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Reevaluating Administrative Discretion and Its Regulatory Framework

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Abstract

Administrative discretion is a crucial aspect of public administration. It empowers public functionaries with the necessary flexibility in their decision-making for the smooth functioning of public operations; however, its potential for abuse cannot be overlooked. Administrative discretion comprehends a vast realm that demands comprehensive exploration by delving into its definition, significance, and multifaceted controls designed to curb its potential abuse. These controls incorporate a range: from 'Structuring the Discretion' to 'Inbuilt Controls' and then culminating into the domain of 'Judicial Control'. Judicial control is the principle designed by the judiciary to control abuse of discretion. It ranges from the necessity of the 'Fair, Proper, and Just Exercise of Discretion' to the 'Independent Application of Mind.' It includes various prohibitions, such as sub-delegation of discretion, imposing fetters on the exercise of discretion, and acting under dictation. Additionally, it entails various obligations, such as the obligation to use an independent mind, to use reasonable discretion, to comply with procedural requirements, and to consider relevant considerations while excluding irrelevant or extraneous ones. Each principle serves as a key element in preventing misuse or abuse of discretion. This research paper serves as a roadmap for comprehending administrative discretion and the judicial principles aimed at preventing its potential abuse.

Keywords: Discretion, Administrative Law, Structuring the Discretion, Abuse of Discretion, Public functionaries

Introduction to Administrative Discretion

The core idea of administrative discretion includes the right to pick from multiple potential actions, where there's space for reasonable individuals to have different opinions on which choice is better (*Secretary of State for Education. And Science v Tameside Metropolitan Borough Council*, n.d.). It has a long history (Shapiro, 1983). In his book 'Lectures on Administrative Law,' C. K.

Takwani observed a shift from the traditional laissez-faire theory to a "welfare state" approach, wherein the state's role has expanded (Takwani, 1980). This shift has led to increased governmental functions. Public functionaries now possess extensive discretionary authority, and the exercise of these powers is typically determined subjectively by the administration. This is often done without establishing specific statutory guidelines or imposing conditions. In practical terms, there exists a centralization of all authority within the administration's control. To execute these functions properly, today, the administration or the public functionaries require discretion (Holzer & Yang, 2005).

Since administrative authorities or public functionaries frequently encounter a variety of situations within a welfare state, the course of which remains unpredictable, it becomes imperative for them to possess the capability to make swift decisions. Moreover, in today's legislative landscape, it is not possible legislature can establish laws and regulations to encompass all future scenarios. Legislative processes often adopt abstract approaches while adhering to fundamental societal rules and needs. The primary objective remains the implementation of legislative goals for the welfare of citizens. This responsibility squarely rests upon public functionaries, who execute it based on prevailing facts and circumstances, utilizing the bestowed discretion by the law.

Besides, in the realm of administrative action, it can be further categorized into ministerial functions or discretionary functions. Ministerial functions entail no degree of discretion (Khan, 2021), whereas discretionary functions hinge entirely upon the appropriate exercise of discretion. Griffith and Street, in their work "Principles of Administrative Law," noted that a "ministerial act stands apart from other official acts" due to the legal requirement that "the duty must be executed with an absolute level of certainty, leaving no room for the application of discretion or judgment." (Griffith & Street, 1967) Conversely, a discretionary act embodies the liberty and adaptability for a public functionary to act in a manner they deem suitable, considering the prevailing facts and circumstances of the case. Nevertheless, this discretion is not beyond legal constraints; rather, it respects the legislature's intent and objectives. Moreover, Hamid Khan believes there are three main reasons to give discretion to public officials: first, modern challenges are so intricate and diverse that they can't be fully addressed by standard rules; second, many of these challenges are new and constantly evolving; and third, predicting and breaking down every new issue is nearly impossible (Khan, 2021). There are also other forms of discretion such as procedural discretion, selection grid discretion, and final decision discretion (Bouchard & Carroll, 2002).

Therefore, in the context of a welfare state, discretion has become an essential and inherent requirement (Sowa & Selden, 2003). Without discretion, the law could become harsh. Presently, discretion plays a larger role in shaping the law. In today's welfare state, government officials, or public functionaries, are obligated to serve citizens and improve their lives through better services (Salanick & Pfeffer, 1977), as seen in aspects like electricity, education, and clean water becoming essential rights (Forsyth, 1999). To effectively serve citizens' needs, the state requires flexibility, leading to the increasing prominence of discretion (Titmuss, 2002). This shift is because discretionary functions now outweigh ministerial ones. It is in the public interest to give discretion (Barth, 1992).

