CHAPTER 3

CLASSIFICATION OF ADMINISTRATIVE ACTIONS

General : As observed in Chapter 2, there are three organs of Government : (1) Legislature, (2) Executive, and (3) Judiciary. These three organs essentially perform three classes of Governmental functions:

(1) Legislative, (2) Executive or administrative, and (3) Judicial. The function of the legislative is to enact the law; the executive is to administer the law and the judiciary is to interpret the law to declare what the law is. But as observed by the Supreme Court in *Jayantilal Amrit Lal* v. *F.N. Rana*, **A I R 1986 SC 847**, it cannot be assumed that the legislative functions are exclusively performed by the legislative, executive functions by the executive and judicial functions by the judiciary. In *Halsbury's Laws of England* also, it is stated that howsoever the term 'the Executive' or 'the Administration' is employed, there is no implication that the functions of the executive are confined exclusively to those of an executive or administrative character. Today, the executive performs variegated functions, *viz.*, to investigate, to prosecute, to prepare and to adopt schemes, to issue and cancel licences, etc. (administrative); to make rules, regulations and by-laws, to fix prices, etc. (legislative); to adjudicate on disputes, to impose fine and penalty, etc. (judicial).

Need for classification : A question which arises for our consideration is whether the functions performed by the executive authorities are purely administrative, *quasi*-judicial or *quasi*-legislative in character. The answer is very difficult, as there is no precise, perfect and scientific test to distinguish these functions from one another. A further difficulty arises in a case in which a single proceedings may at times combine various aspects of the three functions. The Courts have not been able to formulate any definite test for the purpose of making such classification. Yet, such classification is essential and inevitable as many consequences flow from it; *e.g.*, if the executive authority exercises judicial or *quasi*-judicial functions, it must follow the principles of natural justice and is amenable to the writ of *certiorari* or prohibition, but if it is an administrative, legislative or *quasi*-legislative function, this is not so. On the other hand, if the action of the executive authority is legislative in character, the requirement of publication, laying on the table, etc., should be complied with, but it is not necessary in the case of a pure administrative action. It is, therefore, necessary to determine what type of function the administrative authority performs.

Legislative, Executive and Judicial functions--General distinction : In *Fida Ali* v. *State*, **A I R 1961 Guj 151**, a Division Bench of the Gujarat High Court quoted with approval the general distinction between legislative, executive and judicial functions, as pointed out by Willis in his '*Treatise on Constitutional Law*', in the following words:

> "Mr. Green has defined the legislative power as the power to create rights, powers, privileges, or immunities, and their correlatives, as well as status, not dependent upon any previous rights, duties, etc.

> (or for the first time), that is, apparently, the power of creating antecedent legal capacities and liabilities. He defines judicial power as the power to create some right or duty dependent upon a previous right or duty, that is, apparently the power to create remedial legal capacities and liabilities. He finds difficulty in defining executive power, except as including all Governmental power which is not a part of the process of legislation or adjudication, that is, the power which is concerned mostly with the management and execution of public affairs."

It was observed by the Court, "All that the Court can do is to consider the act in question and to decide on an application of broad and general considerations whether the act is a legislative or an executive or a judicial act without making any attempt to formulate rigid or exhaustive tests for determining the nature or character of the act."

Legislative functions : Legislative function of the executive consists of making rules, regulations, bye laws, etc. It is, no doubt, true that any attempt to draw a distinct line between legislative and administrative functions is difficult in theory and impossible in practice. Though difficult, it is necessary that the line must be drawn as different legal rights and consequences may ensue. As Schwartz said: "If a particular function is termed 'legislative' or 'rule making' rather than 'judicial' or 'adjudication', it may have substantial effects upon the parties concerned. If the function is treated as legislative in nature, there is no right to a notice and hearing unless a statute expressly requires them."

The establishment of a Municipal Corporation by the Government is a legislative function and can neither be said to be executive nor administrative in nature. Since the rules of natural justice are not applicable to legislative action plenary or subordinate, a Court cannot issue direction to the Government to hear residents of the municipal area before taking a decision to establish a Municipal Corporation. **A I R 1990 SC 261.**

Legislative and judicial functions--Distinction : In *Prentis* v. *Atlantic Coast Line Co.*, Justice Holmes points out the distinction between legislative and judicial functions in the following words:-

> "A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power."

