JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS *

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My remarks on the problem of judicial review of administrative proceedings are intended to be purely introductory, and to lead up to the fuller comments that will be made on this topic by Professor Byse.

First, I would like to make some preliminary comments on the relationship between our present discussions on administrative law and the discussions held at Stanford last summer by the group of 9 Indian and American lawyers that assembled there for 5 weeks of intensive work. As I see it, the discussions of last summer accomplished some of the spade work of digging out, outlining and analyzing in a preliminary fashion some of the problems of public law—particularly administrative law, and also constitutional law—that are currently of vital concern to India, as well as to other democratic countries. The results of those weeks of intensive group discussions and preliminary research are embodied in the book, "Public Law Problems in India—A Survey Report."

Our objective is to carry on a working group to determine priorities to be accorded to the different types of research projects that are possible in the public law field ; determine just what the various research projects embarked upon during the first year of the Indian Law Institute's operations should cover—what precise topics should be studied, what types of legal and non-legal materials should be used, how the research groups should be organized and what research techniques should be utilized. Our first topic concerning judicial review of administrative proceedings may give us a good opportunity to work out these problems with respect to a particular project.

As I have mentioned, administrative law problems were covered intensively during the survey by the working group at Stanford last summer. During the survey, it was repeatedly recognized by the participants that the problems of administrative law were related to those of constitutional law. Whether or not a hearing is required in a particular case before a tribunal, whether or not a hearing has to contain certain ingredients that comprise fair play, might, on the one hand, be questions of statutory construction, but might also, on the other hand, involve ultimate constitutional questions. In the United States, these

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constitutional questions would be considered largely under the heading of the concept of due process of law, imbedded in the 5th and 14th Amendments to the American Constitution. In India, I understand that these questions would arise either in connection with the general legal concept of "Natural Justice" or with specific reference to the 14th and 19th Articles of the Constitution. The role of the courts in reviewing administrative proceedings to determine compliance with statutory procedures of constitutional principles is a role that is partly explicit, and partly implicit in the American Constitution. To the extent that the court supervises administrative proceedings by its construction of statutes, this is a role that the federal courts exercise under the explicit terms of Article III, Section 2 of the American Constitution with respect to federal administrative tribunals.

To the extent that review of administrative action by the federal courts is based on a federal constitutional question, the review of the constitutional validity of the statute under which the administrative agency operates, or the review of the constitutional validity of the administrative action itself, is undertaken under a doctrine of the role of the Supreme Court which is not spelled out in our Constitution. This doctrine was laid down as implicit in our Constitution by Chief Justice Marshall in the famous case of *Marbury* v. *Madison.*[1] The Indian Constitution is more explicit with respect to judicial review of the constitutional validity of either the statute governing the administrative agency's action or the validity of the administrative action itself. Article 13 makes clear that the courts do have the power of judicial review of the constitutionality of statutes and administrative rules and regulations.

The historical background of judicial review is well presented in pages 715-722 of Gellhorn and Byse "Administrative Law, Cases and Comments" (1954). Our courts in the United States tend to view current problems of administrative law in the main in terms of judicial construction of statutory requirements. Thus, the federal courts would, at least overtly, handle as a matter of statutory interpretation rather than as a matter of constitutional law the question of whether an administrative body must give notice and an opportunity to be heard to interested individuals. But, underlying the statutory construction problem, the "ultimate legal problem is whether the procedure utilized satisfies the guarantee of due process of law"[2]. One may hazard the guess that the same situation prevails in Indian courts—that the constantly reiterated question as to whether certain

1. 1 Cranch 137 (1803)
2. Gellhorn & Byse—*Supra* p. 715.

procedures must be followed by administrative tribunals in order to conform to the requirements of "natural justice" really refers, ultimately, to a constitutional question which is embodied in the written Constitution itself, as well as existing implicitly in the general constitutional doctrines of the country. In the United States, the constitutional provisions that are especially relevant, though they are by no means the only ones that are relevant, are the due process clause of the Fifth Amendment as against the Federal Government and the due process clause of the Fourteenth Amendment as against the States—*i.e.*, the right of a person not to be deprived by Governmental action "of life, liberty, or property, without due process of law."

Most Indian lawyers seem well aware of the fact that the fight waged by Dr. Munshi and others at the Constituent Assembly to have the due process clause incorporated in the Indian Constitution was defeated.[3] Thus, Article 21 merely says that: "No person shall be deprived of his life or personal liberty except according to procedure *established by law*" (emphasis added), whatever that latter term may mean. But note that Article 21 is not the only provision in the Fundamental Rights portion of the Indian Constitution that may be relevant to judicial review of administrative action. Article 14 contains a guarantee of equal protection of the law and, what is more significant, Article 19 contains guarantees of various personal rights—civil rights and property rights—subject only to "reasonable restrictions." To an American, Article 19 seems in substance to convey the same implications as the due process clause in the American Constitution with respect to judicial review of administrative action. Thus, the frequent references to "natural justice" in Indian judicial opinions concerning the propriety of procedures used by administrative tribunals and departments of government would seem ultimately to refer to constitutional guarantees to the individual under Article 19 in much the same way as American judicial discussion of the meaning of statutes governing administrative action may refer ultimately, though tacitly, to the due process guarantees under the Fifth and Fourteenth Amendments.

In sum, the old natural law concepts of what is ethically right became embodied in Lord Coke's doctrine of the "due process of the common law." Lord Coke's doctrine in turn has become applicable to test the soundness of administrative procedures in the United States, ultimately, through the due process language of the Fifth and Fourteenth Amendments (and through other constitutional provisions such as the First Amendment guarantee of the right of free speech). The same doctrine has become applicable in India, ultimately, through

3. Constituent Assembly Debates, III, 426 and VII, 1001.

Article 19. And this is so, even though American courts today may tend to refrain from explicit discussion of constitutional limitations in many cases and dwell instead on questions of statutory construction. The same proposition seems to hold true of India even though Indian courts may similarly tend to shy away from reference to Article 19 in administrative law cases and may dwell on the requirements of the more generalized doctrine of "natural justice."

Just what the precise requirements of Due Process or Natural Justice are in particular cases involving administrative action remain for consideration. The foregoing preliminary remarks merely describe the general constitutional framework within which these questions are settled and suggest that there is a parallel that may be drawn between the ultimate constitutional standards for judicial review of administrative action in India and the United States. In looking ahead to the forthcoming discussion of the particular doctrines laid down by the courts in their review of administrative action, it may be useful to note that constitutional questions may be involved in such matters as the right to hearing, the right to notice, the right to appear with counsel, the right of an interested person to obtain a full disclosure of testimony, the right to confront witnesses—all of these being questions relating to the administrative hearing; and, apart from the hearing questions, there may be constitutional questions concerning the delegation of legislative power—the sufficiency of legislative standards laid down for the administrator to follow. It may also be useful at this point to invite your attention to materials contained in the book on "Public Law Problems in India" that bear on these questions: See, for example, the paper on Proposed Topics for Administrative Law Research, with its discussion of the problems of delegation of power on page 2, and its discussion of the right to a hearing and the ingredients of a fair hearing, on pages 4—5, and 14—15. See also the paper on "Administrative Law—The Right to a Fair Hearing" pages 38-52, noting among other things the reliance placed on Article 19(1)(g) by the Indian Supreme Court in declaring void licensing order under the Essential Supplies Act in the *Dwarka Prasad* case in 1954.[4]

4. A.I.R. 1954 S.C. 224.