CHAPTER 1

INTRODUCTION

The extreme complexities of the modern industrial civilization have resulted in the unprecedented vesting of administrative powers on administrative authorities. As a result of the industrial revolution and the replacement of laissezfaire, the functions of the 'state' have assumed new dimensions. "Laissez faire died with the dawn of the twentieth century and today the state has to concern itself with the welfare of its individual members"! For those new tasks for which the capacity of legislative and judicial institutions felt short... power was thrust into administrators hand.² The inevitable result is the imposition of restrictions on the rights and liberty of the citizen. The more the administration assumed powers, the more danger of infringing right and liberty became imminent. This phenomenon necessitated a rethinking in the conception of the functions of the ordinary courts of law.³


The growth of the administrative process is a universal phenomenon of contemporary society. In the context of the present day extent of governmental powers, the administrative process is the complex method by which administrative agencies carry out their tasks of adjudication, rule making and related functions. The role of administrative action in modern state affects each and every individual. As Prof. Davis observed: 'A large portion of people go through life without even being a party to a law suit. But administrative process affects nearly everyone in many ways'.

Public authorities are set up to govern and administer; and if their actions are injurious to individual or to public as a whole, recourse may be had to Courts, in Order to secure the annulment or variation of administrative orders or determinations, or the restraining of unlawful acts by administrative bodies. In some countries redress against administrative wrong is normally obtainable only within the administrative hierarchy itself. But in most legal systems claims and controversies may be resolved and grievances redressed through the media of Courts. The situation calls for an effective system of remedies for redressing the aggrieved person. The most handy were the prerogative Writs and the Equitable remedies. It must be realised, however, that only a

very small proportion indeed of the totality of administrative
decisions are in fact reviewed by the Courts. It may be
appropriate to quote, "Judicial review of administrative action is
inevitably sporadic and peripheral".5

In England, the prerogative writs were recognised as the
principal method of judicial review of administrative action.
But it was soon recognised that those remedies were entrapped
in the labyrinth of the abstruse technicalities and hair-splitting
distinctions.6 No actions for damages or for any ancillary relief
could be affixed with a prayer for a Writ.

The most obstructing deformity of the Writ of Certiorari
is that it is not available against administrative bodies which do
not have the duty to act judicially.7 To start with, there was
much confusion about the correct principles of classification of
administrative functions. To be precise, it took "exactly a
century from the decision in 1863 of Cooper V. Wandsworth
Board of Works8 to 1963 in Ridge V. Baldwin9

   (London, Stevens and Sons Ltd. 4th Edn.1980) p.3.
6. Ibid at p.429.
and the law has come full circle.\textsuperscript{10} It is to be said that even now the law is not very clear about disciplinary actions.\textsuperscript{11} It is one of the defects of Certiorari that, it so often involves an inquiry into the distinction between judicial acts and administrative acts which no one has been able to define satisfactorily. No such difficulty arises with the remedy of declaration, which is wide enough, to meet this deficiency... It applies to administrative acts as well as judicial acts whenever their validity is challenged because of a denial of justice, or for other good reasons.\textsuperscript{12}

The Writ of Mandamus, as distinct from certiorari and prohibition, applies to judicial, as well as to administrative acts and decision. Mandamus is used as a device for securing judicial enforcement of public duties.\textsuperscript{13} But, it is believed, it has not as yet been employed to impugn legislative instruments, and it seems very doubtful whether such an innovation will be sanctioned by the Courts. It certainly will not lie to challenge legislation made on behalf of the Crown, since mandamus cannot issue against the Crown or its servants.

\begin{thebibliography}{9}
\bibitem{11} Glynn v. Keel University (1971) I.W.L.R. 487.
\bibitem{13} De Smith S.A. \textit{op.cit.} 538.
\end{thebibliography}
acting in this capacity. Mandamus, though more effective than certiorari, has its own highly technical rules relating to locus standi and other matters.

The general utility of declaratory order as an effective remedy in public law has been realised only recently. It is considered to be a symbol of the twentieth century conception of law. In the modern age individual action is liable to be in constant conflict with the administration. Hence, a simple and all embracing method of redress against the administration is essential. It is even said that administrative law had to wait for declaratory action against public authorities.

