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Right or Privilege: Balancing the Individual Fundamental Rights and State Administrative Discretion

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ABSTRACT

A constitution's fundamental rights are the fundamental freedoms that every citizen is entitled to, which include equality, liberty, and justice. These rights safeguard citizens from capricious state actions in democracies. Administrative discretion is the latitude granted to public servants or government agencies to decide within the parameters of their jurisdiction. Administrators can act effectively and adjust to various circumstances by using discretion, but it must be used cautiously to avoid abuse or misuse.

Administrative discretion and fundamental rights are closely related. There are situations where administrative judgments can impact or restrict a person's rights, including the freedom of speech, equality, and immunity from arbitrary imprisonment. Courts are crucial in these situations because they assess whether the exercise of discretion is reasonable, fair, and consistent with constitutional principles. Legal problems may arise if administrative discretion is applied unfairly or biasedly, as this could infringe basic rights.

Legal systems frequently impose rules and restrictions on the use of discretion in order to preserve equilibrium. Individual rights are upheld by the application of principles like natural justice, rationality, and non-arbitrariness. This encourages responsibility and shields people from the state's unjust treatment.

In overall, administrative discretion must be used within the bounds established by fundamental rights even though it is essential for efficient governance. A healthy balance between the two guarantees that the state operates effectively while defending people's liberties and rights.

I. INTRODUCTION

The scope of administrative law has continued to expand over the past century due to growing interaction between the general public and the government. The administrative body's discretion is crucial to the efficient operation of administrative procedures and is essentially

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the reason why they have so much control over how the other branches of government carry out their duties. The authority in question has the discretion to exercise the majority of the powers granted.

The laws that grant the Executive authority are typically quite general in nature and do not clearly and unequivocally define the conditions, situations, and standards that the Executive must adhere to while using the authority granted to it. Such a development is particularly concerning since judicial control deteriorates when the Executive is granted complete power. Since 'absolute power corrupts absolutely' and legislative supervision of the Executive is more of a myth than a reality in contemporary democracies, these restraints are barely physical or significant.

However, the judiciary continues to work to keep the executive branch under control by ensuring that individuals have the constitutionally guaranteed rights, among which fundamental rights are the most important. The legality concept, which is applied by the courts in England,⁴ states that even the most generic terms were presumed to be subject to the fundamental rights of the individual in the absence of explicit language or a necessary implication to the contrary. The approach is applicable to both the construction of delegated laws and the construction of statutes.

A further level of control over administrative discretion is provided by the fundamental rights guaranteed to the people by the Indian Constitution, which serve as a check on the government's legislative and executive branches. In addition to limiting the use of administrative discretion on the same grounds as English courts, Indian courts additionally employ basic rights to limit the administrative authorities' discretion in two other ways.

1) A statute may be ruled unconstitutional by the courts if it attempts to give the government excessive discretion. Therefore, India's fundamental rights give the courts a foundation and help them rein in discretion to a certain degree by evaluating the law's validity against the fundamental rights' touchstone. To do this, the courts can consider both the substantive and procedural aspects of the law in question. The courts may occasionally infer certain protections into the statute in order to uphold its constitutionality.

2) The courts can use some fundamental rights, particularly Article 14, to limit how the discretion under the Act is actually exercised.⁵

⁴ G.P.SINGH, PRINCIPLES OF STATUTORY INTERPRETATION, 12th Edition, page 486-488

⁵ G.P.Singh, *Principles of Statutory Interpretation* 490- 491 (12th Edition).

II. ADMINISTRATIVE DISCRETION

Administrative discretion, according to **Phillip Cooper**, is the “ability of an administrator to make important decisions that have the force of law, directly or indirectly, and that are not expressly required by the Constitution, statutes, or other sources of black letter law”.

This comprehensive description explains the meaning of discretion in administrative processes. Even though the executive branch's actions are based on the authority of the law or pertinent legislation, there are times when the administrative branch can act independently and effectively without legal support because its actions are important for the welfare of the people who depend on it.

Lord Cock asserts that “discretion is a science to understand the difference between truth - untruth, right - wrong, and reasonable – unreasonable”. They cannot perform their duties out of self-interest or to satisfy their own desires.

