

Welcome back students. The subject is administrative law and this module is on classification of administrative action. In this session we would see what are the three types of administrative action and the importance of classification of administrative action.

At the end of the session, you would come to understand that once you get an administrative order in your hand, how could you practically classify it into administrative order or judicial order or a legislative order, and you would also comprehend the necessity to classify administrative action and the practical implications, especially for a lawyer.

As you all know, the government has got three organs, the legislature, the executive, and the judiciary. We're going to focus on the executive branch of government.

Again, as you must be knowing the basic or the fundamental task of the legislature is making laws and that of the judiciary is settling disputes and interpreting laws for the purpose of settling disputes. When it comes to the executive, we cannot just say that the executive task is implementing the laws because the executive, especially in a welfare state, performs much more than that. It also makes laws. It also settles dispute. At the same time, it performs its own traditional work of implementing the law. Therefore, the executive functions could be lawmaking. It could be decision making, or it could be pure administrative action. This is classified and titled as quasi, Legislative, Administrative and quasi judicial action when it comes to administrative action. If the officer exercises discretion, we call it discretionary powers. If not, we call it ministerial powers.

These are the three functions of the government which are going to be focused and analyzed today, quasi legislative function, quasi judicial function and administrative functions. You must be familiar also with the other synonyms for these terms. Quasi legislative is also referred to as delegated legislation or it is called Rulemaking Action. Quasi Judicial is referred to as administrative adjudication or rule decision action. The pure Administrative Action is the rule application action.

Now we must legitimize whatever is being studied. So firstly, it's about understanding and convincing yourself as to why we should classify administrative action. There are many reasons for this, and these are all practical reasons.

Point Number one - publication. If you receive a government order, from the word order, you cannot really make out whether it is a legislative order that the government has passed. Is it a judicial order, or is it a pure administrative order? Therefore, we need to understand what sort of order is that which is passed, and it just come in your hand as a government order. If it is legislative order, it must be published in the official gazette because a legislative order is general in nature and it must be known to everyone. As you must be recollecting, Ignorance of law is not an excuse. Therefore law must be published. When it comes to a quasi judicial order or in administrative order only the party to whom the order is issued needs to know about the order. Therefore, there is no requirement to publish it so widely. Now I'll bring to you the example of Section 3 from essential commodities. A reading of Section 3 of Essential Commodities Act would make us understand that under this provision, government could pass a legislative order or government could pass an administrative or quasi judicial order because this section says that if you're

passing in order, which is general in nature, you must publish it in the official gazette. If you are passing specific orders, you must give a copy of the order to the concerned persons concerned.

Now the second point of difference or second important reason why we should classify administrative action is to know the procedure to be followed by the different sort of government orders. The focus is on principles of natural justice and please recollect natural justice principles would mean *audi alteram partem* and rule against bias.

If it is a quasi judicial order, the authority must compulsorily follow the principles of natural justice, whether the statute speaks about it or the statute is silent about it. If the statute provides for principles of natural justice that is also an indication that the type of power which is conferred on the authority is quasi judicial in nature. When it comes to a quasi legislative or an administrative order, there is no requirement to follow the principles of natural justice all the time. The authority just has to follow what is written in the statute, that is, the procedure that is contained in the statute.

However, there have been changes with respect to administrative orders because administrative orders or administrative authorities also have to follow to a great extent the principles of natural justice. Now, this change happened in a case - *A.K. Kraipak versus Union of India*, where rule against bias was held to be applicable even to an administrative action.

Third Point of significance is judicial review and what are the norms on which judicial review takes place? If it is a quasi judicial order, the lawyer has got a wide range of grounds on which the order can be challenged. If it is a quasilegislative, the grounds are lesser in number, for example malafide. See whether Malafide is a ground to challenge any type of order or only certain types of orders. If it is an administrative order, yes, malafide is a ground to challenge an administrative order. If it is a quasi legislative order, malafide cannot be a ground to challenge it, and in case of quasi judicial order, it's not very clear because malafide has some intricate connection to bias and bias is a ground to challenge quasi judicial order.

The fourth point of difference is where the subdelegation is possible without specific statutory authority or not. If it is a quasi legislative order the authority cannot sub delegate unless statute specifically provide for subdelegation whereas in the case of an administrative order, even without specific statutory authority, the power could be sub delegated.

Fifthly. The point of difference is whether to pass in order, specific statutory authority is required or not. In the case of administrative powers, many administrative powers can be exercised without the support of enacted law, whereas whenever the administrative authority performs a quasi legislative function or a quasi judicial function, they must be specifically empowered so by a statute.

Sixthly Review - now do remember that review is different from judicial review. Review means the same authority which passed the order is reviewing its own order. So can an authority review its own order. If it is a judicial order, the authority cannot review unless and until the statute empowers it. That is, judicial orders cannot be reviewed by the same authority if statute does not expressly confer that power. Whereas administrative orders can be reviewed without such statutory authority.

Lastly whether estoppel will apply to each of these orders. The rule is that no estoppel against statute or no estoppel against a legislative action, whereas estoppel will lie against administrative action.

Now, classifying one from the other, whether it is quasi legislative. Is it administrative? Is it judicial? This is not an easy task. It is said even by the judges, that it is difficult in practice and it is impossible in theory. Yet we need to classify because of these practical reasons.

These are the references for you, thank you.