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Judicial review of administrative discretion

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Abstract
Judicial review of administrative action is viewed as the fundamental feature of our Constitution, which can't be annulled even by practicing the Constituent power of parliament. It is the best cure accessible against the administrative excesses in the event that the organization attempts any work under discretionary power conferred upon it either by statutory standards or under the Constitution of India. In case that there is maltreatment of administrative discretion to have any private benefit or settle its score because of this discretionary power, at that point, the only alternative before the public is to approach judiciary under Article 32,226 or Article 136 of the Constitution of India. The principle motivation behind judicial review is to guarantee that the laws established by the governing body fit in with the standard of law. At the same time, judicial review has certain limitations.

Keywords: judicial review, administrative action, discretionary power, limitations

1. Introduction
Discretion in layman's language means looking over among the different accessible choices without reference to any foreordained measure, regardless of how whimsical that decision might be. The term 'discretion' when attached with the word 'administrative' has fairly various hints. Administrative discretion intends to give a choice on an issue with different option accessible, yet the judgment ought to be with reference to standards of reason, equity and justice. The administrative discretion ought not be founded on close to personal thoughts and likes.

Indian law allows the administrative authorities to have some discretionary powers. Indian law, as it exists currently, sets down wide points of confinement inside which an administrative authority is relied upon to work. The issue of administrative discretion is complicated. To be true, the administration administers law enacted by the legislatures and thus, performs executive functions; it also enacts rules and regulations when the legislative powers are delegated to it to do so by the legislature. Practically, there is concentration of all powers in the hands of administration, which may sometime give rise to despotism creating threat to the rule of law which governs us from cradle to grave [1]. In any intensive type of government, the legislature can't work without the activity of some prudence or discretion by the authorities. It is important not just for the individualization of the administrative power yet in addition since it is humanly difficult to set out a standard for each possible inevitably in the unpredictable craft of present day government. In any case, it is similarly evident that supreme discretion is a merciless ace. Anyway because of the multifaceted nature of current financial conditions, the discretionary powers of the administrative authorities have expanded tremendously. The essential capacity of executive are execution of laws, developing and actualizing government policies, giving general wellbeing, security and profound quality and principles of life in the country. For the exhibition of these tremendous and enormous capacities and for the best administration and to get the necessary objective they need powers. Such powers are assigned by parliament to them. In this way step by step huge powers are vested and amassed in the hands of executive. It has turned out to be important to enable them with wide optional discretion for the rapid and proficient organization. "Each rose has thistles", likewise these tremendous wide discretionary powers, which are vested in official might be utilized for the open welfare and might be utilized for personal needs of the official. The powers resemble that of a knife having edges on the different sides.

The application of discretionary power ought not be arbitrary, obscure or capricious and should be as per the law. In the event that the authority abuses his discretionary power, it turns into a ground for judicial review. In India, in contrast to the USA, there is no Administrative Procedure Act accommodating judicial review on administrative discretion. In this manner, the intensity of judicial scrutiny emerges from the constitutional arrangement of courts.

2. Discretionary Powers and Judicial Review
Administrative activities are either clerical or optional. A ministerial capacity is the place the authority has a commitment to achieve a particular thing with a specific goal in mind. In most authoritative activities, the administrative authority has the power either to act or not to act in one way or the other. This capacity to act or not to act in one way or other is called discretionary power. The regularly extending ambit of administrative discretion in the modem times has offered ascend to an intense type of inquiry of control of such discretion so that there might be "rule of laws and not of men." If complete freedom is given to the administration, it would lead to arbitrariness, genuinely compromising person's freedom. Along these lines, the need is to control discretion in certain measures, to limit it from transforming into unhindered absolutism.

