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Exercise and Exploitation of Administrative Discretion

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ABSTRACT

The current legal strata of India have enabled the legislation and the government to exercise enough discretion that could very well result in misdeeds by persons who are empowered to hold a government office. At the same time, if there is absence of such delegation of power, it will not be feasible, for a country like India, to operate and conduct even minimal administrative tasks. So, where is the line drawn upon when it comes to dispersion of power in the administrative field of government work? Before that, it is significant that one understands the meaning of discretion of powers and how and so the government and similar regulatory bodies require such power to conclude operations that are important for a smooth functioning of the country and its government. The administrative discretion of power is a socially and legally accepted tool that implies that such distribution of power must be complied by the provisions of the constitution of India. Therefore, there should exist constitutional reasons and standings that support the discretion of powers. But, simultaneously, there is a need to establish a mechanism that can govern such discretion of governmental and administrative authorities since, even though such powers are created for the betterment of the country, its government and most importantly, its citizen, but such tools are given in the hand of Mankind. Therefore, a utopian state of applicability can never be achieved. This implies that the constitution must hold safeguards for the people who are affected by the actions of the administrative bodies. The present research paper analyses the discretion in administrative powers and also gives a special reference to the same in the case of Deepak Babaria Vs the State of Gujarat.

Keywords: *Administrative Discretion, Indian Constitution, Exercise Of Power, Exploitation, Indian Cases.*

I. INTRODUCTION

The term 'discretion' has been defined by many jurists and judicial personalities in the past. Justice Frankfurter claims that if discretion is granted without any criterion, then it will result

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in handing out arbitrary power in the form of authorization.² As defined by Lord Cock, it is the discipline of truth and its difference from the untruth; it is the disparity in right and wrong.³

The government in a welfare state work towards promotion of economic and social stability and well being of the people of its country and work towards its citizen's protection and safety⁴. Equality, equal distribution of riches and responsibility towards the public are the pillars of a welfare state. Welfare countries in order to follow the principles of welfare state, vest large discretionary powers with the administrative authorities present in the country. For achieving the objective of social welfare, discretionary administrative powers are a must. In the dynamic society, not every legal problem can be solved by the legislative, hence powers are conferred to the administrative authorities so that critical situations, if arisen in a country, can be dealt properly.

The powers exercised by the administrative authorities are practiced at their own accord. They should not be directed by the instruction and orders passed by superior authorities with regard to discharge of administrative discretion or powers. The powers which are vested with the administrative authorities of the country has to be kept consistent with the laws of equality and rules of justice and rationale, if it is practised according to personal stance and opinions then it shall be deemed arbitrary and vague in nature⁵. The same judgement was held in the case of *U.P. State 111 Road Transport Corp. v Mohd. Ismail*.⁶

Administrative discretion of power finds its base in the Indian constitution. There exists precedent where administrative control of authority in a discretionary manner led to injustice towards citizens of the country. The Supreme Court of the country has time and again laid down judgements regarding the exercise of administrative discretion.

Justice P.N. Bhagawati has stated that it is an essential formula of administrative law that an executive body shall adhere to the criterion that allows its acts to be judged and it must be held accountable for the acts which are taken place in violation of the set standards⁷.

In the case of *Air India Vs Nargesh Meerza*⁸, the employment requisites along with difference

²Rajesh Kumar, administrative discretion and inclusive growth in indian perspective; achievements & challenges, volume 3, Scholorary research journal for humanity, science and English language, 3013, 2340-3083 (2016)

³ Ibid

⁴ Sanjay Kulshetra, Judicial review of administrative state in India, Jiwaji.edu, Sept 2019 http://www.jiwaji.edu/pdf/ecourse/law/Judicial_Review_of_Administrative_Discretion_in_India.pdf

⁵ *U.P. State Road Transport Corp. v Mohd. Ismail* 1991 AIR SC 1099 (India)

⁶ Ibid

⁷ *R. D. Shetty v. International Airport Authority*, A.I.R.1979 SC 1628 (India)

⁸ *Air India Vs Nargesh Meerza*, A.I.R. 1981, SC 1829 (India)

in emoluments and retirement age were posed as a legal issue which arose through the administrative discretion given to the office liable. In the landmark judgement of *Maneka Gandhi Vs Union of India*⁹, the apex court held that if orders for seizing the passport of a person under the passport act of 1967 infringes with the fundamental rights of that person, such exercise of power will be declared arbitrary in nature.