Unlike the prerogative orders, declaration has no coercive force. In public law, it merely determines the rights and

15. Ibid at p.353.
17. De Smith says that it was realised only during the last 60 years. op.cit. p.429.
liabilities of public authorities without any judicial sanction. In a modern civilized society, a mere declaration is not likely to be ignored by the administrative authorities. Hence, it is said that there is something decent about the declaratory decree.20

Declaratory relief can be resorted to both by the aggrieved person and by the administrative authorities wherever there is doubt as to their rights and duties. It is said that possibly in no branch of litigation is the expeditious and pacifying ministrations of the declaratory judgement more useful than in the relations between the citizen and administration.21 It has the added attraction that a private law remedy has been shaped to meet the exigencies of public law necessity.

Declaration is considered to be a wide ranging remedy,22 since it can be applied against administrative as well as quasi judicial functions and for invalidating almost every type of action. In Annamunthodo Vs Oil Field Workers Trade Union23 expulsion from a trade union was successfully challenged.


Notice issued by the revenue officers were struck down in Ridge v Baldwin.24 But if the question raised is purely hypothetical character the remedy may be refused. In British Oxygen Co Ltd v Board of Trade25 a number of declarations were sought regarding the Defendant's exercise of their powers. It was observed that it is not the practice to grant a declaration if it is embarrassing or for any good purpose. One of the essential elements is that there must be a justifiable issue. In Cox v Green26 the question concerned with professional ethics was declared to be not justifiable. But declaratory relief has its own limitations and can be excluded by a statutory provision. The Writs on the other hand cannot be excluded by a mere legislation because it is included among the fundamental rights.

One of the greatest attraction of the declaration is that it is an all-purpose remedy which can be used in an extraordinarily wide variety of cases.26 The declaratory relief compares favourable with the prerogative orders as regards the grounds on which they may be granted, the bodies against whom they may be issued, and their rules of procedure and it is free from other abstruse and hair-splitting technicalities which the Writs are

trapped in. Declaration is the most liberal of all the remedies. This is especially so in respect of the range of persons and decisions against which a declaration can be made. Declaration is in principle available against any person or body public or private, including tribunals and enforcement officers. A declaration may in a suitable case be made in advance of apprehended action. Indeed this is one of the advantages of the declaratory action.27 A declaration will lie when a decision is a nullity. Thus any defect which makes a decision ultra vires, is in principle reviewable by means of a declaration. In this respect, declaration is capable of achieving the same result as any of the prerogative orders. Like certiorari or prohibition, it can expose the nullity of an existing or prospective decision and like mandamus, can declare that the authority has a duty to decide according to principles laid down by the Court. As the purpose of a declaratory judgement has always been to enable a party to obtain a judicial decision upon a state of law or rights whether or not any other substantial relief is claimed in addition, it has always seemed to be wide in scope, limited only by the Courts' discretion whether or not to issue a declaration in any actual case.28

27. Dyson V. Attorney General (1911) 1 K.B.410.

I.1 THE OBJECT AND SCOPE OF THE STUDY

The object of the present study is to find out the efficacy of the declaratory remedy in controlling administrative action. The study also is aimed at analysing the grounds under which a declaratory order can be claimed. There is a controversy regarding the grounds for the issue of declaratory action. The present study aims at examining error of law as a ground of declaratory action. Declaratory action is kept in the dim light due to the myth regarding the efficacy of the glamorous remedy of prerogative Writs. It is also the object of the study, to highlight the effectiveness of declaratory action in juxtaposition to the extraordinary remedies.