Furthermore, the role of discretion serves a dual purpose: firstly, it aims to enhance fair justice, and secondly, it offers flexibility within general laws to soften their impact and ensure just outcomes. However, there's a flip side to this situation. As Justice Douglas remarked (*United States v. Wunderlich*, 342 U.S. 98 (1951), n.d.), law excels when it liberates individuals from unchecked ruler discretion. Where discretion is absolute, people have historically faced hardships. Absolute discretion is more detrimental to freedom than any human creation. In this context, in *New York v. United States* (*New York v. United States*, 342 U.S. 882 (1951), n.d.) it was observed that "Absolute discretion, like corruption, marks the beginning of the end of liberty". Therefore, the broader the

discretion, the higher the potential for its misuse. Some argue that ethics could control discretion (Leys, 1943), but judicial control is indispensable (Treves, 1947).

Even though the potential for discretion to be misused is growing, it remains indispensable. However, it can be managed, directed, and structured. To summarize, in the context of a welfare state today, permitting discretion is crucial. Solely relying on ministerial functions is insufficient to address the multitude of needs and challenges that arise within a welfare state (Jaffe, 1961). But in the case of *Multiline Associates v. Ardeshir Cowaisjee (Multiline Associates v. Ardeshir Cowaisjee and two others, n.d.)*, it was established that the court's exercise of discretion should be employed to prevent mischief and chaos.

Therefore, it is crucial to shed light on and redefine the judicially established principles that prevent the abuse and misuse of administrative discretion. These principles include prohibitions against sub-delegation, undue restrictions, and external influences as well as obligations like independent thinking, reasonable discretion, procedural compliance, and relevant consideration. Each principle plays a pivotal role in preventing the potential misuse of discretionary powers. This research paper serves as a guide to understanding administrative discretion and the judicial principles guarding against its misuse.

Definition of Administrative Discretion

Administrative discretion means how much freedom public administrators have when they make choices or do agency work. This mostly happens when the laws made by the government are not very clear (Warren, 2007). Freund, in the context of defining discretion, stated that "when we refer to administrative discretion, we imply that a decision could be made, having significance, at least grounded on considerations not entirely verifiable or disprovable" (Holcombe, 1929). In practical terms, it is useful to define discretion as encompassing situations where the determination of facts is legitimately entrusted to administrative judgment. A statute grants discretion when it directs an official to employ its authority based on beliefs, expectations, or tendencies rather than concrete facts. Justice Coke has rightly observed that "discretion is a science or understanding to discern between falsity and truth, between right and wrong, between shadows and substance, between equity and colorable glosses and pretenses, and not to do according to their wills and private affections." (*Discretionary Power*, 2023). Lords Halsbury observed that "discretion means, when it is said that something is to be done within the discretion of authorities that something is to be done according to rules of reason and justice, not according to a private opinion but according to law, and not humor. It is to be not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to the discharge of his office or to confine himself" (*Susannah Sharp v Wakefield, n.d.*).

Controls to Prevent the Abuse of Discretion

Structuring the Discretion

The concept of "unfettered discretion" does not hold. Every form of discretion is organized, and structured, whether through rules and principles established in case law, stipulated within the statute, or a combination of both (*Karachi Electric Supply Company Ltd v Lotte Powergreen Pvt Ltd, n.d.*). Structuring discretion essentially means placing limits or guidelines on it, and incorporating controls directly within the law (West, 1984). As noted in the *Liaqat Ali Chughtai case*, to structure discretion means that the authority first establishes a well-thought-out, objective criteria ideal for officer selection. Only then can the selection process commence, always grounded in relevant considerations essential for choosing the most suitable officer for the role (*Liaqat Ali Chughtai v Federation of Pakistan, n.d.*). In Messay's perspective, "structuring" denotes organizing,

regulating, and limiting discretion by imposing standards or conditions. It's firmly established that discretionary powers granted to governmental or quasi-governmental entities must be accompanied by policy standards, procedural safeguards, or guidelines. Failure to provide these may result in the courts annulling the exercise of discretion and its delegation (Bhatia, 1996; Massey, 2001). In the Shiv Nandan Paswan Case, Justice Bhagwati highlighted the doctrine that it's crucial to recognize how the evolution of administrative law is marked by a continuous sequence of rulings that control and organize the discretion bestowed upon the State and its officials. The legal system consistently disapproves of unrestricted discretion in any State entity. The admirable aspect of administrative law is that such discretion has been effectively structured and governed through judicial decisions (*Shiv Nandan Paswan v State of Bihar*, n.d.). Without these standards, principles, and policies, the use of unchecked discretion could make subsequent administrative actions vulnerable to legal disputes (*Jyoti Prasad v Union Territory*, n.d.). Courts maintain that in a democracy grounded in the rule of law, there's no room for absolute or unchecked discretion, as it serves as the breeding ground for tyrannical authority (*Mohambaram v Jayavelu*, n.d.)

