

Remedies in Administrative Law; The Sri Lankan Experience

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Abstract: Administrative remedies can be identified as a set of remedies that provides redress against violations of right by those who are wielding administrative authority which is granted to them by a statute of the parliament or any other law deriving its authority which can be linked to an Act of Parliament. When one considers the development of these administrative remedies from a Sri Lankan perspective, it is evident that the influence of English law as a former British colony, is present in her jurisprudence pertaining to the development of the said remedies. While during the colonial period, following English decisions and principles were the *sine qua non* when it came to the practices of the Courts. However, after gaining independence and establishing an independent judiciary by breaking the bonds with the Privy Council in 1971, the Sri Lankan judiciary formulated a set of principles and rules concerning the granting of administrative remedies based on a Constitutional provision. This paper examines both the history and contemporary practices of the Courts in granting administrative remedies for those who seek administrative redress.

Key Words; Administrative Law, Remedies, Writ Jurisdiction

I. INTRODUCTION

Administrative law is a branch of law that deals with the regulation of interactions between the government and its citizens. In general, administrative law is designed to put limits upon the exercise of governmental powers through the delegated authorities or institutions where such authorities or institutions act in excess of the powers that have been delegated to them. According to Wade and Forsyth¹ administrative law is the law relating to control of governmental power. Administrative law aims to protect the individual from abuse of discretionary use of power by providing the individuals with administrative remedies.

When one considers the development of administrative law in the United Kingdom, it has some peculiar history. A.V. Dicey has once commented on administrative law by saying 'we know nothing of administrative law and we wish to know nothing about it'.² The development of administrative law as a separate and distinct study of law only occurred after the end of the First World War according to historical accounts.³ In fact the first book on administrative law was written by

Fedrick Port in 1929.⁴ However, this is not to say that administrative law did not exist prior to that, and whereas Wade and Forsyth opines that administrative law in England has a long story, but what is implied in here is that it really became to prominence during this period. The development of administrative law as a separate branch of law has a direct connection to the development of the ideas related to welfare State, where the State is required to provide welfare to the society at large, hence the government as the lively arm of the state is therefore required to interact with its citizens and in order to do this it requires departments and authorities with delegated powers. In the exercise of these delegated powers there needs to be a way for protecting the individual rights and liberties for which a different branch called the administrative law was developed.

As the name suggests, the administrative law refers to the administration process of a country. In the early days administrative law was synonymously used with the term public law which is much broader in its ambit. However, the term 'administrative law' though of a recent origin has many of its contents which have been developed through the Common law. However, as English common law was far more advanced in the development of private law as opposed to public law there is some confusion as to the development of its public law remedies.

II. DEVELOPMENT OF REMEDIES UNDER ENGLISH LAW.

Friedman⁵ observes that, where administrative justice is recognized as an equal and autonomous branch of judicial administration, designed to regulate the legal relations between public authority and citizen, the problem of remedies against administrative authorities is relatively simple. The learned author observes that in countries such as France and Germany have adopted an easy mechanism in providing administrative remedies. For example, the general administrative remedy is a petition filed by the person seeking review with appropriate administrative court, and containing a summary statement of the facts, the grounds on which relief is sought, and the nature of the relief that is sought.⁶ Schwartz⁷

1 H.W.R. Wade and C.F. Forsyth, *Administrative Law* (11th Edn, OUP 2014)
2 Cited in, P. Leyland and G. Anthony, *Textbook on Administrative Law* (7th Edn, OUP 2012)
3 A. J. P. Taylor, *English History 1914-1945* (Rev Edn, OUP 2001)

4 Jones and De Villiers, *Principles of Administrative Law* (2nd Edn, Carswell 1994)
5 W. Friedman, *Law in a Changing Society* (2nd Edn, Colombia University Press 1972)
6 *Ibid*

observes that, this system is characterized by the utmost absence of technicalities.

