INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :

www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ISSN: 2582-6433

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ISSN: 2582-6433

ADMINISTRATIVE DISCRETION: THE THIN LINE BETWEEN FLEXIBILITY AND ARBITRARINESS

AUTHORED BY: ABISHA CHRISTOLIN S,
SCHOOL OF EXCELLENCE IN LAW, TNDALU,
III YEAR, BA.LL.B (HONS),
MAIL ID: christolin004@gmail.com
CONTACT NO.: 9385481861

Abstract:

In this article, we embark, on a journey through the complex landscape of Administrative discretion, delving into the subtle dance between flexibility and arbitrariness. We will navigate the legal frameworks and real world case laws, unravelling the nuanced thread that distinguishes thoughtful decision – making from the pitfalls of potential misuse of power. Throughout, we highlight the vital importance of maintaining the thin line for the achievement of good governance.

Keywords:
Administrative discretion, Administrative authority, Flexibility, Arbitrariness, Welfare State

Introduction:

Over time, the traditional theory of "laissez faire" and the "Police State" was abandoned and gradually replaced by the concept of the "Welfare State". The new concept expanded the functions of government which required some powers to be bestowed in the hands of administrative authorities, which in general can be used for the substantive satisfaction of administration. So, in order to fulfil the object of "Welfare State" and to contend the complex socio-economic conditions the administrative authority was vested with extensive power of discretion to handle intricate problems in performing its administrative functions. Discretion in contemporary administration is given in all nuances of the administrative process, irrespective of the legislative, judicial or quasi-judicial function it performs. It is because of the concentration of all powers in the hands of the administration, i.e., the administration administers the laws enacted by the legislature, performing

ISSN: 2582-6433

executive function; enacts laws when legislative powers are delegated to it by the legislature, performing legislative functions and interprets law through administrative tribunals, performing judicial function. The law enables the administrative authorities to use this discretion when required. They use this power to select the best from the various possible choices given to them, considering the situation and circumstances pertaining to the issue. This ensures that the administrative authority has sufficient autonomy to act independently in carrying out its functions. However, the power of discretion is subjected to the principles of natural justice and reasonable restrictions to ensure fairness in administrative actions. The law also in certain cases establishes scrutiny to ascertain that this discretionary power is exercised according to the guidelines of the statute. But, it is not always possible to lay down norms or standards for the exercise of discretionary powers, due to the uncertainty of cases.

Navigating Administrative Discretion:

The root of administrative discretion can be traced back to the writings of the Greek philosopher Socrates, who laid down the basis for philosophical ethics. He laid down certain criteria to determine the course of action to be followed in case of situations requiring immediate action. Thus, he enumerated the concept of administrative discretion from those morals.

Discretion implies the power to make a choice between alternative courses of action.[1] Coke, proclaimed that, "Discretion" is a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colourable glosses and pretences, and not to do according to their wills and private affections.[2]

Lord Diplock in Secy. Of State for Education and Services v. Metropolitan Borough of Tameside[3] said, "The very concept of administrative discretion involves a right to choose between more than one possible cause of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred".

Any administrative authority, when conferred with discretionary power by the legislature, also has the responsibility to exercise it properly, honestly, and reasonably. Circumspection, care, caution and vigilance are implied in discretion conferred upon the administrative authorities in all

[1] K.C. Davis, Discretionary Justice (1969) 4
[2] Rooke's Case, (1598) 5 Co Rep 99b, 100a: 77 ER 209.
[3] (1976) 3 WLR 641 (HL).

ISSN: 2582-6433

administrative functions. The functions of administrative authority may either be ministerial or discretionary. There is no element of discretion used by administrative authorities in performing ministerial functions. This is because, in the ministerial function, the pertinent law specifies the specific terms in which duty is to be performed by the concerned authority, leaving nothing to the discretion of the authority. But, in the contemporary period, purely ministerial functions are far too few. In discretionary matters, "Discretion is merely the administration's own idea of expediency, incapable of being declared wrong in law by any higher authority."[4]A public officer has discretion whenever the effective limits of his power leave him free to make a choice among possible course of action or inaction.[5]

The Spectrum of Flexibility:

Any government performing only ministerial duties with zero discretionary functions will be unduly rigid and unworkable. So, administrators, at least to an extent, should be fetched with discretion to choose when, whether and how they will act. This enables the public officer to use his own discernment to make decisions in grey areas where the rules, regulations and procedures are vague. Enactment of comprehensive legislation with complete details by the legislature is rare and this demands the administrators to fill in the gaps in areas which are necessarily deemed fit, by utilising the powers conferred on them with "reasonableness". These skeletal statutes essentially allow public administrators the discretionary power to interpret laws as they see fit, as long as their discretionary interpretations do not contradict specific statutory provisions.[6]This becomes imperative, in modern days, because of the growing role of administration which is now required to handle crucial and critical problems which involves investigation of facts, analysis of issues, making of choices and exercise of discretion upon selection of the action to be taken.

