

Judicial Control of Administrative Action

by

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Dedicated to the loving memory of
my father
the Late Kartick Chandra Banerjee,
MA, BL, Advocate, Calcutta High Court,
my mother
the Late Suroma Banerjee
who died in my childhood and
my wife
the Late Archana Banerjee
who died on 7th October, 2009
and who played a very important role
in the writing of my books
by encouraging me in various ways

Preface to the Second Edition

This is the Second Edition of Judicial Control of Administrative Action. The First Edition was published in 2001. The purpose of Administrative Law is to keep the Administrative power within the legal bounds and to protect the individual against the abuse of those powers. It may be defined as the branch of law which controls the administrative authority, and the Government and public authority. The most important purpose is to protect the rights of the individual against the administrative rods. Since the publication of the First Edition of the book there has been enormous and continuous growth in the Administrative Law cases seeking judicial review. In the field of Administrative Law it is usual that justice should first come from administrative authority. But it appears that the administrative authority fails to deliver justice to the people as deserved for various reasons. If one fails to get administrative justice from the authority he has to move the court for judicial review of the administrative inaction. The role of the court in judicial review of administrative action is to keep the administrative body within the limits of their authority and to compel them to perform their duty, as entrusted to them under the law. The entire body of the Administrative Law has been built up by administrative decisions. We have tried to collect and classify the cases on Administrative Law from various countries for the purpose of indicating the seemingly unending variety of grounds for judicial review of administrative action. We have also incorporated the most important rights of the people under the Universal Declaration of Human Rights and International Rights so that people as a whole may be aware of their rights against the executive authority. This is an age of rights all over the world which has marked the beginning of a new era in the field of public law. We have tried to incorporate several hundreds of enforceable rights to make the people aware of their rights and to enforce these rights against the administration. The Administrative Law field is enlarging day by day. Our endeavour was to search for those principles and materials for upholding the rights of the people so that they can get justice in a proper forum. Our object is also to see that access to justice is not interfered with on the basis of mere idle procedure and technicalities and to make the system easier so that the road to justice is not closed or narrowed down by the idle and formalistic approach imposed by the court.

We are conscious that legal principles are not at all static but dynamic and are developing at a fast rate. We have tried to make this edition helpful to the members of the Bar, Bench, researchers as well as students, so that they may be inspired to find out and implement the new legal principles for upholding the rights of the people.

We express our gratitude to M/s. LexisNexis Butterworths Wadhwa Nagpur who are publishing the Second Edition of this book with great care and caution. We received assistance from Sankar Prosad Banerjee, Advocate, who helped us in preparing this book and Mr. Ranit Kr. Banerjee, Bar at Law, who also helped us in various ways. We also express our gratitude to Sri Sudhangshu Kr. Basak and Sri Sunirmal Manna who sincerely and untiringly helped us in preparing the manuscript and monitoring the same at every stage for the purpose of completing this book.

We have tried to set out the case law upto September 2011.

Justice Bhagabati Prosad Banerjee
Bhaskar Prosad Banerjee

Preface to the First Edition

The Administrative Law is that branch of law which, seeks to control the powers of all the authorities including the Government with the sole object to protect the rights of the individuals. For the last two decades there has been enormous and continuous growth in the Administrative Law cases seeking judicial review of the decision of the public authorities. In the field of Administrative Law Justice it is a normal thing that justice should come first from the administrative authority. If one fails to get justice from the authority he has to move the Court for judicial review of the administrative action. The role of the Court is to keep the administrative body within the limits of their authority and to compel them to perform duties under the law. The entire body of the administrative law has been built up by judicial decisions. I have tried to collect and classify the cases on Administrative Law for the purpose of indicating the popular grounds for review of the administrative actions and indicated the scope of this branch of law and the remedies available.

With the passage of time not only my age has increased, but also my knowledge increased by reading Books and Journals. There is no end of the Kingdom of knowledge. I have retired as a Judge of the Calcutta High Court on 15th August, 1998. I have started writing books long before my retirement and still continuing even after retirement as I have at my disposal time to spend for this work and I have tried to utilise my time in reading and writing books rather than sitting idle or to enjoy the retired life in some manner. While I was practicing as an Advocate, the Administrative Law was my favourite subject and after completion of my first book on 'Writ Remedies' I decided to write a book on Administrative Law and this book took more than a year and a half to complete this book. I have collected materials about the development of law till June, 2000. I hope that this book will be helpful to the Bench members of the Bar and the students of law who are interested in this branch of law.