Therefore, in the case of Amannullah Khan case (*Amannullah Khan v Federal Government of Pakistan*, n.d.), Justice Shafi-ur-Rehman referenced a book (Davis, 1972; Emerson, 1952) by Kenneth to emphasize that even when broad discretionary powers are granted, there is a grave need to structure that discretion. This structuring entails regulating, organizing, and infusing order into the decision-making process to uphold the highest standards of justice. The instruments for effectively structuring discretionary power include open plans, ensuring government plans are transparent; open policy statements, making governmental policies accessible to the public; open rules, governing discretion through easily accessible rules; open findings, issuing orders with clear, reasoned explanations; open reasons, providing disclosed and relevant justifications; open precedents, publishing reasoned past decisions; and fair informal procedure, allowing alternative lawful methods when formal procedures are absent, as long as not restricted by law. These instruments collectively ensure discretion's accountability and its alignment with the intended principles of justice. Even in the absence of explicitly defined legal procedures, it is permissible to adopt alternative procedures established by existing laws, to structure the discretion, as long as these actions are not explicitly prohibited by the law itself (*Government of NWFP v Mejee flour and General Mills Pvt Ltd*, n.d.)

Inbuilt Control

Besides judicial control, there are several methods exist to curb the misuse of discretion. Intrinsic or inbuilt controls within legislation can help, especially when legislative policy is detailed and explicit. Further, having clear standards within laws can greatly reduce discretion abuse. Delegated legislation, such as rules and regulations, also offers a check on misuse. Adherence to universally recognized principles, like natural justice and issuing orders based on reasons, by administrative officials can also act as a deterrent to misuse. Finally, administrative mechanisms and accountability within departments offer another layer of control. Examples include administrative systems and offices like the ombudsman that promote accountability.

Judicial Control

Judicial control essentially refers to the judicial oversight of administrative discretion. Courts scrutinize the discretionary actions taken by public officials to ensure their compliance with the established principles of law (Treves, 1947).

General Rule

C. K. Takwani, in his book, pointed out that it's commonly acknowledged that courts typically lack the authority to intervene in actions carried out by administrative authorities when exercising discretionary functions (Takwani, 1980). This viewpoint was also shared by Lord Halsbury, who noted that when the legislature delegates a specific power to a particular body and grants them the discretion on how to use it, courts do not possess the authority to challenge that discretion (*Westminster Corp v London & North Western Rly. Co*, n.d.). In the case of Messer Zeenat Manufacturing (*Messer Zeenat Manufacturing Ltd v Secretary, Survey And Rebate, Central Board Of Revenue*, n.d.), it was similarly expressed that if administrative discretion does not display perversity, unreasonableness, discrimination, arbitrariness, or a wrongful exercise of authority, it cannot be validly contested by invoking constitutional jurisdiction. Similarly, the Supreme Court of Canada noted that the criteria for evaluating the exercise of statutory discretion have been established in numerous authoritative instances. It is firmly established that if the discretion is exercised in good faith, without the influence of irrelevant factors, and devoid of arbitrariness or illegality, no court is permitted to intervene, even if the court itself might have made a different choice had the discretion been theirs to wield (*Boulis v Minister of Manpower and Immigration*, n.d.).

Exception

Nevertheless, there are exceptions to every rule. In the case of *Congreve v. Home Office*, Lord Denning observed that discretion must be exercised in conformity with the law. It necessitates the consideration of all pertinent factors while disregarding irrelevant ones, and the decision should remain uninfluenced by any hidden motives (*Congreve v Home Office*, n.d.).

Regarding discretion, while courts typically should not intervene in a public functionary's discretionary actions, viewing this stance as an absolute would risk unchecked discretion spiraling into tyranny. In a democratic setup, checks and balances are integral to all administrative functions. The law does not support the complete ouster of court jurisdiction to review the actions of public officials. This is why Professor Wade pointed out that "it is based on this assumption that the courts derive their authority to establish legal limits on even the broadest discretion" (Wade & Forsyth, n.d.).

Reasons to Control Judicially

Lord Wrenbury astutely noted that a person entrusted with discretion must base their decisions on reasonable grounds. Possessing discretion doesn't permit one to act solely based on personal whims. Rather, they should act according to what is proper. This means that individuals must employ rational thinking to determine and pursue the path that logic and reason dictate in using discretion (*Roberts v Hopwood*, n.d.; Williams, 1994).