Judicial Review is positively a supreme weapon in the hands of judiciary to limit administrative authority from manhandling or abusing its capacity and give just and reasonable treatment to the man in the soul of law. The

purpose of judicial review is to keep the administrative authorities within the bounds of the powers conferred upon them by the statute. It is, then a touchstone and the essence of rule of law [2].The importance of judicial review lies in the fact that wider the discretion; the greater is the possibility of its misuse. All powers have legal limits. The wider the power, the greater is the need for the restraint in its exercise [3]. In India, we have there is a composed Constitution wherein the judicial review has been acknowledged as "heart and centre" of it, and which is treated as the fundamental and basic component of the Constitution and the most secure conceivable shield against the abuse of power by authority. It is additionally presented that the entire law of judicial review of discretionary power has been created by judges on case to case basis. There is nothing as boundless circumspection vested in authoritative specialists. A boundless discretion has been announced by the courts as sworn foe of constitutional assurance against irrationality. To quote Lord Brightman.

"Judicial review is concerned not with the decision but with decision making process. Judicial review is not an appeal from a decision, but the review of the manner in which decision is made. The power of judicial review is meant to ensure that the individual receive a fair treatment and not to ensure that the conclusion which the administrative authority has reached is correct in the eyes of law."[4]

3. Extent of Judicial Review over Administrative Discretion

Krishna Iyer J. in Baldev Raj v. Union of India [5] has also highlighted that, "absolute, power is anathema under our constitutional order" and that "naked and arbitrary exercise of power is bad in law". It is currently very much acknowledged that in any event, when a discretionary power apparently has all the earmarks of being uncontrolled, really it isn't so and it will be dependent upon the boundations which courts will suggest therein. But simultaneously, it ought to be remembered that judicial review of regulatory action or inaction ought to be made with care and not in flurry. Such move must be made in open intrigue and for public interest. The extent of judicial review might be moulded by an assortment of numerous dynamics: the wording of the discretionary power, the issue to which it is connected, the character of the authority to which it is endowed, the reason for which it is presented, the specific conditions wherein it has in actuality been practiced, the material accessible to the court and in the last examination, regardless of whether a court is of the assessment that judicial interest would be in the public interest. The degree to which the courts are qualified to review depends on individual cases.

In any case every administrative action is not dependent upon legal control. There are numerous sorts of managerial activities, which can't be inspected by the law courts. There is an inclination with respect to the governing body likewise to bar by law certain administrative actions from the ward of the legal executive. For instance, in India the administration of Evacuee Property act, 1950 vests last legal powers in the Custodians and Custodian General of Evacuee Property and the law courts have no locale to meddle in the choice made under this Act. Second, even in those authoritative activities which are inside its jurisdiction, the judiciary can't be independent from anyone else and take cognisance of abundances with respect to authorities. It can mediate just on the solicitation of someone who has been influenced by an official activity.

The courts have taken response to specific standards to control discretionary powers in specific circumstances. The few standards can advantageously be assembled in two primary classifications: excess or abuse of discretionary powers by the authority, failure to exercise discretion and violation of fundamental Rights.

1. Excess or abuse of discretionary powers

The authority which exercises the discretion activity gets from the resolution, the courts start by deciding if the prudence has been practiced in similarity with the express words of the rule and may then proceed to decide if it has been practiced in a way that follows certain suggested legal necessities. Under this classification there are standards. Under this category there are principles-

a) Exceeding Jurisdiction

The administrative authority must act and utilize the representative powers appropriately as per the bounds by the parent Acts or by the rule. An activity or choice going past what is approved by law is ultra-vires. In case of J.K. Chaudhary v. R.K. Datta [6], the overseeing body of a university rejected the principal, however the university concerned coordinated to re-establish him. Under the pertinent rule the university could meddle with the choice of the overseeing body on account of a "teacher" which term as translated by the Supreme Court did exclude the Principal. The university, in this manner acted without jurisdiction.

b) Irrelevant Consideration

The power should be exercised taking into account the considerations mentioned in the statutes. If the statute mentions no such consideration, then the power is to be exercised on consideration relevant to the purpose for which it is conferred on the authority concerned [7]. If authority concerned focuses on, or consider entirely superfluous or incidental conditions, occasions or matters then the administrative activity is ultra vires and will be quashed. It does as such to advance the reasons for example "Policy and objects" might be found from the statute. If the ground of test is that relevant contemplations have not been considered, the court will typically attempt to find the potential significance of the components that was over-looked, despite the fact that this may involve a level of hypothesis. The courts will likewise look at the facts to see if those facts are pertinent to the ground.

