Chapter V

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We have seen that the action of the administrative authority will be ultra vires, if there is jurisdictional error. The court will interfere with such action. But the court will not interfere in its supervisory jurisdiction when the action is intra vires. A mere mistake of law often does not deprive a tribunal of its jurisdiction. It does so only if the question is one of jurisdictional law, i.e., when the provisions of law are misapplied to the facts, and assumes jurisdiction to decide the case. Though action may be intra vires, the court treats it as unlawful.

The scope of judicial review in terms of jurisdictional principle has been dominated by the distinction between "Land and Fact". In the Chapter III it has been observed that when there is want or excess of jurisdiction the courts apply the Jurisdictional Fact theory. If the authority acted beyond the jurisdiction marked out for it by law, the reviewing court will interfere and set aside its action as ultra vires. It is also to be observed that the court has limited power in the application of judicial review. This limited power of the court is hardly sufficient to control administrative illegality.

Question of fact is a field where the statutory authority
preserves much of its jurisdiction. On this field they are free to commit an error. It is proposed in this chapter firstly to show that violation of no-evidence rule amounts to error of law which is recognised category of jurisdictional principle to invoke judicial review. Secondly to equate an error of question of fact with the jurisdictional error.

The most persistent problem that appears in both the decisions and the many legal treatises is the distinction between "questions of fact" and matters of law. The analogy of the division of duties between the judges and jury in civil litigation is taken over into administrative law and has been applied to the division of function between courts and administrative agencies. In developing this distinction the courts have held that if the administrative action is based upon a pure question of fact, it will not be set aside as long as there is some evidence to support the finding. If, on the other hand the administrative determination is construed to be based upon an issue of law, the entire proceeding will be reviewed and the court will exercise its own independent judgment as to the validity of the conclusions reached by the tribunal involved. This classification of administrative determinations into question of fact and matters of law has been subjected to withering criticism and it is doubtful if the distinction has served any useful purpose other than to indicate the complete irrationality of the courts' explanation as to their duty with respect to the control of administration.
It has been rightly pointed out by Dickinson, ¹

"matters of law grow downward into roots of fact, and matter of fact reach upward, without a break, into matters of law. The knife of policy alone affects an artificial cleavage at the point where the court chooses to draw the line between public interest and private right. It would seem that when the court's are unwilling to review they are tempted to explain by the easy device of calling the question one of "fact."

Still other judicial distinctions have enabled the courts to develop inroads on the basic principle that administrative fact are generally final and conclusion. It is fully examined in Chapter - III. The doctrine of constitutional or jurisdictional fact is the basis of another technical classification with respect to which the reviewing court must exercise its own independent judgement as to the validity of the administrative ruling. Thus, it would appear that whenever an administrative ruling is attached on the ground that it violates the constitutional rights of the party against when the determination was made, the reviewing court must reach on its own independent judgement as to the validity of such administrative action.

Similarly, this broad scope of review applies to all fact determinations which relate to the jurisdictional authority of the administration authority, since these determination are said to be fundamental in the sense that their existence is a condition precedent to the operation of the statutory provision. Consequently, it has been held that when the administrative authority

¹) Dickinson: Administrative Justice and Supremacy of Law 1927
     P. 49
makes a finding, regardless whether it is purely factual or not, which incidently involves a determination must remain open
to the judicial review.

On question of fact, the general rule is that the findings
of fact by the administrative authority will not be disturbed
unless there is any appellate provision in a statute. The
appellate authority in a statute may disturb the finding of
fact. This is perfectly sound and logical throughout the legal
system. There is a sound sense in trusting the finding of
fact of the body which has a first hand knowledge of a case.

But when there is no appeal provision in a statute pertain-
ing to the findings of fact of the administrative authority, the
finding of fact will be final. In such a situation the party
has no remedy despite an error of findings of fact. This rule
is subject to qualification. It is a recognised rule that
finding of fact must be supported by some legal evidence. The
court exercises the 'No-evidence' rule for this purpose. The
question whether there is evidence which can support a finding
of fact is itself a question of law. No evidence may also
prove to be a ground of review where there is no right of
appeal. With the aid of this rule the courts are in a better
position to apply the doctrine of jurisdictional principle as
a last resort.

1) Allison v. General Medical Council (1994) 1 Q.B. 750
In the *Not Bell Liquors Ltd.*, the question before the Privy Council was: Could the decision of the inferior court be quashed as ultra vires because it had no proper evidence before it? In rejecting the contention that "want of evidence is the same as "want of jurisdiction," Lord Sumner observed: "To say that there is no jurisdiction to convict without evidence is the same thing as saying that there is jurisdiction if the decision is right and none if it is wrong".

In *A.V. Mahony*, the court observed that absence of evidence or insufficiency of evidence to warrant a conviction did not establish want of jurisdiction but was merely error within jurisdiction.

In the *King v. Judlow*, Lord Goddard has said "if it is acting within its jurisdiction, it is now settled law that absence of evidence does not affect the jurisdiction of the tribunal to try the case nor does a misdirection by the tribunal to itself in considering the evidence nor what might be held on appeal to be a wrong decision in point of law".

The court has power (under different name: Inherent jurisdiction, general power) to disturb the findings of fact when they are not supported by any evidence on record.

1) (1922) 2 A.C. 122 at 122
2) (1910) 2 I.R. 695
3) (1947) 1 K.B. at 639
In India an order without any evidence had been treated as an error of jurisdiction. But this view no longer prevails in both the countries. The court will disturb findings of fact if they are not supported by any evidence. Thus the court’s interference is based on the "no evidence rule". The Supreme Court of India has stated the law very clearly on this point as follows in [Basappa V. Nagappa].