Similarly, in the case of *Wednesbury Corporation*, Lord Greene MR underscored that discretion must be exercised reasonably. An individual entrusted with discretion should ensure that their actions align with legal standards. They must focus their attention on relevant considerations while excluding irrelevant factors. Disregarding these principles could rightfully label their actions as unreasonable (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation*, n.d.). In a comparable vein, in the case of *Breen v. Amalgamated Engineering Union*, Lord Denning remarked, "The discretion of a statutory body is never unrestricted; it should be exercised with due regard to relevant and valid considerations." (Denning et al., 1971)

Similarly, in the case of *Habibullah Energy Ltd v. Wapda*, the Supreme Court of Pakistan observed that the foundation of the discretionary power of state functionaries rests upon the authority

delegated by the principal, the nation's people. The legal authority of the state is derived from this fiduciary relationship. If the state or its entities fail in their fiduciary obligations, the core authority of the state to enforce and uphold the law is weakened. Consequently, citizens, who are subjects of the state, may cease to comply with the law, as the state itself has neglected its fiduciary responsibilities. Overlooking breaches of public fiduciary duties is not acceptable, for doing so could undermine the very basis of the state's legal authority and the rule of law (*Habibullah Energy Ltd v Wapda*, n.d.).

Judicial Principles to Control the Abuse of Discretion

The law does not acknowledge the existence of unrestricted discretion, and all discretionary powers, particularly those granted by statutes, must be employed according to established administrative law principles. These principles have a solid foundation in historical precedent and have been elucidated in numerous rulings of the Supreme Court (*Commissioner Inland Revenue, Karachi v Pakistan Beverages Limited, Karachi*, n.d.).

In his treatise "Judicial Review of Administrative Action," De Smith encapsulates the guiding principles set by courts regarding administrative discretion as follows: An authority endowed with discretion is obligated to exercise it. Typically, only the designated authority should exercise the discretion granted to it. This authority must genuinely engage with the matters before it. It should not be influenced by external things. When leveraging its discretion, the authority must avoid actions it is prohibited from taking and refrain from overstepping its designated boundaries. The actions should be in good faith, considering all pertinent factors, and avoiding irrelevant influences. It should stay true to both the law text and the underlying intent of the legislation, ensuring decisions are not arbitrary or whimsical. Additionally, when a determination requires factual acknowledgment, discretion cannot be properly exercised based on mistaken beliefs regarding those facts (Jaffe, 1961; *Leading Works in Public Law: De Smith's Judicial Review of Administrative Action — "The Significance"* | Paul Daly, n.d.; Smith & Evans, 1980).

Likewise, the Supreme Court of Pakistan determined that when the legislature delegates an extensive power, it implies the assumption that this power will be employed: firstly, in a sincere manner; secondly, to further the goals of the legislation; and thirdly, with reasonableness. If authorities neglect to establish regulations through rules, policy statements, or precedents to structure their discretion, it becomes incumbent upon the courts to intervene. This intervention aims to uphold the necessary equilibrium in the exercise of statutory authority (*Muhammad Amin Muhammad Bashir Ltd v Government of Pakistan*, n.d.).

Fair, Proper, and Just Exercise of Discretion

The foremost rule is that the exercise of discretion must be characterized by fairness, propriety, and justice, avoiding arbitrary, capricious, or whimsical actions. Lord Mansfield eloquently expressed that in the context of a Court of Justice, discretion implies a rational and lawful judgment. It must adhere to established principles, devoid of whims or arbitrary judgments. Discretion should be grounded in legality and consistency rather than being vague or fanciful. When voiding John Wilkes' outlawry for publishing *The North Briton*, Lord Mansfield notably said the famous quote "that the law must be applied even if the heavens fell" (*R v Wilkes*, n.d.). The Supreme Court of Pakistan has now established that whenever the law grants a court the discretion to issue an order, that discretion must be exercised with a judicial mindset, taking into account relevant considerations, and fairly and appropriately to promote the cause of justice while avoiding whimsical and arbitrary actions (*Col (Retd) Ayub Ali Rana v Dr. Carlite S. Pune*, n.d.). Likewise, Justice P. N. Bhagwati emphasized that it's inconceivable in a democracy founded on the rule of law for the executive government or its officials to wield arbitrary authority over individual

interests. All governmental actions should be guided by reason and devoid of arbitrariness. This fundamental principle encapsulates the essence of the rule of law, serving as its most essential criterion (*R. D. Shetty v International Airport Authority*, n.d.).

In simple terms, any use of executive power must be conducted with fairness and justice, aiming to further the goals of the legislation. This means that each exercise of power needs to be reasonable and relevant. In essence, a person entrusted with discretion cannot act solely based on personal desires but must act on what is right and just. This obligation is placed on public officials because they hold a responsibility as guardians of public authority. Their actions should be guided by valid reasons, and they must avoid acting in a whimsical, arbitrary, or capricious manner (*Federation of Pakistan v Muhammad Aslam*, n.d.).

Independent Application of Mind

The authority should evaluate the matter on its own merits. This was exemplified in the case of *Manik Chandre* where a statutory functionary entrusted with discretionary authority must exercise this power independently, devoid of external influences. The court ruled against the validity of a scheme when it was revealed that the corporation had not deliberated on the matter at hand before publishing the scheme, even though it was later approved by the governor. This emphasizes the necessity for the responsible body to genuinely apply its judgment (*Manikchandre v State*, n.d.).

