

LEGISLATIVE CONTROL

In any representative democratic government, whether Parliamentary or Presidential, the legislature is the supreme organ of the government as it consists of the representatives of the people. It reflects the will of the people and acts as a custodian of the interests of the people. Hence, it exercises control over administration to hold it accountable and responsible. However, the system of legislative control over administration in a parliamentary form of government (India and UK) differs from such a control in a presidential form of government (USA).

Legislative Control Under Parliamentary System

The parliamentary system of government prevalent in India is based on the principle of collective responsibility. It means that the ministers are responsible to the Parliament for their policies and actions. Thus, the legislative control over administration under such a system is only indirect, that is, through ministers. The officials (administrators) cannot be held responsible to the Parliament directly. They take shelter behind the principle of ministerial responsibility and remain anonymous. In other words, it is the minister who assumes responsibility for the actions of the administrators working under his ministry/department.

The Parliament exercises control over administration through the executive in the following ways.

- (i) General control over the policies and actions of the government through questions, discussions, motions and resolutions.
- (ii) Financial control through budget and audit.
- (iii) Detailed control over financial, administrative and legislative matters through committees.

The various techniques/methods/tools of parliamentary control are as follows.

Law Making It is the primary function of the Parliament. The Parliament lays down the policies of the government by making (enacting) or changing (amending) or cancelling (repealing) the laws. Parliamentary laws determine and condition the organisation, structure, powers, functions and procedures of the administration. However, the control exercised by the Parliament through the law-making process is in broad and general terms. The Parliament makes laws in a skeleton form and authorises the executive to make detailed rules and regulations within the framework of the parent law. This is known as delegated legislation or executive legislation or subordinate legislation. Such rules and regulations are placed before the Parliament for its examination.

Question Hour (Interpellations) The first hour of every parliamentary sitting is slotted for this. During this time, the MPs ask questions and the ministers usually give answers. The questions are of three kinds, viz. starred, unstarred and short notice.

A starred question is one which is distinguished by an asterisk. It requires an oral answer and hence supplementary questions can follow.

An unstarred question, on the other hand, is one which is not distinguished by an asterisk. It requires a written answer and hence, supplementary questions cannot follow.

A short notice question is one which is asked by giving a notice of less than ten days. It is answered orally.

Questions (or interpellations) are effective tools of legislative control over administration and keeps the civil service alert and on its toes. Earl Attlee, the former Prime Minister of Britain, said, “I always consider that question time in the House as one of the finest examples of real democracy. The effect of questions to the Minister and still more questions asked publicly in the House, is to keep the whole of the civil service on their toes.” Similarly Hugh Gaitskell observed, “Anybody who has worked in a civil service department would agree with me that, if there is one major thing which leads civil servants to be excessively cautious, timid and careful and to keep records, which outside the civil service would be regarded as unnecessary, it is the fear of parliamentary questions.”

Zero Hour Unlike the Question Hour, the Zero Hour is not mentioned in the rules of procedure. Thus it is an informal device available to the members of the Parliament to raise matters without any prior notice. The Zero Hour starts immediately after the Question Hour and lasts until the agenda for the day (i.e. regular business of the House) is taken up. In other words, the time gap between the Question Hour and the agenda is known as Zero Hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Half-an-Hour Discussion It is meant for raising a discussion on a matter of sufficient public importance which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact. The Speaker can allot three days in a week for such discussions. There is no formal motion or voting before the House.

Short Duration Discussion It is also known as two hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance. The Speaker can allot two days in a week for such discussions. There is neither a formal motion before the house nor voting. This device has been in existence since 1953.

Other Discussions In addition to the above discussions, there are various other occasions available to the members of Parliament to raise discussions and debates to examine and criticise the administration for its lapses and failures. These include the following:

- Inaugural speech of the President (that is, Motion of Thanks)
- Introduction of several Bills for enactment of laws (i.e. debates on legislation)
- Introduction and passing of resolutions on matters of general public interest

Calling Attention It is a notice introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter. Like the Zero Hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the Zero Hour, it is mentioned in the rules of

procedure.

Adjournment Motion It is introduced in the Parliament to draw attention of the House to a matter of urgent public importance. This motion needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device.

No Confidence Motion Article 75 of the Constitution states that the Council of Ministers shall be collectively responsible to the Lok Sabha. It means that the ministry stays in office so long as it enjoys confidence of the majority of the members of the Lok Sabha. In other words, the Lok Sabha can remove the ministry from office by passing the No Confidence Motion. The motion needs the support of 50 members to be admitted.

