SYNERGY
AN INSTITUTE FOR CIVIL SERVICES EXAMINATION

STUDY MATERIAL

PART-A

ACCOUNTABILITY & CONTROL

16-A/2, 1st Floor, Ajmal Khan Road, W.E.A. Karol Bagh, New Delhi- 05
☎ 011-25744391 ❩ 8527697136 ❩ 8595079231 |www.synergyraftar.com

ACCOUNTABILITY & CONTROL

Administrative responsibility can be defined as the liability of the officials to give a satisfactory account of the exercise of the powers or discretion vested in them to someone to whom it is due. Failing to provide the same leads to some kind of punishment. According to L. D. White, Administrative responsibility consists of the sum total of the constitutional, statutory, administrative and judicial rules and precedents and the established practices by means of which public officials may be held accountable for their official action.' Pfiffner makes a distinction between 'responsibility' and accountability'. He writes that accountability refers to the formal and specific location of responsibility while responsibility is a highly personal moral quality and is not necessarily related to formal status or power. Responsibility refers to the public servant's responsiveness to public will while accountability denotes the specific method and procedure to enforce the public servant's responsibility. Responsibility is, therefore, subjective and works from within. On the other hand, accountability is objective and works from without.

The problem of administrative responsibility is assuming ever increasing importance in the modern welfare states wherein the civil servants not only execute the public policy but are also instrumental in initiating and formulating it and in the process exercise power and discretion in the discharge of their duties. Effective control is, therefore, required to provide safeguard against misuse of power by the administration.

Types of Administration Control

There are two main types of administrative control: internal control and external control. Internal controls are those which are fitted into administrative machinery itself and work automatically with the movement of the machinery. The external controls, on the other hand, are those which operate from outside, and may be in the form of accountability of the administration to the legislature, the executive, the judiciary and the people themselves. Internal controls are of the following kinds:

Budgetary control: One of the effective ways of controlling the administrative branch is the passing of the budget by the legislature. The administration is thereby authorised to collect revenue and incur expenditure for the various services. No money can be withdrawn from the public funds without the previous sanction of the Finance Ministry and the Auditor General of India. When money is spent, there is an audit of financial operations to ensure that the money has been spent on items for which it was sanctioned and that there is no misappropriation or embezzlement. The audit report of the Auditor General is examined by the Public Accounts Committee of the Parliament and is further discussed by the Parliament itself.

Personnel management control: Civil service is internally controlled through personnel management also. The hierarchical structure of the administrative machinery provides the internal control automatically. In such a system if there is any neglect anywhere, the official concerned is immediately held responsible by his or her immediate superior officer and is pulled up or even reprimanded and if the negligence is very serious, it may lead to issuing of a strict warning, loss of increment, demotion, dismissal or even prosecution. Again, the recruitment of the personnel of the various departments, their salaries, terms and conditions of service are determined by a central agency like the public service commissions. This control not only standardises the system of personnel management but also reduces abuse in personnel matters.

Efficiency survey control: The officers of the various departments inspect and tour the field offices in order to ensure that administration is being carried out in accordance with rules and regulations.

There is no universal standard of measuring efficiency which could be applied to all the jobs equally. Still the quantity, quality and system of work could be some of the guiding principles.

Professional morality control: Every profession has its code of morality which has to be observed by one and all in that profession. Professions like law and medicine have formal, legal means of enforcing standards upon their members. Any person found guilty of unprofessional conduct is taken to task by other members of the profession, and for a more serious offence, they may even be debarred to practice the profession. The civil services have also developed a code of morality more appropriately called administrative ethics which consists of high traditions of loyalty to the nation, devotion to work and high sense of integrity and public good. This code of morality is followed by the civil service automatically for the pride of it. This form of control is most effective of all the formal checks, because no member would dare to go against the professional code of ethics for fear of ostracism and ridicule.

Administrative leadership: This is the most effective means of internal control. If the top officers are honest and incorruptible, the subordinates would usually not dare to resort to corruption, negligence, etc. The need of such an inspiring leadership, among our administrators in particular is very urgent if we want that our administrative machinery should run smoothly to the satisfaction of one and all.