According to Freund[7], "The plausible argument in favour of administrative discretion is that it individualizes the exercise of public power over private interests, permitting its adjustment to varying circumstances, and avoiding an undesirable standardization or restraints, disqualification, and particularly of requirements. Under this view, the main advantage of discretion is the flexibility of its operation, and its main province would be the regulation of interests in which

[4] Wade, "Quasi-judicial and It's Background," 10 Camb, L.K. 216, 224 (1949)
[5] K.C. Davis, Discretionary Justice (1969) 4
[6] https://www.taylorfrancis.com/chapters/edit/10.1081/e-epap2-10/administrative-discretion-kenneth-warren (last accessed on 13/10/2023)
[7] Administrative Powers over Persons and Property, 97-103 (1928)

ISSN: 2582-6433

public policy demands both maintenance of minimum standards and the possibility of variation.....”

Flexibility in administrative discretion is essential for the following reasons:

1) The complex nature of circumstances which cannot be confined within the scope of general rules
2) The dynamic and evolving nature of problems which makes the adoption of general rules difficult
3) Unpredictability of problems for which there is no specific rule to be applied
4) Injustice arising out of applying one rule to all cases which have different circumstances attached to it

In the case of State of Punjab v. Khan Chand[8], the Supreme Court held that, “Considering the complex nature or problems which have to be faced by a modern state, it is but inevitable that the matter of details should be left to the authorities acting under an enactment. Discretion has therefore, to be given to the authorities concerned for the exercise of the powers vested in them under an enactment.”

Risk of Crossing Boundaries - The thin line awareness:

The general rule is that the exercise of discretionary power in an administrative action by an administrative authority cannot be obtruded by the Court, since it is not the forum to hear appeals from the decisions of the authority. The Court would not intrude on and question the opinion of the authority as right or wrong, nor substitute its own views in the opinion formed by the concerned authority. It is observed in the case of “Small v. Moss[9] that, “Into that field (of administrative discretion) the Courts may not enter”. It was also expressed by Lord Halsbury, in the case of Westminster Corpn. v. London & North Western Rly. Co.,[10]that, “Where the legislature has confined the power to a particular body, with a discretion how it is to be used, it is beyond the power of any Court to contest that discretion”. The Supreme court of Indian also accepted this principle and laid down a similar judgment in the case of A.K. Gopalan v. State of Madras[11].

It can be viewed from the words of Lord Acton that, "Power tends to corrupt and absolute power

[8] 1974 AIR 543, 1974 SCR (2) 768
[9] (1938) 279 NY 288
[10] 1905 AC 426, 427: 93 LT 143 (HL)
[11] AIR 1950 SC 27: 1950 SCR 88

ISSN: 2582-6433

corrupts absolutely". Similarly, broad discretionary power vested in the hands of administrative authorities increases the possibility of being misused and exercised arbitrarily. In summary, the broader the discretion, the greater the chance of its abuse. There is only a thin line between fairness and arbitrariness in an action. When given a wider scope for the exercise of discretionary power, it may mislead the original object for which it is vested. When there is an excess of discretionary power in the hands of the administrative authorities, they may act:

1) Mala fide - both dishonest intention and malice in law
2) Irrelevant or extraneous in consideration of a case
3) Discriminately
4) Unreasonably

All these are collective called arbitrary use of discretion. Broad powers always breed the danger that its wilder will get power drunk.[12] Justice Douglas of the US Supreme Court, held in the case of United States v. Wunderlich[13] that, "Where discretion is absolute, man has always suffered.... Absolute discretion.... is more destructive of freedom than any of man's other inventions".

Balancing Act: Flexibility versus Arbitrariness:

The balance between flexibility and arbitrariness can be brought about only by ascertaining control over the exercise of discretionary powers by the administrative authority. According to Wade, "If discretionary power is to be tolerable, it must be kept under two kinds of control: Political control through the Parliament and legal control through the judiciary"[14].

Firstly, Political Control over administrative discretion is done by the Legislatives. In a parliamentary form of government, the executive is kept under an obligation to give an account of its performance to the parliament.[15] The Legislature itself lay down some accountability mechanism through various controls for the exercise of discretion.

Those controls can be divided into three:

1) Direct General Control - Exercised at the time of passing of the enabling Act whereby, the Act itself provides the scope, form of delegation and authority of delegation which confines a clear cut jurisdiction under which the discretion can be used.

