large bulk of quasi-judicial functions, it basically operates as a check to the power of such public functionaries.

- **Judicial Principles in Public Law Review of Administrative Actions:**

- ***Doctrine of Legitimate Expectation:***

The doctrine of legitimate expectation operates as a control over the exercise of discretionary powers conferred upon a public authority and gives sufficient “*locus standi*” (Islam, 2002: p. 497) to a claimant for judicial review. Accordingly, “the doctrine in essence imposes a duty on the authority to act fairly” (Schmidt v Secretary of State for Home Affairs). The doctrine belongs to the domain of public law and is designed to give relief to the people when they are not able to justify their claims on the basis of law in the strict sense of the term though they had suffered a civil consequence because their legitimate expectation had been violated.¹⁰ The instances where such expectations arise include, *inter alia*, a result of a promise, representation, practice or policy made, adopted or announced by or on behalf of government or a public authority. On this premise, Islam, a leading constitutional law commentator in Bangladesh, gave an epitomic episode like that a promise made in the shape of a statement of policy or a procedure regularly adopted by the authority may give rise to what is called legitimate expectation (Bangladesh vs. Md. Abul Hossain). Lord Denning first coined the epithet “legitimate expectation” in 1969 and since then, this doctrine

⁹ibid.

¹⁰52 DLR (2000) 7.

is being followed by a number of South Asian jurisdictions and has become a principle having worldwide recognition (*Hafizul Islam (Md.) v. Government of Bangladesh and Other*, 2002). In Bangladesh, this doctrine is an emerging judicial principle and thought as a new tool—a “latest recruit”—to prevent administrative anomalies. The law on it is “still developing on a case-by-case basis both in the context of reasonableness and in that of natural justice.”¹¹ So, where the executive undertakes, expressly or by past practice, to behave in a particular way, the subject may expect that undertaking to be complied with. Arguably, it is submitted that there seems that the doctrine of legitimate expectation in Bangladesh has been developed mainly covering the contractual obligation of the government. However, in pointing out the purview of the doctrine, the court pre-cautioned that legitimate expectation to be enforceable shall have some legal basis. Mere wishful expectation without legal basis is not sustainable in the eye of law. When the action of the government is taken fairly showing reasons, it cannot be struck down (*Ranjit Thakur vs. India*).

Doctrine of Public Interest Litigation:

Public Interest Litigation is a name for judicial process in which the traditional doctrine of *locus standi* has been enlarged and enriched with liberal construction of procedural requirements going beyond legal formalism. This type of law-suit was first introduced and truly successful PIL case in Bangladesh in the historic case of *Mohiuddin Farooque v. Bangladesh*.¹² Where the fundamental rights of any person or group of persons are violated by the administrative authorities but they cannot have resort to the court on account of their poverty, disability, or who are socially and economically in disadvantageous position, any individual or a group of people of the state can move to the Supreme Court. Nowadays almost every day the Supreme Court hear PIL case in Bangladesh.

Other Judicial Doctrines:

One of the most important emerging facets of administrative law is the **doctrine of public accountability** which is intended “to check the growing misuse of power by administration and to provide speedy relief to the victims of such exercise of power” (*Uttara Bank v. Manceil & Kilburn Ltd.*). The essence of the doctrine counsels that the power conferred on administrative authorities is a “public trust” which “must be exercised in the best interest” of the people. Therefore, the trustee who enriches himself by corrupt means holds the property acquired by him as a constructive trustee. A court of Indian jurisdiction held that if the harm is caused due to handling of hazardous material, the liability of the State or its instrumentality would be absolutely strict (*Mansur Ahmad v. Kalipada*). The Judiciary of Bangladesh is not with the same pace in this matter.

Another potential judicial engine is the **doctrine of proportionality** rooted in the jurisprudence of the United States of America. In administrative law, the doctrine is, however, not a fully and finally settled issue. It is aptly propounded

¹¹49 DLR (AD) 1. This case is popularly known as FAP-20 case in Bangladesh.