External Controls

External controls flow from the people themselves, the legislature, the executive and the judiciary. The existence of responsibility of administration to one or another of the above controlling authorities depends upon the constitutional system of the country. In the cabinet system of government, as in the UK and India, the legislature controls the administration much more effectively than its counterpart under the presidential form of government as in the USA. The control of the people in countries practising direct democracy as in Switzerland is more far reaching than in the countries where there is indirect democracy. In some countries, administration in practice is more responsible to the political party than to the constituent authorities of the Constitution, as it was, for example, to the Communist Party in the erstwhile USSR.

Popular control over administration

People are the ultimate sovereign in a democratic government. Hence, final and ultimate responsibility of the public officials is to them. But in the modern states, people cannot exercise direct control over administration as they are generally ignorant and unorganised—neither have they the necessary time nor the capacity for it. The public control over administration, is therefore, mainly indirect and informal which is exercised through their representatives. Still there are some formal and constitutional means of popular control also which are practised in different countries through the system of (a) Recall, (b) Referendum and (c) Initiative.

In some countries as in Switzerland and some states of the USA, administrative officials are also elected by the people. There, the people have the right to recall them also, which means that if officials do not discharge their duties properly, the people can call them back, even before the expiry of their term by voting against them in a poll which is conducted specially for this purpose at the request of stipulated number of voters entitled to elect them.

In some countries, people control the administration through their powers of referendum and initiative. According to the first device, a law passed by the legislature is referred to the people for their votes and it is put into effect only when it is approved by the majority of popular votes. The second device arms the people with the positive power of taking the initiative themselves in asking the government to make a particular law for them. The government on receiving such proposals either in concrete shape or only in outlines, and if it agrees with the proposal, frames a law accordingly. But if

it differs, it has to go to the people for their verdict and if the verdict given is in favour of the proposal, the government has no alternative but to draft the legislative proposal as desired by the people and to get it passed by the legislature. These forms of direct control are however, practicable in small states only. They cannot work in countries with large population such as of India and China.

Parliamentary or legislative control of administration

In modern democratic countries, people exercise control over administration through their representatives, who constitute the legislature. The control of the legislature over administration is most important and effective. The legislature is the source of all administrative authority: It lays down the public policy—the work programme; it decides the nature and scope of administration; the number of personnel required to build the administrative machinery; the methods and procedure of work; and makes available the necessary funds for carrying the policy into practice. Having done all of this, the legislature proceeds to supervise, direct and control the administration so that the public policies determined by it may be executed in an efficient manner.

In parliamentary forms of government, it is not the official who is responsible to the legislature; it is the ministers who have to shoulder responsibility for the administrative acts of their departments and if they fails to satisfy the parliament and cannot carry the majority of the parliament with them, they have to resign. The officials cannot be called in the legislature to explain their acts of omission or commission nor can they be criticised. They do appear before the committees of the parliament yet they cannot be obliged to answer personal criticism.

Means of Legislative Control

The legislative exercises supervision and control over administration through the following means:

Budgetary control: The most effective legislative control over administration is exercised through control over the purse-strings of the nation. Not a paisa can be spent without sanction of the legislature. It is true that the demands for grants made by the executive can neither be rejected nor reduced, so long as it enjoys majority support of the legislature, yet the voting for the grants is to be preceded by debate and discussion which provide an excellent opportunity to the opposition to criticise the government and expose its failures.

Control over delegated legislation: The legislature usually lays down policies in general terms and delegates authority to the administration to fill in the details. But this does not mean that the administration can exercise the discretion in any way it pleases. The Parliament exercises control over delegated legislation by constituting a committee on subordinate legislation charged with the function of scrutinising and reporting to the House whether the powers delegated by the Parliament have been properly exercised within the framework of the statute delegating such powers.

Debates and discussions: The Parliament is provided with many occasions for discussions and debates, most important of which are the inaugural address by the president, the budget speech of the finance minister, the introduction of new legislative measures or amendments of the existing ones and so on. At such occasions, government policy and the working of the departments are thoroughly discussed and debated; the members may comment, criticise or praise any aspect of the department's work. In the words of Warner, such an occasion may be a true testing time of departmental performance and competence.'

