



Role Of Constitutional And Administrative Law In India

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Abstract;

The Constitution is the fundamental law of a Member State governing the organization and functioning of the relations between public authorities and citizens rights and fundamental freedoms, and ways to guarantee them. The Constitution is the supreme law in the state, it is at the top of the pyramid and it is the source of all legal documents and legal regulations. Supremacy of the Constitution is ensured through an effective mechanism resulted in a legal institution called constitutionality of laws controls, including all procedures through which achieve verification of low compliance with constitutional provisions.

Keywords: *Constitution, The Supreme Law of the State. Administration Law*

Introduction

The Constitution is the fundamental legal document that enjoys supremacy over all other legal acts. Supremacy of the Constitution is a complex concept whose content we find in its political and legal values, showing the dominance of the Constitution in the legal system, but also in the entire socio-political system of a state.

The Constitution is the supreme law in the state and has an essential role in organizing the entire socio-political system, legal, economic and cultural centre of the state. The Constitution is the source of all regulations in the economic, political, social and legal. Supremacy of the Constitution is a legal political group and is based on the totality of scientific “of economic, social, political and legal factors are closely related and interaction and to be seen in relation to the constitution of their indivisibility.

Through The Constitution is legitimate power, is conferred authority to governors, is ensured legal in the state, are established the relations between public authorities and between them and the citizens, are enshrined and guaranteed rights and freedoms. The rules contained in the Basic Law have legal force superior to any rules of a state system of legal norms. Kelsen¹⁹ show that law is not a system of legal rules, all located at the same level, but a building with several floors, a pyramid; in other words, a hierarchy consisting of a number of levels or layers of legal rules, the top of which is the constitution

The states have adopted constitutions and constitution became not only the fundamental law of a state, but also political and legal document which mark important moments in the development of socio-economic and politico-legal states”¹. Constitution is the fundamental law of the state which includes general rules and principles by which the state is organized, are organized and function state authorities, are established fundamental rights and freedoms and their guarantees. Due to its quality, the Constitution is at the pinnacle of legal documents, thus it is here an important consequence that all laws must be developed in compliance with constitutional norms, must be complied with that. “It can be regarded as sacred and inviolable precept principle that the constitution is supreme legal system of a State

Supremacy of the Constitution, as stated in the literature, appears as something natural, as such term is used in most cases, but over time have been used other names such as the highest legal value, super legality, the supreme law or the law of laws.

All basic rights are fundamental rights where as all fundamental rights are not basic rights which are narrow of our Indian constitution Article 21 Right to Education Where 1to 14Year Compulsory and Free Education.

The dichotomy between civil and political rights (enforceable by constitutional remedies) and Directive Principles (which cannot be directly enforced in a court) has been progressively diluted by a judicial restatement of the right to life under Article 21 of the Constitution. The right to life has been interpreted by courts to be broad enough to comprehend within its sweep all those facets that make life meaningful. While the Constitution recognizes that life or personal liberty can be regulated or taken away by procedure established by law, courts assert that procedures for limiting or denying these broad Article 21 rights must be fair, just and reasonable to be constitutionally valid. The expansive construction of the right to life thus became a jurisprudential foundation for reading into the “right to life” everything that imparts content to life.

The rights to legal aid, to a speedy trial, to housing, education, public health, information and to a clean environment have in successive decisions come to be recognized as being comprehended in the broad sweep of the right to life. Judicial interpretations preceded a formal amendment to the constitutional text since it was more recently that the right to education was recognized as a fundamental right through the 86th

¹ Mura, constitutional law and political institution, Actami publishing house, Bucharest.

amendment. Consequently, the dichotomy has broken down between civil and political freedoms that are specifically enforceable and economic, social and cultural rights which are not. The traditional notion that civil and political rights are possessed of a negative content obligating the state to keep away from a sphere of activity left for the individual in contrast with socio-economic freedoms which have a positive content gave way to a more realistic balance between the two sets of rights. Increasingly, courts came to a realistic appraisal of the fact that economic, social and cultural rights could be read into civil and political freedoms by constitutional interpretation. The need for a harmonious construction between the two sets of rights thus assumes an important character in every inquiry into the genesis and interpretation of those rights.