III. ADMINISTRATIVE DISCRETION AND FUNDAMENTAL RIGHTS

Certain Fundamental Rights are guaranteed to the populace by the Indian Constitution,⁶ adding another level of judicial oversight over administrative judgment. A statute that aims to grant the administration greater discretion than is permitted will be unconstitutional, and Indian courts have the authority to do so by citing specific fundamental rights. Additionally, the courts may invoke certain Fundamental Rights to require specific procedural protections before determining whether the discretion granted to the administration is constitutional.

Therefore, India’s Fundamental Rights give the judiciary a foundation upon which to exercise some degree of control over administrative discretion.

1. Right to Equality [Article 14]

Everyone is guaranteed “equality before the law” and “equal protection under the law” under Article 14. The Constitution's provisions prevent discrimination and prohibit class legislation, but they allow classification based on intelligent differences and a reasonable connection to the goal the Act is intended to accomplish. In addressing the constitutionality of sections 36 (1) (7a) and 43 D of the Income Tax Act of 1961, the Supreme Court ruled that, in light of Article 14, the standard to be used is “rational/intelligible differentia” that have a connection to the goal being pursued.⁷

The principle of “non discrimination” is embodied in Article 14 of the Constitution. It is not,

⁶ Articles 13 to 35 in Part III of the Indian Constitution

⁷ *Southern Technologies Ltd. v. CIT*, (2010) 2 SCC 548, para 66 : 2010(1) JT 145.

however, a stand-alone clause. It must be understood in light of the rights granted by other articles of the Constitution, such as Article 21.⁸ The basic rule is that giving an administrative authority broad, arbitrary, and unchecked discretion is against Article 14 since it raises the risk of discrimination against people in comparable circumstances, which is against the equality principle outlined in Article 14. A statute is considered discriminatory if it fails to specify a clear policy or goal that governs how the discretion granted by it is to be used.⁹

The idea that the administration cannot be given arbitrary or unguided power is well-established and unambiguous, but the courts' application of this concept to different factual situations is fraught with challenges. The courts are quite flexible in their approach and show deference to the legislative will in order to avoid unduly impeding administrative work. They may maintain legislation even when the policy guiding the discretion is not clear-cut or definitive, but rather ambiguous and inarticulate.

The idea of equality as stated in Article 14 of the Indian Constitution encompasses all aspects of state activity in the case of **Man Singh v. State of Haryana**.¹⁰ It would also apply to an individual when he is subjected to discrimination in the exercise of his rights as well as when he is held liable. Even when it comes to executive or administrative actions, everyone must be treated equally. In actuality, the equality theory is currently the most widely recognized approach to governmental activity and is referred to as a synonym for fairness in the context of justice.

In the case of **Aashirwad Films v. Union of India**,¹¹ the petitioners, who operated a motion picture distributorship in Hyderabad, filed a writ petition under Article 32 of the Indian Constitution, contesting the constitutionality of a notification issued by the Andhra Pradesh government that imposed various entertainment tax rates. The Supreme Court ruled that, while a legislative body has broad discretion and a tax law may not be declared unconstitutional unless the classification is obviously arbitrary and irrational, it is also common knowledge that class legislation constitutes unlawful discrimination by granting specific privileges.

Class legislation is defined as “any law that unlawfully discriminates by granting specific privileges to a group of people who are arbitrarily chosen from a large number of people, all of whom share the same relationship with the privilege granted, and between whom and those

⁸ Reliance Energy Ltd v. Maharashtra State Road Transport Corporations Ltd., (2007) 8 SCC 1

⁹ B.N.Chettiar v. Central Government, AIR 1976 Mad 224

¹⁰ Man Singh v. State of Haryana(2008) 12 SCC 331, 337 (para 20).

¹¹ Aashirwad Films v. Union of India (2007) 6 SCC 624

who are not so favored, no substantive difference or reasonable distinction can be found justifying the inclusion of one and the exclusion of the other from such privilege.” A classification must have a rational, organic, and significant distinction in the nature of the class or classes that the law operates upon; it cannot be arbitrary, artificial, or misleading.

