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Judicial Approach in Cases of Statutory Silence or Ambiguity

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This paper explores judicial approaches to statutory silence and ambiguity in administrative law, emphasising the evolving role of courts in scrutinising regulatory actions. It critiques the ultra vires doctrine as an inadequate justification for judicial review, noting its indeterminacy, limited applicability to discretionary powers, and strained treatment of ouster clauses. Through Indian case law, including Baldev Raj v Union of India[1] and Vishal Tiwari v Union of India[2], the study highlights the need for a principled, common-law foundation for oversight of administrative action. Comparative analysis of U.S. jurisprudence- Chevron USA Inc.[3], Skidmore v Swift & Co.[4], and Loper Bright Enterprises v Raimondo[5]- illustrates a shift from automatic deference to independent judicial interpretation of statutes. The paper examines implications for Indian regulators such as SEBI and the NEB, advocating that courts critically assess statutory alignment and agency rationale, balancing expertise with legislative purpose. It concludes that independent judicial interpretation is essential to uphold the rule of law and protect public interest.

Keywords: *judicial review, administrative law, judicial deference, ultra vires, statutory ambiguity.*

[1] *Baldev Raj Chadha vs Union of India & Ors* AIR 1981 SC 70
[2] *Vishal Tiwari v Union of India* (2024) INSC 3
[3] *Chevron USA Inc v Natural Resources Defense Council* [1984] 467 US 837
[4] *Skidmore v Swift & Co* [1944] 323 US 134
[5] *Loper Bright Enterprises v Raimondo* [2024] 603 US 369

INTRODUCTION: THE EVOLVING ROLE OF THE JUDICIARY IN ADMINISTRATIVE LAW

Alexander Hamilton's view of the judiciary as the 'weakest' branch, while influential, has been challenged by the power of constitutional review established post-*Marbury v Madison*.[6] Contemporary legal thought recognises courts as counter-majoritarian institutions, insulated from political pressures, tasked with safeguarding legality, human rights, and the rule of law through constitutional and judicial review. Their legitimacy stems from a 'culture of justification.'[7]

The concept of 'deference', originating in North America, raises critical questions about when, why, and how much reviewing courts should defer to administrative agencies. Factors such as the type of agency action and the appropriate standards of review, like 'reasonableness' or 'proportionality', are central to this inquiry.[8]

The increasing autonomy of administrative agencies, termed 'agencification', has led to the administration functioning almost as a 'fourth power', beyond the effective control of the traditional executive and legislative branches.[9] This necessitates robust mechanisms for oversight, where courts play a crucial role in checking administrative actions. The issue of judicial deference has thus become paramount, carrying significant legal implications, especially given the constitutional aversion to absolute and arbitrary power, as highlighted by Justice Krishna Iyer in *Baldev Raj v Union of India*: 'absolute power is repugnant to our constitutional framework', and the arbitrary use of power is illegal.[10]

In this context, judicial approaches to statutory silence and ambiguity acquire renewed significance. Courts increasingly face situations where legislative guidance is either absent or indeterminate, compelling them to balance deference to specialised agencies with their constitutional duty of interpretation. This evolving dynamic underscores the judiciary's essential role in maintaining coherence, accountability, and fidelity to legislative purpose within administrative governance.

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[6] *Marbury v Madison* [1803] 5 US 137
[7] G B Zhu, *Deference to the Administration in Judicial Review: Comparative Perspectives* (Springer 2019)
[8] *Vishal Tiwari v Union of India* (2024) INSC 3
[9] *Skidmore v Swift & Co* [1944] 323 US 134
[10] *Baldev Raj Chadha vs Union of India & Ors* AIR 1981 SC 70

THE ULTRA VIRES DOCTRINE AND JUSTIFYING JUDICIAL REVIEW

The justification for judicial review of administrative actions is a subject of ongoing debate, with the *ultra vires* doctrine traditionally positing that courts intervene to ensure public bodies act within the powers granted by Parliament, thereby enforcing legislative intent. As applied in cases like *Ajoy Kumar Banerjee v Union of India*[11], *Dwarka Nath v Municipal Corporation*[12], and *Ram Prasad v State*[13], it dictates that courts will strike down administrative decisions exceeding the statutory powers granted, or when administrative rules conflict with the enabling Act's provisions. This highlights the traditional reliance on the *ultra vires* doctrine in justifying judicial intervention. However, this explanation faces several limitations.