"It has been said that the matter may be regarded as a question of jurisdiction, and that a justice who convicts without evidence is acting without jurisdiction to do so. Accordingly want of essential evidence, if ascertained somehow, is on the same footing as want of qualification in the magistrate, and goes to the question of his right to enter on the case at all. Want of evidence on which to convict is the same as want of jurisdiction to take evidence at all. This is clearly something that he ought not to do, but he is doing it as a judge, and if his jurisdiction to entertain the charge is not open to impeachment, his subsequent error, however grave, is wrongful exercise of a jurisdiction which he has and not a usurpation of a jurisdiction which he has not. Now a magistrate, who has acted within his jurisdiction up to the point at which the missing evidence should have been, but was not, given, can thereafter be said by a kind of relation back to have had no jurisdiction over the charge at all, it is hard to see. It cannot be said that his conviction is void, and may be disregarded as a nullity, or that the whole proceeding was coram non judice. To say that there is no jurisdiction to convict without evidence is the same thing as saying that there is jurisdiction if the decision is right, and none if it is wrong or that jurisdiction at the outset of a case continues so long as the decision stands, but that, it is set aside, the real conclusion is that there never was any jurisdiction at all". 1

The same idea was emphasised by Holroyd, C.J., in [R.V. Murphy] who observed that "when the court has jurisdiction to decide a

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1) Basappa V. Nagappa A.I.R. 1964 S.C. 440
2) (1922) 2 Ir. R. 76
matter, the jurisdiction is not ousted because it happens to be an erroneous decision, and it certainly cannot be deemed to exceed or abuse its jurisdiction merely because it incidentally misconstrues a statute or admits illegal evidence or rejects legal evidence.  

In subsequent cases it is definitely laid down that a finding based on no evidence suffers from error of law apparent on the face of record. In **Bailendra Prasad v. The Punjab State** the High Court set aside the finding of fact by the Revenue Authorities based on no evidence. In another important case **Union of India v. H.G. Goel** where a public servant was dismissed for having allegedly attempted to offer a bribe to the Deputy Director so that the latter might support his representation regarding his seniority to the Union Public Service Commission, the Supreme Court upheld the decision of the High Court quashing the order on the ground that it was not supported by any evidence at all. The test formulated by the court is rightly expressed in the above case in the following words.

"If the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

1) **Kamakalya Devi v. Bachittarnesh** A.I.R. 1960 S.C. 1158  
2) **Gulam Khuddin v. State of M.P.** A.I.R. 1964 Cal. 503  
3) **Syed Yaseen v. Radhakrishnan A.I.R. 1964 S.C. 477**  
4) A.I.R. 1966 Punjab 165 (F.B.)  
In fact this case did not say whether it was a case of error of law. In *Syed Yakoob v. Radhakrishnan* the majority held that even if the tribunal had failed to consider material evidence but there was evidence to support its finding, then it could not be said that the finding of fact was based on no evidence rule at all. In this connection it is necessary to examine the meaning of the expression "No evidence rule".

"No evidence does not necessarily mean a complete absence of evidence. The question is whether the evidence, taken as a whole, is reasonably capable of supporting the finding".  

Prof. Wade cites the above passage from Allison's case for explaining the term 'No evidence rule'. He relies on the observation of Lord Isher in the above case. His Lordship observed, "Was there, then evidence in the present case of such conduct? It seems to me that this question must be solved thus. Taking the evidence which was before the Medical Council as a whole, did it bring the plaintiff within the definition which I have read? Was the evidence, taken as a whole, reasonably capable of being treated by the council as bringing the plaintiff within that definition of infamous conduct in a professional respect?". The change, in the light of the above decision, can be found in the Supreme Court ruling in State

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1) *A.I.R. 1964 S.C. 477*  
See *Swaran Singh v. State of Punjab* *A.I.R. 1976 S.C. 222* at 226

2) *(1964) I Q.B. 750* at 761

3) *Wade : Administrative Law 3rd Edn. 1971 P.100*
of Andhra Pradesh v. S. Sree Rama Rao\(^1\) "Where there is some
evidence, which the authority entrusted with the duty to hold
the enquiry has accepted and which evidence may reasonably
support the conclusion that the delinquent officer is guilty
of the charge, it is not the function of the High Court in a
petition for a writ under Art. 226 to review the evidence and
to arrive at an independent finding on the evidence. The High
Court may undoubtedly interfere where the conclusion on the
very face of it is so wholly arbitrary and capricious that
no reasonable person could ever have arrived at that conclusion.\(^1\)

In fact the Supreme Court in a subsequent case\(^2\) adopted the
wider view of review in relation to findings of fact and observed,
"where the Tribunal having jurisdiction to decide a question
comes to a finding of fact, such a finding is not open to ques-
tion under Art. 226 unless it could be shown to be wholly un-
warranted by the evidence. Where the Tribunal has disabled
itself from reaching a fair decision by some considerations
extraneous to the evidence and the merits of the case or where
its conclusion on the very face of it is so wholly arbitrary
and capricious that no reasonable person can ever have arrived
at that conclusion interference under Art. 226 would be justified".\(^3\)

A finding is said to be on no evidence when it is solely
based on Conjecture, Surmise and Suspicion.\(^3\) The courts do not

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1) A.I.R. 1963 S.C. 1728
interfere with the findings of fact of the lower court unless
there is some grave or palpable error in the appreciation of a
evidence on the basis of which the findings are arrived at.\(^1\)
A finding is said to be perverse when it is not corroborated
by the evidence on record.\(^2\)

The present position is that if there is some evidence to
support a finding, it is not for the court to go into the suffi-
ciency or adequacy of the evidence.\(^3\) It is not the function of
a court to review, reassess, reappreciate or draw its own
inferences from the fact of the evidence.\(^4\) It should take the
evidence as it stands.\(^5\)

In a number of cases it can be found that the court does
interfere and grant relief when the findings of fact are not
supported by legal evidence, when the tribunal or authority
refused to admit admissible and material evidence or has erro-
neously admitted inadmissible evidence which has influenced
the impugned findings of fact.\(^6\)