The Supreme Court has repeatedly drawn sustenance from the recognition conferred upon economic, social and cultural rights by the Covenant on ESCR of 1966, while interpreting domestic legislation or while considering challenges to the validity of enacted law. For example, in *Daily Rated Casual Labour v. Union of India*,¹² the Supreme Court held that the deprivation of equal pay for equal work amounted to an exploitation of labor and was contrary to the spirit of Article 7 of the Covenant. And in *Christian Medical College Hospital Employees Union v. Christian Medical College*³. Vellore,⁴ the Supreme Court held that a college conducted by a religious minority could not claim an exemption from labor legislation. The court held that the Covenant was a basic document declaring certain specific human rights in addition to proclaiming the right to work, equitable conditions of work, adequate remuneration and other rights protective of the welfare of labour.

In *Kapila Hingorani v. State of Bihar*,⁵ the Supreme Court held that the Government of a state which had pervasive control over a corporate body formed by the state would be held duty bound to enforce human rights obligations owed to employees who were facing starvation for want of salaries. These decisions were rendered in the context of labour legislation. In *Minerva Mills Ltd. v. Union of India*,⁶ the court recognized that the Directive Principles of State Policy which embody a commitment to economic, social and cultural rights are reflective of human rights norms, just as the fundamental rights embody human rights of a civil and political nature.

In elaborating upon the right to housing, the Supreme Court has placed extensive reliance on the Covenant on Economic, Social and Cultural rights, as seen in cases like *Ahmadabad Municipal Corporation v. Nawab Khan*,⁷ and *Chameli Singh v. State of U.P.* 6 In *Apparel Export Promotion Council v. Chopra*,⁸ detailed guidelines were framed on matters relating to sexual harassment at the workplace. The court relied

² AIR 1987 SC 2342.

³ AIR 1987 SC 2342.

⁴ 2 AIR 1988 SC 37.

⁵ (2003) 6 SCC 1.

⁶ (1980) 2 SCC 625 at 702

⁷ (1997) 11 SCC 121

⁸ (1996) 2 SCC 549.

upon the Convention on the Elimination of Discrimination against Women and the Covenant on Economic, Social and Cultural rights.

The administrative law has growing importance and interest and the administrative law is the most outstanding phenomena in the welfare state of today. Knowledge of administrative law is as important for the officials responsible for carrying on administration as for the students of law. It is not codified like the Indian Penal code or the law of Contracts. It is based on the constitution. No doubt the Court of Law oversees and ensures that the law of the land is enforced. However, the “very factor of a rapid development and complexity which gave rise to regulation made specific and complete treatment by legislation impossible and, instead, made necessary the choice of the body of officers who could keep abreast of the novelties and intricacies which the problems presented.”

Administrative law is essentially Judge made law. It is a branch of public law as compared to private law-relations inter-se. Administrative law is an ever-expanding subject in developing society and is bound to grow in size as well as quality in coming the decades. We need an efficient regulatory system, which ensures adequate protection of the people’s Rights.

Principles of administrative law emerge and development whenever any person becomes victim of arbitrary exercise of public power. Therefore administrative law deals with relationship individual with power.

The administrative agencies derive their authority from constitutional law and statutory law. The laws made by such agencies in exercise of the powers conferred on them also regulate their action. The principle features are: (a) transfer of power by legislature to administrative authorities, (b) exercise of power by such agencies, and (c) judicial review of administrative decisions.

Inadequacy of the traditional Court to respond to new challenges has led to the growth of administrative adjudicatory process. The traditional administration of justice is technical, expensive and dilatory and is not keeping pace with the dynamics of ever increasing subject matter. Because of limitation of time, the technical nature of legislation, the need for flexibility, experimentations and quick action resulted in the inevitable growth of administrative legislative process.

