Chapter 4

Administrative Action, Openness of Government and Judicial Review

The Constitution of India is a great document whose meaning is so dynamic that new dimensions and zigzag developments overtake society, as the time passes on. The Preamble of the Constitution is the best evidence of this fact which imparts fresh interpretation in the light of social change. Thus to keep pace with the changing socio-economic and political scenario, wide powers vest with legislators, judges and administrators, though it is obligatory that they are to work within the constitutional parameters. However, it is also true that each group can, if it so wished, act quite arbitrarily in any or all of the ways thus far specified. Or as also happens, one group may quite arbitrarily assume control over the functioning of the other two. Thus when power is dispersed in dominant institutions of governance and when those affected by power can hold their rulers accountable, it is termed as a ‘liberal democracy’ or a ‘rule of law society’. This type of society basically seeks to ensure that grants of power to the rulers are at the same time characters of accountability of the ruled.
The trouble and tension arise from that fact that those who have the power to rule do not generally or always like to account for their actions. They believe, and would like all people to believe, that the very fact that they are the rulers (legislators, judges, bureaucrats) should in itself a sufficient assurance that they will exercise their power justly. In a 'rule of law' society each organ of the government has conceded some claims of general accountability, e.g. legislators are liable to people's 'mandate', errant judges could be impeached and bureaucrats (including law enforcement personnel) are broadly within the control and direction of elected politician. Thus, in theory, the rule-of-law societies have much greater scope of accountability, because there remains scope for grave and continuing excesses of power, whether spectacular or routine. So, in a society like India guaranteeing freedom of speech and expression and where Right to Know is a statutory right and derivative fundamental right too, it is difficult to prevent, in the long run, an increased public awareness or consciousness about the exercise and excesses of governmental power. This arises the need to evolve a specific and concrete mechanisms of accountability and judicial review of administrative action in the context of openness of government. There is no denying the fact that due to intensive form of government, there
is a tremendous increase in the functions of the administration and against this backdrop the prime function of judicial review is to check the abuse of administrative powers and to enforce accountability on the operators of these powers.

Government openness is a sure technique to minimize administrative faults. As the light is guarantee against theft, an umbrella is a guarantee against rain and hot sunshine, so governmental openness is a guarantee against administrative misconduct, flaws, scams and scandals etc. It is because the present flow of ‘information’ or the ‘right to know’ is a sine qua non of a really effective participatory democracy. This concept is fortified amongst the people of our country with the present effective legislation such as the ‘Right to Information Act, 2005’. Through this legitimate enactment the people of this country may seek information as they required. So, the concept of ‘openness’ will be there. But certainly due to some specific reasons such as security of the states necessity, in national interest or public interest etc. some restrictions are imposed in some areas which can not be open in toto. Under these
restrictive measures the ministers, through bureaucrats, the politicians and the administrators, fulfill their hidden corrupt intention which have become the breaking news in our day to day life paralyzing the social and moral sentiments of the people interested therein. Therefore, it is in deed necessary that the openness must be in adequate manner so that upto a limited extend it will be open and regarding the administrative misconduct, if any, it is the court or the judiciary whose role is to be an effective one to control administrative action as a whole.

Hence, these research study centrally focused these perspectives in such a manner that the essentiality of judicial review promoting openness of government in the context of administrative action. Undoubtedly it can be revealed that the legislature enacted the legislation for the well-being of the citizen of the country but the majority of the wrongs have been committed by the executive or the administrative bodies at the time of its implementation. So, regarding maladministration, the judiciary has a vital role to control such administrative action. Otherwise the goal of the Preamble to give justice to all its citizens will not be fulfilled. It is because, like other
democratic countries of the world, in our country also, the course have been given the pride of place of independence and they do enjoy a good deal of power to control and review administrative action.

