

ADMINISTRATIVE DISCRETION AND ABUSE OF POWER: A CRITICAL ANALYSIS

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ABSTRACT

Administrative discretion is an essential feature of modern governance. In a welfare state, the legislature cannot foresee every contingency or prescribe rigid rules for every administrative action. Therefore, discretionary authority is delegated to administrative authorities to ensure flexibility, efficiency, and responsiveness. However, discretion, if unchecked, can transform into arbitrariness, mala fide action, and abuse of power. The tension between administrative efficiency and constitutional safeguards lies at the heart of administrative law. This paper critically examines the concept of administrative discretion, its necessity, the legal principles governing its exercise, and the various forms of abuse of power. It further analyses judicial control mechanisms, especially in the Indian constitutional framework, and evaluates the evolving standards such as proportionality and reasonableness. The paper concludes by suggesting reforms to balance administrative autonomy with accountability.

I. Introduction

Modern states perform complex regulatory, economic, and social functions. Legislatures enact broad policies, but the implementation and execution of these policies are entrusted to administrative authorities. In doing so, statutes often confer discretionary powers upon officials to decide matters based on circumstances, public interest, and policy objectives.

Administrative discretion refers to the power granted to administrative authorities to choose between two or more possible courses of action, where each option is legally permissible. It implies freedom within the bounds of law. However, discretion is not equivalent to arbitrariness. The rule of law demands that discretionary powers must be exercised

reasonably, in good faith, and for proper purposes.¹

The abuse of discretion arises when authorities act beyond legal limits, misuse power, act in bad faith, ignore relevant considerations, or act arbitrarily. Administrative law, therefore, serves as a mechanism to ensure that discretion does not become despotism.²

II. Meaning and Nature of Administrative Discretion

A. Concept of Discretion

Discretion implies the authority to decide according to one's judgment within the framework of law. It exists when a statute allows an authority to make choices, interpret

¹ A.V. Dicey, *Introduction to the Study of the Law of the Constitution* 110–12 (10th ed. 1959).

² E.P. Royappa v. State of Tamil Nadu, (1974) 4 S.C.C. 3.

standards, or determine facts before taking action.³

For example, when a statute provides that an authority “may” grant a license if satisfied that certain conditions are met, it leaves room for subjective satisfaction and evaluation. This is discretionary power.

B. Characteristics of Administrative Discretion

1. It is conferred by statute or delegated legislation.
2. It involves choice between alternative lawful actions.
3. It must be exercised in accordance with legal standards.
4. It is subject to judicial review.

Discretion is necessary because rigid legal rules cannot address the dynamic and technical complexities of governance. However, the absence of clear boundaries may invite misuse.⁴

III. Necessity of Administrative Discretion

Administrative discretion is indispensable for several reasons:

1. Complexity of Modern Governance

The welfare state regulates industries, education, health, environment, taxation, telecommunications, and numerous other sectors. Detailed legislative prescriptions would be impractical and inflexible.

2. Need for Expertise

Administrative agencies often possess technical expertise. Discretion allows them to apply specialized knowledge to specific factual situations.

3. Flexibility and Speed

Legislative processes are slow. Discretion enables quick responses to emergencies and evolving situations.

4. Individualized Justice

Discretion allows authorities to tailor decisions based on particular circumstances rather than applying rigid rules mechanically.

Despite these advantages, discretionary power must be carefully controlled to prevent its degeneration into arbitrariness.

IV. Theoretical Foundations: Rule of Law and Discretion

The doctrine of the rule of law requires that all powers be exercised according to law, not personal whims. A.V. Dicey emphasized the supremacy of law and the absence of arbitrary power.⁵

However, modern administrative states cannot function without discretionary authority. Thus, the rule of law does not eliminate discretion but demands that it be structured, guided, and reviewable.

The reconciliation lies in recognizing that discretion must be:

- Based on statutory authority
- Guided by relevant considerations
- Free from arbitrariness
- Subject to judicial review

The judiciary has evolved principles to ensure that discretion operates within constitutional boundaries, especially under equality and fairness doctrines.⁶

V. Grounds of Abuse of Administrative Discretion

Abuse of power occurs when discretion is exercised improperly. Courts have identified several grounds on which administrative action may be invalidated.⁷

A. Mala Fide (Bad Faith)

Mala fide exercise of power refers to action taken with improper motives or personal bias. If

³ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.