According to Justice Holmes, the main aspect is the element of *time*. A rule (legislative function) prescribes *future* pattern of conduct and creates new rights and liabilities, whereas a decision (judicial function) determines rights and liabilities on the basis of *present or past* facts, and declares the *pre-existing* rights and liabilities. In the words of Green: "The legislative function then is general and relates to the future, whereas the judicial function is specific, final and ordinarily relates to the past. The executive function is the function of administering public affairs and enforcing or carrying out the law".

On the other hand, according to some jurists, the element of *applicability* must be taken into account in distinguishing a legislative function from a judicial function. Prof. Dickinson says: "What distinguishes legislation from adjudication is that the former affects the rights of individuals in the abstract and must be applied in a further proceeding before the legal position of any particular individual will be definitely touched by it; while adjudication operates concretely upon indiviuals in their individual capacity".

Legislative and Administrative functions--Distinction : The distinction between legislative and administrative functions is very difficult to draw. However different tests have been formulated. Griffith and Street have suggested two tests: (1) As per the institutional test, that which the Legislature enacts is legislation. But the word 'enacts' includes all kinds of actions taken by the Parliament and thus, this test is not appropriate. (2) According to the second test, the extent of applicability of the act should be determined. A power to make rules of *general application* is a legislative power and the rule is a legislative rule, while a power to give an order in *specific cases* is an executive power and the order is an executive action. De Smith also says that a legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases, while an administrative act is the application of a general rule to a particular case. But this test is also not complete. The difficulty here is that of distinguishing what is '*general*' from what is '*specific*' or '*particular*' as the difference is only a matter of degree. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Thus, this is only a broad distinction, not necessarily always true.

In the case of *Union of India* v. *Cynamide India Ltd.*, the Supreme Court has observed that "with proliferation of delegated legislation, there is a tendency for the line between legislation and administration to vanish into an illusion. Administrative, *quasi*-judicial decisions tend to merge in legislative activity and, conversely, legislative activity tends to face into and present an appearance of an administrative or *quasi*-judicial activity."

According to de Smith, the following legal consequences flow from the aforesaid distinction:

(1) If an order is legislative in character, it has to be published in a certain manner, but it is not necessary if it is of an administrative nature.

(2) If an order is legislative in character, the Court will not issue a writ of *certiorari* to quash it, but if an order is an administrative order and the authority was required to act judicially, the Court can quash it by issuing a writ of *certiorari*.

(3) Generally, subordinate legislation cannot be held invalid for unreasonableness, unless its unreasonableness is evidence of *mala fide* or otherwise shows the abuse of power. But in case of unreasonable administrative order, the aggrieved party is entitled to a legal remedy.

(4) Only in most exceptional circumstances can legislative powers be sub-delegated, but administrative powers can be sub-delegated.

(5) Duty to give reasons applies to administrative orders but not to legislative orders.

Judicial Functions : According to the Committee on Ministers' Powers, a pure judicial function presupposes an existing dispute between two or more parties and it involves four requisites:

(1) the presentation (not necessarily oral) of their case by the parties to the dispute;

(2) if the dispute is a question of fact, the ascertainment of fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties, on evidence;

(3) if the dispute between them is a question of law, the submission of legal argument by the parties; and

(4) a decision which disposes of the whole matter by finding upon the facts in dispute and 'an application of the law of the land to the facts so found, including, where required, a ruling upon any disputed question of law'.

Thus, in a pure judicial function, the aforesaid four requisites must be present. If these requisites are present, the decision is a judicial decision even though it might have been made by any authority other than a Court, *e.g.*, by a Minister, Board, Executive Authority, Administrative Officer or Administrative Tribunal.

Quasi-judicial functions : The word '*quasi*' means 'not exactly'. Generally, an authority is described as '*quasi*-judicial' when it has some of the attributes or trappings of judicial functions, but not all. In the words of the Committee on Ministers' Powers, "the word '*quasi*' when prefixed to a legal term, generally means that the thing, which is described by the word, has some of the legal attributes denoted and connoted by the legal term, but that it has not all of them": *e.g.*, if a transaction is described as a *quasi*-contract, it means that the transaction in question has some but not all the attributes of a contract.