4.1 Administrative Action vis-à-vis Judicial Review:

Law is the basic source of all powers of the administration and administrative authorities. Whatever their actions all are subject to control and review by the judiciary more specifically the law courts. All powers must be exercised within the ambit of law is considered as the basic principle of the power of 'Judicial Review'. In this context, the power of judicial review is based on the doctrine of 'Ultra Vires', that is, a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law.*1 According to Wade, judicial review is the exercise of the court’s power to determine whether action is lawful or not and to award suitable relieve*2. Common law is the basis of judicial review in England. The eminent jurist E.S. Crown*3 has

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*2. Wade and Forsyth, Supra at 33
rightly mentioned, 'Judicial Review' is the power of courts to pronounce upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce and the power to refuse to enforce such as they find to be unconstitutional and hence void.

In India, the power of judicial review is primarily based on the rules of English law. The remedy through prerogative writs have been incorporated in the Constitution. Hence, at present the foundation of judicial review has been laid in the Constitution in Kesavananda Bharati-vs- State of Kerala,*⁴ generally known as ‘Fundamental Rights case’, Justice Khanna said that, “Judicial Review has thus become integral part of our constitutional system and a constitutional validity of the provisions of statutes. If the provisions of the statutes are found to be violative of any of the articles of the Constitution which is the touchstone for the validity of all laws, the Supreme Court and the High Courts are empowered to strike down the said provisions.” The Supreme Court in Sarojini Ramaswami-vs-Union of India*⁵, has observed in the following way*⁶,

* ⁴. AIR 1973 SC 1461.
* ⁵. AIR 1992 SC 2219
* ⁶. Ibid. at 2250 (This case is related to Justice V. Ramaswami’s case against whom removal proceeding were initiated. He was a Judge of the Supreme Court)
Judicial Review is the exercise of the courts inherent power to determine legality of an action and award suitable relieve. This power does not need further statutory authority since it is granted by the Constitution of India to the superior courts."

In its historical perspective, the doctrine of judicial review was for the first time propounded by the Supreme Court of the United State of America. Originally, the U.S. Constitution did not contained an express provision for judicial review. The power of judicial review was, however, assumed by the Supreme Court of America in the historic case of Marbury-vs- Madison.*7

Judicial review is significant derivative from 'Rule of Law'. It is an essential part of rule of law. Judicial review involves determination not only of the constitutionality of the law but also of the validity of 'Administrative Action'. The action of the state public authorities and bureaucracy are all subject to judicial review; they are thus all accountable to the courts for the legality of their action. In India, so much importance is given to judicial review that it has been

*7. 2L Ed. 60, as quoted in Dr. Pandey, J.N., The Constitutional Law of India, 2010
characterized as the 'basic feature' of the Constitution which can not be done away with even by the exercise of the constituent power.*8. The Constitution of India guarantees judicial review of legislation and administrative action in its several Articles, such as, Arts 32, 136, 226 and 227. It can be appreciated with the protection of the institution of judicial review is crucially inter-connected with the protection of Fundamental Rights, for depriving the court of its power of judicial review would be equivalent to making Fundamental Rights non-enforceable, 'a mere adornment', as they will become rights without remedy. In the absence of judicial review, the written Constitution will be reduced to a collection of platitudes without any binding force. In Minerva Mills -vs- Union of India*9, Chandrachud, C.J. speaking on behalf of the majority observed that,

"It is the function of the judges, nay their duty, to pronounce upon the validity of laws. If courts were totally deprived of that power, the fundamental rights conferred on the people will become a mere adornment because rights without remedies are as writ in water. A Controlled Constitution will then become uncontrolled."