In contrast to the above, the English remedies were developed in a much more haphazard manner. In England, prior to the Judicature Acts of 1873 and 1875, there existed two courts of law. This included the courts of equity and the courts of common law. While the distinction in the modern world is somewhat academic, but in the development of remedies it played a vital part. In general, whether the relief was sought in the courts of equity or the common law courts, it was sought with a writ. A writ was something that the claimant required to purchase for the vindication of his/her rights. A writ, was originally a short-written command issued by a person in authority, and tested or sealed by him in proof of its genuineness.⁸ While the equitable remedies were granted according to the conscience of the chancellor, the common law remedies were granted in a much more methodological manner. When one considers the modern administrative remedies that are available, one can see a combination of remedies which were earlier found exclusively in either the courts of equity or courts of common law. Commenting on this Wade and Forsyth⁹ observe that, for a long time there have been anomalies with regard to administrative law remedies. This is due to the fact that administrative remedies belong to different families. Even under administrative law remedies, remedies found in the private law sphere such as damages, injunctions and declarations are made available. Then there are the exclusive public law remedies of certiorari, prohibition and mandamus.

When one considers the development of these remedies, it also is rather peculiar. For example, habeas corpus was initially used for securing the attendance of a party to a trial where such party was detained in some inferior court, then it was used for challenging the detention by the king and after this it became the standard procedure to question the validity of a detention. This clearly indicates the development of remedies was made not upon a rational basis but only by considering the practical methods of enforcing rights.

Prerogative writs are a set of remedies which warrants and analysis of its own. Initially these prerogative writs were only available at the suit of the Crown and it was with the evolution of time that these remedies became available to individuals. Tracing the history of these prerogative writs, Jenks¹⁰ and De Smith¹¹ have written two articles which inquire in to the historical development of these respective prerogative writs. Jenks finds that, prerogative writs at first were never issued except to carry out the direct purposes of

the Crown, or, later, as a special favour, to place at the disposal of some specially favoured suitor the peculiar remedies of the Crown. De Smith also observe that, prerogative writs are writs which originally were issued only at the suit of the King but which were later made available to the subject. Through time, however, the remedies became judicialized as individuals increasingly sought redress in the King's Court rather than from the King himself, and the courts began to grant the remedies in accordance with common law principle. De Smith commenting on this matter states that, in the seventeenth and eighteenth centuries, these various writs came to be called 'prerogative', it was because they were conceived as being intimately connected with the rights of the Crown.

The next issue is the distinction made between these remedies themselves which is confusing at best. De Smith¹² observe that even in the early formative period of the common law a distinction was recognised between writs of course (writs that had acquired a common form and could be purchased by or on behalf of " any applicant from the Royal Chancery) and other writs. Writs of course were given as if it was a right of the subject. However, these writs of course soon became to be abused and in order to rectify this Bacon when he became the Chancellor ordered that no writs of (*inter alia*) *ne exeat regno*, prohibition or *habeas corpus*, or certain forms of *certiorari*, were to pass without warrant under his hand. This was done for maintaining the principle that writs closely associated with the rights of the Crown should not issue out of the Chancery to the subject as of course.

In the early days the prerogative writs were issued by the king himself. However, since the applications made for writs grew up dramatically and the king had other things to attend, the courts were vested with the authority to issue prerogative writs on behalf of the king. When the authority to issue writs were vested with the courts it was exercised as a discretionary power of the courts and therefore, no claimant had a right to be issued with a writ. Therefore, since it was a discretionary exercise of power, courts are deciding whether to issue a writ or not considered the availability of other remedies, the conduct of the parties and the usefulness of issuing a writ among other things before actually issuing a writ for a subject. De Smith¹³ argues that, prerogative writs became discretionary because they are associated with the king and therefore, is never issued as of course. However, he also points that while these are not issued as a matter of course, not all of them are discretionary. For example, prohibition is issued as of a right in certain cases and *habeas corpus ad subjiciendum*, the most famous of them all, is a writ of right which issues *ex debito justitiae* when the applicant has satisfied the court that his detention was unlawful.