According to the Committee, a *quasi*-judicial decision equally presupposes an existing dispute between two or more parties and involves (1) and (2) but does not *necessarily* involve (3) and *never* involves (4). The place of (4) is, in fact, taken by administrative action, the character of which is determined by the Minister's choice.

For instance, suppose a statute empowers a Minister to take action if certain facts are proved, and in that event gives him an absolute discretion whether or not to take action. In such a case he must consider the representations of the parties and ascertain the facts to that extent the decision contains a judicial element. But, the facts once ascertained, his decision does not depend on any legal or statutory direction, for *ex hypothesi* he is left free within the statutory boundaries to take such administrative action as he may think fit: that is to say that the matter is not

finally disposed of by the process of (4).

Quasi-judicial functions--distinguished from judicial functions : A *quasi*-judicial function differs from a *purely* judicial function in the following respects--

(*i*) A *quasi*-judicial authority has some of the trappings of a Court but not all of them; nevertheless there is an obligation to act judicially. **A I R 1950 SC 188.**

(*ii*) A *lis inter partes* is an essential characteristic of a judicial function, but this may not be true of a *quasi*-judicial function.

(*iii*) A Court is bond by the rules of evidence and procedure while *quasi*-judicial authority is not.

(*iv*) While a Court is bound by precedents, a *quasi*-judicial authority is not.

(*v*) A Court cannot be a judge in its own cause (except in a contempt case), while an administrative authority vested with *quasi*-judicial powers may be a party to the controversy but can still decide it. **1962 Supp (3) SCR 36.**

Administrative Functions : It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of Governmental functions that remains after legislative and judicial functions are taken away.

Thus, administrative functions are those functions which are neither legislative nor judicial in character. Generally, the following ingredients are present in administrative functions:

(1) An administrative orders is generally based on Governmental policy or expediency.

(2) In administrative decisions, there is no legal obligation to adopt a judicial approach to the questions to be decided, and the decisions are usually *subjective* rather than *objective*.

(3) An administrative authority is not bound by the rules of evidence and procedure unless the relevant statute specifically imposes such an obligation.

(4) An administrative authority can take a decision in exercise of a statutory power or even in the absence of a statutory provision, provided such a decision or act does not contravene provisions of any law.

(5) Administrative functions may be delegated and sub-delegated unless there is a specific bar or prohibition in the statute.

(6) While taking a decision, an administrative authority may not only consider the evidence adduced by the parties to the dispute, but may also use its discretion.

(7) An administrative authority is not *always* bound by the principles of natural justice unless the statute casts such duty on the authority, either expressly or by necessary implication or if it is required to act judicially.

(8) An administrative order may be held to be invalid on the ground of unreasonableness.

(9) An administrative action will not become a *quasi*-judicial action merely because it has to be performed after forming an opinion as to the existence of any objective fact.

(10) The prerogative writ of *certiorari* and prohibition are not *always* available against administrative actions.

Administrative and quasi-judicial functions--Distinction-- *(i)* **General :** Acts of an administrative authority may be purely administrative or may be legislative or judicial in nature. Decisions which are purely administrative stand on a wholly different footing from judicial as well as *quasi*-judicial decisions and they must be distinguished. This is a very difficult task. "Where does the administrative end and the judicial begin? The problem here is one of demarcation and the Courts are still in the process of working it out.

To appreciate the distinction between administrative and *quasi*-judicial functions, we have to understand two expressions: *(i)* '*lis*' and *(ii)* '*quasi-lis*'.

(i) Lis : One of the major grounds on which a function can be called '*quasi*-judicial' as distinguished from pure '*administrative*' is when there is a *lis inter partes* and an administrative authority is required to decide the dispute between the parties and to adjudicate upon the *lis*. *Prima facie*, in such cases the authority will be regarded as acting in a *quasi*-judicial manner.