Censure Motion A Censure Motion is different from a No Confidence Motion in the following respects:

Table 10.1 Censure Motion vs No Confidence Motion	
Censure Motion	No Confidence Motion
1. It should state the reasons for its adoption in the Lok Sabha	1. It need not state the reasons for its adoption in the Lok Sabha.
2. It can be moved against an individual minister or a group of ministers or the entire council of ministers.	2. It can be moved against the entire Council of Ministers only
3. It is moved for censuring the council of ministers for specific policies and actions.	3. It is moved for ascertaining the confidence of Lok Sabha in the Council of Ministers.
4. If it is passed in the Lok Sabha, the Council of Ministers need not resign from the office.	4. If it is passed in the Lok Sabha, the Council of Ministers must resign from office.

Budgetary System This is the most important technique of parliamentary control over administration. The Parliament controls the revenues and expenditures of the government through enactment of the budget. It is the ultimate authority to sanction the raising and spending of government funds. It can criticise the policies and actions of the government and point out the lapses and failures of administration during the process of enactment of the budget.

Unless the Appropriation Bill and the Finance Bill are passed, the executive cannot incur expenditure and collect taxes respectively. (For details see chapter on “Financial Administration”).

Audit System This is an important tool of parliamentary control over administration. The Comptroller and Auditor General of India [CAG], on behalf of the Parliament, audits the accounts of government and submits an annual ‘Audit Report’ about the financial transactions of the government. The report of CAG highlights the improper, illegal, unwise, uneconomical and irregular expenditures of the government. The CAG is an agent of the Parliament and is responsible only to it (i.e. Parliament). Thus the financial accountability of the government to the Parliament is secured through the Audit Report of the CAG.

Public Accounts Committee This committee was set up first in India in 1921 under the provisions of the Government of India Act of 1919 and has since been in existence. At present, it consists of 22 members (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of the single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members. Until 1966–67, the Chairman of the Committee belonged to the ruling party. However, since then (i.e. 1967) a convention has developed whereby the Chairman of the Committee is selected invariably from the Opposition.

The function of the Committee is to examine the annual audit reports of the Comptroller and Auditor-General of India (CAG) which are laid before the Parliament by the President. In this function, the Committee is assisted by the CAG.

The CAG submits three audit reports to the president, namely, audit report on appropriation accounts, audit report on finance accounts and audit report on public undertakings.

The committee examines public expenditure not only from the legal and formal point of view to discover technical irregularities but also from the point of view of economy, prudence, wisdom and propriety to bring out the cases of waste, loss, corruption, extravagance, inefficiency and nugatory expenses.

Estimates Committee The origins of this committee can be traced to the Standing Financial Committee setup in 1921. The first Estimates Committee in the post-independence era was constituted in 1950 on the recommendation of John Mathai, the then Finance Minister. Originally, it had 25 members but in 1956 its membership was raised to 30. All the thirty members are from Lok Sabha only. The Rajya Sabha has no representation in this Committee. These members are elected by the Lok Sabha every year from amongst its members, according to the principles of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members. The Chairman of the Committee is invariably from the ruling party.

The function of the Committee is to examine the estimates included in the budget and suggest 'economies' in public expenditure. Hence, it has been described as a 'continuous economy committee.'

Committee on Public Undertakings This Committee was created in 1964 on the recommendation of the Krishna Menon Committee. Originally, it had 15 members (10 from the Lok Sabha and 5 from the Rajya Sabha). But in 1974, its membership was raised to 22 (15 from the Lok Sabha and 7 from the Rajya Sabha). The members are elected by the Parliament every year from amongst its members according to the principle of proportional representation by means of a single transferable vote. Thus, all parties get due representation in it. The term of office of the members is one year. A minister cannot be elected as a member of the Committee. The Chairman of the Committee is appointed by the Speaker from amongst its members who are drawn from the Lok Sabha only. Thus, the members of the Committee who are from the Rajya Sabha cannot be appointed as the Chairman.

The functions of the Committee are:

- (a) To examine the reports and accounts of public undertakings.
- (b) To examine the reports, if any, of the Comptroller and Auditor-General on public

undertakings.

- (c) To examine, in the context of autonomy and efficiency of public undertakings, whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices.
- (d) To exercise such other functions vested in the Committee on Public Accounts and the Committee on estimates in relation to public undertakings as may be allotted to the Committee by the Speaker from time to time.