In the case of *Dipak Babaria Vs the State of Gujrat*¹⁰, the honourable Supreme Court of the country gave judgements with regard to exercise of administrative discretion.

II. ADMINISTRATIVE DISCRETION - SUBSTANCE AND IMPLICATION

Administrative discretion if deduced in simple terms would relate to the decisions that someone at the higher authority has to take after the consideration of evidence and adherence towards the policies and exercise of powers that are discretionary in nature and is possessed with such higher authority¹¹. In the historic case of *Susannah Sharp Vs Wakefield*¹², the term ‘discretion’ was given a meaning by Lord Halsbury. The term refers to the situation when a particular act is to be carried out with the prudence of the concerned authorities and that the procedure carried in the completion of such act shall be done on the basis of justice and righteousness¹³. Such acts cannot be performed on the basis of personal opinions. Hence discretion shall be in accordance to law and legal behaviour. It ought not to be arbitrary in nature and shall not be done in vague values. The discretion is in the best interest of those for whom it is exercised only in situations within the ethical domain of honesty and competency¹⁴.

The countries around the world are progressing. And with such progress the human resources are increasing in every domain of work and lifestyle. The government has been vested with administrative powers for discretion, at its discretion. The indication of such discretionary powers with the government is present in the forms of numerous statutes and legislation that hold the authority to delegate power. Hence the power is given to the law servants through government instruments that are produced for completion of delegation practice.

The aim of discretion of power is to delegate functions towards lower levels of officials. It is required to be done by ministers and officials present at higher level of hierarchy because it is

⁹ *Maneka Gandhi Vs Union of India*, A.I.R. 1978, SC 597 (India)

¹⁰ *Babaria Vs the State of Gujrat* (2014) 3 SCC 502 (India)

¹¹ Denise Mayerson, *Procedural Justice and Rationale Theory*, pg 267, Routledge (2020)

¹² *Susannah Sharp Vs Wakefield*, All ER Rep 651 (HL)

¹³ *Ibid*

¹⁴ *Supra* note 3

not plausible for a single being to make every administrative decision by his own¹⁵. Depending upon the powers conferred to appropriate authorities, the implication of decisions taken through the usage of such powers can affect a large number of people in the society and the nation. Such implications can affect the social, political as well as economical environments of a society. Hence the person who holds the authority to make changes, bring new regulation etc has a variety of alternatives from which the decision is landed upon. There are instances where the delegation of powers is not required when a particular minister acts within the limits of the powers confined to him. The Supreme Court has stated that if the function is of the nature of mechanical act or an act to be performed by a minister, it does not require involvement of administrative discretion of powers; in such cases the government has the power to take decisions and amend them as and when required¹⁶. The same has been held in the case of *Kavita vs State of Maharashtra*¹⁷.

III. CONSTITUTIONAL CREDIBILITY OF ADMINISTRATIVE DISCRETION

(A) Article 14 and Article 19

The fundamental rights that are conferred in the Constitution of India provide a basis for controlling the administrative discretion that is exercised by the government through its executive and legislative powers. Hence, the judiciary has time and again defined the boundaries of administrative by taking fundamental rights as a basis.

