

RESTRICTIVE FEATURES IN JUDICIAL REVIEW: *KEBILENE* APPROACH



By:

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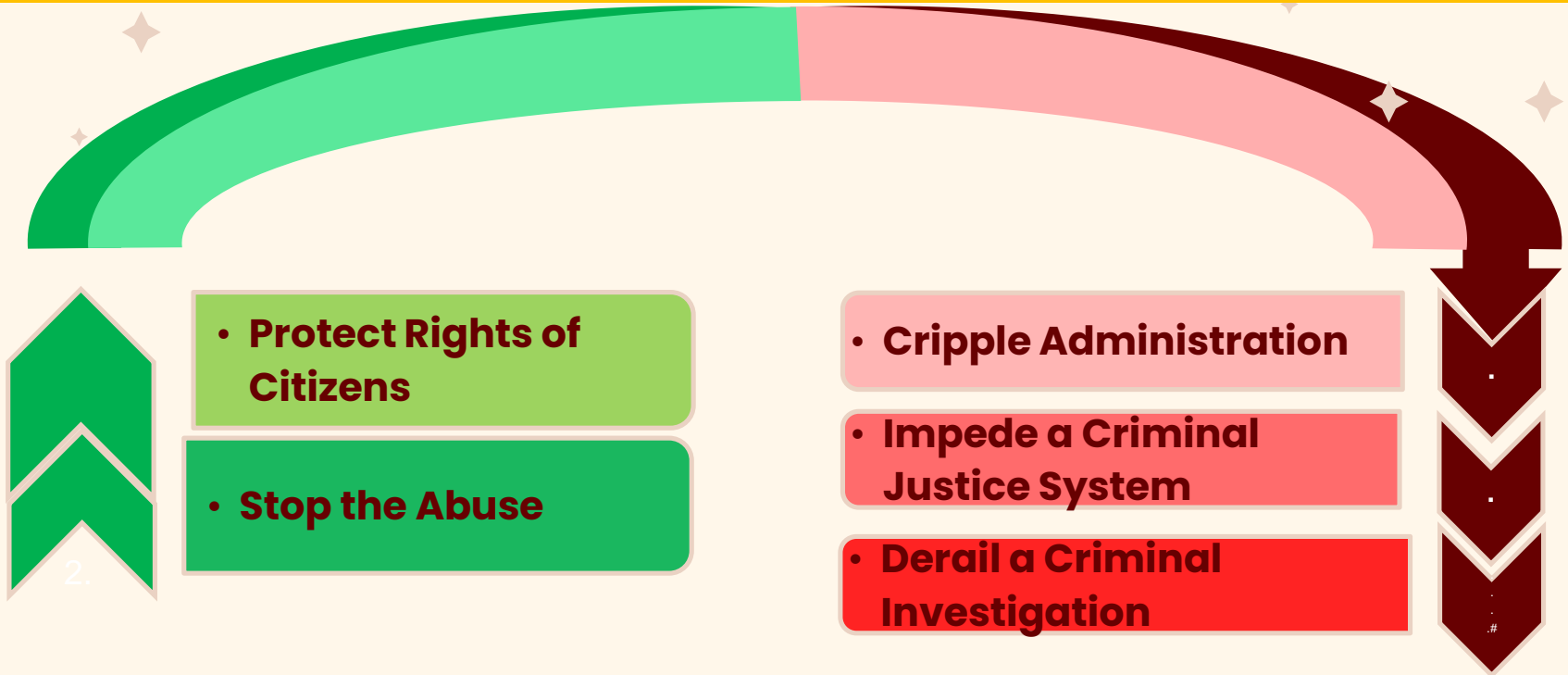
PURPOSE OF JUDICIAL REVIEW:

Keeping powers of government within legal bounds so as to protect citizens against abuse by governmental functionaries.

-Administrative law; H.W.R Wade & C.F. Forsyth, 10th Edition, p 4.



TOOLS OF JUDICIAL REVIEW :





**Court's Task:
Balancing Competing Interests**

1. DISCRETIONARY POWER OF COURT

- Court may find some act to be unlawful, nevertheless, it could decline to intervene.

At p. 599, Wade and Forsyth

- Person's entitlement to a remedy ***ex debito justitiae*** does not alter the discretionary nature of relief.

At p 600, Wade and Forsyth

2. UNIQUE PROCEDURE OF INVOKING COURT'S JURISDICTION

- **No automatic assumption of jurisdiction**
- **Strict regime of adherence to rules of court**
- **Need to satisfy court in the first instance**
- **Unfaulty conduct of the mover of court**
- **Need to move court within reasonable time**

3. JUDICIAL REVIEW AND IRREVIEWABILITY OF 'A DECISION'

- Judicial review is all about the decision-making process but not about a decision itself.

Chief Constable of North Wales Police vs Evans [1982] 1 WLR 1155

4. DISTINCTION BETWEEN INVALIDITY AND INCORRECTNESS

Judicial review is all about the decision being invalid; but, not about the decision being incorrect.

Browns Engineering (pvt) Ltd vs Comm. of Labour 1998 1 SLR 88

5. DOCTRINE OF ERROR ON THE FACE OF RECORD

- Judicially reviews an **ex facie** wrong decision where:
 - vital factor, document or evidence etc.; and,
 - Statutory or regulatory provision etc.
impacting the decision not considered;
- Errors within jurisdiction reviewable
- Legal invention to avert miscarriage of justice
Hayleys Ltd vs de Silva 64 NLR 130

6. PROSECUTORIAL DECISION AND ITS IRREVIEWABILITY : *KEBILENE* FORMULA

Decisions about prosecutions are not amenable to judicial review as complaint/s could equally be made at the trial.

A review process by collateral proceedings unduly delays a trial affecting the administration of criminal justice system

Exception is made for *mala fide* decisions or exceptional circumstances.

R v DPP ex p. Kebeline [1999] 3 WLR 972



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