Committee on Subordinate Legislation This Committee was constituted in 1953. It consists of 15 members including the Chairman, who are nominated by the Speaker. The term of office of the members is one year. A minister cannot be nominated as a member of the Committee. The Chairman of the Committee is drawn from the Opposition.

The function of the Committee is to examine and report to the Lok Sabha, whether the powers to make regulations, rules, sub-rules, bye-laws and others, conferred by the Constitution or delegated by the Parliament to the executive, are being properly exercised by it.

Committee on Government Assurances This Committee was constituted in 1953. It consists of 15 members including the Chairman, who are nominated by the Speaker. The term of office of members is one year. A minister cannot be nominated as a member of the Committee.

The function of the Committee is to examine the assurances, promises, undertakings, and so on, given by ministers from time to time on the floor of the Lok Sabha, and to report on:

- (a) The extent to which such assurances, promises, undertakings have been implemented.
- (b) Whether such implementation has taken place within the minimum time necessary for the purpose.

Departmental Standing Committees On the recommendation of the Rules Committee of the Lok Sabha, 17 departmentally related standing committees were set up in the Parliament in 1993. In 2004, seven more such committees were setup, thus increasing their number from 17 to 24.

The main objective of the standing committees is to secure more accountability of the Executive (i.e., the Council of Ministers) to the Parliament, particularly financial accountability. They also assist the Parliament in debating the budget more effectively.

The 24 standing committees cover under their jurisdiction all the ministries/departments of the Central Government.

Each standing committee consists of 31 members (21 from Lok Sabha and 10 from Rajya Sabha). The members of the Lok Sabha are nominated by the Speaker from amongst its members, while the members of the Rajya Sabha are nominated by the Chairman from amongst its members.

A minister is not eligible to be nominated as a member of any of the standing committee. In case a member, after his nomination to any of the standing committee, is appointed as a minister, he then ceases to be a member of the committee.

The term of office of each standing committee is one year from the date of its constitution.

Out of the 24 standing committees, 8 committees work under the Rajya Sabha and 16 committees work under the Lok Sabha.

The functions of each of the standing committees are:

- (a) To consider the demands for grants of the concerned ministries/departments and make a report on the same to the Houses. The report shall not suggest anything of the nature of cut motions.
- (b) To examine bills pertaining to the concerned ministries/departments and make report thereon.

- (c) To consider annual reports of ministries/departments and make reports thereon.
- (d) To consider national basic long term policy documents presented to the Houses, and make reports thereon.

Legislative Control Under Presidential System

The system of legislative control over administration in the presidential form of government (in the USA) is different from the control system in the parliamentary form of government (in India and Britain). Therefore, most of the techniques of legislative control described above are not practiced in the USA. The reason for such a difference lies in the 'theory of separation of power' which is the basis of presidential government prevalent in the USA. Accordingly, the executive and the legislative organs of the government are separated from each other, and hence, remain independent of each other. The executive (which consists of the President and his secretaries) neither sits in the legislature (which is called *Congress* in the USA) nor is responsible to it for its policies and actions. The President of the USA enjoys a fixed tenure of four years and cannot be removed before the completion of his tenure in normal circumstances. The President need not have a majority support in the Congress (which consists of the House of Representatives and the Senate) for his continuity and survival in office. In fact, the President and his secretaries are not the members of the Congress and do not participate in its proceedings. Hence Congressional control over the executive through questions or adjournment motion or no confidence motion or censure motion is not possible. Under such circumstances, the Congress in the USA exercises control over administration through the following tools:

- (i) The Congress creates executive departments, commissions, boards and other administrative agencies. It also determines their structure, organisation, powers and functions. In fact, the Independent Regulatory Commissions report directly to the Congress as they are placed outside the President's control.
- (ii) The Congress appoints committees to investigate into and criticise the working of administrative departments and agencies. This power of the Congress is known as the power of 'legislative investigation'.
- (iii) The Congress enacts laws or amends and repeals the existing laws to lay down public policies, methods and procedures.
- (iv) The Congress approves the Federal Budget prepared by the Office of Budget and Management under the President's direction. The budget presented to the Congress by the President is thoroughly examined and revised by its committees and sub-committees. It also examines the accounts and audit reports.
- (v) The Senate (upper house of the Congress) enjoys the power of confirming the treaties executed by the President.
- (vi) The Senate also enjoys the power of confirming higher appointments made by the President.
- (vii) The Congress has the power to impeach the President before the completion of his four years tenure on grounds of treason or corruption.
- (viii) The Congress requires the administrative agencies to report their past actions or future plans to its committees or to it as a whole. F.A. Nigro calls it the "doctrine of codirectorship", which means direct participation of the Congress in administrative decision-making.
- (ix) The executive departments are required to submit the annual as well as special reports to the Congress. These reports relate to their performance and problems.