¹²25 DLR 69.

that the doctrine requires a stricter scrutiny of the reasonableness of an administrative action in which the court plays a primary role of finding out whether the action taken is disproportionate in relation to the purpose for which the power is conferred. In Indian jurisdiction, it was held that this doctrine is a part of the concept of judicial review...irrationality and perversity are recognized grounds of it (*Pakistan v. Abdul Kuddus*). In our jurisdiction, since fundamental rights form a part of the Constitution, the courts have always sufficient leverage to use the doctrine of proportionality in judging the reasonableness of a restriction on the exercise of fundamental rights.

2.4. Private Law Review of Administrative Actions in Bangladesh

Apart from the public law review, administrative action in Bangladesh is also controlled by the private law review. Through injunction, suit for damage and declaratory action private law review is also exercised in Bangladesh. By means of injunction an individual is required to do or restraint from doing something, by a suit for damage an aggrieved person can claim damage from the administrative authority who caused damage to him and a declaratory action can be taken to establish one's right.

Injunctions:

Injunction can be defined as an ordinary judicial process that operates in *personam* by which any person or an authority is ordered to do or to restraint from doing a particular act which such person or authority is obliged to do or to refrain from doing under any law (*Trading Corporation of Bangladesh v. Syed Sajeduzzaman*). Historically, the injunction has been as wide as prohibition in the functions in English law. In Bangladesh permanent and temporary injunctions are still regulated by the Specific relief act, 1877 and CPC, 1908, respectively. Sections 52-57 of the Specific Relief Act, 1877, deal with the provisions of injunction. Where a public authority threatens to do or to continue to do some unlawful acts, an action may be brought for an injunction to restrain the authority from doing or continuing to do so. An act done by a public authority generally affects the public in general as well as individuals. Apart from the statutory provisions discussed above, section 151 of the CPC provides that nothing in the code shall be deemed to limit or otherwise effect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court, has invoked by the courts for purpose of issuing injunctions.

Suit for Declarations:

Declaratory action may be defined as a judicial remedy which conclusively determines the rights and obligations of public and private persons and authorities without the addition of any coercive or directory decree. The declaratory judgment is basically a judicial remedy and has come to be sued for a great variety of purposes in public and private law. Declaration can be awarded in almost every situation where an injunction will lie-the most important exception is that interim relief cannot be granted by way of a declaration-and they extend

to a number of situations where an injunction would be inappropriate or could not be obtained for other reasons. However under section 42 of the specific relief Act, 1877 no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration title, omits to do so. Not only a person or any administrative authority entitled to legal character but also any person entitled to any right as to any property can institute a suit for declaration (*Delwar Hossain (Md.) v. Bangladesh*). Regarding administrative actions the court in a case held that suit for declaration that the appointment of plaintiff in a lower rank is illegal and inoperative with consequential relief, suit under section 42 would lie even though prayer for consequential relief will be negative and the civil court cannot restore any officer to his post if he is removed wherefrom (*Dr. Md. Monorul Huq v. Bangladesh*).

Suit for Damages:

Administrative action can also be reviewed by a suit for damages. Whenever any person has been wronged by the action of an administrative authority, he can file a suit for damage against such authority. Article 31 of the Constitution of Bangladesh similarly provides for a right to the protection of law. The court should not find it difficult to apply the rule of liability of the state in actions for damages. However, some requirements are followed is regulated by CPC for the suit instituted against the government or against a public officer in respect of any act purporting to be done by such public official's capacity.

3. Analysis & Findings

Following analysis and findings are formulated by this study:

- **Scope of Administrative Actions:**

Nowadays the traditional theory of “Laissez Faire” has been given up and the old “Police State” becomes a “Welfare State”. For this philosophical shift of the role of the state, its administrative functions have increased. Administrative Law almost concerns itself with the official action which may be:

- ✓ Quasi-legislative action or rule-making action,
- ✓ Quasi-judicial action or adjudicating action,
- ✓ Rule-application action or administrative action,
- ✓ Ministerial action.