* 9. AIR 1980 SC 1789; (1980)3 SCC 625
It has already stated that the system of judicial review of administrative action has been inherited from England and as such on this foundation the Indian Courts have built the superstructure of control mechanism. It is obvious that the whole law of judicial review of administrative action has been developed by judges on case-to-case basis. Consequently, a thicket of technicality and inconsistency surrounds it. However, present trend of judicial decisions to widen the scope of judicial review of administrative actions and to restrict the immunity from judicial review to class of cases which relates to deployment of troops and entering into international treaties, etc.*10

The Supreme Court of India is the Apex Court in the hierarchical judicial system of our country. It is the final interpreter of law and the ultimate court of appeal in all civil, criminal and constitutional matters. The final protector of people's Fundamental Rights is also the Supreme Court of India as stated earlier. Accordingly, the Supreme Court is invested with the power of judicial review under Article 32. Also Art. 136 which is in the nature of a residuary reserve power of judicial review in the area of public

* 10. Indian Railway Construction Co. Ltd. –vs- Ajay Kumar; (2003) 4 SCC 579
law lays down that the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal. Thus Article 136 does not confer a right of appeal on any party, but it confers a discretionary power on the Supreme Court to interfere in suitable cases to advance the cause of justice. Even in cases where special leave is granted, the discretionary power vested in the court continues to remain with the court even at the stage when appeal comes for hearing. Power under Article 136 of the Constitution, on the one hand, is an exceptional power to be exercised sparingly, with caution and care and to remedy extraordinary situations of gross failure of justice; on the other hand, it is an overriding power where under the court may generously step up to impart justice and remedy injustice.*11

Article 226, empowers the High Courts to issue directions, orders or writs for the enforcement of Fundamental Rights and for any other purpose also. Thus, the power of judicial review of the High Courts is wider than that of Supreme Court. The words ‘for

any other purpose' enable the High Court to exercise their power of judicial review for the enforcement of ordinary legal rights which are not Fundamental Rights. The jurisdiction of the High Court under Article 226 for the enforcement of Fundamental Rights is mandatory whereas for the enforcement of ordinary legal rights it is discretionary.*12 The power of judicial review of the High Court under Article 226 is constitutional, therefore, no measure of finality given by the legislature to any action or decision can take away this power.*13 Article 227 invests High Courts with the powers of superintendence over administrative agencies exercising adjudicatory powers. The nature of this power is both administrative and judicial. Article 227 though confers the right of superintendence over all courts and tribunals throughout the territories in relation to which High Court exercises jurisdiction but no corresponding right is conferred upon a litigant to invoke the jurisdiction under this Article as a matter of right. In fact power of superintendence casts a duty upon a High Court to keep the inferior courts and tribunals within the limits of their authority and that they do not cross the limits, ensuring the performance of duty by such courts and tribunals in accordance

* 12 Manjula vs Director of Public Instruction; AIR 1952 Ori. 344; Also Kailash Chander vs State of Haryana 1989 Supp. (2) SCC 669
* 13 Kihoto Hollohan –vs- Zachilthu; 1992 Supp (2) SCC 651
with the law. Only wrong decision may not be the ground for the exercise of jurisdiction under Article 227 unless the wrong is referable to grave dereliction of duty and flagrant abuse of power by the subordinate courts and tribunals resulting in grave injustice to any party.*14

Since the commencement of the Constitution, the most commonly used technique to bring an administrative action within the cognizance of the courts have been the writ system. Innumerable cases have taken place in this area and hundreds of cases continue to be filed against the administration every year for seeking writs and it may be no exaggeration to say that the writ process has overshadowed all other techniques of judicial review of administrative action.

4.2 Locus Standi to Challenge Administrative Action and Writ Jurisdiction:

The term ‘locus standi’ refers to the person who may apply for a writ. The court will first see whether the petitioner is

entitled to invoke the jurisdiction of the court or not. Courts' attitude on this issue is not uniform. Generally an aggrieved person whose legal right has been infringed by the decision, can invoke the jurisdiction of the High Court. In Fertilizer Corporation Kamgar Union -vs- Union of India,*15 Justice Krishna Iyer, rightly observed that, “If the tone of public life in the country were sufficiently honest and fair-minded, formal norms to control administration may not be needed. But when ‘corruption permeates the entire fabric of the government’, legality is the first casualty, for then the state power ‘is exercised on ground unrelated to its nominal purposes.’