Certain administrative authorities have been held to be *quasi*-judicial authorities and their decisions regarded as *quasi*-judicial decisions, wherein such *lis* was present, *e.g.*, a Rent Tribunal determining 'fair rent' between a landlord and his tenant, **(1950) 2 All ER 211,** an Election Tribunal deciding an election dispute between rival candidates, **A I R 1955 SC 425**, an Industrial Tribunal deciding an industrial dispute. **A I R 1950 SC 118.**

(ii) **Quasi-lis :** As discussed above, it is not in all cases that the administrative authority is to decide a *lis inter partes*. There may be cases in which an administrative authority decides a *lis* not between two or more contesting parties but between itself and another party. But there also, if the authority is empowered to take any decision which will prejudicially affect any person, such decision would be a *quasi*-judicial decision provided the authority is required to act judicially.

Thus, where an authority makes an order granting legal aid, dismissing an employee, refusing to grant, revoking, suspending or cancelling a licence, cancelling an examination result of a student for using unfair means, rusticating a student, etc., such decisions are judicial in character.

In all these cases there are no two parties before the administrative authority, and the other party to the dispute, if any, is the authority itself. Yet, as the decision given by such authority adversely affects the rights of a person there is a situation resembling a *lis*. In such cases, the

administrative authority has to decide the matter *objectively* after taking into account the objections of the party before it, and if such authority has exceeded or abused its powers, a writ of *certiorari* can be issued against it.

(iii) **Duty to act judicially :** The real test which distinguishes a *quasi*-judicial act from an administrative act is the *duty to act judicially*, and therefore, in considering whether a particular statutory authority is a *quasi*-judicial body or merely an administrative body, it has to be ascertained whether the statutory authority has the duty to act judicially.

Whenever there is an express provision in the statute itself which requires the administrative authority to act judicially, the action of such authority would necessarily be a *quasi*-judicial function. But this proposition does not say much, for it is to some extent a tautology to say that the function is *quasi*-judicial (or judicial) if it is to be done judicially. Therefore, the real question is: Is it necessary that for an action to be *quasi*-judicial, the relevant statute must expressly require the administrative authority to act judicially?

Generally, statutes do not expressly provide for the duty to act judicially and therefore, even in the absence of express provision in the statutes the duty to act judicially should be inferred from "the cumulative effect of the nature of the rights affected, the manner of the disposal provided, the objective criterion to be adopted, the phraseology used, the nature of the power conferred, of the duty imposed on the authority and the other indicia afforded by the statute.

(iv) **Quasi-judicial functions: Illustrations :--** The following functions are held to be *quasi*-judicial functions:

(*a*) Disciplinary proceedings against students.

(*b*) Dismissal of an employee on the ground of misconduct.

(*c*) Confiscation of goods under the Sea Customs Act, 1878.

(*d*) Cancellation, suspension, revocation or refusal to renew licence or permit by licensing authority.

(*e*) Determination of citizenship.

(*f*) Determination of statutory disputes.

(*g*) Power to continue the detention or seizure of goods beyond particular period.

(*h*) Forfeiture of pension or gratuity.

(v) **Administrative functions–Illustrations :** The following functions are held to be administrative functions:

(*a*) An order of preventive detention.

(*b*) An order of acquisition or requisition of property.

(*c*) An order setting up a commission of inquiry.

(*d*) An order making or refusing to make a reference under the Industrial Disputes Act, 1947.

(e) An order of assessment under the Sales Tax Act.

(f) An order granting or refusing to grant permission of sale in favour of non-agriculturist under the Tenancy Act.

(g) An order of experiment under the Bombay Police Act, 1951.

(h) Power to issue licence or permit.

(i) Entering names in Police register.

Administrative instructions : Subject to the provisions of the Constitution, the executive power of the Government extends to all matters in respect of which the Parliament has power to make laws, so also, the executive power of the Government extends to all matters in respect of which the State Legislature has power to make laws. The executive function comprises both the determination of the policy as well as carrying it intc execution. Since the Governmental functions have increased, it is essential and inevitable for the Government to issue administrative instructions for the determination of policy and its uniform application. The difficult question, which frequently arises in the Court of law is whether such 'administrative instructions' are having force of law and whether they can be enforced through judicial process. It is submitted that the law on the point is not quite clear and certain and there are conflicting judicial pronouncements.

Broadly speaking, administrative rules, regulations or instructions which have no statutory force do not give any rise to any legal right in favour of the aggrieved party and cannot be enforced in a Court of law against the administration.