Article 14 of the constitution guarantees equal protection to all irrespective to their caste, creed, gender, region, religion and other variables¹⁸. The difference in opportunities can be granted only if the classification has a justified nexus to the opportunity created. Article 14 has been taken as a basis for striking down legislations that has created discretion of power without any intelligible differentia. The judiciary condemns the use of anarchic control of powers in the hands of authorities that use it to create and differentiate among people and propagate discrimination¹⁹. In the case of *Anwar Ali vs State of West Bengal*²⁰ the court declared West Bengal Special Courts Act of 1950 as invalid on the ground that it did not have any reasonable classification. The act provided that the state government can refer cases to a special court constituted by the state government itself for the speedy trial for justice but did not provide any

¹⁵Rakesh Chandra, Administrative Discretion, *International Journal of Academic Research and Development*, 130, Volume 2 Issue 4, July 2017

¹⁶Infra note 15

¹⁷*Kavita Vs. State of Maharashtra*, AIR 1981 SC 1641

¹⁸Article 14, constitution of India (1950)

¹⁹Shubham Manoj, Administrative discretion and limitation by article 14, *Social Science Research network*, 119, September 2009

²⁰*Anwar Ali vs State of West Bengal*, AIR 1952 Cal 150

reasonable grounds of distinction for selection of a particular case. The court stated that no acts provide government such power and since there is no nexus between the classifications of cases for the special court, hence the act is ultra vires Article 14 of the constitution.

But, in the case of *Kedarnath vs State of West Bengal*²¹, an act provided setting up of special courts for cases to be tried but it also provided an unfettered power to the government in regards to selection of such cases. But the Supreme Court rejected these arguments and upheld the act and stated that there may arise cases where there are similar cases of same nature and kind and it would not need a separate classification done under the act. In the landmark judge of *R.D. Shetty vs International Airport Authority*²², justice Bagwati mentioned that executive powers that are administered under the law shall be in parallel to the standards that are set for its implementation. The government cannot act in an arbitrary manner while using its position for administrative discretion.

Article 19 of the Indian Constitution provides certain freedoms to the citizens of the countries. Freedom of free speech, right to form lawful association, right to practice any profession are a few examples of the rights that are protected under article 19 of the constitution²³. But such freedoms are subject to reasonable restrictions that can be imposed by competent and lawful authorities holding the position to do so²⁴. They are not absolute in nature. The rights conferred under article 19 can at times be impaired by the usage of administrative discretion. And such instances are open for judicial review. In the case of *Babulal Parate vs State of Maharashtra*²⁵, the apex court did not find the provisions that gave power to the executive with respect to imposition of restrictions on the freedom of speech, as ultra vires of the the Constitution of the country. The court explained that since these provisions have been introduced for a temporary period of time and the purpose of such provisions is to decrease the happening of any disorder and public harm, hence such provision is constitutional and within the ambits of administrative discretion²⁶.

There have been cases where the judiciary has condemned the use of discretion that is not justified in the eyes of law. In the case of *Madhya Pradesh vs Baldeo Prasad*²⁷, the C.P. Goondas Act of 1946 provided that “goondas” can be removed from a certain place for the interest of public safety. The Supreme Court did not approve of this and gave two fold points,

²¹*Kedarnath vs State of West Bengal* AIR 1953 SC 404

²²Supra note 9.

²³Article 19, Constitution of India (1950)

²⁴ibid

²⁵*Babulal Parate vs State of Maharashtra*, AIR 1961 SC 884

²⁶Ibid

²⁷*Madhya Pradesh vs Baldeo Prasad*, AIR 1961 SC 293

firstly that there was no regulation that helped in recognition of a 'goonda' and secondly that if a person was termed as 'goonda', he was not provided with the right to be heard in order to state his defense. Likewise, in a similar case, the Apex court declared the provisions of a certain act as invalid in the eyes of law as it gave uncontrollable powers to executive bodies and did not even give the right of hearing to the person/parties affected. The case was *M.P. v Bharat Singh*²⁸.

IV. EXPLOITATION OF POWERS THROUGH ADMINISTRATIVE DISCRETION

Administrative discretion is significant as a government of any kind cannot function without delegating tasks and powers in order to use effortful discretion. But such administration of discretionary powers is of complex nature. Absolute discretion can make room for misuse of the powers provided to the concerned authorities. There are situations and circumstances where such misuse has had a significant damage on others as well as the authority that is involved in such illicit activities.