7 Bernard Schwartz, *French Administrative Law and the Common-law World* (1st Edn, New York University Press 1954)

8 Edward D C L Jenks, 'Prerogative Writs in English Law' (1922-1923) 32 Yale LJ 523

9 H.W.R. Wade and C.F. Forsyth, *Administrative Law* (11th Edn, OUP 2014)

10 Edward D C L Jenks, 'Prerogative Writs in English Law' (1922-1923) 32 Yale LJ 523

11 S A de Smith, 'The Prerogative Writs' (1951) 11 Cambridge LJ 40

12 *Ibid*

13 S A de Smith, 'The Prerogative Writs' (1951) 11 Cambridge LJ 40

III. A BRIEF OVERVIEW OF THE REMEDIES

As explained above, the prerogative writs have an ancient history and they have been the primary vehicle through which the superior courts review the legality of governmental actions in the modern context. The five prerogative remedies which are in use today include *habeas corpus*, *certiorari*, prohibition, *mandamus* and *quo warranto*. In addition to this, the private law remedies of injunctions, declarations and damages have also been used in the administrative law sphere. Further to this, from an English law perspective, the enactment of the Human Rights Act of 1998¹⁴ has also provided some alternatives such as 'a declaration of incompatibility' issued by the courts to notify of an incompatibility between a statute and the rights and liberties embedded in the European Charter of Human Rights.

Habeas corpus is commonly called the "Great Writ." As a prerogative writ it has a very ancient historical root and some historical accounts suggest that it was available even prior to the Magna Carta. It is so called a 'Great Writ' as it tests the reasons why a petitioner is being deprived of his liberty by keeping him/her in detention. However, it does not lie as an appeal from a judgment of conviction upon a trial or a plea of guilty; wherefore, a person cannot claim for a writ of habeas corpus if he/she is legally detained as a means of inflicting punishment and it does not perform the appellate office of determining the sufficiency of evidence, as it relates to guilt or innocence. Rather, it tests the imprisonment of the petitioner against constitutional principles; and if, at some time during the criminal procedure by which the petitioner was finally incarcerated, constitutional rights were violated to his legal detriment, he is entitled to release from custody.¹⁵

A certiorari now known as a quashing order, is the most commonly sought of the prerogative remedies and it will often be the remedy of most value to the claimant. As its name makes clear, the order serves to quash a decision or other measure and, where it is granted, the decision or other measure in respect of which it is granted is regarded as having never had legal effect. In the case of *R v Electricity Commissioners ex parte London Electricity Joint Committee Co*¹⁶ Lord Atkin stressed out the requirements that had to be met in issuing a certiorari and it latter became to be known as the atkin formula, where it was held that, '[w]herever anybody of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially act in excess of their legal authority, they are subject to the controlling jurisdiction of the King's Bench exercised in the writs of prohibition and certiorari.'¹⁷

Orders of prohibition have historically served to restrain public bodies from acting in a way that is, or would be, unlawful, for instance in the (rare) circumstance where an individual knows in advance that an illegal decision is to be taken. Otherwise, the nature of the remedy is such that it may be requested in tandem with a quashing order as, to the extent that the quashing order renders the original decision void, prohibition can issue to prevent the respondent making the same decision in the future. The prohibiting order is now also regarded as indistinguishable from a mandatory order and an injunction, as all three remedies can require a respondent to do, or not to do, anything in relation to the issues before the court. As with quashing orders, the remedy is coercive and a failure to observe it may be regarded as a contempt of court.

Mandamus now known as a mandatory order is also a coercive remedy and, as outlined above, it has the effect of requiring the decision-maker to perform a public—usually a statutory—duty. The coercive nature of the order again entails that a failure to comply with it may be a contempt of court and that the respondent may be punished by means of, for instance, a fine. In earlier case law¹⁸, it was thought that the individual who wished to obtain the remedy should first have to demand that the authority perform the duty and that proceedings could follow only where the authority refused to do so.