Resolutions or motions: The legislature also controls the administration through motions and resolutions. A resolution is only recommendatory, yet a government which claims to be based on popular consent dare not ignore it. Motions of various kinds such as cut motion, call attention ambition, no- confidence motion, etc. can be moved against a particular minister or government as a whole. Of all the motions, adjournment motion is the most common. This motion is intended to draw

the attention of the House to some urgent matter of public importance. If the Speaker permits the motion, the work of the House is suspended and a discussion on the matter takes place. The opposition usually tables such motions to bring to light the acts of omission and commission on the part of the government.

Question hour: Questions represent a very powerful technique of Parliamentary control over administration. The question hour' is the opening hour of Parliament meetings, when any member of the House can put questions for seeking information regarding any matter. The members usually give a notice of their questions to the ministers. The ministers concerned prepare their answer with the help of the officers of the departments. If the answer to a question is not full and satisfactory, supplementary questions can also be asked. Sometimes the question hour may be followed by half-an-hour discussion when a member feels dissatisfied with the answer given to his or her question. During this short discussion, the House may extract more information on a matter of public policy from the government.

Formally, the object of the question is merely to elicit information about something, but in practice, it is used to draw attention to the failures and abuses of authority (administration) or to the grievances of the people. Regarding the importance of the Question Hour, A. S. Rikhy, Deputy Secretary, Lok Sabha Secretariat, wrote, It is through question hour that government is able quickly to feel pulse of the nation and adopt its policies and actions accordingly. Questions bring to the notice of Minister many an abuse which otherwise would have gone unnoticed.

Proceeding further he said,

It is through questions in Parliament that the government maintains contact with the public since the members are enabled thereby to initiate the grievances of the public in executive or administrative matters. Questions enable ministers to gauge the popular reactions to their policy and administration.

Speaking about the importance of question hour, C. R. Attlee, Prime Minister of England had observed:

> I always consider that question time in the House is 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 Gaits, a prominent leader of the British Labour Party, had remarked:

> Anybody who has worked in a Civil Service department would agree with me that if there is one major thinking which leads civil servants to be accessible, conscious, timid and careful, to keep records which outside the civil service would be regarded as unnecessary, it is the fear of the Parliamentary question.

N. V. Gadgil, the Governor of Punjab, had said,

> By questions and debate, administration is kept under constant and continuous review. The most trivial detail may be fraught with enormous consequences as the Opposition utilizes its whole time in spotting the executives weak points and once it catches them, it has boundless opportunities to hammer them constantly.

Audit and report: When parliament sanctions money for expenditure, it is also its duty to ensure that the money is spent judiciously. This control over public expenditure is exercised by the legislature, through the Comptroller and Auditor General of India. He audits the expenditure incurred in and outside India by the government and submits his or her report to the legislature. The Auditor-General while auditing the expenditure, examines that the money spent was given due sanction by the competent authority and that it is spent for the purpose for which sanction was granted. It also ascertains that the expenditure is incurred with due regard to the principles of financial propriety.

The report submitted by the Auditor-General is scrutinised by the Public Accounts Committee of the legislature and thereafter the legislature discusses its findings.

Control through parliamentary committees: The Parliament is not in a position to go into details of the working of various administrative departments, due to lack of time and also lack of knowledge about their activities. It, therefore, makes use of committees to go into the depth of the working of different departments and keep a constant watch on their functioning. Some of the important committees of the Indian Parliament are: Public Accounts Committee, Estimates Committee, Committee on Public Undertakings, Standing Committees for various ministries, Committee on Assurances and Committee on Subordinate Legislation.

The first four committees are mainly concerned with financial control over administration. The Public Accounts Committee examines the report of the Auditor-General about the propriety of expenditure incurred by administrative departments and then reports its findings to the legislature. The Estimates Committee examines the budgetary estimates sent by different ministries before they are voted upon the Parliament. Its main function is to suggest economies in expenditure. The Public Undertakings Committee scrutinises the reports and accounts of the public sector undertakings. It also examines that the public sector undertakings are being managed in accordance with sound business principles.

Standing committees of various ministries discuss their budgetary provisions in depth after the budget has been presented in the Parliament. This happens because the Parliament has neither the time nor the opportunity to examine in detail the budget of all the ministries.