It is a fact that a few resembling studies have been undertaken to bring out the effectiveness of the remedy of declaratory action in controlling the administrative authorities in India. In England the remedy of declaratory action is widely acclaimed as most effective remedy to control administrative authorities. Whereas in India, the privileges of the prerogative remedies have shadowed the effectiveness of declaratory action in public law. The present study is aimed at filling up the gap in this area as very a few research studies appear to have been done so far.
1.2. HYPOTHESIS

The main hypothesis is to examine the efficacy of declaratory action as an effective remedy for controlling administrative action. A humble attempt is made to evaluate the various aspects and quicksands of declaration in public law. Due to the conferment of multifarious administrative powers on the executive, there is an imminent threat of violation of the individual rights. Against any administrative excess the affected party can use the declaratory action in the ordinary civil Courts. But a wrong notion has crept into the mind of bewildered litigant that the Writ proceedings are the more effective remedy. The present study is an attempt to find out to what extent the remedy of declaratory action has established itself vi-a-vis the prerogative orders as a supervisory remedy. Controverted facts are left generally for determination by suits where the field for enquiry is wide and is one that can be claimed as of right. In this study, it is proposed to find out whether the possible gap left by the limitation upon the availability of the prerogative Writs can be readily filled in through the use of the declaratory action, to challenge the legality of an executive rule or order.

The sub-hypotheses are formulated to show that the availability of a prerogative order in any particular case does not exclude the declaratory action and that the declaratory
action may be employed virtually in all cases and on all grounds which warrant the issue of a prerogative order. Whether declaration is issued for error of law on the face of the record, is subject to conflict and an attempt is made to make an analysis. Another sub-hypothesis is to see whether S.80 notice provided under the Civil Procedure Code is applicable when a declaration is sought against the Government.

I.3. METHODOLOGY

The data for the study is collected both from the primary sources as well as secondary sources. Primary sources form judicial pronouncements of the Hon'ble Supreme Court and various High Courts. The cases decided by the Privy Council have been analysed to find out the growth and development of declaratory action in India. The Judgements delivered by the Supreme Court of America and the House of Lords have been extensively relied upon to establish the position in England.

The various law journals and books of eminent jurists form the Secondary source. The main journals include 'Public Law', 'Modern Law Review', 'Law Quarterly Review', 'Harward Law Review', 'Yale Law Journal' 'Administrative Law review', 'Journal of the Indian Law Institute', 'Halsbury's Laws of England' etc. The reports of various Committees and Commissions such as Law Commission, Franks Committee,
Donougmore Committee etc. have been extensively consulted for the study as the Secondary source. The works of eminent jurists like Borchard, Zamir, De-Smith, Wade, K.C.Davis, Dr. A.T. Markose also form part of secondary source. A detailed Bibliography is attached.

1.4 PLAN OF THE THESIS

The present study comprises of eleven chapters. The first chapter deals with the introduction, object of the study, hypothesis formulated and the methodology adopted. In the second chapter the historical evolution and development of declaratory action both in English and the Indian Law has been meticulously analysed.

The third chapter deals with the statutory basis of declaratory action in India. S.34 of the Specific Relief Act, 1963 and the concept of legal character have been extensively evaluated in this chapter.

The concept of jurisdictional error is the subject matter of 4th chapter, jurisdictional error and error within jurisdiction, absence of Jurisdiction, excess of jurisdiction, and abuse of jurisdiction are analysed in this chapter.
The fifth chapter deals with the principles of violation of natural justice. Different Kinds of bias, principles of hearing, pre-decisional and post-decisional hearing, speaking orders, Institutional decision, violation, whether void or voidable and exclusion of natural justice are included in this chapter.

Sixth chapter deals with the law relating to the exclusion of jurisdiction of civil Courts. The concept of jurisdictional error, non-compliance with statutory provisions, constitutional invalidity, etc. have been analysed in this chapter.

Proceedings against Government is the subject matter of 7th chapter. An attempt has been made to analyse Section 80 C.P.C. as extensively as possible along with identify of persons, identity of cause of action and identify of relief.

The 8th Chapter is devoted to make an evaluation of Law of limitation and declaratory action. Error of Law on the face of the record is the subject matter of 9th Chapter. In the 10th chapter, dynamics of declaratory action in controlling administrative action is analysed. An evaluation of Article 226 and 32 vis-a-vis declaration is made in this chapter.

The 11th Chapter relates to the findings, suggestions and conclusions.