\(^1\) Sunita Devi V. Sheo Shankar Yadav (1973) 15 C.J. 234
\(^2\) M.E. Industries V. Ramman A.I.R. 1968 S.C. 32, 34
\(^3\) V.V. Iyer V. Jasjit Singh A.I.R. 1973 S.C. 194
\(^4\) Venkateswaran V. Wadhwani A.I.R. 1961 S.C. 1506
\(^5\) Girdharilal Bansidhar V. Union of India (1964) S.C.R. 62
\(^6\) Shradhan V. Pandya A.I.R. 1971 Suj. 161

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\(^3\) State of A.P. V. Sri Rama Rao A.I.R. 1963 S.C. 1723
\(^5\) Kusalya Devi V. Bachittar Singh A.I.R. 1960 S.C. 1168
\(^6\) State of Madras V. Sundaram A.I.R. 1965 S.C. 1108

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\(^5\) Union of India V. K.G. Coel. A.I.R. 1964 S.C. 394

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\(^6\) Syed Yakub V. Radhakrishnan A.I.R. 1964 S.C. 477
In the light of the above discussion it seems that when a finding of fact is not supported by any legal evidence, such error is treated as an error of law apparent on the face of record. This law is well settled in the Indian and English law. In fact in the English law, error of law apparent on the face of the record as a ground for interference by writ came into vogue after the case of Lord Denning revived the doctrine of error of law apparent on the face of the record which was totally ignored by the court till then. In English law 'no evidence rule' is treated as an error of law on the face of the record, whereas in India in the pre-Constitution era it was treated as want of jurisdiction. It means want of evidence was the same thing as want of jurisdiction. The reason for it is that in the English law, the narrow meaning of jurisdictional principle as given in R v. Bolton and R v. Hat Ball Liquor Ltd case had a great influence on the reasoning of the court's decision. No doubt Bolton's Pure Theory of Jurisdiction is not totally accepted by the court. It can be seen in a number of cases vis. Zunbarry v. Fuller and R v. Special Commissioner of Income Tax, where the court refused to accept the Pure Theory of
Jursidiction. More recently in the Anisminic\(^1\) the court had repudiated the Pure Theory of Jurisdiction. The court has given in this case broad meaning to the concept of jurisdiction. Here it is important to note that the courts in India equated no evidence rule with want of jurisdiction. But departed from this well established principle in the post-Constitutional era, because the court recognises the concept of error of law apparent on the face of record as a ground for its interference.

But so far as findings of fact are concerned the Pure Theory of jurisdiction still prevails. The well established rule of the English law is that findings of fact are not disturbed by the reviewing court unless findings or inferences drawn by the authority pertaining to the fact on which the existence of their jurisdiction depends are not supported by any legal evidence. The reviewing courts in such cases apply the principle of no evidence rule with great care. If the courts apply no evidence rule frequently, it means virtually the reviewing court is functioning as an appellate court on the findings of fact of the inferior authority. And the inference or determination of the authority in relation to the findings of fact, when the authority is acting within jurisdiction, will not be final, the authorities would become transmitting agencies of evidence to the courts and consequently much of the advantage of administrative adjudication will be lost. It does not mean

\(^1\) (1969) 1 All E.R. 202 (H.L.)
that the administrative authority is an absolute judge of deciding the findings of fact. If they are empowered to decide the findings conclusively, they will act arbitrarily. And this will not be tolerated in a court, where the rule of law is prevailing or dominant. Some check must be there on the power of the authority. To have a check in such situation, the court established a rule that findings of fact by an administrative authority may be questioned before the courts if they are based on no evidence. A finding without any evidence is regarded as an error of law, as a matter of law there should be some evidence to support the findings. Thus Prof. Schwartz points out,

"One of the principal reasons for the creation of such agencies is to secure the benefit of special knowledge acquired through continuous experience in a difficult and complicated field. If the review of administrative determinations were to be very broad, with the reviewing court deciding the case de novo on its independent judgment, "administrative tribunals would be turned into little more than media for transmission of the evidence to the courts. It would destroy the values of adjudication of fact by experts or specialists in the field involved. It would divide the responsibility for administrative adjudication."

We should not forget that "in the whole of administrative law the functions that can be performed by judicial review are fairly limited." The role of the courts in this field "is to serve as a check on the administrative branch of government—a check against excess of power and abusive exercise of power in derogation of private right. The judicial function is thus one of control: we can expect judicial review to check—not to supplant—administrative action. The province of the judge is to confine the administrative within the bounds of legality, not to determine for himself the wisdom of challenged administrative action."

1) Syed Yakoob V. Radhakrishan A.I.R. 1964 S.C. 477
At the same time, the limitations imposed on the scope of inquiry of the reviewing court must not go so far as to prevent full judicial scrutiny of the question of legality. If that question cannot be properly explored by the judge, the right to judicial review can become but an empty form. "It makes judicial review of administrative orders a hopeless formality for the litigant... It reduces the judicial process in such cases to a mere form." 1

From the above discussion it is clear that the court will interfere in the findings of fact by the inferior authority when their findings are not based on evidence. Except on this ground, the courts are reluctant to enter into questions of fact which are within the exclusive field of the administrative authority. The courts are as much reluctant in reviewing facts as they have been eager to control errors of law apparent on the fact of record. They have frequently used their power to review questions of law to test the findings of fact. It is important to note here that prior to the Summary Jurisdiction Act, 1948 the courts in England reviewed the summary convictions for insufficiency of evidence. Thus where the record shows that there was no evidence to support the findings of the inferior authority, the court exercises its power to review i.e., such error may amount to error on the face of record. The classical case on this point is A.V. Smith. 2 In this case a person was convicted under Stat. 40 Geo. III which declared an offence to sale wholesale bread before it had been baked for twenty four hours. There being no evidence that bread was sold, the conviction was quashed. It was held that where the power of conviction is by statute given to a

2) (1800) 3 T.R. 588 quoted from 70 Harv. L.R. 953 at 959.
magistrate he is sole judge of the weight of evidence given before him, the court will not examine whether or not he has drawn a right conclusion from the evidence. But if no evidence appears on the conviction to support the material part of the information, the court will quash the conviction.