The Committee on Assurances is responsible to see that the assurances given by the ministers from time to time are carried out within the prescribed time. Sometimes the ministers during question hour or debates give an assurance or make some promises regarding certain matters on the floor of the House. Formerly, it was left to the individual member to keep a watch whether the promises were implemented or not. The government had no obligation to report to any body whether or not the assurances were carried out. Ministers were, therefore, tempted to make false promises to please certain members. But now the rules of procedure of the Lok Sabha and those of the state legislatures provide for the setting up of the Committee on Assurances which consists of some members of the House and functions under the control of the Speaker. In the words of M. N. Kaul, former Secretary of the Lok Sabha Secretariat,

> The formation of a Committee on Assurances has helped not only to keep vigil on the administrative efficiency but has also helped in removing many of the defects inherent in the previous system. The Ministers now are careful in giving promises and the administration is prompt to take action on the promises given.

The Committee on Subordinate Legislation exercises the necessary checks over the authority delegated to the executive by the legislation.

Executive Control of Public Administration

The executive control of administration is exercised by the chief executive. In parliamentary form of government, the chief executive is only the nominal head and the real powers are vested in the cabinet. The cabinet or council of ministers collectively and each minister individual in charge of one or more departments is responsible to the legislature for the administration of his or her department. A minister is assisted by a secretary and a head of the department in running the administration of the department. The secretary is in charge of the department outside the secretariat. The former is

concerned with direction, supervision and control of the department. According to the doctrine of ministerial responsibility, it is the minister who is responsible to the legislature for all acts of commission and omission of the officials of his or her department and if anything goes wrong in the department, he or she may be even urged to resign from office.

According to E. N. Gladden, 'there are three important controls by executive on the civil service, namely, political directions through ministerial administrator, the operation of the national budgetary system and recruitment by an independent authority.'

These three main controls along with other forms of control are discussed below:

Control through policy: The executive plays a very important role in policy making. In the USA, it is the chief executive who determines the general lines of administrative action. The chief executive may delegate the power of formulation of policy to the heads of various administrative departments but overall responsibility remains his or her. In Parliamentary government, it is the cabinet which is responsible for policy formulation, supreme direction of administration and the coordination and control over the various branches of administration. The minister, therefore, as a member of the cabinet and as in charge of one or more departments, controls the administration of department by directing, supervising and guiding it.

Control through budgetary system: It is the executive which prepares the budget, determines the sources of income and provides various amounts of expenditure to the departments which they cannot exceed. Personnel requirements of the departments are also determined by the executive. Thus, each department has to remain under the effective and continuous control of the executive for its financial and personnel needs.

Control through recruitment system: It is the executive which lays down general principles for recruitment of the civil service. The ministers select their own secretaries and deputy secretaries to run the department. The appointments to other posts are made on the recommendation of an independent recruiting agency—the Public Service Commission.

Control through executive law-making: The executive law-making or delegated legislation is another form of executive control over public officials. Most of the laws passed by the legislature are skeletal in character and the executive is empowered to fill in the details. In India, the executive has also the power of issuing ordinances, which are as authoritative and powerful as an Act passed by the legislature, with the only difference that they are issued by the chief executive to meet an emergent situation which may arise when the Parliament is not in session. Further, they are operative for a temporary period only and cease to be in force unless they are approved by the Parliament as soon as it has met.

Importance of Executive Control

The control exercised by the legislatures is of a general type and periodic in nature, but control exercised by the executive is corrective and stimulatory in nature. A good budget staff and a good personnel office will do more to preserve the liberties of the people than a court, because they will be in operation long before a potential wrong is done.

It is essential that the relation of the minister with the permanent staff is cordial, so that the work of the department may be performed in an efficient and economical manner. The ministers are usually amateurs because they occupy their positions not by virtue of their ability but because of their popularity. The\ have, therefore, to depend on their permanent secretaries, who are experts in their fields of administration. According to Walter Bagehot,

> Government is a combination of special and non-special minds, the civil service forming the first and the minister forming the second element. The success of government depends upon harmonious relations between the two. The Minister should not interfere too much in the detailed working of his or her department. He should lay down only broad outlines of policy and see to it that it is executed faithfully by his or her permanent officials in the department.

In the words of Herbert Morrison,

> Relationship between the minister and civil servants should be and usually is that of colleagues working together in a team, cooperative partners seeking to advance public interest and the efficiency of the department. The minister should not be an isolated autocrat, giving orders without hearing or considering arguments for alternative courses, nor on the other hand, should the civil servants be able to treat him as a mere cypher. The partnership should be alive and virile; rival ideas and opinions should be fairly considered and the relationship of all should be one of mutual respect—on the understanding, of course, that the Ministers decision is final and must be loyally and helpfully carried out, and that he requires efficient and energetic service.