I express my gratitude to Wadhwa & Company and all its partners who are the Publishers and who engaged me in writing this book and inspired me for completing this book. My son Sri Bhaskar Prosad Banerjee, Advocate who participated with me in completing work. My younger son Sri Sankar Prosad Banerjee who is now a law student also helped me in correcting the manuscripts. I am also grateful to Sri Sudhangshu Kumar Basak and Sri Mukti Pada Das who helped me in preparing and comparing the manuscripts. I will be failing in my duties if I do not express my gratitude for the services rendered by Sri Narayan De and Sri Uttam Dey my erstwhile clerks for this work.

Calcutta
19th, December, 2000

Justice Bhagabati Prosad Banerjee

Scheme of the Work

The First Edition of this Book “Judicial Control of Administrative Action” was published in 2001 and since then there has been much development in the field. Case law from different parts of the world has been collected and incorporated in this book which contains 22 chapters.

The *First Chapter* of the work consists of Judicial Control of Administrative Action in the UK, the USA and in India separately.

Chapter 2 highlights the scope of Articles 32 and 226 of the Constitution.

Chapter 3 indicates the authorities against whom remedy is available. Initially the writ used to lie against the authority created by a statute, but now the principle has been broadened in India as well as in the USA. However, in UK the law of standing was broadened by Lord Justice Denning and there had been a development in the branch of law of standing in a very spectacular way but law has since been amended narrowing the scope of *locus standi*. In spite of change in law, the English Courts are constantly evolving new principles to enlarge the scope of law of standing and that development is still going on.

In *Chapter 4* the principles of *locus standi* have been dealt with regarding the standing of person or a class of person to move the Court for remedy in Public Law. The principles of *locus standi* in England, Canada, New Zealand, United States and in India have been dealt with separately.

Chapter 5 deals with alternative remedy.

Chapter 6 deals with the principle of delay, acquiescence and estoppel which stands in the way of getting relief in Public Law Remedy.

Chapter 7 deals with suppression of material facts for getting appropriate relief in Public Law Remedy.

In *Chapter 8*, I have tried to collect and classify as well as distinguish between Public Law and Private Law.

Chapter 9 deals with *mandamus*.

Chapter 10 deals with *certiorari*.

Chapter 11 deals with prohibition.

Chapter 12 deals with *quo warranto*.

Chapter 13 deals with writ of evocation.

Chapter 14 deals with writ of *procedendo*.

Chapter 15 deals with *habeas corpus* in England, United States of America and in India.

Chapter 16 contains the grounds of judicial review.

Chapter 17 deals with the intensity of judicial review.

Chapter 18 indicates the practice and procedures which are required to be followed in writ cases and cases in Public Law Remedy.

Chapter 19 deals with judicial review of cases.

Scheme of the Work

In *Chapter 20*, I have tried to explain the scope of judicial activism of the law which is to develop and not to stagnate there. The function of the Judges is to be active in developing and expanding the scope of law to meet with the changing needs of the time. Law cannot be kept static and it has to be made dynamic to meet with the new situation with changing times. The Court has to evolve remedy where in law there is no remedy so as to make the rights meaningful; where there is no right, there should be a remedy. But if the remedy is not there, the Court has to evolve a remedy. If the Court decides cases on the basis of rigid adherence to the precedence then the law will become static. The Judicial Activism is the latest development in the Administrative Law Remedy.

Chapter 21 deals with Public Interest Litigation which started its journey from the UK and it is playing a very important role in India where public spirited persons are allowed to espouse the cases of the poor and illiterate masses for upholding their rights. From this Public Interest Litigation many of the matters pertaining to public interest have been unearthed, and this which has played a very important role in the present socio-economic and political condition in India and a number of such litigations has increased to such a great extent that the Supreme Court of India warned that the Public Interest Litigation should not be allowed to be converted into Publicity Interest Litigation.

This is an age of Rights. People have various rights under the Constitution, law and various human rights. People have a right to know all these rights and make people aware of their rights. I have incorporated several hundreds of rights in *Chapter 22* under the heading 'Charter of Rights'.

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