



Administrative Discretion



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Objectives

Objectives of the session are to:

- Understand the meaning and concept of administrative discretion
- Highlight the need and importance of discretionary powers and
- Study the grounds of judicial control of administrative discretionary powers

Kinds of Executive Functions

- **Ministerial Functions** - A duty or power exercise of which involves no element of discretion.
- The law prescribes the duty to be performed with such certainty as to leave nothing to the exercise of discretion or judgment
- like maintenance of births and deaths register, execution of a warrant

- **Discretionary Functions-** power to choose amongst alternative courses of action
- For example acquisition of property, regulation of trade, industry or business, investigation, seizure and destruction of property, detention
- Decision depends on the subjective satisfaction of the authority.



Law has reached its finest moments when it has freed man from the unlimited discretion of some ruler..... Where discretion is absolute man has always suffered.”

Justice Douglas



Discretion Meaning

Discretion in layman's language means

- choosing from amongst the various available alternatives
- without reference to any predetermined criterion,
- no matter how fanciful that choice may be.

Discretionary Power

- “Discretion” when qualified by the word “administrative” has somewhat different overtones.
- It is the authority to choose amongst alternative courses of action for ‘good reasons’.
- Central feature of discretion is a degree of autonomy within a defined context, vested in the decision maker.
- Discretionary decision making is subjected to the requirement of ‘rational decision-making’.



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.”

Justice Coke

Growth of Discretion-Factors

- **Need of controls in the areas of welfare, the economy and the environment**
- **Limited legislative capacity and resources**
- **Need of technical expertise**
- **Complexity of subject matter and the variability of the problems encountered**
- **Shift in power structure of modern government**
- **Discretion is often desirable for individualized justice**

Ways of conferment of discretion

- Discretion is conferred by law on the administrator through a variety of forms:
- *if satisfied*, *is of opinion*, *deems necessary*, *thinks fit*, *public purpose*, *public interest*, *public health*, *Public morality* etc.
- Legislation are usually drafted in general terms.
- Leave large area of choice to the administrator to apply the law to actual, specific and factual situations from case to case.
- do not specify clearly the conditions, circumstances and norms for exercising the powers conferred on

Administrative Discretion and Law

- To be exercised according to rules of reasons and justice and not according to private opinion, according to law and not humor, not arbitrary, capricious, vague and fanciful but legal and regular.
- To be exercised according to known principles of law.

Judicial Review of Discretion

- There is nothing like unfettered discretion immune from judicial review. There can be no such thing as un-reviewable discretion.
- Judicial review of administrative discretion reflects reconciliation of two conflicting interests *viz*;
 - The legislature has conferred the powers on the administrator and it is not for the courts to sit in judgment over it.
 - But the authority must act within the bounds of law so that the exercise of discretion does not become arbitrary.

Judicial Review of Discretion - Stages

Judicial Review is being exercised at two stages:

- **At the conferment stage by deciding about the constitutionality of the statute.**
- **At the actual exercise stage by deciding the validity of the action.**

Grant of Discretion and Article 14

- **State of West Bengal Vs. Anwar Ali Sarkar, AIR 1952 SC 75**
- **In Re Special Courts Bill, 1978 (1979) 1 SCC 380**
- **Satwant Singh Vs. Asstt. Passport Officer, AIR 1967 SC 1836**

Exercise of Discretion- Grounds

There are two broad grounds :

- Abuse of Discretion
- Non Exercise of Discretion



Abuse of Discretion

This may be because of :

- **Malafide exercise of power**
- **Taking into account irrelevant consideration**
- **Leaving out relevant consideration**
- **Unreasonable exercise of power**
- **Colourable exercise of power**
- **Mixed consideration**
- **Improper purpose**

Non Exercise of Discretion

This may be on the ground(s) as below:

- **Exercise of discretion by wrong person**
- **Acting under dictation**
- **Mechanical exercise of power (non application of mind)**
- **Fettering of discretion**

- It may, however, be remembered that some of the above mentioned grounds may overlap
- In an English Case A red-haired teacher was dismissed because she had red hair.
 - This is unreasonable in one sense.
 - In another sense it is taking into consideration extraneous matters.
 - It is also so unreasonable that it might almost be described as being done in bad faith;
 - In fact all these things run into one another.

Questions

- **What is meant by administrative discretion?**
- **What is distinction between ministerial and discretionary functions?**
- **Why is administrative discretion needed?**
- **At what stages judicial review of discretion is exercised?**
- **What is abuse of administrative discretion?**



Thanks!

Any questions?