When there is a corrupt intention with respect to exercise of any discretionary power, it is done with bad faith. Such practice is called *mala fide*. A statute or administration is to be declared bad and ill faith-ed if the motives behind the execution of such holdings are not honest²⁹. The term 'mala fide' has a wide interpretation in the court of law. But the onus lies on the person who claims malice on the part of the authorities and their discretion of powers. Such as, in the case of *Jaichand vs State of West Bengal*³⁰, the definition of 'mala fide' means the abuse of statutory powers for the utility and completion of any external interest which was never the aim of the law. In another case, *State of Punjab vs Gurdail Singh*³¹ the apex court cancelled out the proceedings for the purpose of property and land acquisition on the basis of 'mala fide' intentions and motives. The facts of the case involved that the respondents were acting out of revenge against the petitioners in matters of land acquisition that hinted the involvement of malice on the part of the respondents.

The use of statutes for different purposes than the ones that it has been designed to achieve is also regarded as invalid use of discretionary powers. Hence, if it found out that a legislation is in use for putting in motion the different activities that does not relate to the purpose behind the statute, the court will disregard it as a valid law and declare it *ultra vires*³². In the case of *K*

²⁸*M.P. v Bharat Singh*, AIR 1967 SC 1170

²⁹Supra note 24

³⁰*Jaichand vs State of West Bengal*, 1967 AIR 483

³¹*State of Punjab vs Gurdail Singh*, 1980 AIR 319

³²Supra note 20

Dass vs State of West Bengal³³, it was noticed that the power of detaining a person was being enforced for petty offence; hence it was declared to be invalid by the court of law.

Another exploitation of discretionary power is noticed when such power is exercised for reasons that does not hold any kind of relevancy to the concerned statute, also known as extraneous considerations. If an administrative action is governed by the rules of circumstances that does not relate to the important considerations that shall be taken into account then it will be ultra vires³⁴. Subsequently, such discretionary powers will not hold any value. Similarly, it is important to for-see the important measures before any delegation of administrative powers or else actions taken without consideration of important factors and with the inclusion of extraneous circumstances will be wrong and invalid³⁵. A statute has purposes defined in an explicit or an implied manner, it is the duty of relevant authorities to act within its manner.

In the case of Brij Mohan Singh vs State of Punjab³⁶, the court quashed the orders of the government and stated that it was done through taking circumstances that were not relevant in the case. The facts involved deciding upon the compulsory retirement where a few considerations for the same were extraneous and irrelevant for landing upon a retirement decision. In the case of Ram Manohar Lohia vs State of Bihar³⁷, the petitioner by the usage of Defence of India Rule of 1962 was kept in detention; the purpose of which was to prevent any harm to the 'law and order' of the state. But the act provided for detention only in the cases of maintenance of 'public order'. The court held that the two concepts differs in their meanings and virtues thus such order of detention was quashed.

V. CONCLUSION

It is a basic rule of law, that every authority and power is to be used keeping in mind the moral high grounds, ethics and legal systems. Administrative discretion is to be used in such a way that the boundaries of law are not to be disturbed. Administrative discretion is to be used by taking into consideration the fundamental rights that are mentioned in the constitution. Fundamental rights have the power to govern administrative discretion. If any delegation is to be exercised by the way of administrative discretion it ought to be consistent with the fundamental rights. Such discretion does not hold any finality because the court of law time and again interprets different scenarios of administrative discretion.

³³ K Dass vs State of West Bengal, 1975 AIR 550

³⁴Supra note 5

³⁵Ibid

³⁶Brij Mohan Singh vs State of Punjab, 1987 AIR 948

³⁷Ram Manohar Lohia vs State of Bihar, 1966 AIR 740

In today's time, discretion is the need of the hour because a single entity cannot handle dynamics of human behaviour and response. The important part is to make the public as a whole feel welcomed and accepted by the way of things are run through the usage of administrative discretion. The citizens hold the government officers responsible for running the country hence it is the duty of such officers to exercise legal and just discretion of administration.