Besides these main actions, administrative law also concerns incidental actions such as investigatory, supervisory, advisory and declaratory. Principles of administrative law emerge and develop wherever any person becomes the victim with the arbitrary exercise of public power.

- **Challenges in Administrative Action Controlling Mechanism:**

Administrative law also deals with the control mechanism by which administrative organs are kept within bounds and made effective in the service of the individuals. An action may be controlled by different factors. These are as follows:

- ✓ Exercising writ jurisdiction through the writs of Habeas Corpus, Mandamus, Certiorari, Prohibition and quo Warranto;

- ✓ Exercising ordinary judicial powers through injunctions and declaratory actions;
- ✓ Higher administrative authorities and tribunals;
- ✓ “Easy Access to Justice” also provides an effective check on the exercise of public power.

However, these controlling are not free from limitations. Limits of writ jurisdiction based on case laws are:

- ✓ Disputed question of facts,

Disputed question of title cannot be the subject matter of writ. Writ is not the proper forum for seeking remedy in disputed question of fact (*Tasmina Chowdhury v. Deputy Commissioner*).

- ✓ Economic and Political policies of the Government.
- ✓ The Court cannot issue writ directing the Government to implement its policies. Policies are directory in nature and cannot be enforced through Court.¹³

Any person in the service of the Republic or of any statutory public authority may make an application to the Administrative Tribunal. Statutory Public Authority is defined as an authority, corporation or body specified in the Schedule of the Administrative Tribunal Act. Though by and large administrative action is discretionary and is based on subjective satisfaction, however, authority must act fairly, impartially and reasonably. According to H.W.R. Wade, there are some faults in the administrative actions which render them ultra vires. Such faults might arise either on account of lack of power or improper exercise of power. Such improper exercise of power may also be due to either wrong manner in which it is exercised or on account of the state of mind with which it is exercised (*Barnett, 2017*). The grounds on which an administrative action can be challenged in a court of law are, among others, as follows:

- ✓ Lack of power (*Govt, of Bangladesh Vs. Dr. Nilima Ibrahim*);
- ✓ Mala fides (*Kh. Ehteshamuddin Ahmed & others Vs. Bangladesh & others*);
- ✓ Colorable exercise of power;
- ✓ The unreasonable exercise of power;
- ✓ Non-application of mind;
- ✓ Error of law; and
- ✓ Procedural impropriety.

Judicial control has certain other inherent shortcomings and limitations. Of them, the cardinal one is that all administrative actions are not direct subject to judicial control. There are many genera of administrative actions which cannot be reviewed by the law courts. For instance, under article 45 & 102 (5) of the Constitution of Bangladesh, the High Court Division has no jurisdiction to interfere with the decision of Court Martial convened under the Army Act, 1952 except on limited grounds of coram non iudice and mala fide. Therefore, there is a growing tendency on the part of the legislature also to exclude by law certain administrative acts from the jurisdiction of judiciary. Owing to some conditio-

¹³45 DLR (AD) 39.

nality, the judiciary itself cannot directly take cognizance of excesses on the part of officials. It can intervene only on the request of somebody who has been affected or is likely to be affected by an official action.