This case does not say whether the ground on which the conviction was quashed constituted jurisdictional error or error of law apparent on the face of record. Prof. Jaffee says, in support of the theory, that the absence of evidence on a material issue is itself a jurisdictional defect. Prof. S. A. de Smith\(^1\) seems to suggest that it was an error of law. The above case is explained by Lord O'Brien, C.J., in *A. V. Noehy* 2 "that case (A. V. Smith) was a miscarriage within jurisdiction, because there was error on the face of proceedings, the evidence being set out and not warranting conviction". Thus in *A. V. Noehy*, absence of evidence was recognised as error of law on the face of record. The same view is expressed by Lord Sumner in *Nat Bell Liquors Ltd.* 3 "It may well be that error as to the law of evidence, like any other error of law, if it is apparent on the record is a ground for quashing the order made below". It is necessary here to examine some more cases with a view to see whether absence of evidence amounts error of law.

1) S. A. de Smith: Judicial review of Administrative Action 2nd Edn. 1968 p. 68 Note 76
2) (1910) 2 I.R. 665 at 716
3) (1922) 2 A.C. 128, 144
on the face of record. Further, in the light of the recent trend, an attempt has been made to show that such error on the face of record amounts to error of jurisdiction.

A very important case is decided on the above point in

R. v. Birmingham Compensation Appeal Tribunal. Ex Parte Read

Haulage.\(^1\) In this case the tribunal decided that the compensation to be paid to the claimant should be calculated in accordance with Sch. II, Para 9, (i), of the Transferred Undertakings (Compensation to Employees) Regulations, 1980, on the ground that on the evidence they were of the opinion that there existed in his case 'expectation under customary practice to the payment of compensation in the event of discharge' with Sch. II, Para 8 (1) (i), to the regulations. It was held that there was no evidence in the instant case of an 'expectation under customary practice to the payment of compensation in the event of discharge'. Accordingly, as an error of law appeared on the face of the award, certiorari would issue to quash the order. Thus the same principle is affirmed in subsequent cases. In Davis v. Price,\(^2\) Lord Parker says that, if they misconstrued the statute or acted on no evidence they merely erred in law, and unless that error is manifest on the face of the award, the decision cannot be challenged on proceedings for an order of certiorari.

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1) (1952) 2 All E.R. 100 n.

The meaning of error of law apparent on the face of record has been widened recently, so as to include not only the case of admission of inadmissible evidence but also the rejection of admissible evidence. Lord Parker C.J., in *R v. Agricultural Land Tribunal for the South Eastern Area, ex-parte Brassey,*\(^1\) said that, "There is a clear distinction between a tribunal which acts without jurisdiction and one which goes wrong in law while acting within its jurisdiction, for example, acting on no evidence or even acting on evidence which ought to have been rejected, or failing to take into consideration evidence which ought to have been considered. These are all matters of law, and unless the error appears on the record, no order for certiorari can be obtained."

From the above cases it is clear that the principle of error of law apparent on the face of record would be carried further, to examine the sufficiency of evidence. Thus in *Arman's case*\(^2\) there is a suggestion that insufficiency of evidence to justify the findings of an inferior tribunal constitutes an error of law apparent on the face of record. Thus the position is, that an error of law apparent on the face of record helps the court to intervene on the ground of no evidence, wrong evidence and insufficient evidence. In addition to this there

1) (1960) 1 W.L.R. 991 at 914.
   See *R v. Industrial Injuries Commission ex-parte Ward* (1965) 2 Q.B. 112
may be other reasons where 'no evidence' rule may be a ground for quashing a decision. *E.g.* Bad faith, unreasonableness, etc., it may constitute an error of law on the face of record or it might bring the decision within the rule of "jurisdictional fact".

It has been observed that the concept of jurisdictional error cannot cover all error including the case of no evidence rule. The reasons given by the court are that the rules of evidence do not apply to the proceedings reviewed by the writ of certiorari. The courts are invested with wide discretion to say in a particular case whether the tribunal acted on inadmissible evidence, or failed to consider admissible evidence. This leads us to say that the area of review of facts will therefore, be determined by the policy of the court. Because in a number of cases it is seen that the court justified their view in terms of the orthodox theory of jurisdiction where they refused to intervene on the ground of no evidence. This orthodoxy can be seen in the application of narrow meaning of the jurisdictional theory. According to this view such error occurs during the exercise of power. Hence it is within the jurisdiction of the authority. The jurisdictional error, according to the orthodox theory, must prevent the authority from commencing the proceeding and cannot be something arising during it. We have seen that this theory did not prevail for a long time. Jurisdictional error theory as applied in *Summary V. Fuller*, *R V. Special Commissioner of Income Tax etc.*, is holding
its way in modern cases. Further, as above discussed, the inferior authority had no jurisdiction to reach a decision unsupported by evidence. As Prof. Wade points out, "The doctrine of error on the face of record infringes it and there is really no reason why new doctrines as to findings of fact should not infringe it also".\footnote{1} It is equally true, as observed in the Chapter - III that there is no review of findings of fact within the jurisdiction. The court can interfere by holding that the existence of the fact is jurisdictional condition\footnote{(Chapter - III)}. It is because of these doctrines that the pure theory of jurisdiction lost its sway. A finding based on no evidence is recognised as an error of law apparent on the face of record. The courts exercise their reviewing power when the evidence for findings of an authority is lacking. There is plenty of indication that 'no evidence' may thus be controlled by inherent jurisdiction, even in older law.\footnote{2}

In \textit{Arakah's case}\footnote{3} the House of Lords appears to show that whether or not there is evidence to support a particular decision is always a question of law. "This rule can be invoked where the lack of evidence appears on the record. There have been wider judicial dicta to the effect that the court will