c) Leaving out relevant consideration

The general rule is that an individual or authority endowed with discretion should guide himself appropriately in law so that if in the statute there are to be found explicitly or by suggestion matters which he should have respect to, he should have respect to them. Alternately if the topic and the general translation of the Act clarify that specific issues would not be apropos to the issue being referred to, he should dismiss such issues. At the end of the day, he should consider important and overlook irrelevant consideration.

d) Improper pur44pose

It is all around settled rule that power of the administrative authority must be practiced for the reason for which they were allowed and things which were accidental and

auxiliary to that reason. It is suggested that the governing body presents the prudence upon the administrative authority with the aim that it ought to be utilized to advance the approach and the objects of the Act which must be dictated by thinking about provisions of the Act all in all. The judiciary has cleared in many cases that every discretionary power vested in the executive should be exercised in a just, reasonable and fair manner[8].To quote Warrington, L.J.,

"It may be also possible to prove that an act of public body, though performed in good faith and without the taint of corruption, was founded an alien and irrelevant ground as to be outside the authority conferred upon the body and therefore inoperative" [9].

e) Colourable exercise of power

It implies that under a pretence of power given for one reason, the authority is trying to accomplish something different which isn't approved to do under the law being referred to. Colourable implies that the power is practiced apparently for the approved end yet truly to accomplish some other purpose; the power is unlawful yet it has been given the appearance of legality. In Vora v. State of Maharashtra [10], the State Government requisitioned the flat of the petitioner, but in spite of repeated requests of the petitioner, it was not derequisitioned. Declaring the action bad the Court observed that, though the act of requisition was of transitory character, the Government in substance wanted the flat for permanent use, which would be a fraud upon the statute.

f) Mala fide

Where the administrative authority uses his administrative capacity to bug his rivals and adversaries, such activities are mala fide and are void. Malice is of two types:

Malice in Fact- When an administrative move is made out of personal enmity, malevolence, retribution or dishonest aim, the activity essentially requires to be struck down.

Malice in Law: When a move is made or power is practiced without just or sensible reason or for reason unfamiliar to the statute, the activity of authority would be awful and the activity ultra vires.

g) Non-observance of natural justice

It is well-settled that regardless of whether the activity of administration is simply of administrative nature, that it unfavourably influences any individual, the rules of natural justice must be watched and the individual concerned must be heard. Infringement of the rule of natural justice makes the activity ultra vires and void.

2. Failure to exercise discretion

The key object of giving discretionary power on a managerial authority is that the authority itself must exercise the said power. In case there is inability to exercise discretion with respect to that authority the activity will be corrupt. Such kind of flaws may emerge in the accompanying conditions:

a) Fettering discretion by a self-imposed rule

An authority endowed with discretion must exercise it thinking about individual cases. Rather than doing that if the authority forces fetters on its discretion by receiving fixed standards to be applied in all cases preceding it, there is inability to practice circumspection with respect to that power. What is anticipated from the authority is that it must think about the facts of each case, apply its brain and choose the equivalent. On the off chance that any general principle is be applied to all cases, there is no point of thinking about the facts of an individual case at all and practicing discretionary power. In Gell v. Teja Noora [11] under the Bombay Police Act, 1863, the commissioner of Police had discretion to refuse to grant a licence for any land conveyance "which he may consider to be insufficiently sound for the conveyance of the public." Instead of applying this to individual cases, he issued a general order that any 'Victoria' presented for licence must be of a particular pattern. The High Court of Bombay held the order bad as the commissioner had imposed fetters on his discretion by self-imposed rules of policy.

b) Acting under dictation

An authority assigned with a power doesn't practice that power however acts under the correspondence of a superior authority. Here, the authority conferred with the power implies to follow up on its own yet 'in substance' the power is practiced by another. In law, this adds up to non-exercise of power by the authority and the activity is awful. It is well-settled that if the power allows its choice to be affected by the transcription of others, it would lead to abdication and giving up of discretion. If the authority "hands over its discretion to another body it acts ultra vires" [12].