Firstly, the *ultra vires* principle is inherently flexible and indeterminate. Courts apply a spectrum of review standards without clear guidance from the doctrine itself on which to employ in specific contexts. The ambiguity surrounding Parliament's intended level of oversight weakens the doctrine's ability to justify particular review approaches.[14] *Secondly*, the principle lacks a firm grounding in reality, particularly concerning discretionary powers. Legislation often lacks specific guidance on the exercise of discretion, making the assumption of precise parliamentary intent unrealistic. Furthermore, the development of new grounds for review, such as proportionality, appears to be a judicial creation, not a direct reflection of evolving legislative intent.[15] *Thirdly*, it suffers from internal contradictions, most notably in the judicial treatment of ouster clauses. Despite Parliament's explicit attempts to exclude judicial review, courts consistently find ways to circumvent these clauses, often by deeming flawed decisions a nullity. Attributing this to Parliament's supposed intention to exclude review only of legally sound decisions strains the doctrine. Instead, courts seem to operate on a more fundamental principle safeguarding access to judicial review, independent of specific legislative will.[16] *Fourthly*, the principle struggles to account for the application of judicial review to bodies not deriving their power from statute. As public law's scope expands, the notion that judicial control solely polices parliamentary intent becomes

[11] *Ajoy Kumar Banerjee & Ors v Union of India & Ors* AIR 1984 SC 1130
[12] *Dwarka Nath and Anr v Municipal Corporation of Delhi and Ors* AIR 1971 SC 1844
[13] *Ram Prasad and Ors v State Through Chhote* AIR 1952 All 843
[14] Paul Craig, 'Ultra Vires and the Foundations of Judicial Review' (1998) 57(1) Cambridge Law Journal 63 <https://www.jstor.org/stable/4508421> accessed 28 September 2025
[15] *Ibid* 65
[16] *Ibid* 68

unsustainable.[17] Applying the language of *ultra vires* in these cases requires a significant reinterpretation, shifting its meaning from enforcing legislative will to a broader justification for judicial oversight of powerful institutions.

While some argue that abandoning *ultra vires* could hinder the circumvention of ouster clauses and erode judicial review, this is not a necessary consequence. Courts could instead base their limited recognition of such clauses on a common law constitutional principle protecting their inherent power to oversee the legality of public power exercises. Another defence suggests that *ultra vires* acts as a '*fig leaf*', maintaining the appearance of judicial deference to parliamentary sovereignty. However, this can obscure the real reasons and policy considerations driving the evolution of judicial review, potentially leading to justifications based on vague notions of legislative intent without transparent discussion of underlying principles and the balance of power.[18]

Conceptually, private law readily develops and applies constraints on private power through common law principles without constant reference to legislative intent. There is no inherent reason why similar principles cannot underpin judicial control of public power. A common law foundation for judicial review would more accurately reflect the constitutional roles of both courts and Parliament. While Parliament retains legislative supremacy, courts have a constitutional function to ensure the rule of law and prevent abuses of power.

Therefore, a more accurate and principled approach is to acknowledge judicial review as fundamentally a creation of the common law, rather than relying on the often-strained fiction of *ultra vires*. The legitimacy of judicial review, including its grounds and intensity, should be justified by reasoned arguments based on normative principles, similar to the evaluation of common law principles in other legal domains. This provides a more honest and robust foundation for judicial review in a constitutional democracy.

JUDICIAL REVIEW OF REGULATORY BODIES: THE HINDENBURG CASE AND SEBI

In *Vishal Tiwari v Union of India & Ors*[19], the Supreme Court delineated the limited scope of judicial review over SEBI's regulatory domain and delegated legislation. Recognising SEBI's

[17] *Ibid* 70
[18] *Ibid* 68
[19] *Vishal Tiwari v Union of India* (2024) INSC 3

expertise, the Court emphasised it cannot act as an appellate authority assessing the correctness or suitability of SEBI's policies, nor as an advisor on policy matters. The Court established specific parameters for reviewing SEBI's policies, limiting its scrutiny to whether a policy:

(i) violates fundamental rights;
(ii) contravenes the Constitution or a statutory provision; or
(iii) is manifestly arbitrary. The focus of the review is the legality, not the wisdom of the policy.

Regarding technical, economic or financial matters where experts' views have been considered by SEBI, the Court stated it should not interfere with the resulting policies or subordinate legislation simply because it believes a better alternative exists. It reiterated that it cannot supplant the role of the expert regulator.[20]

Specifically addressing the challenge to SEBI's amendments to the FPI Regulations, 2014 and the LODR Regulations, 2015, the Court found no grounds for revocation. It noted that regulations are reviewable if *ultra vires* the parent legislation or the Constitution, but no such grounds were presented. The Court concluded SEBI's procedure was regular and legal, and the amendments had tightened the regulatory framework. The petitioners' argument of regulatory failure due to these changes was deemed an impermissible basis for judicial intervention, as it sought to substitute the Court's judgment for SEBI's statutory powers.[21]

Therefore, *Vishal Tiwari* established a deferential approach to judicial review of SEBI's regulatory functions. The Court acknowledges SEBI's specialised role and limits intervention, thereby upholding the separation of powers and the expertise of regulatory bodies in the financial market.