Prohibition on Sub-delegation of Discretion

Sub-delegation of discretion is prohibited unless explicitly permitted. Noted legal scholar De Smith (Smith & Evans, 1980) pointed out that discretionary power should typically only be exercised by the designated authority. It is a widely recognized legal principle that when authority is granted to an individual, signifying trust in their personal decision, that person must use the power themselves unless expressly authorized to delegate it. Wade has also pointed out this in his work. (Wade & Forsyth, n.d.).

Prohibition on Imposing Fetters on Exercise Discretion

An authority should not restrict its ability to exercise discretion. C K Takwani noted that the public functionaries who have been given discretionary powers should utilize them by examining each case independently. If the authority limits its discretion by adhering to rigid policy rules for every case, it essentially forfeits its duty to genuinely exercise that discretion. Instead, the authority should diligently assess the specifics of each scenario, engage in thoughtful analysis, and render a decision (Takwani, 1980). However, the authority is obligated to provide reasons for its exercised discretion in its order (*Farid Sons Ltd v Government of Pakistan*, n.d.).

Furthermore, this principle is highlighted in the case of *Mohammad Aslam Bora*. In this case, where the plaintiff sought a declaration and correction of his date of birth in his matriculation certificate, the university argued that it couldn't consider the application due to a syndicate decision. However, the court concluded that the power to make such corrections lay with the pro-vice-chancellor, and retaining this power would be meaningless if not exercised. The court emphasized that the university couldn't refrain from using its power as needed, as fetters on the use of discretion cannot be imposed unless mandated by law (*University of Punjab v Mohammad Aslam Bora*, n.d.).

To sum up, the authority granted discretion under statutory provisions cannot compromise or restrict its powers unless the statute itself permits such restrictions. This was further emphasized in the case of *Gadoon Textile Mills case*, where the court underlined that a public authority cannot bind its discretion granted by law through an agreement (*Gadoon Textile Mills v Wapda*, n.d.).

Prohibition on Acting under Dictation

A public official should not act according to dictation or instruction. The law is unequivocal: if discretion is vested in a lower authority, a higher authority cannot dictate when and how it should be exercised. This scenario, known as abrogation of authority, undermines the decision-making power. Discretionary authority should be employed with an independent perspective, unaffected by directives from above. No matter how senior the authority, they cannot instruct a lower authority on how to act. This principle was demonstrated in the case of *Commissioner of Police v. Gordhandas Bhanji*. In this instance, the Bombay Police Act, of 1902, granted the commissioner of police the authority to issue licenses for cinema theaters. Although the commissioner initially granted a license based on an advisory committee's suggestion, it was later revoked at the state government's direction. The court deemed this cancellation order invalid as it originated from the government, rendering the commissioner a mere intermediary (*Commissioner of Police v Gordhandas Bhanji*, n.d.).

Similarly, in the case of *Balwant Singh*, the situation arose where the public prosecutor, handling a criminal case with charges already framed and pending before a Magistrate in Bihar, received an order from the magistrate to withdraw the case. This directive was based on the State Criminal Intelligence Department's suggestion that a second police investigation was more accurate than the initial one, which was found to be false. The court ruled that justice ordinarily demands that every case must reach its destination, and not be interrupted en route. And the statutory responsibility for deciding upon withdrawal squarely rests on the Public Prosecutor. It is non-negotiable and cannot be bartered away in favor of those who may be above him on the administration side. The surrender of discretion by the Public Prosecutor and the Magistrate is unfortunate (*Balwant Singh v State of Bihar*, n.d.). This emphasizes that public prosecutors and magistrates should maintain their independent discretion rather than succumbing to external influences.

Similarly, in the case of *Muhammad Tufail v. Province of Punjab*, the petitioner found himself in a situation where he held a tenancy of a bungalow in Gujranwala, which was seized by the government under martial law regulations. Under the 'West Pakistan Requisitioning of Immoveable Property Act, 1956', section 3 empowers the provincial government to requisition any building for the use of a government officer if deemed necessary or expedient. The government can issue written orders for requisition and subsequent actions. In this instance, the government directed its commissioners to requisition premises, even if they were undergoing ejectment proceedings in competent courts. The commissioner followed these instructions, leading to legal proceedings. However, the Court ruled that discretion must be exercised by the authority himself; while passing orders, the commissioner has only obeyed the command of authority superior to him. This is not the exercise of discretion by him (*Muhammad Tufail v Province of Punjab*, n.d.). This case underscores the importance of personal discretion by the relevant authority, rather than mere compliance with superiors' orders.