The Constitutionalization of administrative law through fundamental rights

Justice Mathew, in one of the most significant decisions of the Supreme Court on constitutional law, famously noted that the “fundamental rights have no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience⁹. The question of what these vessel may filled with legally speaking, remains deeply disputed. Beyond generalized statements about interpreting rights expansively, the Court has yet to seriously engage in a principled analysis of how rights

⁹ Kesavananda Bharati v. State of Kerala (1973) 4 S.C.C. 225, 880.

may be interpreted and applied, choosing instead to adopt a wide and sometimes inconsistent variety of approaches.¹⁰

Even in the absence of systematic structures, it is common for the Indian Supreme Court to “fill” the contents of rights with recourse to legal principles, concepts, and ideas from various sources. These range from the non-justifiable “Directive Principles of State Policy” contained in part IV of the Indian Constitution¹¹ to the use of international instruments and human rights treaties.¹² Unsurprisingly, the use of common law principles of natural justice has been specifically cited by the Court as “an instance of the expansive interpretation of a fundamental right.”¹³

Independently of fundamental rights, the principles of natural justice have seen wide application by courts and regulatory bodies as essential components of administrative procedure.¹⁴ The application of these principles is not identical in constitutional and administrative law, but over the years, Indian jurisprudence has seen the evolution of a complex borrowing and inter-relationship between their administrative and constitutional law usage. I will trace the evolution of the Court’s approach, (i) from a firm rejection of principles of natural justice in interpreting and applying constitutional rights, (ii) to its embrace of these principles as essential to constitutional rights, and (iii) to a consequently complex and unclear doctrine.

Judicial review of legislation and administrative action in India

Constitutional law, the power to engage in judicial review is taken to be a self-evident truth, although no single provision of the constitution explicitly authorizes it. Powers of judicial review are generally accepted as a *fait accompli*, and are sometimes understood to inhere in the constitution¹⁵ or, alternatively, as deriving

¹⁰ See Madhav Khosla, *Making Social Rights Conditional*, 8(4) *Int’l J. Const. L.* 739 (2010); Arun K. Thiruvengadam, *Characterising and Evaluating Indian Social Rights Jurisprudence into the 21st Century*, 2d Azim Premji University Law and Development Conference, Bengaluru, India, Aug. 2013, available at <http://www.azimpremjiuniversity.edu.in/SitePages/pdf/Characterising-and-evaluating-Indiansocial-rights-jurisprudence-into-the-21st-century.pdf>

¹¹ See generally Gautam Bhatia, *Directive Principles of State Policy*, in *The Oxford Handbook of the Indian Constitution* 645 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla eds., 2016).

¹² See generally Lavanya Rajamani, *International Law and the Constitutional Schema*, in *The Oxford Handbook of the Indian Constitution* 144 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla eds., 2016); Vijayshri Sripati, *Towards Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950–2000)*, 14(2) *Am. U. L. Rev.* 413, 468–470 (1998).

¹³ *M. Nagaraj v. Union of India* (2006) 8 S.C.C. 212, 241.

¹⁴ 1 Jain & Jain, *supra* note 17, at 14; Massey, *supra* note 16, at 183.

¹⁵ Sathé, *Judicial Review in India: Limits and Policy*, 35 *Ohio St. L.J.* 870 (1974).

from a reading of several constitutional provisions together.¹⁶ Part III of the Indian Constitution establishes a bill of rights, known as the Fundamental Rights. Within Part III, article 32 explicitly secures the “right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred in this Part.”¹⁷

This provision allows the Supreme Court to issue directions in the nature of orders or writs “for the enforcement of any of the rights conferred by this Part.”¹⁸