THE CHEVRON DOCTRINE: JUDICIAL DEFERENCE TO AGENCY STATUTORY INTERPRETATION

The Chevron doctrine, established in *Chevron U.S.A. Inc. v Natural Resources Defence Council*, dictates judicial deference to an agency's reasonable interpretation of an ambiguous statute

[20] *Ibid* 187
[21] *Ibid* 190

it administers.[22] While traditionally viewed as historically rooted, recent scholarship has challenged this, arguing that pre-Chevron deference was inconsistent and not based on deference to the executive *per se*.

The traditional narrative often portrays pre-Chevron practices as a precursor to the modern doctrine. However, this view is contested by arguments that both the Chevron Court and subsequent commentators *misinterpreted* 19th-century cases concerning statutory interpretation. Aditya Bamzai asserts that cases employing canons of construction such as *contemporanea expositio* (reliance on contemporaneous understanding) and *interpres consuetudo* (reliance on customary understanding) have been mistakenly identified as instances of deference specifically to executive interpretation.[23]

These canons, prevalent in 17th and 18th-century interpretive theory, aimed to resolve ambiguity by understanding legal texts as they were originally understood. When 19th-century courts gave weight to interpretations aligning with executive views, it was because those interpretations were perceived as reflecting a contemporaneous or customary understanding of the statute, not due to a general rule of deference to the executive branch itself.[24] The executive origin of an interpretation was relevant but not the decisive factor determining its weight. Moreover, the role of the writ of mandamus in early American judicial review, largely confined to non-discretionary, ministerial duties, further undermines the notion of a broad doctrine of judicial deference to executive statutory interpretations before the enactment of general federal-question jurisdiction in 1875.

The early 20th century saw legal realism challenging the law-fact distinction.[25] The Supreme Court embraced this, shifting from traditional interpretive canons. It's argued that Congress, through the Administrative Procedure Act, 1946 ("APA")'s judicial review provision ("shall decide all relevant questions of law"), intended to reject this shift and codify a traditional, independent judicial role in statutory interpretation, contrasting with Chevron's deference.

[22] *Chevron USA Inc v Natural Resources Defense Council* [1984] 467 US 837
[23] Aditya Bamzai, 'The Origins of Judicial Deference to Executive Interpretation' (2017) 126 Yale Law Journal 908 <https://yalelawjournal.org/pdf/BamzaiFinalPDF_9nhy6gyp.pdf> accessed 01 October 2025
[24] *Ibid* 916
[25] *Ibid* 972-975

The APA's Attorney General's Manual doesn't explicitly detail deference principles, suggesting it wasn't a simple restatement of existing law on this issue.[26]

The Chevron doctrine, derived from its 'interpretive methodology', was applied through a two-step test. First, using traditional statutory construction tools, courts determine if Congress's intent is unambiguous. If so, that intent governs. Second, if the statute is silent or ambiguous, courts assess whether the agency's interpretation is a permissible construction. If reasonable, the court defers.

Despite its prominence, Chevron had drawbacks –[27]

Historical Inaccuracy: The claim of a long tradition of deference to agency interpretations is challenged. 19th-century cases applied general interpretive canons to discern original meaning, not establishing deference to the executive *qua* executive. Executive interpretations were influential if aligned with contemporaneous or customary understanding.

Conflict with the APA: The APA's directive for courts to 'decide all relevant questions of law' implies an independent judicial role in statutory interpretation, contrasting with Chevron's deferential stance. The APA suggests a more active judicial role in determining legal meaning.

Separation of Powers Concerns: Critics argue that Chevron can encroach on the judicial function of interpreting law, potentially concentrating federal power in the executive branch, challenging the Constitution's checks and balances. This raises concerns about the judiciary's oversight of executive action.

Undermining Independent Judicial Judgement: Chevron may compel judges to favour a reasonable agency construction over what they believe is the best reading of an ambiguous statute, thus abdicating their responsibility for independent legal judgment.

Departure from Traditional Interpretive Methodology: Chevron shifts away from traditional canons, prioritising original public meaning towards deference based on agency expertise and policy considerations.

