NOTES

Procedural Fairness & Judicial Review : Administrative Law

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Administrative authorities have extensive powers which can have a direct effect on an individual's rights and interests. In order that these powers may be exercised in a fair and legal manner, the principles of natural justice such as the ***rule against bias*** and **audi alteram partem** i.e. *the right to* be heard must be followed. It is not enough merely to consider what decision was reached, since attention must also be paid to the manner in which it was made. In India the writ jurisdiction provided for under **Articles 32** and **226** constitutes an important constitutional means of judicial review of an administrative action.

The principles of natural justice

What is known as natural justice refers to the fundamental principles of fairness when making decisions. It is not a rigid set of technical rules, since the specific content of these principles varies depending on the kind of power involved, the seriousness of the consequences and the particular circumstances of the case. In some instances, a hearing may be required by reason of fairness even if a statute does not explicitly provide for one.

1. Rule against bias

The principle is stated in the form of the maxim ***nemo judex in causa sua***, which means that nobody should act as a judge in their own case. A person who is responsible for making a decision must remain impartial and must not have any personal, financial or official interest that might lead to a reasonable suspicion of bias.

Bias can be personal, financial, related to the subject matter or departmental. The test does not always demonstrate actual prejudice. It is also necessary for the circumstances to show that a fair-minded person could reasonably doubt the decision-maker’s impartiality. One should not decide a dispute in which their own behaviour or financial interest is involved.

2. Audi alteram partem: the right to a fair hearing

'***Audi alteram partem***' is equivalent to 'hear the other side'. Before a decision is taken which has an adverse effect on a person, the person should normally be given:

- clear notice of the proposed action and the allegations,
- reasonable time to respond,
- access to the material being relied upon, subject to lawful limits,
- a meaningful opportunity to present evidence and arguments, and
- a decision made by an unbiased authority.

It depends on the relevant statute and the specific facts whether cross-examination or legal representation is needed. A trial-like hearing is not necessary in all cases involving administration. The important issue is whether the person was given a fair and practical opportunity to defend themselves.

The same rule extends to cases involving disciplinary measures, the cancellation of licenses, blacklisting, decisions regarding examinations, employment issues and all other decisions which have civil consequences. In the case of ***A.K. Kraipak v. Union of India*** the Supreme Court highlighted that the distinction between administrative and quasi-judicial action is very narrow and that the principle of fairness applies to both. In ***Maneka Gandhi v. Union of India*** the idea of fairness was linked to the procedure required by **Article 21**.

3. A hearing after a decision and decisions based on reasons

A post-decision hearing can at times be agreed to in situations where there is a need for urgent action, for example, in order to prevent an immediate threat to public safety. It should not turn into a regular justification for refusing a previous hearing.

An authority must also provide reasons, since such reasons indicate that the relevant material has been taken into account, enable the affected person to understand the outcome and allow judicial review to take place. A short order is not automatically invalid, but it is hard to defend a decision which gives no explanation when important rights are in question.

4. Exceptions and the consequences of a breach

Natural justice is adaptable, in emergencies, in cases concerning national security, in relation to legislative action, when a hearing cannot take place, or where disclosure would undermine the object of the action, a previous hearing may be restricted or omitted. Courts are careful when considering such exceptions.

A decision can be set aside and sent back for a new one if natural justice has been violated. However, this effect is not always immediate. The courts may consider whether the breach actually caused harm, in particular where the facts indicate that no different outcome could have been reached. The case of ***Union of India v. K.A. Kittu*** shows that tribunals and courts are able to examine whether a departmental inquiry was biased, procedurally unfair or not supported by the evidence.

Can Advocates Use Social Media for Promotion?



The Quick Answer

No. Advocates cannot carry out direct or indirect advertising, solicitation or client acquisition through social media.

What is allowed?
Responsible posts like academic discussions, accurate reporting and impartial case law updates — as long as they are not misleading, sensational or promotional.

The Rule

BCI Rule 36

Rule 36, Section IV, Chapter II, Part VI of the BCI Rules prohibits soliciting work or advertising (either directly or indirectly).

Limited information allowed:

- Name
- Address
- Contact details
- Enrolment particulars
- Qualifications
- General areas of practice



Why Now?



- Rise of reels, sponsored posts, client testimonials, influencer collaborations, etc.
- Court content being recorded, edited and monetised.
- BCI extended the existing duty of restraint to the digital space.

Relevant Legal Provisions



- Advocates Act, 1961 (BCI's functions)
- BCI Rules, 1975 (Rule 36)
- Contempt of Courts Act, 1971 (risk of prejudicing proceedings)

What Triggered It?



- Promotional reels, monetised content, collaborations, client testimonials, etc. by advocates.
- Concerns were raised in the case of Anil Pandey v. Bar Council of India (July 2026).
- BCI issued the circular (BCID: 4657/2026) on 17 July 2026.

The administrative process and judicial review

1. Meaning and Need

Judicial review is the ability of the courts to look at whether administrative action is legal. It constitutes a constitutional check on public power and is an important element of the rule of law since it guards individuals against decisions which are made without authority, out of bad faith or as a result of unfair procedures.

Judicial review is generally concerned with the process of making decisions and not with substituting the administrator's view for that of the judge. Instead of asking which decision is the best when judged on its merits, the courts inquire whether the authority had the power to make the decision, had followed a fair procedure, and had reached a decision that is supported by the law.

2. Scope and Constitutional Jurisdiction

The Supreme Court has the power to protect fundamental rights under **Article 32** and to examine administrative actions in suitable proceedings. By means of **Article 136** it can grant special leave to appeal against the judgment, order or decision of any court or tribunal in India. The power given under **Article 136** is discretionary and therefore not an ordinary right of appeal. It is only exercised in cases where there is a need to correct serious injustice or a legal error.