The basic purpose of judicial review is to enforce constitutionalism and to guard against majoritarianism. Thus an important aspect of public law review is not only the enforcement of private rights but to keep the administrative and quasi-administrative machinery within proper control. This concept of public law review was rightly stressed by the Supreme Court in S.L. Kapoor -vs- Jagmohan.*16 It is no denying the fact that today due to the intensive

* 16. (1980) 4 SCC 382
form of government there is a tremendous increase in the functions of the administration as a facilitator, regulator and provider. Therefore, if these new-found powers are properly exercised these may lead to a real socio-economic growth and if abused these may lead to a totalitarian state.*17 Against this backdrop the prime function of judicial review is to check the abuse of administrative powers and to enforce accountability on the operators of these powers.

The power of public law review is exercised by the Supreme Court and the High Courts through various writs, such as, Habeas Corpus, Mandamus, Certiorari, prohibition and Quo warranto and also through the exercise of power under Articles 136 and 227 of the Constitution.

Generally Articles 32 and 226 of the Indian Constitution make provisions for the system of writs in the country. Art. 32(1) guarantees the right to move the Supreme Court, by appropriate proceedings, for the enforcement of Fundamental Rights enumerated in the Constitution. For this purpose, the Supreme Court under Art.

32 (2) has the power to issue appropriate directions or orders or writ, including the above cited five writs. Article 226 (1) empowers every High Court, notwithstanding anything in Art. 32, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including in appropriate cases any government, within those territories directions, orders or writs including writs in the nature of habeas Corpus, mandamus, certiorari, prohibition and quo-warranto for the enforcement of Fundamental Rights or for any other purpose. Therefore, the Supreme Court and the High Courts have been invested the power of judicial review of administrative action by applying their vesting power of writ jurisdiction through various writs, as mentioned above, under the concerned provisions of the Constitution of India. Hence, these are the various legislative ways through which the issues and non-issues of administrative action may come out and the people in the democratic country India uphold their better concept of information in all the times. In this context, we are having so many instances when we draw our attention towards the newspaper of our country either local or national. Very recently, in November, 2010 there published a sensitive news in almost all the newspapers, periodicals*18 etc. regarding the

* 18. Frontline; December 17, 2010; The Hindu; February, 2011
‘2G Spectrum allocation scam’ and the same shocked the society as a whole which marked as a watershed month in terms of corruption exposes in the history of independent India. Through this corruption scandal there made an impact towards the social and political life of the people of our country and abroad also. Revelations about multiple corruption scandals took in their sweep politicians, government, the administrative and defence services as also national and international corporate houses and generated a sense of disquiet across the country. In this process, political heavyweights and the main opposition party at the centre, fought a fierce tactical battle to continue in office. The silence and inaction of the Prime Minister Manmohan Singh in responding to allegations of corruption in 2G Spectrum allocation involving A. Raja, then telecom minister was questioned by the Supreme Court itself. Both Houses of parliament came to a standstill from day one of the winter session, with the opposition demanding Joint Parliamentary Committee (JPC) probe into the allegations on 2G spectrum allocations.

Hence, this vital and sensitive news is the basic outcome of the administrative action in the context of corruption and the same
is focused due to the consciousness of the people and more basically
the media itself with the help of right to information of the people.
The same is undergone in the 'trial' and the citizen of the country are
always eagerly waiting for an adequate judgment from the judiciary
so that the corrupt people may be punished at law.

4.3 Administrative action with special reference to certain norms
and doctrines:

Administrative actions are prevented by certain norms
and doctrine against the arbitrary exercise of power by the
administrative authorities. More or less the same is discussed in the
later part of my discussion.