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\item [1)] H.W.B. Wade ; Anglo American Administrative Law - More Reflections (1966) 22 L.Q.R. F. 237
\item [2)] R V. Bursingham Compensation Appeal, Ex. F. Road Haulage (1966) 2 All E.R. 100 n.
\item Davis V. Prince (1966) 1 W.L.R. 434
\item R V South Eastern area Agricultural Land Tribunal Ex. P. Bracey (1966) 1 W.L.R. 911
\item [3)] R V. Governor of Brixton Prison Ex. P. Amrah (1968) A.C.192
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quash the decisions based on no evidence without reference to the record.\(^1\) More recently, the trend of judicial thinking is that some supporting evidence is required by the principles of natural justice. This suggestion is very useful when there is no appeal provision. Two examples may be cited from the court of Appeal. In one case\(^2\) the rule of natural justice was applied by the court on the ground that the rules of natural justice required the decision of the Industrial Injuries Commission to be based on evidence of some probative value. In another case\(^3\) Lord Denning said that the court will intervene if the Minister had acted on no evidence even though it was held that, that the question of want of evidence was not jurisdictional. A decision based on no evidence is very likely capricious or unreasonable, or given upon wrong legal grounds or in breach of natural justice so that the court, if it wants to interfere, can do so. Prof. Wade aptly remarks that “even under the law as it now stands, what is shut out at the front door may get in by the back”.\(^4\) The absence of evidence is treated as error of law. The courts are naturally tempted to press it into service as a ground of review. This error of law on the face of record\(^5\) is

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1) See Foot Note Last page.
2) R v. Deputy Industrial Injuries Commissioner Ex P. Moore (1966) 1 Q.B. 466
3) Ashbridge Investment Ltd. v. Minister of Housing and Local Government (1968) 1 W.L.R. 1320
4) R v. Wade; Administrative Law 3rd Edn. 1971 P.101
is recognised as an excess of jurisdiction. Further breach of natural justice rule is also treated as an excess of jurisdiction: Lord Hald in the Anisminis case has summed up the jurisdictional defect which may occur even though the initial jurisdiction to entertain a proceeding was possessed by the tribunal. This observation approved by the Supreme Court of India in Union of India v. Haranand Gupta as follows:

"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity, but in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of of the tribunal being entitled to enter on the enquiry in question. But there are many cases where although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

1) Ridge v. Baldwin (1904) A.C. 40
2) (1971) 1 S.C. 1522
From the case law it is clear in both countries that a finding of fact not supported by any legal evidence is recognized as an error of law. The lack of evidence which is shown on the facts of record is error of law. Prof. Wade calls such error as an error of jurisdictional law. It means that when the parties agree to the fact, the only question before the authority is to apply the law to the fact in a given case. When the authority misinterprets the law in a given case, it assumes jurisdiction over the fact by applying the wrong interpretation of the law to the fact. By this assumption of jurisdiction on the basis of misconstruction of statute, the authority acquired jurisdiction during the course of proceeding. In the light of the Jurisdictional Fact theory any error committed by the authority in relation to its jurisdiction in the course of proceeding is jurisdictional error. Whatever jurisdiction it had at the outset islost during the exercise of its power because of misinterpretation of legal provision and the whole determination is ultra vires on the ground of excess of jurisdiction.

This view can be substantiated by taking the following examples: what is an Industrial Dispute, who is an employee, what is Injury to Employee during the course of employment, what is House, what is Income and Capital, who is a Citizen and Alien, who is a Successor in title etc. In all these cases the authorities get jurisdiction over the subject matter under the statute. There is no dispute regarding it. In other
words the finding of the lower authority conclusive and final to that effect. The authority has jurisdiction at the outset over the existence of fact, but this preliminary jurisdiction of the authority is subject to another criterion laid down in the Nat Bell Liquor Ltd.; namely, the observance of the law in the course of its exercise. Any error of finding of fact committed by the authorities in the exercise of their power is not only error of law but an error of jurisdiction. Observations made by the courts are important. In this respect Prof. Wade points out,

"If, for example, a rent tribunal takes jurisdiction in a case by finding, wrongly, that the tenancy is a residential and not a business tenancy, the court on proof of the true facts will quash its decision. The same would be true if the Home Secretary, who has power to deport aliens, were to detain for deportation an 'alien' who in truth was a British subject. In both cases the error of fact or law would have been the step which led to the excess of jurisdiction though it does not, properly speaking, 'destroy jurisdiction', since jurisdiction never in reality existed. The amount of repetition of Lord Denman's words can alter this vital rule, for otherwise statutory authorities would become final judge of the limits of their own powers. The antithesis to Lord Denman's proposition is the equally well-known statement that

1) Anisminic case (1969) I All L.R. 208 (II.L.)
3) On this point I (Prof. Wade) accept Mr. Gordon's comment in 52 L.Q.R. at P. 618-19; Perhaps the clearest proof is that in his much quoted judgement in R v. Nat Bell Liquors Ltd (1932) 2 A.C. 158 at 158 Lord Sumner expounds the doctrine of jurisdictional fact and treats it as perfectly consistent with Lord Denman's judgement. Similarly Browne J., in his unreported judgement at first instance in the Anisminic case found both doctrines readily reconcilable. Lord Denning, evidently feeling more difficulty, has made a distinction between want of jurisdiction (at the commencement of the inquiry) and excess of jurisdiction (in the course of it); Baldwin and Francis Ltd V. Patent Appeal Tribunal (1959) A.C. 663 at P. 686
4) Lumsbury v. Fuller (1883) 9 Ex. 111 at 140 (Colesridge J.).
"It is a general rule that no court of limited jurisdiction can give itself jurisdiction by a wrong decision on a point collateral to the merits of the case upon which the limit to its jurisdiction depends."

And the antidote to Lord Reid’s proposition is the remark of Lord Upjohn in the same case:

"... though, of course, the inferior court cannot give itself jurisdiction by a wholly unjustified finding of fact necessary to confer jurisdiction."