Additionally, article 13 declares all pre-constitutional legislation that is inconsistent with fundamental rights to be void,¹⁹ and prohibits the state from making “any law which takes away or abridges the rights conferred by this part”²⁰ failing which laws so made are “to the extent of such contravention,” void.²¹ Read together, these provisions form the basis for the exercise of judicial review by the Indian Supreme Court.²²

When it comes to the judicial review over administrative action, on the other hand, the Indian Supreme Court has developed its jurisprudence by borrowing selectively from British common law to exercise two broad groups of control. The first group of controls consists of judicial, institutional, and private law remedies, such as appeals from Indian regulatory and administrative bodies to constitutional courts and injunctive relief in civil courts.²³ Courts, in applying these controls, use a number of administrative law doctrines to review administrative action. The doctrines of illegality (*ultra vires*)²⁴ and of legitimate expectations,²⁵ for instance, find their source in British common law, but are applied and developed by Indian Courts to varying extents.²⁶ Administrative action in India can also be challenged on other grounds, such as unreasonableness and,

¹⁶ See Gopal Subramaniam, *Writs and Remedies*, in *The Oxford Handbook of the Indian Constitution* 614 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla eds., 2016); Chintan Chandrachud, *Balanced Constitutionalism: Courts and Legislature in India and the United Kingdom* 11, 12 (2017); Soli Sorabjee, *Introduction to Judicial Review in India*, 4 *Jud. Rev.* 126 (1999)

¹⁷ India Const., Art. 32, § 1.

¹⁸ India Const., Art. 32, § 2.

¹⁹ India Const., Art. 13, § 1.

²⁰ India Const., Art. 13, § 2.

²¹ *Id*

²² Judicial review is also linked to articles 372(1) and 245(1) of the Indian Constitution. See Chandrachud, *supra* note 9, at 11.

²³ 2 M. P. Jain & S. N. Jain, *Principles of Administrative Law* 2023 (8th ed. 2017); I.

²⁴ See 1 M. P. Jain & S. N. Jain, *Principles of Administrative Law* 156–197 (8th ed. 2017); Massey, *supra* note 16, at 44; B. P. Banerjee, *Judicial Control of Administrative Action* 135, 135 (3d ed. 2016); Avtar Singh, *In Defense of Ultra Vires*, 2 *S.C.C.-J.* 25 (1971).

²⁵ See 2 Jain & Jain, *supra* note 16, at 1649; Massey, *supra* note 16, at 135

²⁶ See 1 M. P. Jain & S. N. Jain, *Principles of Administrative Law* 156–197 (8th ed. 2017); Massey, *supra* note 16, at 44; B. P. Banerjee, *Judicial Control of Administrative Action* 135, 135 (3d ed. 2016); Avtar Singh, *In Defense of Ultra Vires*, 2 *S.C.C.-J.* 25 (1971)

increasingly on grounds of proportionality,²⁷ arbitrariness,²⁸ and, finally, procedural impropriety, i.e. for violations of the principles of natural justice.²⁹ The tremendous body of jurisprudence generated by the judicial control of administrative action remains largely untouched by statute, and it has been suggested that Indian administrative law is “the common law of the Constitution, as for the most part it is un-codified.”³⁰

The second, and highly significant body of judicial controls of administrative action, lies in the use of rights-based review and remedies to control administrative acts ranging from decision-making processes, subordinate legislation, and, on occasion, executive action.³¹ This is because fundamental rights are enforceable against

Constitutionalizing administrative law in the Indian Supreme Court 479 the state, which is understood to include not just the legislature and the executive but also a number of administrative and regulatory bodies.³² The range of actions that can be challenged is wide: the term “law” in article 13 is defined to include “any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law,” in addition to legislative enactments.³³ To enforce these rights, constitutional courts are empowered to issue certain writs and directions, including the traditional writs of certiorari, prohibition, and mandamus.³⁴

A significant overlap between constitutional review and judicial control of administrative action arises from this width of laws and authorities. For instance, the review of administrative action on the grounds of fairness, arbitrariness, reasonableness, and proportionality is sometimes invoked under the fundamental right

²⁷ See 2 Jain & Jain, *supra* note 16, at 1649; Massey, *supra* note 16, at 135.