⁴ Kasturi Lal Lakshmi Reddy v. State of J&K, (1980) 4 S.C.C. 1.

⁵ A.V. Dicey, *supra*.

⁶ Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 S.C.C. 489.

⁷ Shrilekha Vidyarthi v. State of U.P., (1991) 1 S.C.C. 212.

power is used for an ulterior purpose unrelated to the statute, it constitutes abuse.⁸

Bad faith may be:

1. Personal malice against an individual
2. Political vendetta
3. Use of power for collateral objectives

Courts require strong evidence to establish mala fide, as allegations of bad faith are serious in nature.

B. Improper Purpose

Administrative authorities must exercise power for the purpose for which it was granted. If used for an extraneous or unauthorized purpose, the action is invalid.⁹

For instance, land acquisition powers meant for public purpose cannot be used to benefit private individuals.

C. Irrelevant Considerations

Authorities must consider relevant factors and ignore irrelevant ones. If a decision is based on extraneous considerations, it is subject to judicial review.¹⁰

The principle requires that:

- Relevant statutory criteria be considered
- Personal preferences be excluded
- Political pressure be disregarded

D. Failure to Consider Relevant Factors

Even if no irrelevant factor is considered, omission of essential factors may render the decision invalid.

E. Arbitrariness

Arbitrariness violates constitutional guarantees of equality and fairness. Administrative discretion must not be exercised arbitrarily or capriciously.¹¹

Arbitrariness includes:

- Absence of rational basis
- Discriminatory treatment
- Inconsistent decision-making
- Lack of transparency

The development of the arbitrariness doctrine has significantly expanded judicial control over administrative discretion.

F. Unreasonableness (Wednesbury Principle)

The doctrine of unreasonableness holds that a decision is invalid if it is so unreasonable that no reasonable authority would have made it.¹²

This standard is traditionally deferential, limiting interference to extreme cases. However, modern courts increasingly apply stricter scrutiny in cases affecting fundamental rights.

G. Proportionality

The doctrine of proportionality requires that administrative measures must not be more drastic than necessary to achieve the desired objective.¹³

It involves three tests:

1. Legitimate aim
2. Rational connection
3. Necessity and balancing

Proportionality provides a more structured and rigorous standard than traditional reasonableness.

H. Colourable Exercise of Power

When power appears to be exercised for legitimate purposes but is actually used for unauthorized objectives, it is called colourable exercise of power.

The substance, not form, of the action is examined.

⁸ State of Punjab v. Gurdial Singh, (1980) 2 S.C.C. 471.

⁹ Padfield v. Minister of Agriculture, [1968] A.C. 997 (H.L.).

¹⁰ Barium Chemicals Ltd. v. Company Law Board, A.I.R. 1967 S.C. 295.

¹¹ Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248.

¹² Associated Provincial Picture Houses Ltd v. Wednesbury Corp., [1948] 1 K.B. 223 (C.A.).

¹³ R (Daly) v. Secretary of State for the Home Department, [2001] 2 A.C. 532 (H.L.).

VI. Judicial Control of Administrative

Discretion

Judicial review is the primary mechanism to control abuse of discretion. Courts do not substitute their decision for that of the authority but examine the legality of the process.

A. Grounds of Judicial Review

Judicial review generally operates on three broad grounds:

1. Illegality
2. Irrationality
3. Procedural impropriety

These grounds have expanded over time to include proportionality and legitimate expectation.

B. Role of Constitutional Provisions

In jurisdictions like India, constitutional provisions relating to equality, life, and personal liberty have strengthened judicial oversight.

Administrative actions violating principles of fairness, non-arbitrariness, and reasonableness are struck down under constitutional review.¹⁴

C. Limits of Judicial Review

Courts exercise self-restraint in matters involving:¹⁵

- Policy decisions
- Economic regulation
- Technical expertise

Judicial intervention is limited to examining whether discretion has been exercised lawfully.

VII. Administrative Discretion in Regulatory

Authorities

Independent regulatory authorities exercise vast discretionary powers in sectors such as telecommunications, competition, environmental protection, and financial regulation.

Challenges include:

- Lack of transparency
- Risk of regulatory capture
- Overlapping jurisdictions
- Political influence

To ensure accountability, mechanisms such as public consultations, reasoned orders, appellate tribunals, and legislative oversight are employed.