The original conception of jurisdiction restricted to the initial conditions for the assumption of power by the tribunal could not cover the mistakes which the tribunal may commit in proceeding with the case. According to the pure theory of jurisdiction there can be no jurisdictional error where the tribunal has jurisdiction to embark on its inquiry in the first place. By the application of this approach, a tribunal which, in reaching its decision on the merits of the inquiry, it is authorized to conduct, its actuated by an irrelevant consideration, fails to take into account a relevant consideration, or exercises its power unreasonably, will be guilty only of an error within jurisdiction. Therefore, such abuse of discretionary power would not render an action ultra vires, and the decision would be reviewable only if these errors constitute error of law which appear on the record of the decision.

The fallacy involved in the pure theory of jurisdiction has been many times refuted.1 (Chapter - III). The first

1) H. W. R. Wade: Unlawful Administrative Action - Void or Voidable L.Q.R. (1968) 2, at p. 95-96
extension of the principle of jurisdiction was made when an error of law apparent on the face of record committed by a tribunal was also held to amount to lack of jurisdiction. It is quite clear that a statutory tribunal may step outside its jurisdiction in the course of its inquiry as well as at the outset, and this transgression may result from a mistake of law in the interpretation of the statute by which the jurisdiction is conferred. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute. It is common experience that the empowering statute does not give adequate guidance to the court. It is really a question of how much latitude the court is prepared to allow. The House of Lords in Anisminic case\(^1\) made it perfectly clear that nullity is the consequence of all kinds of jurisdictional error, e.g., breach of natural justice, bad faith, failure to deal with the right question and taking wrong matters into account. Because it is an infringement of implied statutory consideration so that the fault will go to jurisdiction. Thus Prof. de Smith observes\(^2\):

"Discretionary powers must be exercised for the purposes for which they were granted; relevant considerations must be taken into account and irrelevant considerations disregarded; they must be exercised in good faith and not arbitrarily or capriciously. If the repository of the power fails to comply with these requirements it acts ultra vires".

1) (1969) 2 All E.R. 308 at 313
Lord Russell of Killowen in *Kruse v. Johnson*\(^1\) upholds the same principle in his well-known judgment on the validity of by law. He points out; "... the court might well say, 'Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires'.

A further extension of the jurisdictional principle was to include in its ambit a violation of natural justice governing the procedure of an inquiry. It is well settled principle is explained with crystal clarity by Diplock in *Anisminic case* in the court of Appeal.\(^2\) Lord Reid in the same case in the House of Lords observes that if the tribunal failed to comply with the requirements of the rules of natural justice in the course of inquiry, its decision is nullity and goes to jurisdiction. It means the procedural errors such as failure to hold an inquiry as required by natural justice go to the jurisdiction of the authority. Thus it infringes the basic canons of fair hearing so that the fault will go to jurisdiction and render the action a nullity.

When the procedural error is committed during the course of proceeding it would seem to be an error not going to jurisdiction, except when appeal provision is provided. As English commentators point out that :

"To hold otherwise would be to assert that, although a tribunal had jurisdiction at the outset, a subsequent

\(^1\) *Anisminic Ltd v. Foreign Compensation Commission* (1967) 2 All E.R. 386; Anisminic case (1969) 1 All E.R. 203 at p. 213; Ridge v. Baldwin (1964) A.C. 40

procedural mistake relates back to the start and makes the whole proceeding an excess of jurisdiction. Nevertheless, the courts have quashed administrative acts because of such procedural defects. It is a fundamental rule of law that want of jurisdiction cannot be cured by acquiescence or express waiver; a chief constable who exercised a statutory right of appeal to the Home Secretary from a watch committee was held by the House of Lords not thereby to have waived his right subsequently to have the committee's decision declared void.

It may be confidently stated that the courts now will consistently quash determinations which break the rules of natural justice. Having lost sight of the old concept of error in fact; they have to search for some other justification for this intervention. Unwillingly aware that this is something other than want of jurisdiction, they fight shy of the words 'excess of jurisdiction' and take refuge in vague expressions like 'a denial of justice'. Or, with a superficial show of logic, they say that a hearing with incorrect procedure is equivalent to 'declining jurisdiction' or 'no decision' or 'refusing to hear'.

Breach of natural justice apart, the courts do not hold that the breach of rules of procedure always goes to jurisdiction. The courts have sometimes confessed their inability to formulate any test that will decide when disregard of procedure amounts to excess of jurisdiction. This inability is usually cloaked under precedents or vague distinctions between 'nullity' and 'mere irregularity'. In short, supervising jurisdictions from which there is no appeal, and confronted by serious procedural breaches which they wish to check, the courts have disguised the fact that they are changing the law so that they now quash for serious procedural error, but suggest in their judgments that they are still merely preventing excesses of jurisdiction, whether the procedural breach renders the proceedings a nullity or merely makes them irregular must obviously depend largely on whether the courts wish to intervene.1

When there is appeal provision, it is not difficult for the court to intervene in the findings of fact of the lower authority.

we have already seen that absence of evidence to support the finding is an error of law apparent on the record and therefore resulted in excess of jurisdiction. But the courts in India and England in their supervisory jurisdiction maintain the distinction between excess of jurisdiction and appeal on point of law. Profs. Griffith and Street\(^1\) point out that, "there is no decided case in England to the effect that a right to quash for excess of jurisdiction extends to circumstances where the decision is against the weight of the evidence."

The general trend of the courts in India and U.K. is in favour of the view that a decision arrived at on no evidence rule may not be quashed merely on that ground.\(^2\) It seems that the courts have justified this by following the Pure Theory of Jurisdiction, that a jurisdictional error prevents the tribunal at the outset of hearing and cannot be something arising during it. In this connection Profs. Griffith and Street\(^3\) who advocated the jurisdictional fact theory to determine the jurisdictional error of the tribunal aptly remarked that, of course, "they should have departed from this logical position and said that a court had no jurisdiction to reach a decision unsupported by evidence."