- (x) The members of the Congress are provided with an office and staff to maintain regular contacts with the administrative officials to seek remedial action on complaints received from the citizens of their respective constituencies. This is known as the institution of 'case work'.
- (ix) The Congress directly supervises the operations of certain administrative departments and agencies. This is known as the doctrine of 'legislative oversight'.

Thus, the Congressional control over administration in the USA is limited and restricted in nature and scope.

Limitations and Ineffectiveness

The legislative control over administration in parliamentary countries like India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The following factors are responsible for the ineffectiveness of parliamentary control in India.

- (i) The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.
- (ii) Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.
- (iii) The legislative leadership lies with the executive and it plays a significant role in formulating policies.
- (iv) The very size of the Parliament is too large and unmanageable to be effective.
- (v) The majority support enjoyed by the executive in the Parliament reduces the possibility of effective criticism.
- (vi) The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the executive. Thus, they do post mortem work.
- (vii) The increased recourse to 'Guillotine' reduced the scope of financial control.
- (viii) The growth of 'delegated legislation' reduced the role of Parliament in making detailed laws and increased the powers of bureaucracy.
- (ix) The frequent promulgation of 'Ordinances' by the President dilutes the Parliament's power of legislation.
- (x) The Parliament's control is sporadic, general and mostly political in nature.
- (ix) Lack of a strong and steady opposition in the Parliament, and a setback in the parliamentary behaviour and ethics, have also contributed to the ineffectiveness of legislative control over administration in India.

Appleby's Criticism

Paul H. Appleby (an American scholar of public administration), in his report entitled "Re-examination of India's Administrative System" (1956), was very critical of parliamentary control over administration in India. He said that there is excessive parliamentary interference in public administration of India. He came to the conclusion that one of the important negative influences on achievement was Parliament. His list of criticisms were as follows:

- (i) The members of Parliament greatly exaggerate the importance of the function of the Comptroller and Auditor-General and pay far too much attention to his reports. So doing, the Parliament increases the timidity of public servants at all levels, making them unwilling to

take responsibility for decisions, forcing decisions to be made by a slow and cumbersome process of reference and conference in which everybody finally shares dimly in the making of every decision, not enough gets done and what gets done is done too slowly.

- (ii) There is, among members of the Parliament, too much general and vague fear that its responsibilities are not being preserved. Such fear cannot be supported by a bill of particulars really related to the high level of parliamentary responsibility. Government proposals to the Parliament are amended in India much more often than in the United Kingdom, and the proposals are drawn originally with much more regard for the sentiments of even a small segments of the Parliament.
- (iii) The Parliament often exhibits a prejudice for reliance on the judgement of businessmen.
- (iv) The Parliament seems strangely inclined to make too ready concessions to some of the self-interest demands of small but influential business interests, and to enforce corresponding changes in government's decisions.
- (v) By Parliament's endorsement of the formerly small and narrow approach of the Public Service Commission to its own functions in the mistaken belief that this strengthens the merit system, it undermines the responsibility of the ministries and thereby, undermines the responsibility of the Parliament.
- (vi) Parliament is a chief citadel of opposition to delegation of powers, the need for which is the worst shortcoming of Indian administration. Parliament's reluctance to delegate its power in detail, as it is essential to do if parliamentary powers are to be important and positive, discourages ministers from delegating their powers, discourages secretaries from delegating their powers, and managing directors from delegating their powers.

EXECUTIVE CONTROL

Executive control over administration means the control exercised by the chief executive (political executive) over the functioning of bureaucracy. Such control in the USA is exercised by the President and his secretaries, and in India and Britain by the Cabinet and ministers (individually).

In parliamentary government the Cabinet is collectively responsible to the Parliament for its policies and actions. Each minister is also individually responsible for the acts of omission and commission in his Ministry/department. In other words, ministerial responsibility is the basic feature of the Parliamentary government. For this very reason the political executive (Cabinet and ministers) exercise control over administration.