Furthermore, the principle highlighted in *Ardeshire Cowasjee v. Multiline Associates* emphasizes that "an authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictation of another body or disable itself from exercising discretion in each case..." (*Multiline Associates v. Ardeshir Cowaisjee and two others*, n.d.) This reaffirms the importance of personal and independent discretion, as well as the commitment of the relevant authority to make informed and reasoned decisions in each specific case.

Obligation to use an Independent Mind

The next principle is that the public functionary must apply his mind to each case. The case of *Sibnat Banerji* is best suited here, where a preventive detention order was invalidated because it had been issued routinely based on police advice, without the home secretary independently assessing the evidence and materials before him to determine if the detention order was warranted. During the proceedings, it became evident that the home department had a practice of automatically issuing detention orders upon police recommendation, and the home secretary did not personally examine the materials to decide whether the order was justified in a specific case. Therefore, the court ruled that the home secretary's satisfaction was a crucial requirement for issuing detention orders, and its absence would lead to the order's nullification (*Emperor v Sibnat Banerji*, n.d.). Similarly, in the case of *Ghulam Mohyudin v Chief Settlement Commissioner*, the court ruled that the chief settlement commissioner had not fulfilled his jurisdiction properly by merely countersigning the note of the settlement commissioner (policy). In essence, he had acted mechanically without exercising the authority vested in him in compliance with the law (*Ghulam Mohyudin v Chief Settlement Commissioner*, n.d.).

Obligation to use Reasonable Exercise of Discretion

The use of discretionary powers should be reasonable (Nathanson, 1949). If these powers are employed unreasonably, the action could be invalidated solely on this basis. However, the term "unreasonable" is vague and could encompass various aspects, such as the consideration of irrelevant or extraneous factors by the authority, improper or ulterior motives behind the exercise of power, or deceptive use of power by the authority. In such cases, the courts may intervene and overturn the action (Takwani, 1980). Lord Diplock aptly stated that within the realm of public law, the term "unreasonable" carries specific legal significance. It refers to how a public authority has utilized a discretion granted by statute. For an action to be deemed "unreasonable," it must represent a course of action that no reasonable authority, fully aware of its responsibilities, would have chosen to undertake (*Secretary of State for Educ. And Science v Tameside Metropolitan Borough Council*, n.d.). The landmark case of *Roberts v. Hopwood* exemplifies the concept of the unreasonable exercise of discretion. In this case, the authority held the power to determine and pay 'such wages as it may think fit.' The court dissected the phrase 'may think fit' as follows: "Is the verb 'think' equivalent to 'reasonably think'? My Lords, to my mind there is no difference in the meaning, whether the word 'reasonably' or 'reasonable' is in or out... I base my opinion on broader principles. An individual invested with discretion must exercise it on rational grounds. Discretion does not grant one the liberty to act solely according to personal preference... It necessitates that, while exercising discretion, an individual should not pursue their desires but rather what is ethically appropriate. In essence, they must employ their reasoning abilities to discern and follow the path dictated by reason. Their actions should be reasonable." (*Roberts v Hopwood*, n.d.) .

In *Padfield v. Minister of Agriculture, Fisheries and Food*, Lord Reid noted that "Parliament must have intended the discretion to be employed in furthering the policy and objectives of the Act; these must be discerned by interpreting the entire Act, a task that rests with the court. While it is not possible to establish strict boundaries in such matters, if the Minister, due to misinterpretation of the Act or any other reason, exercises discretion in a way that obstructs or goes against the policy and goals of the Act, our legal system would be inadequate if those affected were not entitled to seek protection from the court" (*Padfield v Minister of Agriculture, Fisheries and Food*, n.d.). Finally, the principle dictates that when making discretionary decisions, there must be logical justifications. Such decisions should be based on solid findings of essential facts, backed by reliable evidence. These determinations should be explained in a manner consistent with the purpose of the statute, logically and comprehensibly. Conversely, actions that don't meet these basic criteria in

discretionary decisions might be considered arbitrary and could signal an improper exercise of authority (*Abid Hassan v P. I. A. C*, n.d.).

Obligation to Comply with Procedural Requirements

The exercise of discretionary powers can be invalidated if the authority fails to adhere to the procedural requirements specified in the statute. However, the significance of adhering to procedural guidelines may vary depending on whether courts consider such compliance mandatory or merely advisory. However, a well-established legal principle asserts that when a specific procedure is outlined for acting, that action must precisely follow the prescribed method and not deviate. This implicitly restricts the action from being performed in any other way. The necessity for strict adherence to the prescribed procedure cannot be overlooked or waived.