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1) *Ibid.* P.231  
2) R v. Agricultural Land Tribunal ex. P. Bursey (1960) 1 W.L.R. 611; Davis v. Price (1952) 1 W.L.R. 434 at 441-42; in the Amisicnou case, House of Lords said that this case was wrongly decided.  
3) *Ibid.* P.231
As pointed out earlier the court is helpless in disturbing the findings of fact because of abolition of writ of 'error in fact'. There may be another reason which can be found in the distinction between question of law and jurisdictional error. The courts naturally were inclined to search for another device in order to control the administrative authority. In quest of their search for justification of interference, they found the rules of natural justice. Even after the abolition of writ of 'error in fact' and after the passing of the Summary Jurisdiction Act 1948, judicial zeal never remained unabated. After many years, the principle of error of law on the fact of record was revived in 1961. In Arman's case the review was invoked on the ground of error on the fact of record where there was lack of evidence. Further the principle of error on the face of record is stretch to such an extent as to bring the concept of natural justice within its ambit. In this context Prof. Wade points out that, "This is a novel suggestion, and it conflicts with the well established proposition that to find facts supported by no evidence is not ultra vires. But, as we have seen elsewhere, the courts are now showing a disposition to develop 'no evidence' as a head of judicial control, and if they do so it may be that natural justice will supply the peg on which to hang it".

1) See Chapter - IV of the thesis.
2) R V Northumberland Compensation Appeal Tribunal (1952)1 K.B. 338
3) R V Governor of Brixton Prison ex parte Arman (1968) A.C. 192 at 234
4) H.W.R. Wade : Administrative Law, 3rd Edn. 1971 P.213
There is a suggestion of Prof. Alice Jacob to that effect. Prof. Alice Jacob argues that in India the concept of natural justice should be widened to include a requirement of sufficient evidence for a finding of fact. In fact, Prof. Alice Jacob raised the question as to desirability of the court exercising some control over findings of fact. However, the fate of the application of the concept of natural justice in findings of fact rests ultimately on the attitude of the courts in India. We have already observed in Syed Iqoob’s case that the Supreme Court refused to review findings of fact under the influence of which a Transport Tribunal issued a permit even when the complainant was correct in his contention. There are a large number of decisions where the court has given clear guidance. The critics maintain that no evidence rule has enabled the court in controlling the findings of fact, but the case law shows different tendencies. Because of this variation in judicial pronouncements, Prof. Norman S. Marsh throws some doubt upon the desirability of involving the court in the process of findings of fact which is explained latter. The reason for doubts, it seems that the courts in India and England would not intervene in the findings of fact of the administrative authority except such findings must be supported by some legal evidence.

2) A.I.R. 1964 S.C. 477
One cannot escape noticing that the requirement of formulation of findings of fact and giving of reasons for decisions had not been held to be a part of the rules of natural justice unless the statute provides for giving of reasons. This topic is discussed fully in the Chapter - IV. In fact, courts in India are trying to incorporate the rule that administrative decision should be accompanied by reasons as one of the rules of natural justice. Suffice here to say that even in the absence of any provision in law to give reasons, the court on many occasions insisted that reason must be given by the authority for its determination. This judicial activism, helps the court to examine whether the authority has taken into consideration all relevant matters for its conclusion. If its action is based on some procedural irregularity, or on irrelevant consideration, the court will quash it as ultra vires. Therefore, it is submitted, the court must incorporate the requirement of findings and reasons into the broad concept of natural justice. By insisting on reasons for the determination the court can easily find the error in the findings of fact. The present trend in India is to insist on the administrative authority (quasi-judicial and administrative authority) to give reasons.\(^1\)

The position in England is different because there is the statutory law in force known as the Tribunal and Inquiries Act 1958.

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1) Travancore Rayon Case V. India A.I.R. 1971 S.C. 362
Barikum Chemical Ltd. V. Company Law Board A.I.R. 1967 S.C. 295
Union of India V. M.L. Capoor A.I.R. 1974 S.C. 57
The Act made a provision for giving reasons, when asked for by a party. Where the Act is not applicable, the court itself insist on giving reasons.

To sum up it can be said that the ground is prepared for some measure of judicial control of the evidentiary basis of tribunal’s findings. The study of no evidence rule coupled with the doctrine of error of law on the face of record clearly reveals the fact that, “the courts are so familiar with no evidence rule as a ground of appeal that they are naturally tempted to press it into service as a ground of review”.1 Secondly, we have seen that when the findings of the authority are based on no evidence, such error of findings is treated as excess of jurisdiction and the doctrine of ultra vires is applied. This can be seen from the Ansmicnic case.2 Here the ultra vires doctrine is more comprehensive for controlling the administrative actions.

It has been established in this work that an error of law cannot be said to be within the authority conferred. The same view is expressed by the Committee on Ministers’ Powers. In R v. Northumberland Compensation Appeal Tribunal,3 Lord Denning says, "judicial control to-day extends not only to seeing that the inferior tribunals keep within their jurisdiction, but also to seeing that they observe the law". In fact, the Supreme Court

1) R v Birmingham Compensation Appeal Tribunal (1952) 2 All E.R. 100
2) (1969) 2 W.L.R. 193
3) (1952) 1 K.B. at 347
of India in 

Sardar Govind Rao V. State of M.P., ¹ held that the applicant who had applied for the award of grant of money or pension to the State Government was entitled to know the reasons for the rejection of his application by the State Government. It is true that the insistence of reasons to be supplied by the authority is not founded on constitutional provisions. It must be fairly based on the requirement of natural justice itself. This is another instance where one can see judicial activism in the absence of clear legal provision in relation to speaking orders. Any error committed in the exercise of the jurisdiction is called an excess of jurisdiction and hence ultra vires. In other words "the notion of ultra vires, observed Prof. Schwarts,² upon which the law of review is grounded, has been expanded from the primary conception of lack of jurisdiction to embrace cases involving improper exercise of jurisdiction".

