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The Concept of Administrative Discretion

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The responsibility for the enforcement of public policy is entrusted to the executive branch of the Government by the Constitution. Such responsibility is discharged by the large number of administrators. Decisions are taken by the administrators based on the laws. The Parliament enact the laws and provide the guidelines to be followed in making the innumerable rules. The procedures and guidelines provided are to be respected in the exercise of direction involving decision making. Due to the complexity of modern socio-economic condition, the discretionary powers of the administrative authorities have increased enormously. For effective implementation of the socio – economic policies, it is imperative that the administration shall be conferred with discretionary powers. The Law cannot be comprehensive enough to cover all the possible contingencies and problems which arise in the course of administration. In the absence of flexibility in the statutory provisions, the administrative authority has to exercise a reasonable amount of discretion to adopt its action to the circumstances of the individual case it deals with. It becomes incumbent upon the administrator to acquire a thorough knowledge of the law governing the administrative operations and the rights and privileges of the citizens. The crucial factors that are involved in this exercise are the interpretation of law to individual cases based on facts and circumstances. The Government may make rules which it thinks expedient to carry out the purposes of the statutory Acts depending on the complexity of problems arises. The problems which are to be solved by the administration even in the absence of specific rules. The modern tendency is to leave a large amount of discretion with various administrate authorities.

If there is only one course of action, question of discretion does not arise. Discretion implies power to make a choice between alternative courses of action. Discretion is defined as a “Science or understanding to discern between falcity and truth, between right and wrong, between shadow and substance, between equity and colourable glosses and pretenses not to do according to the will and private affection.”

Prof. Freund gives an excellent and an elaborate analysis of the meaning of administrative discretion. He states: “When we speak of administrative discretion, we mean that a determination may be reacted, in part at least, upon the basis of consideration, not merely susceptible of proof or disproof. A statute confers discretion when it refers to an official, for the use of his powers to beliefs, expectation or tendencies, instead of facts or to such terms as ‘ adequate’ , ‘advisable’, ‘ appropriate’ , ‘equitable’, ‘fair’, ‘fit’, ‘necessary’, practicable’, ‘proper’, than ‘reasonable’, ‘reputable’ , ‘safe’, ‘sufficient’, ‘wholesome’, or their opposites. This lack of degree of certainty belonging even to such difficult concepts as fraud or discrimination or monopoly, they involve matter of degree or an appeal to judgment. The discretion enlarges as the elements of future probability preponderates over that of present conditions; it contracts where in certain types of cases, quality tends to become standardized, or in matters of safety; on the other hand, certain application of the concept of immortality, fraud, restraint of trade, discrimination or monopoly are so

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controversial, as to operate practically like matter of discretion. The main advantage of discretion is the flexibility of its operation, and its main province would be the regulation of interest in which public policy demands, both maintenance of minimum standards, and the possibility of variation."

Legislation is often sketchy and skeletal, leaving many gaps to be filled, by the administrator, as he thinks fit and reasonable, in the given circumstances of each individual case he deals with. The legislator sometimes gives him unqualified and uncontrolled discretion without any proper guidance. Lord Denning said " We could not have reached our standards and our way of life, without the increasing powers of the executive. " The modern welfare government direct their activities of administration towards two ends, viz. to make provisions of certain services for the welfare of the people and secondly, regulation of individuals conduct in the interest of public good. The first activity may not create serious problems of enforcement, but the latter i.e. the regulatory function invest the administrator with wide discretion.

The importance of discretion has increased day by day, as the administration is required to apply vague and indefinite statutory provisions to individual case. It is difficult to understand the present day problems within the general rules. Many problems are new and beyond the scope and experience of the administration to be solved easily. Sometimes specific rules and statutory provisions are absent. Even then the administrator is expected to solve them in a reasonable manner, as any prudent man exercises his power in similar situations.