The courts have also ruled that the policy does not have to be specified in the precise statutory provision that gives the administration discretion; rather, the preamble and the lengthy title of the relevant act provide sufficient indication that the policy would be appropriate for the circumstances. Then there is the presumption of validity notion of a statute under Article 14, which requires the person contesting it to demonstrate that it is discriminatory. Because of these limited arguments, a court would only be convinced to declare a legislation discriminatory in very few circumstances.

2. Article 19: The Seven Freedoms

Article 19 (1) guarantees Indian people seven liberties under subclauses (a) to (g). However, sections (2) to (6) of Article 19 allow for the imposition of reasonable restrictions on these freedoms for a variety of reasons, therefore they are not absolute liberties. This means that an executive fiat alone cannot restrict any of the freedoms protected by Art. 19(1)(a) to (g); a statute must support the administrative action. Furthermore, it must be appropriate to restrict any of the liberties. This implies that the courts have the authority to decide whether a restriction is reasonable or not, and they do so by taking into account both the procedural and substantive elements of the relevant legislation.

In India, the proportionality principles have been actively applied to both legislative and administrative actions since 1950. The Supreme Court has examined whether restrictions imposed by legislation were excessive for the circumstances and not the least restrictive in order to determine whether they were legitimate. Legislation that violates fundamental freedoms listed in Article 19(1) of the Indian Constitution must have a rational relationship with any of the purposes for which it can be imposed under the applicable constitutional provision.¹²

3. Freedom of Speech and Expression: Article 19(1)(a) and (2)

All citizens are guaranteed the freedom of speech and expression under Article 19(1)(a). The right derived from Article 19(1)(a) is not unqualified or unrestricted.¹³ No liberty can be absolute in nature and unchecked in its action to grant a right completely unrestricted. Clause

¹² Om Kumar v. Union of India (2001) 2 SCC 386

¹³ RamlilaMaidan Incident v. Home Secretary, Union of India (2012) 2 MLJ 32 (SC) : (2012) 5 SCC 1

(2) states that the State may enact legislation that places reasonable limitations on this freedom for the sake of public order, decency or morality, friendly relations with other countries, the sovereignty and integrity of India, the security of the State, or in connection with contempt of court, defamation, or incitement to an offense.

The general rule is that an administrative official should not be granted unrestricted or arbitrary power to control the right to free speech and expression in the absence of any legislative policy or procedural safeguards. Additionally, discretion must only be used for the objectives listed in Art. 19(2). A few examples can be used to demonstrate the idea. A District Magistrate may forbid public dramatic performances that are scandalous, slanderous, corrupt, or likely to provoke emotions of disenchantment with the government, according to the Dramatic Performances Act of 1876.

The Act was declared unconstitutional because it gave the District Magistrate the final say over whether a particular play was prohibited by the Act. The District Magistrate was not required to provide justification for his decision, and there was no provision for a higher authority to be appointed to review or reconsider the order he had issued or to give the harmed party a chance to argue against the prohibitory order.¹⁴

The administration was given the authority to include any disease under the purview of the Drugs and Magic Remedies Act of 1954 in Section 3(d). It was decided that giving the president such authority was uncontrolled and unconsidered, which resulted in an unjustifiable infringement on the right to free speech.

The **State of Punjab v. Virendra**,¹⁵ if the State Government is “satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order,” it may, for a maximum of two months, publish no matter relating to a particular subject in any issue of a newspaper, according to Section 2(1)(a) of the Punjab Special Powers (Press) Act, 1956. The court acknowledged that the government was responsible for maintaining law and order in the state and that swift decision-making and action were crucial in this case because it had all the relevant facts and was therefore best positioned to take preventative measures against any threatened breach of peace.

The appellant filed a case in **Khushboo v. Kanniammal**,¹⁶ asking the Supreme Court to halt criminal proceedings against her for the offenses covered by sections 499, 500, and 505 of the

¹⁴ State v Baboolal, AIR 1956 All.