There is one happy trend in India. The courts are trying to incorporate the rule that the administrative decisions should be accompanied by reasons as one of the rules of natural justice. In the absence of law, this step helps the court to find out whether the administrative action in question is lawful or not. Therefore it is suggested that in India a legislative attempt should be made on the line of the Tribunals and Inquiries Act 1962, which provides for the giving of reasons by the tribunals when demanded by the party concerned.

1) A.I.R. 1965 S.C. 1222
2) Prof. Schwarts : An Introduction to American Administrative Law, 2nd Edn. 1963 P. 193
So far as the no evidence rule is concerned, it is too restrictive in its nature because firstly, the authority is not bound to keep record and secondly the reviewing court is reluctant to interfere in findings of fact. We have seen that error of law appearing on the face of record and extension of principles of natural justice have undermined the above view. In this connection it is suggested, that the broad view must be taken by the court in relation to findings of fact based on no-evidence rule. There is nothing wrong if the courts in India adopt the substantial evidence rule which is followed in United States. No evidence rule may be substituted by the 'substantial evidence doctrine'.

Prof. Alice Jacob feels the desirability of the writ courts extending their control over findings of fact. This can be achieved by the courts in India substituting the substantial evidence rule for the no evidence rule. As Prof. Schwartz points out that,

"Substantial evidence is hence such evidence as might lead a reasonable man to make the finding at issue. The evidence in support of a fact finding is substantial when from it an inference of the existence of the fact may be drawn reasonably. In such a case, the reviewing court must uphold the finding, even if it would have drawn a contrary inference from the evidence. ... The substantial evidence test is thus a test of the reasonableness, not of the rightness, of administrative findings of fact".1

Some doubts are raised by Prof. Norman Marsh about the application of substantial evidence doctrine in the English

1) Prof. Schwartz: An Introduction to American Administrative Law, 2nd Edn. 1962 P.200
administrative law. Prof. Norman March points out that

"some writers on administrative law maintain that
with a little gentle pressure the Courts may be
persuaded that the so-called 'no evidence rule is
a first cousin of the American substantial evi-
dence' rule and in this age of miraculous surgery
can, by a judicial operation, be turned into its
identical twin. But I am doubtful, if only be-
cause it really begs the question as to whether
it is desirable to involve the Courts as we know
them in England and in India too closely in the
fact-finding process".1

In different ways, it seems that the ground is being
prepared for some measure of judicial control of the eviden-
ciary basis of tribunals findings. In a number of judicial
decisions the courts have extended their power thereby giving
proper answer to the challenge of the ever increasing power
vested in the administrative authority. As Prof. H.W.R. Wade
points out,

"Judicial opinion in Britain is likely to be opposed
to any doctrine which requires, as the American doct-
rine does, the assessment of the weight of evidence
given before a tribunal specially constituted by
Parliament for deciding the facts. But instinctive
opposition to findings based upon no evidence what-
ever may impel British law to make a start down the
American road. At present an excessively uncertain
distinction determines whether there shall be full
review by the court or no review at all".2

In every case there must be some evidence to support the
findings. If some legal evidence is there, the finding is

1) Prof. Norman G. March: The Future of Administrative Law,
A.I.E. 1969 Journal P.120 at 124
Lq.R. P.226 at 240.
conclusive. It is conclusive in the sense that the court would not disturb the findings of fact. But if such findings are based on no evidence, the authority cannot assume jurisdiction. Because in such situation there exists no jurisdiction at all. And the court will interfere if the decision of determination of the authority is perverse. Prof. Schwarts rightly observed that "it is the power to find the fact, rather than law, that is the decisive element in the vast majority of cases". The power of administrative bodies to make findings of fact which may be treated as conclusive is a power of enormous consequences. An unscrupulous administrator might be tempted to say "Let me find the facts for the people of my country and I care little who lays down the general principles." Then how to control the administrative findings which are not supported by any legal evidence, when the authorities do not keep a record. There will be lawlessness in the administrative process if the authorities are allowed to act freely. It is for the court to find out some device to check the administrative authority. The Court has the ultimate authority under its inherent jurisdiction to see that justice is properly administered and the administrative authority not only acts within the statute but follows the law. What is essential is that their action must be lawful.

Therefore, even in the absence of a specific law, it is desirable for an administrative tribunal or authority to keep

1) Quoted from Landis: The Judicial Process 1938 P.136
records. A legislative attempt may be made on the lines of the Tribunal and Inquiries Act of 1958 of England. It will help the court to find out the error committed by the authority if any. It might sometimes be possible to challenge the action even on the ground of insufficiency of evidence which is also recognised by the court in both countries as error of law apparent on the face of record. The recent trend of the English court is to treat error of law on the face of record as an error which goes to the jurisdiction i.e., jurisdictional error. It is, therefore, submitted, that when the Supreme Court in a number of cases has recognised that lack of evidence as an error of law on the face of record, there is nothing in the way of the Supreme Court to treat error of law on the face of the record as a jurisdictional error, on the line of the reasoning given by the English courts. It is further submitted, that the Supreme Court must reconsider its attitude in relation to findings of fact based on no evidence. It is a well settled principle that the interpretation of a legal term is within the exclusive power of the court. If the administrative authorities misinterpret the law on which they assume jurisdiction and decide the case, such error would not remain as an error of law on the face of record but it hits the very jurisdiction of the authority concerned.

If the findings are not supported by any legal evidence then such findings of the authorities amount to abuse of power
which is a familiar category of ultra vires. Lastly, natural justice demands that decisions should not be vitiated by wrong findings or misinterpretation of law. It is the function of the court to see that justice is properly administered in a given case. Prof. Wade rightly observed, "the respect which is rightly shown to a tribunal's findings of fact should stop at the point where they are patently baseless, for otherwise grave injustice may be done".¹