Blackstone defines *quo warranto* as "a writ of right for the king, against him who claims or usurps any office, franchise or liberty, to inquire by what authority he supports his claim, in order to determine the right." At first this remedy was civil, and if a judgment were rendered for the king there was either a seizure by the crown or a judgment of ouster to eject the usurper; but in no event would a fine or punishment be inflicted. Centuries later the writ fell into disuse, but in its place grew up an "information in the nature of *quo warranto*" which originally was a method of criminal prosecution that not only ousted and seized, but also imposed a fine. In time the information again became a civil proceeding to try the right to a franchise or office.¹⁹

An injunction is an order that requires a party to proceedings either to act or not to act in a particular way (it may thus be mandatory or prohibitory in form and, for that reason, is sometimes said to be indistinguishable from *mandamus* and *prohibition*). The remedy is coercive,²⁰ may issue at any time in proceedings, and may be interim or final.²¹ Interim injunctions are granted in accordance with the 'balance of convenience' test that is associated with private law²² but which is applied in a modified form in public law proceedings

14 Section 04 declares that the court can issue a declaration of incompatibility where there is conflict between the provisions of primary legislations and the rights enshrined in the Charter of Fundamental Rights of the European Union.

15 Frank M Scarlett, 'Habeas Corpus' (1967) 18 Mercer L Rev 354

16 [1924] 1 K.B. 171

17 *Ibid*

18 *The State (Modern Homes (Ireland) Ltd v Dublin Corp* [1953] IR 202

19 Richard C Turrone, 'Quo Warranto' (1963) 15 Hastings LJ 222

20 *M v Home Office* [1994] 1 AC 377

21 *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434

22 *American Cyanamid Co v Ethicon Ltd* [1975] AC 396

to the extent that the courts take account of the public interest²³

The declaration, deriving from the Court of Chancery and the common law Court of Exchequer, is a very wide-ranging remedy that has been developed in public law largely during the last 100 years or so.²⁴ In general terms, it has the effect of stating the law based on the facts before the court, thereby clarifying the legal position between the parties to the action. The remedy in that way sets out the respective rights of the parties without directly affecting those rights, and it is for that reason that the courts often prefer to grant a declaration rather than, for instance, a quashing order and/or a mandatory order.

Damages are available as a remedy in judicial review proceedings, albeit that they are rarely awarded by the courts. The basic rule is that they will be granted only where the facts that give rise to the claim for judicial review would also sustain a cause of action in private law, for instance for breach of contract, negligence, trespass, breach of statutory duty etc.

IV. THE SRI LANKAN EXPERIENCE

The Sri Lankan administrative law was developed purely by the principles of English law. This is evident from the fact when one considers the opinion of L.J.M Cooray²⁵ who states that the common law system which Ceylon has inherited has no separate machinery to control administrative bodies. He further observes that, the system of administrative law contains defects, many of them inherited from England law. Legal proceedings are conducive to delay and are expensive. There is a range of unreviewable administrative action. The judicial remedies in administrative law are over-complicated and hedged about by technical and restrictive rules, some of which are merely historical anomalies of English law which have become part of the law of Sri Lanka. There are various gaps in the law governing the civil liability of public authorities. Therefore, it is evident that the system of controlling administrative bodies would be similar to the one which is developed and used by the British. It could be argued that, another reason for this is to be found in the principles of Roman-Dutch law which was prevalent when the British took control over the land as Roman-Dutch law was not very famous for its public law branch. In this background the respective remedies that were granted for abuse of governmental power where individuals have suffered some detriment was in the form of prerogative writs which was rather alien to the established principles of Roman-Dutch law. This was pointed out in the case of *Abdul Thassim v Edmund Rodrigo*²⁶ it was held that, the writs are unknown to Roman-Dutch and without calling in English law on the subject that no writs could be issued. It is clear from the above

dictum that English law is the applicable law on the subject from a Sri Lankan perspective.

