



## ADMINISTRATIVE DISCRETION: BUREAUCRACY IN DEMOCRACY

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### ABSTRACT

Discretion is contrary to the equality and Indian constitution is based on the basic principle of equality which brings the conflict within the Grundnorm of largest democracy of the world. Administrative discretion refers to the will of the administrative authorities in decision making and functioning for the public welfare and to maintain law and peace. India like most of the countries of the world is a welfare state where government works with a basic aim of social and economic welfare of the society. “Nothing is permanent except change”, and with the consistent change in the society it is not possible to change the law with that consistency and this is the point where administrative discretion comes with an upper hand. In the present scenario, there are different situations, circumstances and problems arising every now and then which cannot be solved by the general rules of society. Administrative authorities can exercise their discretion according to the situation and circumstance and this forms the base of “discretion”. The applicability of general rule in varied circumstance, it would lead to injustice within the society.

This paper would be concentrated on an essential part of administrative law i.e., administrative discretion. The aim of the paper is to have a basic and deep idea of what administrative discretion is according to dictionaries, scholars, philosopher and thinkers and how discretion prevails within a

democracy promoting equality and other basic fundamental principles such as rule of law simultaneously. The paper would be conferred with landmark and essential judgments stating how judiciary is acting as watchdog to limit the abuse of the discretionary powers and what are the negative sides of the concept, the doctrines and test attached with administrative discretion.

**Keywords:** Discretion, rule of law, democracy, injustice, equality.

### 1. INTRODUCTION

Due to the decline of the individualism and doctrine of laissez-faire, the philosophy of the welfare state was adopted in various countries and it led to tremendous increase in the state activities and it has become necessary to confer discretionary powers on the administrative authorities so that they may be able to meet the emergent situation in the public interest, promptly and efficiently. The Judiciary, Legislation and Executive are the backbone of smooth functioning of the nation within the constitutional mandates. Indian constitution provides right to equality<sup>2</sup> which brings every individual on the same podium irrespective of their inequalities and differences but the implied notion within this provision is the “equality amongst the equal”. It is true that for the best functioning of the government and administration there is a need of discretion for the officials. It is a recognized fact that today no administration

<sup>1</sup>Dr. Kailash Rai, *Administrative law*, (Allahabad: Allahabad law publishers), reprinted 2011, p.7.

<sup>2</sup> Indian const. art. 14.



can function without discretion<sup>3</sup> but it is equally true that absolute discretion is a ruthless master. Discretion is considered to be more destructive of freedom than any of man's other invention<sup>4</sup>. "Discretion" is the right to choose between different options available to an individual according to his will and without any expressed or implied boundaries. For example what I want to wear? What I want to eat? Where I want to go? Answer to every question is "discretion". Discretion gives an individual the power to decide what he wants. A person is having all the rights to dispose his property in his will as per his discretion without any fear of law or any other factor and no matter how arbitrary it is. But when "administrative" word as a prefix is added to "discretion", choice remains constant but ceiling is attached to it. Discretion is very essential part for the functioning of the state and it gives freedom to the officials to take decisions when and where required as per the situations but like a coin, it is also having two sides, the other side should not be ignored so whenever discretion is conferred, the abuse of such discretion took place and lead to irreparable losses. Being a part of world's largest democracy, every citizen of the nation is filled with pre conceived notion that discretion to administrative authorities will be contradictory with every basic principle such as right to equality, rule of law and fundamental rights and every authority promoting these basic principles like judiciary.

<sup>3</sup> Gupta v. The Bombay Municipal Commission, (1968) 1 SCR 274 at 297.

<sup>4</sup>United States v. Wunderlich, 96 L Ed 113:342 US 98, 101 (1951) (Justice Douglas).

To gain a proper understanding of a subject, the primary requirement is the understanding of the subject from various perspectives. In India, judicial decisions are not just judicial pronouncement of the matter but are the benchmark to define various subjects of the society. The thoughts of renowned and intelligent legal minds are very essential aspect to understand a subject with the circumstance from affirmative as well as negative side. Before moving further with administrative discretion, we will first look at the definitions by judiciary, philosophers and legal minds.

"Discretion" means the power, right or liberty to decide one way or the other; to act according to one's own judgment; freedom of choice; to completely understand one's power or control; the freedom to decide what should be done in a particular situation.<sup>5</sup>

Discretion implies power to make choice between alternative course of action or inaction. A public officer has discretion whenever the effective limits of his power leave him free to make choice among possible course of action or inaction<sup>6</sup>.

"Discretion", proclaimed Coke is a science or understanding to discern between falsity and truth, between right and wrong, between shadow and substance, between equity and colorable glosses and pretences, and not to

<sup>5</sup> Webster's Encyclopedia Unabridged Dictionary, 411 (1994); Chamber's Twentieth Century Dictionary, 369 (1976); Concise Oxford English Dictionary, 409 (2002).