[26] *Ibid*
[27] *Ibid* 980-997

No established rule of statutory construction *mandated* judicial deference to executive interpretation *qua* executive interpretation in the early American Republic. The *Chevron* Court's reliance on 19th-century cases is a misinterpretation, conflating the application of general interpretive canons with a specific doctrine of deference to administrative agencies. Furthermore, the APA is argued to have been intended to preserve a more traditional, independent judicial role in statutory interpretation, as evidenced by the text of section 706. Consequently, the historical and statutory basis for the rule announced in *Chevron* is significantly weakened, and the doctrine raises enduring questions about the appropriate roles of the judiciary and the executive in interpreting the law within the framework of separation of powers.

THE *LOPER BRIGHT* DECISION: RATIONALE AND THE OVERTURNING OF CHEVRON

The decision in *Loper Bright Enterprises v Raimondo* marks a significant departure from established administrative law by overturning the doctrine of Chevron deference.[28] This ruling empowers the judiciary to independently scrutinise and potentially reject statutory interpretations adopted by federal administrative agencies. However, the implications are nuanced and not absolute. Before *Chevron*, the legal landscape was shaped by *Skidmore v Swift & Co.*[29], where courts accorded persuasive authority to an agency's statutory interpretation based on its expertise and reasoning. These interpretations served as informed perspectives but were not controlling.

In a 6:3 decision authored by Chief Justice Roberts, the Supreme Court formally overruled *Chevron*, stating that 'courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority'. The Court's rationale centred on the Administrative Procedure Act, 1946, which directs reviewing courts to 'decide all relevant questions of law' and 'interpret statutory provisions'. The Court argued that this APA mandate was incompatible with *Chevron's* requirement to accept any permissible

[28] *Loper Bright Enterprises v Raimondo* [2024] 603 US 369
[29] *Skidmore v Swift & Co* [1944] 323 US 134

agency construction of an ambiguous statute. Even with ambiguity, the Court maintained there is a best reading all the same, which courts must determine using all interpretive tools.[30]

The Court rejected the premise that statutory ambiguities inherently involve agency expertise or policy, asserting that statutory interpretation is a textual exercise where courts possess special competence. Invoking *Marbury v Madison*, the Court quoted Justice Marshall's assertion that 'it is emphatically the province and duty of the judicial department to say what the law is'. The majority dismissed the notion of Congressional intent for agencies to fill statutory gaps as 'a fiction', suggesting many ambiguities are unintentional legislative oversights.[31] For the *Loper Bright* Court, the administrative context doesn't alter the court's duty to decide legal questions, a principle they found codified in the APA and predating *Chevron*.

The post-Chevron world may increasingly resemble *Kisor v Wilkie*, which addressed deference to agency interpretations of their own regulations.[32] *Kisor* emphasised independent judicial interpretation, nuanced consideration of agency expertise, and the importance of consistent interpretations. These principles are likely to gain prominence when courts review agency interpretations of statutes. Textualist judges will continue to grapple with ambiguous statutory language, potentially leading to more frequent disagreements and reinforcing arguments for a more robust nondelegation doctrine. The executive branch will need to adapt by investing more effort in comprehensively explaining its legal interpretations, demonstrating genuine agency expertise grounded in statutory text. This could lead to more detailed but potentially slower rulemaking processes. Agencies might also more actively seek statutory clarifications from Congress.[33]

Concerns include the potential for increased judicial policy-making and greater non-uniformity in federal law. Some argue that *Chevron*, despite flaws, constrained partisan judicial decision-making. The process of distinguishing between ambiguous and

[30] 'Loper Bright Enterprises v Raimondo' (*Constitutional Accountability Center*) <https://www.theusconstitution.org/litigation/loper-bright-enterprises-v-raimondo/> accessed 01 October 2025
[31] *Ibid*
[32] *Kisor v Wilkie* [2019] 139 S Ct 2400
[33] Nowell D Bamberger al., 'After Chevron: What the Supreme Court's Loper Bright Decision Changed, and What It Didn't' (*Cleary Gottlieb*, 11 July 2024) <https://www.clearygottlieb.com/news-and-insights/publication-listing/after-chevron-what-the-supreme-courts-loper-bright-decision-changed-and-what-it-didnt> accessed 01 October 2025

unambiguous statutes was itself a source of disagreement, and the post-Chevron era might simply shift these disagreements to determining the *best* interpretation.

CONCLUDING LESSONS FOR INDIA FROM LOPER BRIGHT ENTERPRISES

Drawing on the principles and implications of the US Supreme Court's decision in *Loper Bright*, India can glean several key insights relevant to its own administrative law framework and the relationship between its judiciary and regulatory bodies.