However, it is crucial to differentiate between mandatory and discretionary requirements in the context of legal provisions. A notable example illustrating this distinction is the case of *Muhammad Akhtar v Additional Director, Anti-Corruption Establishment, Multan*. In this case, an inquiry conducted by Anti-Corruption authorities was initially dropped. However, upon reaching the additional director of the Anti-Corruption department, the inquiry was reinstated. The affected parties challenged this decision, and the High Court ruled that the rule in question was not mandatory due to the absence of specified consequences for non-compliance. As a result, disobedience of the rule was considered directory in nature and did not render the decision invalid (*Muhammad Akhtar v Additional Director, Anti-Corruption Establishment, Multan*, n.d.).

Obligation to not Exceed from Jurisdiction

Public functionaries are obligated to operate within the confines of their assigned powers. They lack the authority to exceed the jurisdiction outlined by the law, and any such transgression would render their actions ultra vires. This perspective was upheld by courts in the past and continues to be upheld by present-day courts. In the case of *T K Chaudhary v Datta*, the authority possessed the power to dismiss any teacher as per the statute. However, the authority applied this power against the principal. The court deemed this action as surpassing the jurisdiction (*T K Chaudhary v Datta*, n.d.). Similar is the stance of Pakistani courts, emphasizing that public functionaries must not act beyond their designated powers. They are expected to operate with integrity and honesty, and within the boundaries of their authorized authority (*Ayaz Ahmed Memon v Pakistan Railways*, n.d.).

Obligation to Consider the Relevant Considerations and not the Irrelevant or Extraneous Considerations.

When exercising discretion, public functionaries are obligated to take into account relevant factors while refraining from considering irrelevant or extraneous elements. As seen in the case of *Rampur Distillery Co* declined to approve the renewal of a company's managing agency based on the criticism of the Managing Director's previous actions by the Vivian Bose Commission. While the Court acknowledged that considering past conduct was relevant, it emphasized that the Board should have also taken the present activities of the directors into account before making a final decision (*Rampur Distillery Co v Company Law Board*, n.d.). In the case of *S. R. Venkataraman*, the petitioner, a government official, retired from service in the public interest at the age of 50. However, upon review by the court, it was noted that extraneous circumstances had influenced the exercise of discretion. The Supreme Court then nullified the order, citing a principle from the case *the Queen on the Prosecution of Richard Westbrook v The Vestry of St. Pancras*. The quoted principle states that when individuals entrusted with a public duty exercise their discretion by considering factors not suitable for guiding their decision, the law considers that they have not genuinely exercised their discretion (*S. R. Venkataraman v Union of India*, n.d.).

Simply saying, discretionary powers must be exercised based on the specific facts and circumstances of each case, not on the whims or biases of the authority. The decision-making process should be governed by principles of justice and fairness and should align with the intent and purpose of the relevant laws, rules, or regulations. An authority's decisions should promote the objectives of the governing laws or established policies. Acting against these principles or objectives can lead to an unjust, unreasonable, and unfair exercise of power (*Walayat Ali v Pakistan International Airlines Corporation*, n.d.).

Obligation to use Discretion in Good Faith

The exercise of discretion by public functionaries should be devoid of any malafide intentions. Malafide can encompass both dishonesty and ill-will, as well as acting out of animosity or vengeance. When discretion is employed with malafide intent, it means that the authority is either acting with hidden motives or utilizing its power for purposes not intended by the law.

Regarding the notion of good faith, Professor Wade pointed out that recent judgments frequently contain references to both good and bad faith. These terms don't significantly alter the core meaning and are most commonly used to distinguish between actions deemed lawful or otherwise. While instances of public authorities being accused of intentional deception are rare, they often face allegations of mistakes stemming from a lack of knowledge or misinterpretations. Yet, these authorities are consistently charged with bad faith by the courts when their actions appear unreasonable or are based on incorrect reasons. Time and again, it is emphasized that powers should be wielded reasonably and in good faith. However, in such discussions, good faith essentially translates to valid motives (Wade & Forsyth, n.d.).

That's why all public functionaries are required to perform their duties and exercise discretion judiciously and transparently while using the authority granted by law. Any malafide or misuse of discretion by a public functionary rendered all orders and proceedings conducted as illegal and devoid of legal effect (*Muhammad Amin Chapal v Karachi Cantonment Board*, n.d.).

Prohibition on Exercising Discretion for an Improper Purpose or Collateral Purpose

The discretion should not be employed for an inappropriate or secondary intent. If a statutory power given to an authority is used for any other aim, it's considered an abuse of power, and the action can be invalidated. The discretion must not be used for an improper purpose or collateral purpose. It was held in *P R Kulkarni case*, that "a power used under the misapprehension that it was needed for effectuating a purpose, which was really outside the law or the proper scope of the power, could be said to be an exercise for an extraneous or collateral purpose" (*State of Mysore v P R Kulkarni*, n.d.).