4.3 (i) Violation of Procedural Norms:

There often comes a complex question in mind that, to
what extent an administrative action in violation of a prescribed norm
of procedure will be invalid? In Bank of Patiala –vs- S.K. Sharma,*19
the Supreme Court of India examined this question and passed an

* 19. (1996)3 SCC 364
order and imposing punishment on an employee after an enquiry in violation of a procedural norm laid down in Rule 68 (b)(iii) of Bank Officers’ Service Regulation which provided that the copies of the statement of witnesses must be provided to the employee at least three days before the enquiry. In this case though the employee had been given an opportunity to examine the file and take notes but copies of the statements of witnesses had not been provided as such. Upholding the validity of administrative action the Apex Court discussed in detail the legal consequences of the violation of a procedural norm. Accordingly the court come to a conclusion by ascertaining certain procedural norms which includes to follow the principle of natural justice also in some consequences. But it is obvious that if in cases where bias is alleged then the concerned ascertained norms will not be applicable.

From the above, it can further be stated that the administrative authority those who are performing their activities arbitrarily and ultra vires in nature which affects the people in common parlance, in that situation there is the judiciary who takes as an active part to hinder it and to protect the innocent one. It is worth
mentioning that such incident often happens amongst the administrative authorities to fulfill their ill motive. By this on going situation, it hampers the shining of the democracy and accordingly the germ of corruption will be increasing day by day. In that situation judiciary has taken a major role to control it and save the growth of the democracy in all the ways. That is why, it is revealed that judiciary has a vital role for promoting openness of government in the context of administrative action.

4.3 (ii) **Doctrine of Legitimate Expectation**:

The doctrine of legitimate expectation belongs to the domain of public law and is intended to give relief to the people when they are not able to justify their claims on the basis of law in the strict sense of the term through they had suffered a civil consequence because their legitimate expectation had been violated. The term ‘legitimate expectation’ was first used by Lord Denning in 1969 and from that time it has assumed the position of a significant doctrine of public law in almost all jurisdictions.*20

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* 20. Clerk, R., In Pursuit of Fair justice; AIR 1996 (J) 11
Accordingly this doctrine has developed in India by the Apex Court in order to check the arbitrary exercise of power by the administrative authorities. In private law a person can approach the court only when his right based on statute or contract is violated but this rule of locus standi is relaxed in public law to allow standing even when a legitimate expectation of a public authority is not fulfilled. Therefore this doctrine provides a central space between 'no claim' and 'legal claim' wherein a public authority can be made accountable on the ground of an expectation which is legitimate. For example, the Government has made a scheme for providing drinking water in villages in certain area but later on changed it so as to exclude certain villages from the purview of the scheme then in such a case what is violated is the legitimate expectation of the people in the excluded villages for tap water and the government can be held responsible if exclusion is not fair and reasonable. Hence, this doctrine becomes a part of the principles of natural justice and no one can be deprived of his legitimate expectations without following the principles of natural justice. Wade rightly states that the doctrine of legitimate expectation has been developed, both in context of
reasonableness and natural justice.\(^*21\) In Union of India-vs-Hindustan Development Corporation,\(^*22\) the Apex Court held that, "The concept of legitimate expectation in administrative law has now, undoubtedly, gained sufficient importance. It is stated that the 'legitimates expectation' is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action and this creation takes its place besides such principles as the rules of natural justice unreasonableness, the fiduciary duty of local authorities and in future, perhaps, the principle of proportionality". Further the court held that it only operates in public law field and provides locus standi for judicial review. Its denial is a ground for challenging the decision but denial can be justified by showing some overriding public interest. Denial does not by itself confer an absolute right to claim relief. The right to relief should be limited only to cases where denial amounts to denial of any right or where decision/action is arbitrary, unreasonable, not in public interest and inconsistent with principles of natural justice. The court will interfere merely on the ground of change in government policy. In this instant case, question arose regarding the validity of the dual policy of the government in the matter of contracts with private parties for supply of goods.