VIII. Legitimate Expectation and Fairness

The doctrine of legitimate expectation protects individuals from arbitrary deviation from established policies or representations.

It arises when:

- A consistent practice exists
- A clear promise is made
- Reliance is demonstrated

While it does not guarantee a substantive right, it ensures procedural fairness and rationality.

IX. Administrative Guidelines and Structured Discretion

To prevent abuse, authorities often issue guidelines to structure discretion. Although guidelines do not replace statutory provisions, they reduce arbitrariness and promote consistency.

Structured discretion ensures:

- Uniform standards
- Transparency
- Predictability
- Reduced personal bias

However, rigid adherence to guidelines without flexibility may defeat the purpose of discretion.

X. Contemporary Challenges

A. Algorithmic Decision-Making

Digital governance increasingly relies on automated systems. Algorithmic discretion raises concerns regarding:

¹⁴ Council of Civil Service Unions v. Minister for the Civil Service, [1985] A.C. 374 (H.L.).

¹⁵ Tata Cellular v. Union of India, (1994) 6 S.C.C. 651.

- Transparency
- Accountability
- Bias
- Due process

Judicial review of automated decisions poses new doctrinal challenges.

B. Emergency Powers

During emergencies, administrative discretion expands significantly. While necessary for public safety, emergency powers must remain subject to constitutional safeguards.

Unchecked emergency discretion risks authoritarianism.

C. Public-Private Partnerships

Delegation of public functions to private entities blurs accountability lines. When private bodies exercise public discretion, they must adhere to principles of fairness and reasonableness.

XI. Comparative Perspective

In the United Kingdom, judicial review traditionally focused on ultra vires and Wednesbury unreasonableness. However, proportionality has gained prominence, especially in human rights cases.¹⁶

In the United States, administrative discretion is controlled through the “arbitrary and capricious” standard under administrative procedure statutes.

Comparative analysis reveals a global trend toward greater scrutiny of discretionary power, especially where fundamental rights are involved.

XII. Safeguards Against Abuse of Power

To prevent abuse of discretion, several safeguards are essential:

1. Clear Legislative Policy

Statutes should define objectives and limits of discretion.

2. Procedural Safeguards

- Notice and hearing
- Reasoned decisions
- Right to appeal

3. Transparency

Publication of guidelines and decisions promotes accountability.

4. Judicial Review

Courts must remain vigilant against arbitrariness.

5. Legislative Oversight

Parliamentary committees can scrutinize administrative actions.

6. Independent Tribunals

Specialized appellate bodies provide technical review.

XIII. Critical Evaluation

While judicial review has expanded, excessive intervention may hinder administrative efficiency. Over-judicialization of governance risks substituting judicial wisdom for administrative expertise.

The challenge lies in maintaining balance:

- Too much discretion leads to arbitrariness.
- Too much control leads to administrative paralysis.

Modern administrative law seeks to replace “absolute discretion” with “structured discretion.”

The shift from subjective satisfaction to objective standards, and from unreasonableness to proportionality, reflects a maturation of judicial control.

However, concerns remain:

- Inconsistent application of standards
- Delays in judicial review
- Burden on courts
- Political pressure on regulators

¹⁶ Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (2018).

Reform must aim at strengthening internal accountability mechanisms rather than relying solely on courts.

XIV. Conclusion

Administrative discretion is an unavoidable and essential component of modern governance. Without it, the state cannot effectively implement welfare policies or respond to dynamic social and economic challenges. However, discretionary power carries inherent risks of misuse, arbitrariness, and abuse.

Administrative law mediates the tension between power and accountability. Through doctrines such as mala fide, improper purpose, irrelevant considerations, arbitrariness, unreasonableness, and proportionality, courts ensure that discretion remains within legal and constitutional limits.

The evolution of judicial standards reflects a broader commitment to fairness, transparency, and the rule of law. Yet, judicial review alone cannot guarantee good governance. Structured discretion, legislative clarity, transparency mechanisms, and institutional accountability are equally crucial.¹⁷

Ultimately, administrative discretion must operate as a tool of justice, not oppression. The true test of constitutional governance lies not in the absence of power, but in the disciplined and principled exercise of it.

GRASP - EDUCATE - EVOLVE

¹⁷ Indian Const. art. 14.