Thus, it is obvious that the executive control over administration can be fully effective only when there is team spirit, cooperation and mutual trust between the political chief and civil service..

Judicial Control over Administration

The actions of government are subject to the scrutiny of courts of justice. The executives can only act in pursuance of powers given to them by law. According to Justice Douglas, judiciary is the guardian of conscience of the people as well as the law of the land. L. D. White writes, 'Judicial control of administration ensures legality of the acts of the executive and protects citizens against unlawful trespass on their constitutional or other rights/ Judiciary is, thus, the guardian of the citizens' rights.[9]

Cases of Judicial intervention

The judiciary can interfere with the administrative as well the quasi-judicial orders, whenever they suffer from lack of jurisdiction, error of law and fact, abuse of authority and irregularities of procedure. It should, however, be noted that the courts cannot interfere in the administrative activities on their own, but only when they are invited to do so by any person, who feels that his or her rights have been infringed or are likely to be infringed as a result of some action of the public official. The circumstances in which courts can intervene in administrative matters are:

(a) Lack of jurisdiction: Every officers to act within the four corners of the authority entrusted to him and also within a specified geographical area. If they go beyond their power or outside the territorial limits authority, their acts will be declared by courts as ultra vires and hence ineffective.

(b) Error of law: A public servant may misinterpret the law and thereby take a decision infringing upon the rights of a citizen. A citizen who has suffered has the right to approach the courts for damages.

(c) Error of fact finding: An official may wrongly interpret facts or ignore them and thus may act on wrong presumptions, which may affect a citizen adversely and so there may be a ground for bringing a case in a court of law.

(d) Avenue of authority: If public officials use their authority vindictively to harm some person, the courts can intervene and punish them.

(e) Error of procedure: Public officials have to act according to a certain procedure as laid down by laws, and if they do not follow the prescribed procedure, the courts have a right to question the legality of their actions. For example, law requires that any employee be served with a notice

of the charges against them before their suspension or dismissal can take place. If an officer takes action against any employee without serving a proper notice, then his or her act may be declared null and void by the courts of law.

Judicial Remedies For Suing the Government and the Officials

The judicial control over the administration can be in the form of suing the state or the government itself or public officials concerned for their wrongful acts. The position in this regard differs in the countries following the system of Rule of Law or the Administrative Law (Driot Administratij). The Rule of Law system prevails in England and other Commonwealth countries (including India), the USA and Belgium. The Administrative Law system is practised in France and other countries of continental Europe. The system of Rule of Law in the words of Dicey, famous British Constitutional Lawyer, implies that everybody, high or low, official or private citizen, is subject to the same ordinary law of the land and that the official cannot take shelter behind state sovereignty in committing mistakes in his or her official capacity. This means that the state cannot be held liable for the wrong acts of her officials and the officials themselves are personally liable for their acts of omission and commission. The state thus enjoys immunity from liability in torts, i.e., it cannot be sued for damages and a suit can be brought for damages only against the official concerned. But this remedy is hardly of any use, because the damages decreed by the court against the official cannot usually be recovered due to his or her impecunious condition. An agitation has, therefore, been going on to so reform this system as to make the remedy effective. In England the system was improved by the passage of the Crown Proceedings Act of 1947, which makes the Crown, i.e., the state, liable for torts committed by its servants. But in the USA the state is still immune from tortuous liability of its officials.

In India, the suability of the state is governed by Article 300 of the Constitution, which provides that the state is suable for contracts, i.e., trading functions and is not suable for the tortuous acts of its officials. In practice, however, the state is ordinarily held responsible for the tortuous acts of its servants. In the case of Rao v. Khusal Chand, the Bombay High Court has held that the government cannot claim any immunity from illegal acts under Section 176 of the government of India Act, 1935, when it illegally requisitions land under the Bombay Land Requisition Ordinance. Except in case of strictly sovereign acts, the Government of India is liable for all unlawful acts of its servants. The question of liability of the state government arose when the Supreme Court rejected the contention of the State of Rajasthan for claiming immunity for the tortuous acts of its servants and upheld the High Court s Order, allowing compensation against the state for the tortuous act of one of its employees.