Unlike the legislative control which is general, periodical, informational and reportive, the executive control is fuller in content, constant, continuous, stimulative, corrective and directive.

The executive exercises control over administration through following means or techniques.

Political Direction (Policy-making) In India, the Cabinet formulates administrative policies and enjoys the power of direction, supervision and coordination with regard to its implementation. The minister, who is incharge of one or more departments, lays down the departmental policy and directs, supervises and coordinates its implementation by the administrators. Thus, through political direction, the Minister controls the operations of administrative agencies working under his ministry/department(s). The departmental officials are directly and totally responsible to the minister. In the USA, the same function is performed by the President and his secretaries.

Budgetary System The executive controls the administration through budgetary system. It formulates the budget, gets it enacted by the Parliament, and allocates the necessary funds to the administrative agencies to meet their expenditure. In all such activities, the Ministry of Finance (which is the central financial agency of the Government of India) plays an important role. It exercises financial control over administration in the following ways.

- (i) Approval of policies and programmes in principle.
- (ii) Acceptance of provision in the budget estimates.
- (iii) Sanctioning expenditure subject to the powers which are delegated.
- (iv) Providing financial advice through the Integrated Financial Advisor.
- (v) Reappropriation of grants (i.e. transfer of funds from one sub-head to another).
- (vi) Internal audit system.
- (vii) Prescribing a financial code to be followed by the spending authorities.

Appointment and Removal (Personnel Management and Control) This is the most effective means of executive control over administration. The executive plays an important role in personnel management and control and enjoys the power of appointment and removal of top administrators. In this function, the executive (in India) is assisted by the Department of Personnel and Training, the Ministry of Finance, and the UPSC. The Department of Personnel and Training is the central personnel agency in India and plays a major role in personnel management and control. At the highest level, the ministers play an important role in the selection and appointment of secretaries and heads of departments. Thus they (i.e. ministers) exercise full control over the administration of departments under their charge through such appointees.

In the USA also, though the President has to seek the approval of Senate for effecting appointments to top posts, he has the exclusive power of removing them from office. The Office of Personnel Management (OPM) in the US plays an important role in personnel management and control.

Delegated Legislation Also known as the executive legislation, it is an important tool in the hands of the executive to exercise control over administration. The Parliament makes laws in skeleton forms and authorises the executive to fill in minor details. Therefore, the executive makes rules, regulations and bye-laws which have to be observed by the administrators in execution of the law concerned.

Ordinances The Constitution of India authorises the chief executive, that is, the President to promulgate ordinances during the recess (interval) of Parliament to meet situation demanding immediate action. An ordinance is as authoritative and powerful as an act of Parliament and hence, governs the functioning of administration.

Civil Service Code The executive has prescribed a civil service code to be observed and followed by the administrators in the exercise of their official powers. It consists of a set of conduct rules which prevent the administrators from misutilising their powers for their personal ends. The important among such rules in India are as follows.

- (a) All-India Services (Conduct) Rules, 1954
- (b) Central Civil Services (Conduct) Rules, 1955
- (c) Railway Services (Conduct) Rules, 1956.

They deal with various things like loyalty to the state, obeying the official orders of the superiors, political activities of civil servants, financial transactions of civil servants, marital restrictions, and others.

Staff Agencies The executive also exercises control over administration through staff agencies. The important staff agencies in India are the Department of Administrative Reforms, the Planning Commission, the Cabinet Secretariat and the Prime Minister's Office. Mooney said that a staff agency is "an expansion of the personality of the executive. It means more eyes, more ears and more hands to aid him in forming and carrying out his plans." Thus, the staff agencies exercise influence and indirect control over the administrative agencies and play an important role in coordinating their policies and programmes.

Appeal to Public Opinion The administrative system, (i.e. civil service or bureaucracy) whether in the USA or the UK or India, is status quo oriented and hence resists change. It does not receive new policies, plans, programmes and projects formulated by the executive with positive mindedness. In fact, the various organs of the administrative machinery, in the words of Pfiffner and Presthus, "seek to strengthen their position *vis a vis* other agencies, and the executive, by alliances with legislature and pressure groups, as well as by calculated support building campaigns directed at the general public. They develop vested interests not only in programme areas, but equally in established ways of doing things, which enhance the self-consciousness and strategic position of the bureaucracy." Due to this, the bureaucracy resists new programmes and methods as they threaten its (bureaucracy's) strong position. Under such circumstances, the executive appeals to the public opinion.