¹⁵ State of Punjab v. Virendra, AIR 1957 SC 896

¹⁶ Khushboo v. Kanniammal, (2010) 5 SCC 600

Penal Code, 1860, as well as sections 4 and 6 of the Indecent Representation of Women Act, 1986. The court determined that emphasis must be placed on the necessity of tolerating unpopular opinions in the sociocultural sphere, despite the fact that the constitutional right to free speech and expression is not unqualified and may be subject to reasonable limitations on the basis of morality and decency, among other considerations. It was noted that the Framers of our Constitution understood the value of preserving this privilege because the free exchange of ideas and opinions is necessary to maintain the citizens' collective existence. A culture of open discourse regarding societal attitudes must be fostered in addition to the informed citizenry, which is a prerequisite for meaningful democratic governance.

4. The Right to Assemble [Article 19(1) (b) and (3)]

While the freedom to gather in peace and without weapons is guaranteed by Article 19(1)(b), clause (3) allows for justifiable legal restrictions on this right based on factors such as public order. Giving administrative officers unrestricted authority to control the right to assemble is invalid.

The legitimacy of a rule that stated that no public assembly could be held on a public thoroughfare without the authorized officer's written consent was called into doubt in **Himachal Lal v. Police Commissioner, Ahmadabad**.¹⁷

There were no considerations established for the relevant officer's use of power. Because the clause did not specify the conditions under which the officer could deny permission to hold a public meeting, the court threw it down. The official in question was given arbitrary powers, and there were no procedural safeguards against power abuse. Although the country's residents are free to congregate, speak, and express themselves, it was decided that this does not mean they can do so anywhere they choose. Consequently, the directive was enforced. The right to remove religious and nonreligious processions off roadways has been ruled to be subject to municipal traffic control orders and magistrate orders under all applicable laws and public rights.¹⁸

5. Freedom to form association [Article 19(1) (c) and (4)]

Article 19(1)(c) guarantees the freedom to form an association, subject to reasonable restrictions imposed in the benefit of public order or morality, among other things, as stipulated in Article (4). The foundation of democracy is the ability to establish associations. It might become hard to establish political parties in the nation without such a privilege. As a

¹⁷ Himachal Lal v. Police Commissioner, Ahmadabad, AIR 1973 SC 87

¹⁸ Shaikh PiruBux v. KalandiPatil, AIR 1970 SC 1885

result, the Supreme Court has been more critical of laws that provide the executive authority to limit this freedom.

According to the uncertain ruling in **State of Madras v. VG. Row**,¹⁹ legal provisions that allow an administrative authority to declare an association unlawful based on subjective satisfaction and without allowing the grounds for imposing the restriction to be properly tested in a judicial inquiry in both their factual and legal aspects were prohibited. It was required by the relevant statute that the government submit the information on which it acted to an advisory board and accept the ruling. However, the Supreme Court ruled that this one-sided advisory board study and summary could not be used in place of a court investigation.

The Court noted that the right to create an association has a very broad and diverse range of applications, and that restricting it could have major negative effects on the political, religious, and economic spheres. Therefore, the formula of subjective satisfaction with an advisory board thrown in to review the materials without having a provision for a judicial inquiry into the same was not going to receive judicial sanction in such a matter as freedom of association, unless there were very special circumstances and even then, only within very limited bounds.

Members of voluntary associations in **Damayanti Naranga**²⁰ were subject to restrictions regarding the entrance of new members. The association had to accept members who were supported by the government. It was decided that the limits were unreasonable. However, in cases where the association conducts activity that the state controls in the public interest, the state may impose membership requirements.

6. The Right to Movement and Residence [Article 19(1) (d), (1) (e) and (5)]

Every Indian citizen is guaranteed the freedom to travel around the country's territory under Article 19(1)(d). Indian citizens are entitled to live and settle wherever in India under Article 19(1)(e). In accordance with Article 19(5), the State may enact legislation that places reasonable limitations on these rights for the benefit of the public at large or to further the interests of any Scheduled Tribes.

In **Dr. Khare v. State of Delhi**,²¹ the court decided that a legislation allowing for externment was not wrong just because it left the element of emergency that necessitated quick action to stop a perceived threat to public peace. The statute in question was only transitory in nature

¹⁹ State of Madras v. VG. Row, AIR 1963 SC 812

²⁰ Damayanti Naranga v. Union of India AIR 1971 SC 966

²¹ Dr. Khare v. State of Delhi, AIR 1950 SC 211

since, if his externship lasted more than three months, he might submit a representation for review by an advisory board after receiving the executive's justification for the externship.

