

Judicial Review of Administrative Discretion in India (Part A)

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the traditional theory of *'laissez faire'* has been given up by the State and the old 'police State' has now become a 'welfare State'. Because of this philosophy, governmental functions have increased.

The administrative authorities have acquired vast discretionary powers and generally, exercise *of* those powers are left to the subjective satisfaction of the administration without laying down the statutory guidelines or imposing conditions on it.

ADMINISTRATIVE DISCRETION: MEANING

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The best definition of 'administrative discretion' is given by Professor Freund' in the following words:

'When we speak of administrative discretion, we mean that a determination may be reached, in part at least, upon the basis of consideration not entirely susceptible of proof or disproof.... It may be practically convenient to say that discretion includes the case in which the ascertainment of fact is legitimately left to administrative determination.'

The decision is taken by the authority not only on the basis of the evidence but in accordance with policy or expediency and in exercise of discretionary powers conferred on that authority

Judicial Review: Meaning

Judicial review is a procedure by which a court can pronounce on an administrative action by a public body.

judicial review in India deals with three aspects:

(i) judicial review of legislative action;

(ii) (u) judicial review of judicicia

decision; and

(iii) judicial review of administrative action. In

this lecture

we are concerned with the last aspect, namely,

judicial review of administrative

action.

In India there is no Administrative Procedure Act providing for judicial review on the exercise of administrative discretion. Therefore, the power of judicial review arises from the constitutional configuration of courts.

Judicial review is the basic feature of the Indian Constitution and therefore, cannot be abrogated even by an amendment of the Constitution. It is incorporated in Articles 226 and 227 of the Constitution insofar as the High Courts are concerned. In regard to the Supreme Court Articles 32 and 136 of the Constitution embody the principle of judicial review. Article 32 is included in Part III as a fundamental right for enforcement of any of the fundamental rights conferred under Part III.

JUDICIAL REVIEW: OBJECT

The underlying object of judicial review is to ensure that the authority does not abuse its power and the individual receives just and fair treatment and not to ensure that the authority reaches a conclusion which is correct in the eye of law.'

DISCRETIONARY POWER AND JUDICIAL REVIEW

Discretionary powers conferred on the administration are of different types.

They may range from simple ministerial functions like maintenance of births and deaths register to powers which seriously affect the rights of an individual, e.g. acquisition of property, regulation of trade, industry or business, investigation, seizure, confiscation and destruction of property, detention of a person on subjective satisfaction of an executive authority and the like

GROUND

While exercising power of judicial review, the Court does not exercise appellate powers. It is not intended to take away from administrative authorities the powers and discretion properly vested in them by law and to substitute courts as the bodies making the decisions. Judicial review is a protection and not a weapon.

In India, the courts will interfere with the discretionary powers exercised by the administration in the following circumstances:

(1) Failure to exercise discretion; or

(2) Excess or abuse of discretion.

FAILURE TO EXERCISE DISCRETION

The main object of conferring discretionary power on an administrative authority is that the authority itself must exercise the said power. If there is failure to exercise discretion on the part of that authority the action will be bad. Such type of flaw may arise in the following circumstances:

- (a) Sub-delegation**
- (b) Imposing fetters on discretion by self-imposed rules of policy;**
- (c) Acting under dictation;**
- (d) Non-application of mind: and**
- (e) Power coupled with duty.**

Sub-delegation

The very object of conferring a power on a particular administrative authority is that the power must be exercised by that authority and cannot be sub-delegated to any other authority or official.

Thus, in *Allingham v. Minister of Agriculture and Ganporti Singhji v. Stale of Ajmer*, the sub-delegation of power was held to be bad. Likewise, in *Sohni Silk Mills v. ESI Corpn.*, the parent Act enabled the corporation to delegate its power to recover damages to the Director General, who, however, in turn sub-delegated the said power to Regional-Directors. Since there was no such provision permitting the Director General to sub-delegate his power the action was held to be bad.