However, writs are not the only remedy which is made available for an individual who is aggrieved by an executive action. In summarizing the different options available to an individual, L.J.M Cooray²⁷ points out that an aggrieved individual had three modes of obtaining relief against executive action improperly exercised according to the body of administrative law which prevailed in Sri Lanka from colonial times. Firstly, he could go to the Court of Appeal under the 1978 Constitution and prior to it the Supreme Court to invoke its supervisory jurisdiction by applying for a prerogative writ, such as *certiorari*, prohibition and *mandamus*. Secondly, he could go to the original courts and bring an ordinary action for a declaration and/or for a permanent injunction or specific performance. Thirdly, he could claim from the District Court as circumstances warrant, an injunction staying the exercise of executive authority till a claim he had made in a substantive action is determined or as the circumstances may warrant where the cause of action is based on contract or tort can even claim for damages. However, the latter two remedies are now subjected to the provisions of the Interpretation Ordinance No 21 of 1901 whereby section 24 restricts the issuing or orders in the form of injunctions and specific performance against ministerial acts.

The writ jurisdiction warrants a study of its own since it is the most unique and mostly sought-after remedy when it comes to administrative matters. The writ jurisdiction in Sri Lanka was firstly contained in the Courts Ordinance No 01 of 1889 under section 42 provided that the writ jurisdiction shall be exercised by the Supreme Court. It declared that the Supreme Court shall have full power and authority to inspect and examine the records of any court, and to grant and issue, according to law, mandates in the nature of writs of *mandamus*, *quo warranto*, *certiorari procedendo*, and prohibition, against any District Judge, Commissioner, Magistrate, or other person or tribunal. Section 45 of the Ordinance specifically provided provisions to issue writs of *habeas corpus*. The provision makes it clear that the writs are to be issued *according to the law* and this phrase has been interpreted several times even when it appeared under section 42. In the case of *Nakkuda Ali v Jayaratne*²⁸ the Privy Council held that, whereas the court is given the authority to issue writs *according to law*, 'it is the relevant rules of English common law that must be resorted to in order to ascertain in what circumstances and under what conditions the Court, may be moved for the issue of a prerogative writ'²⁹. In addition to this requirement to issuing writs *according to law* the question as to which bodies or persons that are amenable to the writ jurisdiction was also a pivotal one.

23 *R v Secretary of State for Transport, ex p Factortame Ltd* (No 2) [1991] AC 603

24 *R v Medicines Control Agency, ex p Pharma Nord Ltd* [1998] COD 315
25 L J M Cooray, 'Durayappah v. Fernando. A Revival of Natural Justice in Ceylon' (1969) 18 International and Comparative Law Quarterly 757
26 [1947] 48 NLR 121

27 L J M Cooray, 'The Twilight of Judicial Control of Executive Action in Sri Lanka' (1976) 18 Malaya L Rev 230

28 [1950] 51 NLR 457

29 Ibid at Page 461

In some early decisions³⁰ the view was expressed that the words "other person or tribunal" in section 42 must be read ejusdem generis with the preceding words and that therefore the writs were available only against courts established for the ordinary administration of justice. In the case of *Dankotuwa Estates v. The Tea Controller*³¹ the court held that, an order made by the Tea Controller is one made by him in an administrative or ministerial capacity and the Tea Controller, not being under a *duty to act judicially* when he made the order, is not amenable to the writ. The idea that, only bodies or persons who are required to act judicially are only amenable to the writ jurisdiction was further endorsed by the decision of the Privy Council in *Nakkuda Ali v Jayaratne*³² and even Wade and Forsyth has considered this to be a dark day in the legal history of England. However, the negativity created by this judgment was taken away in the case of *Ridge v Baldwin*³³ where the court held that when ever an authority takes a decision that affects the rights and liberties of a subject it will be subjected to the writs jurisdiction whether it was acting judicially or not.