²⁸ Chintan Chandrachud, *The (Fictitious) Doctrine of Substantive Legitimate Expectations in India*, in *Legitimate Expectations in the Common Law World* 245 (M. Groves & G. Weeks eds., 2016); Singh, *supra* note 17.

²⁹ See Abhinav Chandrachud, *Wednesbury Reformulated: Proportionality and the Supreme Court of India*, 13(1) *Oxford U. Commonwealth L.J.* 191 (2013); V. Sudhish Pai, *Is Wednesbury on the Terminal Decline*, 2 *S.C.C.-J.* 15 (2008); Chintan Chandrachud, *Proportionality, Judicial Reasoning, and the Indian Supreme Court* (2016); University of Cambridge Faculty of Law Research Paper No. 12 (2016), available at <https://ssrn.com/abstract=2720080>

³⁰ Prateek Jalan & Ritin Rai, *Review of Administrative Action*, in *The Oxford Handbook of the Indian Constitution* 432 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla, eds., 2016); 1 Jain & Jain, *supra* note 17, at 156–197.

³¹ See generally Abhinav Chandrachud, *Due Process*, in *The Oxford Handbook of the Indian Constitution* 777, 782 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla, eds., 2016); 1 Jain & Jain, *supra* note 17, at 465.

³² Upendra Baxi, *Preface: The Myth and Reality of the Indian Administrative Law*, in *Administrative Law* xviii (I. P. Massey ed., 8th ed. 2012)

³³ See generally Banerjee, *supra* note 17 (the author confines his study of judicial control of administrative action entirely to rights-based review in consideration of its significance); Jalan & Rai, *supra* note 21, at 432.

³⁴ *India Const.*, art. 12. See also Ananth Padmanabhan, *Rights: Breadth, Scope, and Applicability*, in *The Oxford Handbook of the Indian Constitution* 432 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla, eds., 2016); 1 Jain & Jain, *supra* note 17, at 581, 583.

to equality, under article 14 of the Constitution, and to reasonable controls on several freedoms under article 19 of the Indian Constitution.³⁵ In addition to this, the review of administrative action on substantive and procedural grounds (in other jurisdictions, a “due process” requirement) is linked to article 21, which guarantees the right to life and personal liberty subject to “procedure established by law”³⁶ The “constitutionalization” of Indian administrative law, therefore, has its roots in the constitution’s text but has been actively extended by the Indian Supreme Court’s jurisprudence.

Case Studies in the Bombay High Court

The National Park: Housing for the Poor vs. the Environment

In 1995, the Bombay Environment Action Group (BEAG), an NGO specializing in matters of environmental concern filed a public interest case in the Bombay High Court, seeking the court's intervention to remove illegal encroachments in the National Park (SGNP) and for protection of the park. Covering 107 sq.kms., SGNP is a notified National Park under the Wildlife Protection Act. It is arguably the only National Park within municipal limits anywhere in the world. SGNP is a unique natural biosphere reserve. It is the home of a huge number of unique species of flora and fauna, including several large mammals such as the panther and, recently, even the tiger. The Bombay Natural History Society reports that SGNP boasts over 800 flowering plants, 274 bird species, 42 mammal species, 38 species of reptiles and a staggering 8000 insect species, including over 150 species of butterflies.

Thus, the court faced a delicate situation. On the one hand, the law mandated the clearance of illegal encroachments from the national park. On the other hand, there was the issue of rehabilitating the encroachers outside the park and doing so in a just and humane manner. The case presented a sensitive human conflict and required a careful balancing act between the preservation of the environment and the protection of the right to housing. But what makes this a truly remarkable case is the approach of the court itself, and of the petitioners. Though the BEAG's brief is focused on environmental protection, it approached the case as a human problem requiring a humane solution, and urged the court to evolve a scheme on those lines. This is precisely what the court did; at no time did the court venture into the realm of writing landmark decisions. Instead, it focused on solving the problem, one that was inherently huge and intricate. In doing so, it delicately balanced two competing public interests.