Firstly, *Loper Bright* strongly reaffirms the fundamental role of the judiciary in independently interpreting statutes, even when those statutes are administered by specialised regulatory agencies. The Supreme Court's reliance on *Marbury v Madison* underscores this principle.[34] This suggests that Indian courts, when reviewing the actions of regulatory bodies like SEBI, could place a greater emphasis on their own independent analysis of the relevant statutes to determine their meaning, particularly when the statutes are silent or ambiguous on a specific issue.

Secondly, it dismantles the presumption inherent in *Chevron* that statutory ambiguity automatically implies a congressional delegation of interpretive authority to the agency. The US Supreme Court explicitly views this presumption as a 'fiction'.[35] India can learn to be more critical of the notion that regulatory bodies inherently possess the authority to interpret ambiguous provisions in their parent statutes without rigorous judicial scrutiny. Instead, Indian courts might expect agencies like SEBI to demonstrate a clearer basis in the express provisions and overall purpose of the enabling legislation for their interpretations in areas where the statute lacks explicit guidance.

Thirdly, while overturning *Chevron*, it explicitly acknowledges that courts may still seek guidance from the interpretations of agencies responsible for implementing statutes, drawing on the principles established in *Skidmore v Swift & Co.* Under *Skidmore*, the weight accorded to an agency's interpretation depends on factors such as (i) the thoroughness of its consideration; (ii) the validity of its reasoning, and (iii) its consistency.[36] This suggests that India can adopt a framework where Indian courts, while exercising independent judgment,

[34] *Marbury v Madison* [1803] 5 US 137
[35] *Loper Bright Enterprises v Raimondo* [2024] 603 US 369
[36] *Skidmore v Swift & Co* [1944] 323 US 134

still give due respect to the expertise and experience of regulatory bodies like SEBI. The agency's reasoned interpretations, especially those developed through transparent and deliberative processes, would carry persuasive weight but would not command automatic deference. The court would still need to be convinced by the agency's rationale based on its own statutory analysis.

Fourthly, it underscores the importance of the APA in defining the contours of judicial review, particularly its directive for reviewing courts to decide all relevant questions of law and interpret statutory provisions. While India does not have a single, comprehensive APA parallel, the principles of judicial review of administrative action are enshrined in its Constitution and various statutes. India can learn from *Loper Bright's* emphasis on the statutory basis for the judiciary's role in independently deciding legal questions related to agency action. This could mean that Indian courts might pay closer attention to the specific language of the parent statutes establishing regulatory bodies and the scope of judicial review provided therein.

Fifthly, if the Court adopts a less deferential approach, it can examine whether the amendments truly align with the SEBI Act's purpose of investor protection and market regulation. With allegations sometimes, such as facilitated mischief, the Court can demand that SEBI demonstrate a clear link between its regulations and the Act's objectives, rather than simply accepting SEBI's explanation. When legislation lacks specific guidance on discretionary powers, a less deferential court would have scrutinised whether SEBI's exercise of these powers remained consistent with the Act's broader principles. Additionally, the *ultra vires* doctrine can be interpreted to include implied limits on delegated legislation.[37] If the Court perceived the amendments as weakening investor protection or facilitating market manipulation, it could have found them beyond the implied limits of SEBI's regulatory powers, even without explicit statutory prohibitions. A more expansive interpretation would assess whether the effect of regulations undermines the spirit of the Act, even without direct textual conflict. The Court could have considered whether the amendments, by hindering the detection of price manipulation and insider trading, indirectly frustrated SEBI's primary duty of investor protection.

[37] Craig (n 14)

Drawing on common law principles safeguarding the legality of public power exercises, rather than solely on the 'strained fiction of ultra vires', could have provided additional grounds for review in cases of statutory ambiguity. A more active application of the *ultra vires* doctrine could have enabled the Court to scrutinise SEBI's amendments more closely and potentially direct reconsideration of those undermining investor protection and market regulation, aligning with a more proactive judicial role than the deferential stance.

In conclusion, India can learn from *Loper Bright's* emphasis on independent judicial interpretation of statutes, even within the context of regulatory agencies. This involves a potential shift away from automatic deference based solely on statutory ambiguity towards a more critical, independent analysis of the 'best reading' of the law, while still according due respect to agency expertise under principles akin to *Skidmore*. The reasoning in *Loper Bright* can inform ongoing discussions in India regarding the appropriate scope of judicial review of regulatory authorities' powers.