Prohibition on Colorable Exercise of Power

The next principle is that the exercise of discretion should not be a colorable exercise of power. C K Takwani elaborates this as follows: "When an authority appears to be exercising a power for its designated purpose, but in actuality, it is being employed for an alternative objective, it is termed as a colorable exercise of power" (Takwani, 1980). The discretion granted to the relevant authority should be utilized fairly, openly, and justly, relying on a reasonable assessment. This exercise must not be arbitrary or done deceitfully (*Muhammad Zahir Raja v Federation of Pakistan*, n.d.). Therefore, actions that are driven by bad faith or are intended to deceive are not considered lawful actions.

Prohibition on Ignoring the Principles of Natural Justice

The exercise of discretion must not ignore the principles of natural justice. If public functionaries use their discretionary powers without considering these principles, their actions become invalid. For example, in the case of *the Water and Power Development Authority vs. Muhammad Naveed Iqbal*, a civil servant was retired without being given a chance to be heard. The court ruled that such an exercise of discretion by WAPDA lacked transparency and violated the principles of natural justice, possibly due to bad intentions (*Water and Power Development Authority v Muhammad Naveed Iqbal*, n.d.).

Obligation to Comply with the Doctrine of Proportionality

The exercise of discretion must adhere to the doctrine of proportionality (*Judicial Policy-Making and Europeanization: The Proportionality of National Control and Administrative Discretion: Journal of European Public Policy: Vol 18, No 7*, n.d.). This was emphasized in the case of *Sabir Iqbal vs. Cantonment Board, Peshawar*, where the court highlighted that executive discretion could be reviewed based on the principle of proportionality. If an action was disproportionately infringing upon a human right, it would be considered illegal. Proportionality requires evaluating whether the means chosen by the executive to achieve an objective that may impact human rights are appropriate and reasonable. This principle ensures that the exercise of discretion remains fair, rational, and not disproportionate (*Sabir Iqbal v Cantonment Board, Peshawar*, n.d.). In the case of *Shuja Sharif*, it was ruled that the principle of proportionality entails choosing the most suitable and least restrictive measure by the legislature or administrator to achieve the goals of legislation or administrative orders. This principle obliges the court to assess whether there is a proper balance between any negative impacts that the legislation or administrative order might have on individuals' rights, freedoms, or interests while considering the intended purpose they were meant to serve (*Shuja Sharif v Federation of Pakistan*, n.d.).

Obligation to give Reasons for the use of Discretion

The public functionary must give reasons for the exercise of discretion. The obligation to provide reasons for the exercise of discretion is important. Section 24-A of the General Clauses Act, 1897 establishes that public functionaries must offer reasons for their discretionary actions. In the case of *Khalid Humayun v the NAB*, it was affirmed that the exercise of statutory power should be reasonable, fair, just, and aligned with the objectives of the law. Additionally, the court emphasized that an executive authority is required to provide reasons for its decisions. This is crucial because the reasonableness of administrative discretion or policy hinges on the evaluation of factors that were taken into account by the executive when making their decisions or forming policies (*Khalid Humayun v the NAB*, n.d.). This obligation applies to every authority, whether judicial or quasi-judicial. In the case of *Zain Yar Khan*, it was established that reasons must be provided for orders issued under any enactment by any authority, office, or person. Therefore, according to Section 24-A of the General Clauses Act, 1897, every public functionary is required to fulfill their duties and exercise their authority and discretion in a manner that is fair, just, and reasonable (*Zain Yar Khan Vs Chief Engineer WAPDA*, n.d.).

Conclusion

Discretion is the way to make decisions (Robbins, 2005). Handling how administrators or public functionaries use their discretionary powers helps create fairness in society (Cárdenas & Ramírez de la Cruz, 2017). There exists a connection between administrative discretion and the rule of law. When understood correctly, administrative discretion is not only in line with a specific interpretation of the rule of law, but it can also serve as a means for the executive to demonstrate its

dedication to that principle (Cartier, 2009). Controlling discretion is the beginning of administrative law (Levin, 1986). A comprehensive set of administrative laws and principles are always available in place to guide the discretionary decisions made by public functionaries (Keeler, 2013). The central focus of administrative law revolves around the judicial control of discretionary powers (Daintith, 2005). Discretion is part and parcel of justice (Reiss, 1970). Public functionaries follow certain principles using discretion (Sossin, 2005). Effective control over discretionary power is essential, encompassing both internal mechanisms and external oversight in the form of judicial control (Kang, 2005). While the role of discretion is indeed indispensable in a democracy (Cooper, 1938), it must not be unchecked or without boundaries (Nedjatigil, 1985). Legislation must also ensure that effective controls are incorporated within its provisions (Morrow, 1968) and Public functionaries must also adhere to moral principles when exercising their discretion (Haque, 2004; Leys, 1943)

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