\(^*\) 22. (1993)3 SCC 499; AIR 1994 SC 980
Amongst the various administrative law principles this doctrine of legitimate expectation is also considered to be the best example in the field of judicial creativity. Nevertheless it is not extra-legal and extra-constitutional. Certainly Article 14 of the Constitution of India reflects a natural habitat for such doctrine which abhors arbitrariness and insists on fairness in all administrative dealings. At present this doctrine is an established one so that the protection of Article 14 is available not only in case of arbitrary 'class legislation' but also in case of arbitrary 'state action'. Hence, the doctrine is being hailed as a fine principle of administrative jurisprudence for reconciling power with liberty.*23 Though this doctrine has both negative and positive contents yet it must be exercised in the best interest of its beneficiaries, that is, the people in view of its basis on the principle that public power is a trust.

In Breen –vs- Amalgamated Engg. Union,*24, Lord Denning stated that if a person seeks a privilege to which he has no claim, he can be turned away without a word. He need not be heard.

* 24. (1971)1 All ER 1148; (1971) 2 QB 175
But if he is deprived of his livelihood, he should be afforded a hearing. Likewise, if he has some right of interest, or legitimate expectation, of which it would not be fair to deprive him without hearing, then he should be afforded hearing.

In Supreme Court Advocates –on-Records vs Union of India,*\textsuperscript{25} the Supreme Court held that in recommending appointment to the Supreme Court, due consideration of every legitimate expectation has to be observed by the Chief Justice of India. “Just as a High Court Judge at the time of his initial appointment has the legitimate expectation to become Chief Justice of a High Court in his turn in the ordinary course, he has the legitimate expectation to be considered for appointment to the Supreme Court in his turn, according to his seniority.”

In West Bengal-vs- Niranjan Singha,*\textsuperscript{26} the Supreme Court observed that where an agency was granted the right to collect toll or taxes, the claim of the agency for renewal could not be

*\textsuperscript{25} (1993)4 SCC 441 (703); AIR 1994 SC 268 (437) (Verma,J.)
*\textsuperscript{26} (2001)2 SCC 326
sustained where the government decides to have a fresh agreement with a view to obtaining higher consideration. Legitimate expectation can not be invoked against the higher public interest of the state of earning higher revenue. A case of substantive legitimate expectation would arise when a body, by representation or by past practice, aroused expectation that would be within its power to fulfill.

In J.P. Bansal-vs- Rajasthan,\(^\text{27}\) Pasayat, J. distinguished Justice Ray’s case and stated the law of legitimate expectation in the correct perspective. The learned judge, relying upon the seminal observations of Lord Diplock in Council of civil Service Unions -vs- Minister for the Civil Services,\(^\text{28}\) stated the law succinctly in the following words:\(^\text{29}\)

*An expectation could be based on an express promise or representation or by established past action or settle conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class of persons.*

\(^{27}\) AIR 2003 SC 1405  
\(^{28}\) [1985] AC 374, 408-409  
\(^{29}\) J.P. Bansal-vs- Rajasthan; AIR 2003 SC 1405, 1412
From the above discussion, it is clear that the doctrine of legitimate expectation in essence imposes a duty to act fairly. It is a fundamental principle of law that every power must be exercised within the four corners of law within the legal limits. Exercise of administrative power is not an exception to that basic rule. The doctrines by which those limits are ascertained and enforced from the very narrow of administrative law. Unfettered decision can not exist where the rule of law reigns. Again, all power is capable of abuse, and that the power to prevent the abuse is the acid test of effective judicial review.\(^30\)

It can further be precluded that there are mainly two different powers of the administrator such as ‘mandatory’ and ‘discretionary’ in nature. The administrative authorities are bound to follow the mandatory principle, if not, then it will be ultra-vires. On the other hand at the time of implementation of discretionary power they are easily having certain ways so that they may act arbitrarily and the same is a major drawbacks towards the free and fair administration. Therefore it is indeed necessary to keep notice by the

\(^{30}\) Wade, Administrator Law (1994) at PP-39-41
impartial body like the judiciary that they will not be able to do any unreasonableness and the violation of the principle of natural justice. Accordingly we may expect 'openness' which are 'limited' in nature. And as such it can be suggested that there should be 'limited openness' in the functions of an administrator so that their corrupt intentions may not be fulfilled.