[12] Wade, Courts and Administrative Process, 63 LQR 164 (1947)
[13] 342 US 98, 101 (1951)
[14] Wade & Forsyth, administrative Law, 4 (2009)
[15] Goel, S. L. Advanced public administration. Deep and Deep Publications (2003): 565

ISSN: 2582-6433

2) Direct Specific Control - Requires the delegated legislation made by the Administrative authority to be laid down before Parliament. This method is called "laying on the table". There are three types of laying. They are:

i. Simple Laying - Laying with no further direction, wherein the purpose is to simply inform the House.

ii. Negative Laying - Laying subject to negative resolution implies the coming into force of rules with the exception that it shall cease to have effect if the House annuls it.

iii. Affirmative Laying - Laying subject to affirmative resolution where the rules need approval to come into effect or else they cease to be in operation by such resolution.[16]

3) Indirect Control - Through Parliamentary Committees

Secondly, Legal Control of administrative discretion is done by the Judiciary through Judicial Review. According to Jain & Jain[17], "It is an accepted axiom that the real Kernel of democracy lies in the Court enjoying the ultimate authority to restrain the exercise of absolute and arbitrary power". Like other democracies of the world, India also gives the Court considerable powers to control and review administrative action. One can find innumerable principles which the Courts have propounded and developed for regulating the functioning of the administration in several directions.[18]

Courts generally control administrative discretion when the administrative authority acts arbitrarily. The grounds under which the judiciary review are as follows:

1) Mala fide – when administrative authorities act with corrupt or dishonest intention against the law of fairness, equity and justice
2) Malice in Law - when statute confers the right to perform one action and the authority performs another; or use of discretionary power for improper purpose
3) Irrelevant Consideration - decisions made based on extraneous consideration
4) Ignorance of relevant consideration – leaving the express and implied considerations mentioned in the statute
5) Breach of Principles of Natural Justice – failure of fair hearing and rule against bias

[16] https://www.studocu.com/in/document/annamalai-university/administrative-law/direct-special-control-laying-on-the-table/37064404 (Last Accessed on 15/10/2023)
[17] M.P. Jain & S.N. Jain, Principles of Administrative Law, 534 (2017)
[18] See M.P. Jain, Justice Bhagwati and Indian administrative Law, (1980) Ban. LJ 1

ISSN: 2582-6433

6) Colourable Exercise of Power – authority seeking to achieve something else when power is conferred for other purpose.
7) Administrative discrimination – discriminatory or unequal treatment of equals in pursuance of discretion

These checks are necessary for a harmonious exercise of administrative discretion. In the case of Muhammad Basher v. Abdul Kareem[19] the court held that "a balanced and rational compromise, between the rights of the citizens and the actions of the public functionaries, is obligation of the Superior Courts".

Conclusion:

There should always be a neutrality between the administrative needs of a developing Welfare State and Individuals' rights and freedoms. An administrative body without any discretion becomes rigid and impractical. Also, an administrative body without any control may turn out to be an absolute arbitrary body and act against the concept of rule of law, and it may become hostile to the democratic Constitution and pose a threat to the fundamental principles guaranteed to every citizen by the Constitution. So, sticking to the right equilibrium is necessary for good governance. The fundamental values inherent in the legal order of a country must be instilled in the functioning of the administrative bodies and its officials whenever they tend to ignore them. A strong oversight system with transparency and accountability is crucial to tread the delicate balance and upholding the ideals of equity, fairness and justice in the execution of administrative discretion.

References:

1. M.P. Jain & S.N. Jain, Principles of Administrative Law, LexisNexis, 7th edition, (2017), 429-438, 474-508, 670-734.
2. C.K. Takwani, Lectures On Administrative Law, EBC Publications, 7th edition (Reprinted), (2023), 286-351.
3. Prof. Upendra Baxi, Administrative Law, EBC Publications, 8th edition, (2012), 63-76
4. https://www.jkshahclasses.com/announcement/chapter_15.pdf
5. https://lawbhoomi.com/grounds-of-control-on-administrative-discretion/

[19] PLD 2004 SC 271

ISSN: 2582-6433

6. https://www.scconline.com/blog/post/2022/06/24/abuse-of-administrative-discretion-a-detailed-study/
7. https://www.taylorfrancis.com/chapters/edit/10.1081/e-epap2-10/administrative-discretion-kenneth-warren
8. https://www.legalserviceindia.com/legal/article-8568-administrative-discretion.html
9. https://issrapapers.ndu.edu.pk/site/article/download/100/55/71