³⁵ India Const. art. 13, § 3. See also I H. M. Seervai, *Constitutional Law of India: A Critical Commentary* 400 (4th ed. 2017) (1991).

³⁶ See generally Subramaniam, *supra* note 9.

The Courts and Problems of the Physically Challenged

In 1995 Parliament enacted the Persons with Disabilities Act (Equal Employment, Protection of Rights and Full Participation). The Act mandates an identification of jobs and review of employment under the state, and carves out reservations of not less than 3% of posts in public employment for physically challenged persons. There is a mandate under the Act to create schemes providing for training and welfare, age limits, health and safety measures and for the creation of a non-handicapping environment. The Act requires affirmative action in the allotment of land at concessional rates. The Act further requires non-discrimination in transport and on the road by adapting rail compartments, vessels and aircraft.

On 31st March 2004, an initial direction was issued by the Bombay High Court to the Municipal Corporation in a public interest litigation to purchase 30 public buses capable of accommodating disabled persons, including those with wheel chairs. In a separate order, the court dealt with the problem faced by visually challenged hawkers at railway stations. A report was submitted before the court by an NGO, India Centre of Human Rights and the law which took note of grave acts of police brutality against visually challenged hawkers. Their goods were thrown on railway tracks and some were subjected to assault. 60% of the hawkers earned Rs.50/- to Rs.100/- every day, while the rest earned less than Rs.50/- every day. Most were found to hawk because of an inability to find gainful employment. The report complained of a discriminatory enforcement of law. Blind hawkers who were not in a position to pay bribes were the ones who were targeted for police action. The Court issued several directions to the railway authorities seeking to protect the welfare of these hawkers.

The Bombay High Court was moved on an important issue involving the exercise of franchise by physically challenged persons. Despite an order passed by the Supreme Court mandating the provision of ramps in cities and metropolitan areas, no provision had been made to comply with the order. The Court was moved in order to facilitate the exercise of the right of franchise by visually challenged persons. The method which was followed earlier by the state involved a visually challenged voter appearing in person before the presiding officer of a polling station and being assisted to place his ballot against the name of a candidate of his choice on the electronic voting machine. This involved a serious infraction of the principle of secrecy of the ballot. On the suggestion of interested NGOs, the court found a low cost alternative to ensure the preservation of the secrecy of the ballot while at the same time enabling visually challenged voters to exercise their franchise. In short, the state was directed to print dummy ballot papers in Braille. Every visually challenged voter would be allowed access to this dummy ballot paper in Braille which would be at every polling station. This would indicate to him the position of each candidate on the electronic voting machine and enable the voter to exercise his franchise. In related areas, the Court has

given directions to the state to constitute committees to identify the jobs where reservations in the form of affirmative action could be adopted for the physically challenged.

Remedies in Administration and Constitutional law

The impact of the Constitutionalization of administrative law is not limited to changing the understanding of constitutional rights; it has had significant consequences for how rights have been enforced as well. Article 32 of the Indian Constitution provides remedies for the enforcement of fundamental rights; indeed, taking recourse to the Supreme Court for such enforcement is itself a protected right.³⁷ These powers are separate and distinct from the Supreme Court's powers to address violations of other legal rights; fundamental rights, accordingly, stand on a separate footing, not only in terms of judicial review, but also in terms of the means available to the Supreme Court to enforce them.³⁸ Administrative decisions are usually challenged in lower civil courts as well as high courts, and then reach the Supreme Court by way of appeal. Violations of fundamental rights, on the other hand, can be directly challenged at the high courts or the Supreme Court, and need not go through the civil appellate system.³⁹