On the other hand, in the countries where the system of Administrative Law prevails, the liability of the state for the wrongful acts of its officials is fully established. There the officials are tried not in the ordinary law courts but in the administrative courts which award damages from the public funds to the aggrieved individuals. The state may later deal with its official at fault as it thinks fit but so far as the citizens are concerned, they can sue and obtains damages from the state.

In the countries with the Rule of Law system, the public officials are no doubt personally liable and suable in respect of acts done by them in their public capacity and they are amenable to the ordinary law and in the ordinary courts of the land, yet there is a distinctive procedure to be followed in bringing a case against them. First, there are certain officials like the heads of the state who enjoy legal immunity, for example, the British monarch is completely immune from legal liability in respect of any of his or her acts done in public or personal capacity. The US President is also immune from any legal proceedings during the term of office. The US President can only be impeached by the Congress and it is only after removal from office that the president can be tried in

ordinary courts for crimes committed as president. In India personal immunity from legal liability is granted to the president of the Union and governors of the states for any act done in exercise of their powers and duties as laid down in the Constitution. During their term of office they are immune from any criminal proceedings even in respect of their personal acts. The ministers have however, no such immunity and they are, therefore, liable for crimes and torts and amenable to the ordinary courts.

The other officials can be sued both in civil and criminal cases. Civil proceedings can be instituted against an official for anything done in his or her official capacity only after the expiry of a two month notice. No such notice is however, necessary when the official is to be proceeded against for an act done outside the scope of his or her official duties. When criminal proceedings are to be instituted against officials for the acts done in their official capacity, previous sanction of the president or the governor, as the case may be, is to be obtained. Many examples can be cited in this regard. The Governor of Bihar had accorded sanction for the prosecution of Bihar Chief Minister Laloo Prasad Yadav and two of his cabinet colleagues involved in the Fodder Scam and the sanction of the President of India had been obtained for the prosecution of IAS officers involved in various scandals and scams.

Extraordinary Judicial Remedies

In addition to the judicial remedies of suing the government or its officials, the Constitution has provided for a number of writs which may be issued whenever the rule of law is not observed or it is violated. These are:

Habeas Corpus: It is a Latin term which literally means to produce the body of'. It is issued if there is a prima facie case that a person is unlawfully detained. The detention is not illegal if it is made in accordance with the procedure established by law and if a person who is arrested is not produced before the magistrate within 24 hours of his or her arrest.

In India, the Executive is authorised under the Preventive Detention Act to detain a person for three months for his or her anti-social and subversive activities. But the power under this Act cannot be arbitrarily used. An advisory board consisting of persons of the status of the judge of a High Court investigates the cause of detention and reports that there is, in its opinion, sufficient cause for such detention. In a democratic country, a preventive detention legislation providing restriction on the liberties of the people may be counterproductive. But the circumstances are such in our country that it cannot be abrogated all at once as the subversive elements in the guise of provincialism, linguistic differences and communalism still constitute a threat to our country.

Writs of mandamus: Mandamus literally means 'a mandate' or a command'. The writ of mandamus is a command issued by a common law-court of competent jurisdiction, directing any person, corporation or inferior court requiring them to do some particular thing specified therein which appertains to their office and is in the nature of public duty. In short, it is a writ issued to a public official to do a thing which is part of their official duty but which has not been done. This writ cannot be claimed as a matter of right. It will not be granted if the court is satisfied that there is an alternative remedy which is self-sufficient and convenient.

Prohibition: In this writ the superior court commands the lower court not to do a thing which it is not authorised to do. This writ can be claimed as a matter of right. Prohibition differs from mandamus in that, a prohibition writ can be claimed as a matter of right while the mandamus cannot; mandamus can be available against any public authority or official, but prohibition can be issued only against judicial and quasi-judicial tribunals. Prohibition does not require any personal right of interest on the part of the applicant but in the case of mandamus, a person must prove his or her personal right.

Certiorari: It literally means to be certified or to be made certain. The writ of certiorari means the direction of a superior court to an inferior court for transferring the records of proceedings of a case pending with it for the purpose of determining the legality of the proceedings and for giving more satisfactory effect to them than could be done in the inferior court concerned. The writ of certiorari resembles the writ of prohibition as they both are meant to supervise the works of the judicial authority, but certiorari is something more than the writ of prohibition. The latter prevents an inferior court from undertaking a trial but certiorari enables the superior court from proceeding with a trial. It enables the superior court to send for records of the proceedings and order of the inferior court, to enquire into its legality and to quash the order if found beyond its jurisdiction.