The Courts Ordinance No 1 of 1889 was repealed by the Administration of Justice Law No 44 of 1973. Section 12 provided that, the Supreme Court may grant and issue, according to law, mandates in the nature of writs of mandamus, quo warranto, certiorari, procedendo and prohibition and it also provided that the Supreme Court could also issue writs in the nature of habeas corpus. However, during this period the most significant thing that happened was the amendment brought to the Interpretation Ordinance No 21 of 1901 where the ability of individuals in seeking administrative justice was severely hampered. Section 22 which basically deals with ouster clauses, ousting the powers of the judiciary to intervene in administrative matters. Section 23 restricts the rights of courts to issue declaratory orders and section 24 restricts the power of courts in issuing injunctions and orders of specific performance against ministerial acts. These provisions have made a significant impact on the vindication of rights by the individuals in administrative matters.

It is to be noted that the current writ jurisdiction is exercised by the Court of Appeal under Article 140 of the 1978 Constitution. Article 140 of the Constitution provides that, 'subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto* against the judge of any Court of First Instance or tribunal or other institution or any other person.

Article 141 deals with the power of the Court of Appeal with regard to issuing of writs in the nature of habeas corpus. It is worthwhile mentioning that the writ jurisdiction of the Court of Appeal in now enshrined in the Constitution itself and this is a first in the country. This is evident from the wording of the Article, where the Court of Appeal is required to issue writs subject to the provisions of the Constitution *according to law*. In the new context the term 'according to law' was interpreted in the case of *Attorney General v Shirani Bandaranayake*³⁴ the Supreme Court held that by the requirement to grant and issue orders in the nature of writs "according to law", by which is meant the common law of England as developed by our own courts. In addition to the Court of Appeal, with the enactment of the 13th amendment to the Constitution, Article 154P (4) (b) allows the Provincial High Court to issue in the nature of writs of *certiorari*, *prohibition*, *procedendo*, *mandamus* and *quo warranto* against any person exercising, within the Province in respect of any matter set out in the Provincial Council List. It is to be noted that the Provincial High Courts are also granted with the power to issue writs of habeas corpus under Article 154P (4) (a) of the Constitution. In addition to this, the Court of Appeal while hearing a writ petition is of the opinion that there is a *fundamental rights* issue to be tried out can refer such a petition for the determination by the Supreme Court under Article 126 (3) of the Constitution. It is also interesting to note that the one-month limitation on the general exercise of the fundamental rights jurisdiction of the Supreme Court will not be taken into account under this method.

The writs jurisdiction coupled with the fundamental rights chapter and the fact that the writs jurisdiction of the Court of Appeal is founded upon a Constitutional basis has meant that in the contemporary setting it has become a real weapon for the individuals to vindicate their rights in the face of violation by administrative acts or decisions. The judiciary has also emphasised the importance of protecting the individual rights through the writ's jurisdiction. This was evident in the case of *Peter Atapattu v Peoples Bank*³⁵ where the Court of Appeal had to interpret an *ouster clause* in light of the Constitution. The Court held that when the provisions of the Interpretation Ordinance No 21 of 1901 came in to Conflict with Article 140 of the Constitution which deals with the writ jurisdiction of the Court of Appeal, being the higher norm stemming from the Constitution itself, provisions of Article 140 must stand regardless of the provisions contained in an ordinary piece of legislation.