JUDICIAL CONTROL

The control exercised by the Courts over the administrative acts is called judicial control. In other words, it means the power of the courts to keep the administrative acts within the limits of law. It also implies the right of an aggrieved citizen to challenge the wrongful acts of administrators in a court of law. The primary objective of judicial control over administration is the protection of the rights and liberties of citizens by ensuring the legality of administrative act. In the words of L.D. White, "The purpose of legislative supervision is principally to control the policy and the expenditure of the executive branch, the end sought by judicial control of administrative acts is to ensure their legality and thus, protect citizens against unlawful trespass on their constitutional or other rights."

As rightly observed by M.P. Sharma (the first Professor of public administration in India), "looked at from the point of view of the citizens whose liberties and rights they (i.e. courts) are intended to protect, the controls exercised by the courts are called 'judicial remedies.' As a matter of fact, official liability before the courts and judicial remedies for the citizens against official excesses or abuse of power are the two faces of the same coin."

Basis

The judicial control over administration emanates from the concept of 'rule of law' which is a cardinal feature of the British Constitution as well as the Indian Constitution. A.V. Dicey, the British constitutional lawyer, in his famous book *Introduction to the Study of the Law of the Constitution* gave a classic exposition of this concept which is as follows.

"No man is punishable or can be lawfully made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land... no man

is above the law, but... every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals... every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen... the general principles of Constitution... are with us the result of judicial decision determining the rights of private persons in particular cases brought before the courts.”

In short, the three elements of ‘rule of law’ are as follows:

- (i) Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- (ii) Equality before the law, that is, equal subjection of all citizens (rich or poor, high or low, official or non-official) to the ordinary law of the land administered by the ordinary law courts.
- (iii) The primacy of the rights of the individual, that is, the Constitution, is the result of the rights of the individual as defined and enforced by the courts of law rather than the Constitution being the source of the individual rights. Thus, the rights of the citizens of Great Britain flow from the judicial decisions, not from the Constitution.

Scope (Grounds)

The judiciary can intervene in the administrative acts under the following circumstances.

- (i) Lack of jurisdiction, that is, when the administrator acts without authority or beyond the scope of his authority or outside the geographical limits of his authority. It is technically called ‘overfeasance’ (excess of authority).
- (ii) Error of law, that is, when the administrator misinterprets the law and thus imposes upon the citizen, obligations which are not required by the content of law. It is technically called ‘misfeasance’.
- (iii) Error in fact finding, that is, when the administrator makes a mistake in the discovery of facts and acts on wrong presumptions.
- (iv) Abuse of authority, that is, when the administrator uses his authority (or power or discretion) vindictively to harm some person. It is technically called ‘malfeasance.’
- (v) Error of procedure, that is, when the administrator does not follow the laid down procedure.

The citizens who are affected by the above cases can seek the intervention of judiciary in the administrative acts.

Methods

The judiciary exercises control over administration through the following methods or techniques.

Judicial Review It is the power of the courts to examine the legality and constitutionality of administrative acts. On examination, if they are found to be violative of the Constitution (*ultra vires*), they can be declared as illegal, unconstitutional and invalid by the courts. The scope of judicial review in the USA is much wider than in Britain. India falls in between the two due to the constitutional and statutory limitations (on the scope of judicial review).

Statutory Appeal The parliamentary statute (i.e. law or act) may itself provide that in a specific type of administrative act, the aggrieved citizen will have the right of appeal to the courts. Under such

circumstances, the statutory appeal is possible.

Suits Against Government In India, Article 300 of the Constitution governs the suability of the state. It states that the Union Government and state government can be sued, subject to the provisions of the law made by the Parliament and the state legislature respectively. The state is suable in contracts. This means that the contractual liability of the Union Government and the state governments is same as that of an individual under the ordinary law of contract. However, in case of torts, the position is different (a tort is a wrongful action or injury for which a suit for damages lies). In this regard, a distinction is made between the sovereign and non-sovereign functions of the state. The state, for the tortious acts of its servants, can be sued only in case of its non-sovereign functions but not in case of its sovereign functions.

In Britain, there has been traditional immunity of the state (i.e. Crown) from any legal liability for any action. Suits against government in contract or tort were severely restricted. Such restrictions were relaxed and the situation was improved by the Crown Proceedings Act of 1947. The present position in Britain is that the State can be sued for the wrongful acts of its officials whether in contracts or torts, with some exceptions.