7. Freedom to hold Property [Article 19(1) (f) and (5)]

Along with Article 31, which provides protection for property rights, Articles 19(1)(f) and 19(5) have been removed. As a result, property rights are now far less protected. Article 300-A of the constitution currently states that no one may be stripped of their property unless authorized by law. Therefore, it is not justified to tamper with property rights solely by executive action without legal backing. Only when a law grants an administrative authority the requisite jurisdiction may it interfere with an individual's property rights. Additionally, the administration can only act in compliance with the law.²²

8. Freedom of Trade and Commerce [Article 19 (1) (g) and (6)]

Currently, the trade, commerce, and business sector is subject to strict administrative oversight. Administrative authorities have been granted extensive authority to control trade and commerce through laws or regulations. Licencing, price-fixing, stock requisitioning, and commodity movement regulation are some of the control mechanisms in place in the region. These practices are partially motivated by the scarcity and shortage of necessities, partially by the country's economic recovery as a result of the Five Year Plans, partially to deter certain unethical and illegal sectors, and partially to monitor the unethical professional practices utilized by wealthy individuals.

Sections 47(3) and 47(4) of the Andhra Pradesh Shops and Establishments Act 1988 were challenged in **Grand Kakatiya Sheraton Hotel & Towers Employees & Workers Union v. Srinivasa Reports Ltd**²³ on the grounds that they were discriminatory and violated Articles 14 and 19(1)(g) of the Indian Constitution, making them unconstitutional. The Supreme Court ruled that even one year of service would not be required in the event of an employment termination owing to disability or death, as stipulated in subsection (3). The court did not believe that a provision could be deemed reasonable despite the presumption of validity.

According to the ruling in **Khode Distilleries Limited**,²⁴ a state government may outright forbid the commerce or business of liquor in light of Article 47 of the Indian Constitution since citizens do not have a fundamental right to do so. The state cannot, however, forbid the commerce or operation of a pharmaceutical product that contains industrial alcohol, liquor, or

²² State of Mysore v. K.C.Adiga, AIR 1976 SC 853

²³ Grand Kakatiya Sheraton Hotel & Towers Employees & Workers Union v. Srinivasa Reports Ltd , (2009) 5 SCC 342

²⁴ Khode distilleries limited v. state of Karnataka, (1995) 1 SCC 574

both. In accordance with Section 4 of the Central Provinces Regulations of the Manufacturing of Bodies Act, 1948, the Dy. Commissioner issued an order prohibiting the people living in specific villages from manufacturing bodies. Because it violated Article 19(1)(g) of the Indian Constitution, the aforementioned order was declared null and void.²⁵

IV. CONCLUSION

The judiciary has frequently rejected legislative attempts to grant administrative authorities unchecked and unguided discretion in areas covered by some of the Fundamental Rights, such as Articles 14 and 19, where it has insisted that the legislature establish a standard or lay down a policy or principle that governs the exercise of administrative discretion. However, the judiciary's acceptance of occasionally ambiguous and general policy statements in statutes as sufficient to maintain the discretion granted to administrative bodies as not unregulated has considerably diminished and diluted the effectiveness of this holistic approach.

V. SUGGESTION

The balance between governmental authorities' powers and individual rights is examined in "Fundamental Rights and Administrative Discretion." Starting with a definition of both terms is a good idea: administrative discretion is the power granted to public authorities to make choices within the bounds of the law, and basic rights are constitutional safeguards that safeguard individual liberty and dignity. When administrative decisions that are based on discretion clash with fundamental rights, the main problem occurs. It's crucial to consider how judicial scrutiny and constitutional protections serve as restraints on the arbitrary or excessive use of power in certain situations. Principles like natural justice, fairness, non-arbitrariness, and the rule of law should be emphasized. Finally, stress the importance of striking a balance so that individual rights are maintained while government can operate efficiently.

²⁵Chintamanrao v. state of MP., AIR 1951 SC 118;1950 SCR 759.