4.3 (iii) **Doctrine of Public Accountability** :

The concept of the doctrine of public accountability is one of the most important emerging facet of administrative law in recent times. All the three organs of the government viz legislature, executive and judiciary are subject to public accountability. Hence, the basic purpose of the emergence of the doctrine is to check the growing misuse of power by the administration and to provide speedy relief to the victims in the exercise of power. It is settled law that all discretionary powers must be exercised reasonably and in the larger public interest. The doctrine is based on the premise that the power in the hands of administrative authorities is a public trust which must be exercised in the best interest of the people. Therefore, the trustee (the public servant) who enriches himself by corrupt means holds the
property acquired by him as a constructive trustee, public offices, either big or small, are sacred trusts. Every holder of public office is a trustee whose highest duty is to the people of the country. Every act of the holder of public office, should be for public good. Emphasis now is on reviewability of every action of the state or its instrumentalities. All powers possessed by a public authority are for public good.*31

Incumbent of an institution discharging public function, being its creature, can not be higher than the institution.*32

In State of Bihar—vs- Subhash Singh,*33 the court held that the Head of the Department is ultimately circumstances absolving him of the accountability. The concept of public liability has been further strengthened by the court by strictly applying the contempt law. In this regard there are so many senior public servants were sent to jail for deliberately violating court orders.*34 In the same

* 32. T.N. Seshan—vs- Union of India; (1995) 4 SCC 611
* 33. (1997)4 SCC 430
* 34. State of Bihar—vs-Subhash Singh; (1997) 4 SCC 430
manner where the public servant has caused a loss to the public exchequer the court has allowed the government to recover such loss personally from the erring officer.*35

This doctrine of public accountability equally applies to judiciary also. It is because, every organ of the government is subject to criticism for its flaws and drawbacks and judicial institution is not an exception to it. An essential requirement of justice is that it should be dispensed as quickly as possible. It has been rightly said that, "justice delayed is justice denied." Therefore, delay in disposal of cases can be commented. Whereas comments and criticisms of judicial functioning, on matters of principle, are healthy aids for introspection and improvement, the functioning of the court in relation to a particular proceeding is not permissible.*36 There should not be biased mind on account of 'judicial obstinacy.' All judicial functionaries must passes inflicting character to decide every case objectively and with an unbiased mind.*37 Even on

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* 35. State of Kerala-vs- Thressia; 1995 Supp (2) 449
administrative side also, the judiciary must act judiciously.\(^*38\) A Judge can not act in public controversies nor he can make disparaging remarks against the chief justice or against a Brother Judge.\(^*39\)

From the above, it can be ascertained that all actions of the state and its instrumentalities must be towards the objectives set out in the Constitution. Every step of the government should be in the direction of democratic traditions, social and economic development and public welfare. By this doctrine the victims may got immediate relief by preventing the growing misuse of power of the administrative authorities. It is worth mentioning that the ministers have taken their plans for a period of five years. After the completion of such five years plan another one for the next five years have been taken either by the same government, if elected, or by the another new one. But whatever the plan is taken by the government, the main moto of the plan is to the welfare of the state. Theoretically, whatever the scheme is taken by the government during the tenure of five year period is for the well-being of the people of the country but some of

\(^*38\) R.C. Sood-vs- High Court of Rajasthan; (1998)5 SCC 413; 1994 Supp(3) SCC 711; R.C. Sood-vs- High Court of Judicature at Rajasthan; (1998)5 SCC 413; 1994 Supp(3) SCC 711