In the USA, subject to a few exceptions, the state cannot be sued in cases pertaining to torts. In other words, the State (either federal government or state government) is immune from the tortious liability of its servants, except in few cases.

In France, where the system of ‘Droit Administratif’ prevails, the state assumes responsibility for the official actions of its servants and compensate the citizens for any loss suffered by them. The aggrieved citizens can directly sue the state in the ‘administrative courts’ and get the damages awarded.

Suits Against Public Officials In India, the President and the state governors enjoy personal immunity from legal liability for their official acts. During their term of office, they are immune from any criminal proceedings, even in respect of their personal acts. They cannot be arrested or imprisoned. However, after giving two months’ notice, civil proceedings can be instituted against them during their term of office in respect of their personal acts. The ministers do not enjoy such immunities and hence they can be sued in ordinary courts like common citizens for crimes as well as torts.

Under the Judicial Officer’s Protection Act of 1850, the judicial officers are immune from any liability in respect of their acts and hence cannot be sued.

The civil servants are conferred personal immunity from legal liability for official contracts by the Article 299 of the Constitution of India. In other cases, the liability of the officials is the same as of any ordinary citizen. Civil proceedings can be instituted against them for anything done in their official capacity after giving a two months’ notice. As regards criminal liabilities, proceedings can be instituted against them for acts done in their official capacity with prior permission from the government.

The Monarch in Britain and the President in the USA enjoy immunity from legal liability. The legally accepted phrase in Britain is, ‘The King can do no wrong.’ Hence he cannot be sued in any court of law.

Extraordinary Remedies These consist of the following six kinds of writs issued by the courts.

- (i) **Habeas Corpus** It literally means “to have the body of.” It is an order issued by the court to a person who has detained another person, to produce the body of the latter before it. The court

will set the imprisoned person free if the detention is illegal. This writ is a bulwark of individual liberty against arbitrary detention.

- (ii) **Mandamus** It literally means ‘we command’. It is a command issued by the court to a public official asking him to perform his official duties which he has failed to perform.
- (iii) **Prohibition** It literally means ‘to forbid.’ It is issued by a higher court to a lower court when the latter exceeds its jurisdiction. It can be issued only against judicial and quasi-judicial authorities and not against administrative authorities. Hence, its importance as a tool of judicial control over administration is highly restricted.
- (iv) **Certiorari** It literally means ‘to be certified.’ It is issued by a higher court to a lower court for transferring the records of proceedings of a case pending with it, for the purpose of determining the legality of its proceedings or for giving fuller and a more satisfactory effect to them than could be done in the lower court. Thus, unlike the prohibition which is only preventive, the Certiorari is both preventive as well as curative.
- (v) **Quo Warranto** It literally means ‘by what authority or warrant.’ It is issued by the courts to enquire into the legality of claim of a person to a public office. Therefore, it prevents illegal assumption of public office by a person.
- (vi) **Injunction** It is issued by the court asking a person to do a thing or refrain from doing it. Thus, it is of two kinds *viz.* mandatory and preventive. The mandatory injunction resembles the writ of Mandamus but it is different. As put by M.P. Sharma, “Mandamus cannot be issued against private persons while the injunction is primarily a process of private law and only rarely a remedy in administrative law. Mandamus is a remedy of common law while injunction is the strong arm of equity.”

Similarly, preventive injunction resembles the writ of prohibition but it is different. In the words of M.P. Sharma, “Injunction is directed to the litigant parties while prohibition to the court itself. Also, while injunction recognises the jurisdiction of the court in which the proceedings are pending, prohibition strikes at such jurisdiction.”

Writs in India

The following points can be noted in this context.

- (i) The courts can issue all the above mentioned writs. However, only the first five are mentioned in the Constitution of India.
- (ii) Article 32 of the Constitution authorises the Supreme Court to issue writs for the enforcement of the Fundamental Rights of citizens guaranteed to them by the Constitution.
- (iii) Article 226 of the Constitution authorises High Courts to issue the writs not only for the enforcement of the Fundamental Rights of citizens guaranteed by the Constitution but also for other purposes. This means that the writ jurisdiction of High Courts is wider than that of the Supreme Court.
- (iv) Parliament (under Article 32) can empower any other court to issue these writs. Since no such provision has been made so far, only the Supreme Court and the High Courts can issue the writs and not any other court.

Limitations

The following factors limit the effectiveness of judicial control over administration.