Thus, in Commissioner of Police v. Gordhandas Bhanji [13], under the city of Bombay Police Act, 1902, the commissioner of police granted licence for the construction of a cinema theatre. But later on he cancelled it at the direction of the state government. The Supreme Court set aside the order of cancellation of licence as the commissioner had acted merely as the agent of the government.

c) Non-application of mind

The administrative authority exercising discretionary power must exercise that power by applying its mind to the facts and conditions of the case close by. In the event that this condition isn't fulfilled, there is clear non-utilization of brain with respect to the power concerned. The authority may act precisely, without due consideration and caution or without an awareness of other's expectations in the activity of its tact. Here likewise, there is inability to practice caution and the activity is based.

In the well-known case of Barium Chemicals Ltd. v Company Law Board [14], an order of investigation against the petitioner company was passed by the Central Government. Under The Companies Act, 1956, the Government was empowered to issue such order if, 'there are circumstances suggesting fraud on the part of the management'. It was held by the Supreme Court that it was necessary for the Central Government to state the circumstances which led to the impugned action so that the same could be examined by the court.

d) Unreasonableness

Unreasonableness means that despite the fact that the authority has acted by law as in it has not followed up on unimportant grounds or practiced power for an improper reason, yet it has given more weight to certain elements then they merited as contrasted with different variables.

Unreasonableness may outfit a ground for mediation by the court when the constitution of India or rule so requires Article 14 of the constitution ensures balance under equality before law however the courts have allowed sensible classification to be made.

In Maneka Gandhi v. Union Of India [15], it was held that an order made under Passport Act, 1967 could be declared bad if it so drastic in nature, as to be imposing unreasonable restrictions on the individual freedom. In this case Bhagwati J. also invoked Article 14 to say that that Article "ensures fairness" in state actions and any procedure which is not "right and just and fair" is arbitrary, fanciful or oppressive without observance of Rules of natural justice is invalid under Article 14.

3. Violation of fundamental Rights

Fundamental Rights fulfils some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. If discretion is against fundamental rights it must be void and declared unconstitutional by the court. The power of judicial scrutiny is fundamentally significantly upon the High Courts and the Supreme Court of India [16]. Under Article 13 of the Indian Constitution, the impulse of judicial review was shown under fundamental rights in Part III. Administration cannot violate article 14 & 19 when they will exercise discretionary powers. If any executive takes an administrative action which is violation of fundamental rights, such administrative action shall be held ultra vires. The court give utmost importance to safeguard the fundamental rights. Fundamental Rights are enshrined in the Constitution in Part III. Citizens can enjoy these rights within some definite limitations. On the one hand, in a democracy, the executive is elected by the majority, to implement its functions. On the other hand, an unelected body like the courts can strike out the actions of the executive through judicial review. Democracy, it is claimed, is not only about fulfilling the will of the majority. It is also operating government within frameworks of norms and values. Consequently, when the courts strike out a decision because it is unfair or arbitrary or it diminishes an individual's rights, they are supporting democracy.

4. Conclusion

As we continue further into the 21st century, the gamuts of administrative control are regularly expanding. The maltreatment of administrative activities takes various forms. However, the courts have built up that obstruction in these decisions is allowed on specific grounds. The main check courts force is that way of making the decision be reasonable.

At long last, the court has created different control over discretionary powers. It guarantees that the move made by the authority isn't silly and plainly preposterous with the end goal that no rational individual could arrive at same decision. It guarantees that the power granted should be exercised within the confinement of the rule and works so as to give the best and just decision dependent on sound and certain grounds. The opportunity given to administrative authority to choose matters, utilizing their best judgment countered with the general judicial scrutiny is an indication of the parity kept up in Indian statute.

Indian court's activity is hard as they must be cautious that the fundamental thought behind the grant of this discretion on administrative authorities is kept up and put to task on a record of any disappointment and it additionally must be careful the way that they don't exhaust their judicial discretion.

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