Maneka Gandhi,⁴⁰ as I have discussed, made it apparent that a violation of administrative principles might conceivably amount to a violation of fundamental rights; however, this was not automatic and depended on the specific context of the case. However, the transformation of these administrative principles to components of constitutional rights has enabled litigants to move from a tiered appellate system to directly litigating administrative issues before the Supreme Court, in the guise of fundamental rights. "This Constitutionalisation of administrative law," argues one scholar, "ignores its common law roots and results in a top-heavy system where constitutional courts come to arrogate all administrative review powers."⁴¹

³⁷ 137 India Const., art. 32.

³⁸ See generally Sathe, *supra* note 87, at 290–301; Subramaniam, *supra* note 9, at 614, 615. This is not the case for the Indian High Courts, which can enforce fundamental rights through writ remedies but may also use those remedies to enforce other legal rights. India Const., art. 226.

³⁹ India does not have a separate system of administrative courts, although certain administrative bodies include tribunals, which can exercise some of the powers of civil courts in decision-making. Their decisions are appealable to high courts and the Supreme Court.

⁴⁰ (1978) 1 S.C.C. 248.

⁴¹ Tarunabh Khaitan, *Equality: Legislative Review under Article 14*, in *The Oxford Handbook of the Indian Constitution* 699, 716 (Sujit Choudhry, Pratap Bhanu Mehta, & Madhav Khosla, eds., 2016) (discussing the use of administrative principles of unreasonableness in the context of the right to equality and equal treatment under article 14 of the Indian Constitution). See also Farrah Ahmed & Tarunabh Khaitan, *Constitutional Avoidance and Social Rights Litigation*, 35(3) *Oxford J. Legal Stud.* 607, 618 (2015) (making a broad case for the use of administrative law principles as an alternative to invoking constitutional rights in certain cases).

The impact of this transformation raises a number of unanswered questions, ranging from structural issues of access to justice, to the manner in which rights are enforced as well as for the legality of administrative orders that are challenged under the guise of rights enforcement. In this section, I will attempt to address two of these issues, focusing on significant Supreme Court decisions on these points, and considering the impact of the judgment in Maneka Gandhi to their application.

Conclusion

Supremacy of the Constitution is its quality, which positioned it on top of all state institutions and businesses, making it a legal and political reality, not just legal. It is a complex notion comprising elements that ensure a supreme position in the entire state system. Supremacy of the Constitution is having an historical character. Compliance with The Constitution, its supremacy and the laws are mandatory, rules value as principles are enshrined in the Constitution. In order to ensure the supremacy of the Constitution was created constitutionality control. This is the most important legal guarantee of supremacy of the Constitution. To achieve this control body responsible for this effect must be independent and impartial, without allowing the interference of politics in its otherwise would violate the constitutional order of the state. As shown in the literature, “free interpretation of constitutional provisions mean violation of the fundamental law and democratic principles specific to the civilized world.

The formulation of a constitutional precept is the first stage. This is an important step, because the evolution of doctrine has a significant role to play in a democratic polity in order to legitimize the role and position of the judiciary in the constitutional scheme as an expounder of human rights. The implementation of human rights can commence upon a jurisprudential recognition of the entitlement of the individual to freedoms, not only of a civil and political character, but to those with an economic, social and cultural content as well. Raising these human rights to a level of constitutional protection and interpreting them in the context of international conventions confers upon the process a degree of continuity and sanctity in a democratic polity. Courts have a vital role to play in mandating the observance of human rights in an economic, social and cultural context.

Administrative law is a part of Indian constitution and does not have any separate authority or distinguished power. Jurisdiction of administrative law is written ambit of constitutional law and restricted in certain matters. It derives powers from constitution only and administers them for public interest. For maintenance of rule of law administrative law is required. Administrative law is a custodian of rule of law which administers it by applying its power conferred kernels of administrative law, judicial and quasi judicial authorities bestowed by the constitution.