As the administrator may not have a general rule or norm to be adopted, there is every danger of discrimination leading to abuse of power. The administrator tries to defer any decision making if the case involves vested interests so as to avoid any public controversy and criticism of his action. " The modern tendency is to some what standardize administrative discretion leaving only a residual margin for adjustability in the realm of fact situations, in particular cases". "The authority in which a discretion is vested can be compelled to exercise, but not to exercise in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely adders it self to the matter before it. It must not act under the dictation of another body or disable it self from refraining discretion in each individual case. In the purposed exercise of to dissertation, it must not do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed away by irrelevant considerations, must not seek to purposes, alien to the letter and spirit of the legislation that gives it power to act, and must not act arbitrarily and capriciously.

The public authority who has been given discretionary power cannot act as a free agent. He must justify his action on valid grounds of public interest and statutory provisions. The statute confers freedom to determine its own criteria for choosing between alternative courses of action and such words like "as he deems", "if he thinks fit", "if he considers" and such offer expressions. He is not free to use the power by self imposed rules. He must apply his mind considering the facts in question and not

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adopting a rigid policy. Facts of the case cannot be twisted and the values cannot be ignored.

All administrative powers are statutory in their origin. The statute explains the intention of the legislature and provides the guidelines to be followed by the executive for implementing the policy Statutory functions may be mandatory or discretionary. The legislature may make it obligatory for the executive to run certain functions or it may leave certain activities to the discretion of the executives. If the legislature imposes certain conditions of procedures to be followed by the executive authorities, it becomes a mandatory obligation to the administration to follow such procedure. Non – observances of a mandatory provision will render the administrative action invalid.

If there are any procedural safeguards prescribed by the statute itself, the authority cannot function beyond their scope and extent. The administrative authority has to adopt the substantive rules and procedure given under the scope of the statute. He cannot act beyond the intention of the policy prescribed by the legislature. Cases should be decided within the framework of the policy. "Without policy, government and administration are rudderless. Successful policies make for successful government and administration. On the other hand when policy fails, the government fails." Dimock defines policies as "the consciously acknowledged rules of conduct that guide administrative decision."

Functions are classified into ministerial functions and directional functions. A ministerial function is one where the relevant law prescribes the duty to be performed by the concerned administrative authority in certain and specific terms leaving nothing to the discretion of the authority. It does not involve an investigation into the disputed facts and making of choices. The authority concerned acts according to the law which imposes on it a simple and definite duty in respect of which it has no choice. According to Keir and Lawson: "Many of the acts performed by public authorities or public officers are done in strict obedience to rules of statute or common law which imposes on them a simple and definite duty in respect of which they have no choice."

In the modern administration Socio – economic condition have become very complex. Consequently, the scope of ministerial function is very small and that of discretionary functions much larger. A government having only ministerial duties with no discretionary functions will be extremely rigid and unworkable. Officials must be allowed a choice as to when, how and whether they will act. The reason for this attitude is that more often than not, the administration is required to handle intricate problems which involve investigation of facts, making of choices and exercise of discretion before deciding upon what action to take. Thus, the modern tendency is to confer a large amount of discretion with various administrative authorities.

The statute book in new full of provisions giving discretion of one kind or the other to the administrator or officials for various purposes. According to Jain and Jain, there are four good reasons conferring discretion on administrative authorities:

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1) The present day problem which the administration is called upon to deal with are complex and varying nature and it is difficult to comprehend them all within the scope of general rules.

2) Most of the problems are now, practically of the first impression. Lack of any previous experience to deal with them does not warrant the adoption of general rules.

3) It is not always possible to foresee each and every problem but when a problem arises it must in any case be solved by the administration in spite of the absence of specific rules applicable to the situation.

4) Circumstances differ from case to case so that applying one rule mechanically to all cases may itself result in injustice.

It has been recognized by all civilized states all over the world that courts have the rights to interfere with the exercise of discretionary power of the administration and review abuses of discretionary power.

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