Under **Article 226**, the High Courts have a broader writ power. They are not only able to issue writs in respect of fundamental rights but also 'for any other purpose', this covering the enforcement of legal rights. This gives **Article 226** a strong remedy for unlawful administrative action.

3. Legal proceedings concerning administrative action

The five traditional writs are:

- The **habeas corpus** remedy safeguards a person from being detained unlawfully.
- A **mandamus** is a type of order that requires a public authority to carry out a legal public duty. It usually does not force someone to perform a purely private act or to decide in a particular way.

- **Certiorari** is the remedy by which an order issued by a court, tribunal or authority may be set aside if that court, tribunal or authority acted without jurisdiction, breached the principles of natural justice or made a serious mistake of law.
- **Prohibition** stops a lower court or tribunal from carrying on with the proceedings outside the scope of its jurisdiction. It is usually preventive, whereas certiorari is generally corrective.
- **Quo warranto** questions the legal basis is there for a person holding a public office.

A writ can be issued against the government, a statutory authority, a tribunal or an organisation carrying out a public duty. The jurisdiction provided for in **Article 226** is normally linked to the cause of action or the respondent authority which is located within the territorial jurisdiction of the High Court. It is possible for the courts to give interim relief in order to avoid immediate harm, but **Article 226(3)** provides a means of challenging an interim order that has been obtained without giving the other party a proper opportunity to be heard.

Someone who is sufficiently interested can go to the court. **Public Interest Litigation (PIL)** weakened the traditional requirement of ***locus standi*** so that a person concerned about public issues could bring forward a matter which affects disadvantaged groups or the general public. The procedure is not intended for the purpose of gaining publicity or for dealing with private disputes.

4. Reasons for Judicial Review

The main grounds are:

1. The action was illegal or there was an error in jurisdiction since the authority lacked the power to act, had gone beyond the power conferred on it, had misunderstood the law, or had exercised its power for an improper purpose.
2. The decision is so unreasonable that no reasonable authority, on properly applying its mind, would have reached it, this is what is known as the **Wednesbury standard**.
3. There has been procedural impropriety since the authority failed to follow a required procedure, showed bias, or refused a fair hearing.
4. Proportionality means that a measure goes beyond what is necessary in order to achieve a legitimate aim. The court has to consider whether the aim is legitimate, whether the measure is appropriate and necessary, and also whether the harm to the right in question is excessive.

5. A legitimate expectation can arise from a consistent previous practice, a clear promise, or a published procedure, leading to a reasonable expectation of fair treatment. Although it does not always ensure a specific benefit, the authority should not arbitrarily undermine that expectation unless there is a sufficient public reason to do so.

The principles that govern the jurisdiction of writs

Article 226 is discretionary, and it is normally advisable to make use of an alternative legal remedy, such as an appeal or a tribunal. This is a case of self-restraint, not a total prohibition. The High Court may still get involved where there has been a violation of fundamental rights, where there has been a lack of jurisdiction, where there has been a breach of natural justice or where the alternative remedy is ineffective.

A writ petition may be defeated on the grounds of delay and laches. It is necessary for a person to go to court as soon as possible and to give a reason for any serious delay. The rule concerning res judicata also applies in that a matter which has finally been decided between the same parties should not be reopened more than once, provided that the usual exceptions apply.

Statutory Remedies

There are other available remedies besides constitutional writs. A statute can include provisions for an appeal, revision, review, a complaint procedure, or the establishment of a tribunal. A civil court might issue an injunction to prevent an unlawful action or give a declaration setting out the legal position of the parties.

Yet civil suits can be explicitly excluded or be excluded by necessary implication if a special statutory remedy is available. The courts still have jurisdiction in cases where the authority has acted outside the scope of the statute, where fundamental principles of judicial procedure have been violated, or where the remedy is inadequate.

Government immunities and information

The government can assert a privilege in respect of documents if revealing them would be to the detriment of the public interest, national security or confidential administration. The courts have the possibility of determining whether the claim is real and legally valid. The government also enjoys procedural safeguards concerning notice, limitation and enforcement, these safeguards

being based on the appropriate statute.

Even so, the government is obliged by statute and therefore cannot rely on executive instructions to override a legislative directive. While promissory estoppel might stop the government from unfairly retracting a clear promise to which a person has relied, it cannot be applied to compel an act which is prohibited by law or to contradict a paramount public interest. The Right to Information Act promotes transparency, with the exception of its exemptions.

The judicial control of administrative discretion

Administrative discretion means the legal freedom to choose among more than one permissible course of action. It is necessary because authorities face varied facts and changing public needs. Discretion is not the same as personal choice. It must be exercised honestly, for the purpose for which it was granted, on relevant material and without arbitrariness.

Courts may intervene where discretion is exercised in bad faith, for an improper purpose, on irrelevant considerations, by ignoring relevant considerations, under dictation, through a rigid policy that leaves no real discretion, or in a manner violating **Articles 14**, **19** or **21**. Judicial review protects fundamental rights but does not allow the court to administer the department itself.

Liability of the State

Under **Article 300** of the Constitution, the Union and the States may sue and be sued. The State can be liable in contracts and, subject to statutory rules, in tort for harm caused by its servants. Constitutional courts have also developed public-law compensation for serious violations such as unlawful detention. Public power must carry public responsibility.

Conclusion

Administrative law is the law of accountability in everyday governance. It recognises that administrators need power, but insists that it remain within legal limits. Natural justice ensures fair hearings and unbiased decisions. Judicial review checks illegality, irrationality and procedural unfairness. Writs, appeals, PIL, legitimate expectation, proportionality and State liability complete the system.

Administrative law does not ask courts to run administration, it asks them to ensure that public power stays within the Constitution, the statute and basic fairness.