4. Concluding Observation

Bangladesh, a comparatively young country in the South Asian subcontinent, emerged with high expectations of establishing an effective system of administration (Khanam et al., 2021), although making administrative justice work effectively in practice is far more challenging as it presents a wide range of complex practical issues. There are inevitably constraints and limits on what can be achieved. Procedural restrictions have important substantive consequences by making it more difficult for people to secure their legal entitlements. As the judiciary of Bangladesh is not substantially independent and also not free from any defects desirable solutions are a matter of fur cry. However, modernization and technological development have produced significant structural changes in public administration in Bangladesh. To be more benefited it is the high time to set the boundary of functions to be discharged by the administrative authorities clearly through the enactment of law. Besides, more stringent check should be placed on the delegated legislation. Delegated legislations which are manifestly unjust or oppressive or outrageous must be declared *ultra vires* by the courts. Among the existing control mechanisms available in Bangladesh, judicial efficacy to interpret the law and applying the principles to control administrative actions, introducing Ombudsman system (Giddings et al., 1993) should be focused with research and training program in extensive ways.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Abdul Jalil v Sharon Lialy, 50 DLR (AD) 55.
- Abdul Latif v. Bangladesh, 43 DLR 446.
- Abu Taher Mia vs. Faiz Uddin, 41 DLR 543.
- Aruna sen v. Bangladesh, 27 DLR 22.
- Bangladesh vs. Md. Abul Hossain, BLD [2003] (AD) 129.
- Barnett, H. (2017). *Constitutional & Administrative Law*. Routledge.
<https://doi.org/10.4324/9781315458373>
- Chunnu Chowdhury v DM. 41DLR 156.
- Delwar Hossain (Md.) v. Bangladesh, 54 DLR, 494.
- Dr. Md. Monorul Huq v. Bangladesh, 45 DLR (AD) 39.
- Ghulam Jilani v West Pakistan, 19 DLR (SC) 403.
- Giddings, P., Gregory, R., Moore, V., & Pearson, J. (1993). *Controlling Administrative Action in the United Kingdom: The Role of Ombudsman Systems and the Courts*

- Compared. *International Review of Administrative Sciences*, 59, 291-309.
<https://doi.org/10.1177/002085239305900206>
- Goldswain, G. K. (2017). "Clean Hands"—Is This or a Similar Concept Used by the Courts to Determine A Taxpayer's Right to Just Administrative Action? *Southern African Business Review*, 21, 55-84.
- Govt, of Bangladesh Vs. Dr. Nilima Ibrahim, 1981, BLD. (AD) 303.
- Hafizul Islam (Md.) v. Government of Bangladesh and Other (2002) 7 MLR (HC) 433.
- Islam, M. (2002). *Constitutional Law of Bangladesh* (2nd ed.). Mullick Brothers.
- Kh. Ehteshamuddin Ahmed & Others vs. Bangladesh & Others, 1981, BLD (AD) 107.
- Khanam, T., Begum, A., Khanam, S., & Zuhra, F. (2021). An Analysis of New VAT Law in Bangladesh: Changes & Challenges. *Beijing Law Review*, 12, 875-887.
<https://doi.org/10.4236/blr.2021.123044>
- Kritikal, A., & Kehakiman, S. (2018). Critical Analysis of Judicial Review of Administrative Actions in Iran. *Jurnal Undang-Undang Dan Masyarakat*, 23, 25-30.
- Mansur Ahmad v. Kalipada, 11 DLR, 103.
- Mujibur Rahman vs. Bangladesh, 44 DLR, 111.
- Nazmul Huq v. Deputy Commissioner, 45 DLR, 520.
- Pakistan v. Abdul Kuddus, 20 DLR, 332.
- R. v Saint Martin's Gaurdians, [1851] 7 Q.B 149.
- Ranjit Thakur vs. India, AIR [1987] SC 2386, 2392.
- Sampath Kumar .vs. Union of India, A.I.R. [1937] SC 386 (Para 16).
- Schmidt v Secretary of State for Home Affairs, (1969) 2 .Ch. 149.
- Sonu Sampat Shewale v. Jalgaon. Borough Municipality, ILR (1958) Bom 113.
- Sunil Batra II v. Delhi Administration, A.I.R. [1980] S.C. 1579.
- Takwani, C. K. (2006). *Lectures on Administrative Law* (4th ed.). Eastern Book Company.
- Talukder, H. (2011). *Development of Administrative Law in Bangladesh: Outcome and Prospects* (2nd ed.). The Bangladesh Law Researchers Association.
- Tasmina Chowdhury v. Deputy Commissioner, 49 DLR 29.
- Trading Corporation of Bangladesh v. Syed Sajeduzzaman, 40 DLR.
- Uttara Bank v. Manceil & Kilburn Ltd., 33 DLR (AD) 298.
- Willis, J. (1935). Three Approaches to Administrative Law: The Judicial, the Conceptual, and the Functional. *The University of Toronto Law Journal*, 1, 53-81.
<https://doi.org/10.2307/823868>