Quo warranto: Quo warranto means 'by what warrant or authority?' The writ of Quo warranto is issued by a court to enquire into the legality of the claim which a party asserts to ian office or franchise and to oust him or her from its enjoyment if the claim be not well-founded or to have the same declared forfeited. The conditions necessary for the issue of the writ are: (a) the office under dispute must have been created by the constitution or by a statute and should be public and not a private one; (b) the tenure of the office must be permanent, i.e., it should not be terminable at pleasure; (c) the persons proceeded against must have been in actual possession of the office in question; (d) it is not necessary that the petitioner should be only the legal claimant. Persons, whether they have a direct interest in the office or not may apply for the issue of the writ. The purpose of this writ is thus to try a claim to the public office. The burden of proof to prove his or her title lies on the respondent. The usual judgement in such proceedings is that of turning out of office. If the plaintiff claims and proves his or her title to the office, they are declared installed or the office is declared vacant.

Judicial activism: Of late, judiciary has been very active in pronouncing historic judgements on the acts of omission and commission of government and administration including that of governors, central and state ministers and higher civil services especially those involved in various scandals and scams on petitions preferred by public interest litigation promoters. The basic duty of the judiciary is to give a ruling on points of law and to interpret the various provisions of the Constitution. But its duty does not end with awarding of verdicts. Its duty is also to ensure that the verdicts are duly implemented by the Executive. Patna High Court, various other Higher Courts and Supreme Court have directed the C.B.I. to report to it direct in the on-going corruption cases and work on its directions and not to seek orders from the Executive. This has been termed as 'judicial activism' by the popular mind and is associated with the courts discharging the functions of the executive. Judicial activism has been hailed by the public as the greatest safeguard against the abuse of authority by the administration and the protector of the rights of the individuals.

Limitations of Judicial Control

The judicial remedies, no doubt, provide an effective control against official excesses or abuse of power and in protecting the liberties and rights of the citizens. But it has certain limitations, such as:

All Administrative actions are not subject to the judicial control. There are many kinds of administrative actions which according to the Constitution, cannot be reviewed by the law courts. Then there is a tendency on the part of the legislature also to exclude by law certain administrative acts from the jurisdiction of the judiciary.

Even in those administrative actions which are within its jurisdiction, the judiciary cannot by itself take cognizance of excesses on the part of official. It can intervene only on the request of somebody who has been affected of is likely to be affected by an official action.

The judicial process is very slow and cumbersome. Its technicalities cannot be understood by a layman and then the procedure is so lengthy that it cannot be known as to when the court would be in a position to give its final judgement. There have been instances when the cases have been pending with the courts for years together. Therefore, cases need to be decided upon expeditiously. The government is proposing to fix a time limit of one year wherein the cases should be disposed of finally. Again, there is the problem of innumerable cases accumulating in the courts. At present there is a backlog of over one-and-a-half crore cases in Indian courts. The Judicial Reforms Commission which the government is contemplating to constitute is expected to suggest remedial measures for this malaise, including augmenting the strength of judicial officers, simplifying the court procedure, increasing the frequency of holding Lok Adalats, establishing consumer's tribunals in large number, etc.

Judicial action is usually an expensive business and cannot therefore be taken advantage of by many people. Filing a suit means paying the court fee, fee of the lawyer engaged and the cost of producing witnesses and undergoing all inconveniences which only those who can afford can bear. Thus, for a majority of Indians, judicial remedies are a costly affair.

Lastly, the courts may not be in a position to give a judgement based on justice in the case of such administrative actions as are of highly technical nature, because the judges are only legal experts and they have no expert knowledge of those technical matters that come up before them for their review. That is why such cases are referred to administrative tribunals, which consist of experts in technical matters. 'It is desirable, however,' remarks E. N. Gladden, 'that the courts should have an oversight of the adjudicative activities of the officials and that there should be proper avenues of appeal to the courts particularly on points of law and that procedure should be adopted by the administrative tribunals which conform to normal judicial principles and practices.'