\(^*39\) State of Rajasthan -vs- Prakash Chand; (1998) 1 SCC 1
the schemes are yet to be fulfilled due to completion of their period or
the negligence of their duties. Subsequently the new government has
come and take their charges. If the next government that it comes to
be a new one then the scheme taken by the earlier government may
not be fulfilled and they might have taken some new schemes as their
own party's political issues or motivation. These problem will not a
creating factor only when the same government once again re-elected.
Therefore my suggestion, in this context, is that every government
should try to complete their adopted schemes within the tenure
otherwise they will be morally responsible to the public for their
negligence of duties. It is because, according to the doctrine of public
accountability all the three organs of the democracy are accountable
to the public and as such the concerned government must ready to
face any prevailing situation at any moment. Responsiveness and
accountability are the basic element of 'good governance' and the
same way it is regarded as the facet to the 'openness of government'.
But for the sake of democracy and for the prevention of corruption
and maladministration practices by the administrative authorities the
only precaution or the preventive measure is to the 'openness' of the
governmental functions which should be 'limited' in nature on the
imposed restrictions. Therefore this research study directly
highlighted the 'limited openness of government' to solve the problem more or less and the citizen of the country be more advanced by the information receives by themselves time to time.

4.3 (iv) **Doctrine of Proportionality**:  

With the rapid growth of administrative law there was need to control the possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, illegality, improper, unreasonable, irrationality or proportionality, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power is the doctrine of proportionality and the courts have always tried to temper this doctrine with the ‘doctrine of flexibility’.\(^{40}\)

The doctrine of proportionality was developed in 19\(^{th}\) century in Europe originated in Prussia. Proportionality is “concerned with the way in which the decision-maker has ordered his priorities, the very essence of decision-making consists in the attribution of

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relative importance to the factors in the case". In the human rights context, proportionality involves a 'balancing test' and the 'necessity test'. The form scrutinizes excessive and onerous penalties or infringement of rights or interest whereas the latter takes into account other less restrictive alternatives.41

The doctrine ordains that administrative measures must not be more drastic than is necessary for attaining the desired result. If an action taken by an authority is grossly disproportionate, the said decision is not immune from judicial scrutiny. Apart from the fact that it is improper and unreasonable exercise of power, it shocks the conscience of the court and amounts to evidence of bias and prejudice. The doctrine operates both in procedural and substantive matters.42

In Coimbatore Distt. Central Co-op Bank-vs-Employees’ Assn.43 certain employees went on illegal strike. They also prevented others from discharging their duty. It was held that the

   Also UOI-vs- G, Ganayutham; (1997) 7 SCC 463; AIR 1997 SC 3387
* 42. Wade and Forsyth, Administrative Law (2005) at P-366
* 43 (2007) 4 SCC 669
acts amounted to ‘extremely serious misconduct.’ Punishment imposed on the employees of stoppage of increments could not be said to be disproportionate to the charges leveled and proved against employees.

It is clear that the principles of reasonableness and proportionality covers a great deal of common ground.*44 This doctrine as a part of judicial review ensures that a decision otherwise within the province of administrative authority must not be arbitrary, irrational or unreasonable. Though in judicial review the court is not concerned with the correctness of the decision but the way in which the decision is taken, the very decision making process involving attributing relative importance to various aspects in the case and there the doctrine of proportionality enters.

Thus the deployment of proportionality sets in focus the true nature of the exercise of power, whether legislative and more particularly administrative and the elaboration of a rule about permissible priorities.

* 44. Wade and Forsyth, Administrative Law (2005) at P-366
Therefore, it is imperative that judicial review of administrative action in the context of openness of government is a sine-qua-non in the democratic set up of a country where the Executive and Legislative members are people's representative. Observance of the principles of natural justice and fair-play in action by the government and administrative authorities are the legitimate expectations of the citizens, who may seem to be the silent spectator, but in reality they are the true watchdog and active participants in a Parliamentary form of government like India. However, the court cannot insist an administrative authority to act judicially at its own, but still it may insist them to act fairly. In the context of openness of government, judicial review works as checks and balances in true spirit of the term.