It is to be remembered that when an applicant is making a petition to be issued with a writ, he is actually invoking judicial review of an act or omission of an administrative body or person that has had an adverse impact on his rights. Therefore, it also becomes important to know as to what bodies are amenable to the writ's jurisdiction. While the earlier cases even required a body to act judicially to become

30 *Dankotuwa Estates v. The Tea Controller* [1941] 42 NLR

31 Ibid

32 [1950] 51 NLR 457

33 [1964] AC 40

34 SC Appeal No. 67/2013

35 [1997] 1 Sri LR 208

amenable to the writ jurisdiction modern cases have shown a more rights conscious approach as seen in the decision of *Harijani and Others v Indian Overseas Bank*³⁶ where the Supreme Court held that even where a private incorporated body is exercising a public function would become amenable to the writs jurisdiction. In establishing this argument, the court also made reference to the decision in *Saheer and others vs Board of Governors, Zahira College and others*³⁷ where a similar approach was adopted.

As mentioned above since the writ jurisdiction is also linked with the fundamental rights jurisdiction under Article 126 (3) of the Constitution, the courts have used Article 12 of the Constitution which deals with the equality clause to enhance the application of the writ's jurisdiction. For example, in *Perera v Prof Daya Edirisinghe*³⁸ the court had to consider an application for mandamus by a student of fine arts. The court stated that Article 12, read together with the rules and examination criteria of the University of Kelaniya, gave a duly qualified candidate a right to a degree. The University had a duty to award the degree without discrimination, and even where the University had reserved some discretion, such discretion should be exercised without discrimination.

It is also to be noted that the remedies provided under Article 140 of the Constitution are not only limited to prerogative writs that we find under the English law. This was succinctly expressed in the case of *Mundy vs. Central Environmental Authority and others*³⁹ where the Court held that, [t]he jurisdiction conferred by Article 140, however, is not confined to *prerogative writs*, or *extraordinary remedies*, but extends *subject to the provisions of the Constitution to orders in the nature of writs of Certiorari*, etc. Taken in the context of our Constitutional principles and provisions, these *orders* constitute one of the principal safeguards against excess and abuse of executive power: mandating the judiciary to defend the Sovereignty of the People enshrined in Article 3 against infringement or encroachment by the Executive, with no trace of any deference due to the Crown and its agents' (emphasis is mine).

From the above dictum it seems evident that while the administrative remedies in the country while having their basis in the English law tradition has now become *sui generis* catering for the needs of the particular needs of the country with a Constitutional backing which the English never had any experience of. With the writ jurisdiction of the Court of Appeal it has been able to develop other doctrines such as the public trust doctrine which makes public authorities accountable for their actions when they act in breach of their trusteeship. Further to this the writ jurisdiction has also been used to supplement the fundamental rights that have been granted under the Constitution and for example some have

pointed out that the right to a clean and healthy environment has been achieved through judicial review.⁴⁰

V.CONCLUSION

The administrative remedies that were developed under the English law was a creature of the Common law and in particular the prerogative remedies or the writs as they came to be. Sri Lanka too adopted the same procedure where the administrative matters were also dealt with by the ordinary courts instead of specific courts created for that purpose and from the latter part of the 19th century the Supreme Court of the country was vested with the writ jurisdiction. At the beginning the Courts adopted the circumstances in which the writs were issued as a guideline for issuing writs to petitioners. However, the situation changed with the implementation of the 1978 Constitution where the writ jurisdiction found a Constitutional and its ambit was not restricted to the issuing of prerogative writs as the Constitution empowered the Court of Appeal subject to the provisions of the Constitution to issue writs in the nature of *certiorari*, *mandamus*, *quo warranto* and prohibitions. The remedies have widened in their scope and has now combined with the fundamental rights jurisdiction of the country which has helped to strengthen the reach and the ambit of these remedies. While it can be conceded that under English law the administrative remedies have developed in a piecemeal manner without looking at the need for a separate administrative justice, the Sri Lankan experience has been different from the inception of the 1978 Constitution which has combined the fundamental rights jurisdiction with the writs jurisdiction and has made administrative justice a part of the fundamental rights as fundamental rights are protected from infringements arising out of both executive and administrative acts with the only limitation of the contents of those fundamental rights and that too has been extended by the Supreme Court through its interpretative endeavours.

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