- (i) The judiciary cannot intervene in administrative process on its own. The courts intervene only when the aggrieved citizen takes the matter before them. Therefore, the judiciary lacks the *suo moto* power.
- (ii) The control exercised by the courts is in the nature of a post mortem control, that is, they intervene after the damage is done to the citizen by the administrative acts.
- (iii) All administrative acts are not subject to judicial control as the Parliament may exclude certain matters from the jurisdiction of the courts.
- (iv) Self-denying ordinance, that is, the judiciary denies to itself jurisdiction in certain matters. The courts refuse to intervene in certain purely administrative matters on its own accord.
- (v) The judicial process is very slow and cumbersome as well as very expensive.
- (vi) The judges being legal experts cannot fully and properly understand the highly technical nature of administrative acts.
- (vii) The volume, variety and complexity of administration has increased due to welfare orientation of the state. Hence, the courts cannot review each and every administrative act affecting the citizen.

CITIZENS' CONTROL

A democratic government is based on the 'doctrine of popular sovereignty' which means that the people are supreme in a democracy, or the final authority in democracy is vested in the people. Therefore, administration in democracy is or should finally and ultimately be responsible to the people.

The people exercise control over administration through the following methods or means:

1. Election The representative democracy is classified in two kinds, namely, the Presidential Government and the Parliamentary Government. In the Presidential Government prevalent in the USA, the President is directly elected by the people. He is the Chief Executive enjoying all powers of the executive organ of the government. He is not responsible to the Legislature (i.e., Congress) but to the people ultimately. Thus, the popular control over Chief Executive in a presidential government like USA is direct.

In the Parliamentary Government prevalent in Britain and India, the real executive (i.e., Cabinet) is drawn from the legislature and remains responsible to it for its policies and actions. The legislature in turn is responsible to the people. Thus the popular control over the executive in a parliamentary government like Britain and India is indirect as it is exercised through the elected Parliament.

In a democracy whether presidential or parliamentary, when the government becomes unresponsive, corrupt, irresponsible and inefficient, it can be removed from office by means of periodic elections. The elections are the medium of expression of people's confidence in the popular government.

2. Recall It is a direct democratic device. It is used in Switzerland and thirteen states of USA where the administrative officials are directly elected by the people. The system of recall enables the people to remove the elected official from office before the expiry of his tenure, when he fails to represent their will. In other words, the official has to vacate office before the completion of his tenure, if he is

defeated in a recall poll. The device of recall can be used when the people are not satisfied with the performance of the elected official while in office and it does not require any charges of illegal actions. The chief merit of recall is that it enables the people to hold their public officials continuously responsible for their professional role and duties.

3. Pressure Groups The term 'Pressure Group' originated in USA. It is a group of people who are organised actively for the purpose of promoting their common interest. Some examples of such groups are voluntary agencies, trade unions, employment associations, professional associations, student unions and so forth. These groups are also called as interest groups or vested groups. They exert pressure on the administration to promote their objectives. They influence the policy-making and policy-implementation in government through legal and legitimate methods like publicity, propagandising, petitioning, public debating, maintaining contacts with their legislators and so forth. They act as a liaison between the administration and their members. However, some times they resort to illegitimate and illegal methods like strikes, violent activities and corruption which damages public interest and administrative integrity.

4. Advisory Committees These are also called as Advisory Councils or Boards. They are attached to the administrative system at all levels from top to bottom. They consist of expert citizens and representatives of the special interests. They act as a link between the administration and the public and provide advise to the government on administrative policies, problems and procedures. The recommendations made by these agencies are only advisory in nature and are not binding on the department to which they are attached. However, they act as an effective instrument of the department's public relations and make administration democratic in character.

5. Public Opinion Unlike the above formal modes, public opinion is an informal mode of citizens' control over administration. Public opinion is the opinion of people in relation to the government policies and actions. It is expressed through various agencies like press, public platform, political parties, radio, television, cinema, pressure groups, educational institutions and so on. Of these, independent press is the most effective agency of public opinion. It is described as the "fourth estate" of democracy.

The importance of public opinion as a mode of citizens' control over administration is highlighted by the following points:

- (i) It influences the policies and programmes of the government.
- (ii) It keeps the administration responsive and acts as a watchdog on it.
- (iii) It acts as a source of laws and facilitates their successful implementation.
- (iv) It safeguards individual liberty by keeping a check on unpopular and undemocratic activities of the government.