<sup>6</sup> K.C.Davis, Discretionary Justice 4 (1969); De smith, Judicial Review of Administrative Action 296-299 (1995).



do according to their wills and private affection....<sup>7</sup>.

In *Secy. Of State for Education & Science v. Tameside Metropolitan Borough Council*<sup>8</sup>,

Lord Diplock said:

“The very concept of administrative discretion involves a right to choose between more than one possible course of action on which there is a room for reasonable people to hold differing opinion as to which is to be preferred”

When someone is left to decide according to their discretion that what is right and wrong, it is presumed that the discretion should be sound discretion and according to prescribed law, if not done then judiciary is having power to redress the things done otherwise<sup>9</sup>.

## 2. ADMINSTRATIVE DISCRETION AND JUDICIAL REVIEW

“Judicial review provides for the sober second thought”

The constitution of India is supreme law of the land and the authority within which every law is governed and every individual is protected. Judiciary is the watchdog of the constitutional values given by the founders of constitution and judicial review is weapon to undo the arbitrary steps taken by legislation and executive. Judicial review provided to the Supreme Court is applicable

<sup>7</sup> *Rooke case*, 1598 5 Co Reb 99b (100a): 77 ER 209; see also, *Union of India v. Singh*, 2 SCC 590 (2004): AIR 827 (2004).

<sup>8</sup> 1977 AC 1014: 3 WLR 641 (HL: 1976); see also, *Brind v. Secy. of State for the Home*, 2 AC 696 (1991): 2 WLR 588 (1991); *Breen v. Amalgamated Engg. Union*, 2 QB 175 (1971): 2 WLR 742 (CA: 1971).

<sup>9</sup> *Union of India v. Singh*, 2 SCC 590 (2004): AIR 827 (2004).

within the territory of India and to the High Courts within state with no specific provisions but under article 32 and 136 for Supreme Court and article 226 and 227 for high courts respectively in constitution of India.

According to the dictionary, “judicial review” is “a procedure by which a court can pronounce on an administrative action by a public body”.<sup>10</sup>

Judicial review is a great weapon in the hands of the judges. It comprises the power to control and to hold unconstitutional and unenforceable any law or order based upon such law or any other action by a public authority which is inconsistent or in conflict with the basic law of the land<sup>11</sup>.

As a matter of fact, unlimited power leads to arbitrariness and administrative discretion would have also, without judicial review. Looking at the objective of the judicial review, it is clear that the concept of judicial review is to ensure the proper functioning without the abusing the power provided to the authorities. The concept of judicial review was observed by the Supreme Court in *Minerva Mills v. Union of India*<sup>12</sup>, stating that the constitution of India has created independent judiciary and vested them with the power of judicial review to determine the authenticity and legality of the steps taken by the legislation and the validity of the legislation. Another landmark judgment

<sup>10</sup> Concise Oxford English Dictionary 765 (2002).

<sup>11</sup> Henry Abraham; see also, *R. v. Secy. Of State of the Environment*, AC 240 (1986): 2 WLR I (HL: 1986); *Tata Cellular v. Union of India*, 6 SCC 651 (1994): II AIR (1996).

<sup>12</sup> 1 SCR 206 (1981).



of *Tata Cellular v. Union of India*<sup>13</sup> stated that any unfair action by any branch of the state must be set right by judicial review but the decision given in *Barium Chemicals Ltd. v. Company Law Board*<sup>14</sup> showed definite orientation in the judicial behaviour for an effective control of administrative discretion. Under section 237 of companies act, 1956, the board is authorized to order an investigation in the affairs of the company. The Company law board ordered an investigation into Barium Chemicals Ltd. exercising its power on the basis that faulty planning laid to losses by the company and as the result, price of the shares of company had fallen and many eminent members from the board resigned. Court quashed the order of the board on the ground that the exercise of the discretion by board was extraneous as per mentioned in section 237.

### 3. FAILURE OF ADMINISTRATIVE DISCRETION

Every concept goes through two consequences, success and failure. When the concept is complied with all the positive results in the society and for the society they turn out to be successful but when some factor goes against the concept they lead to failure. Administration is conferred with discretion to exercise that power but if there is noncompliance, it may lead to consequences. Some failure to the administrative discretion is as follows:

1. Sub-delegation: Sub-delegation is the delegation of power conferred on specific authority to some other authority. The maxim *delegatus non potest delegare* (a delegated cannot further delegate) states

that if power is conferred to an authority, it should be specifically exercise by the authority alone and not to be further passed on to other authority.

2. Acting under dictation: An administrative authority has failed to exercise its discretion if that discretion is under the influence dictation by the superior authority. In this case, the power is given to an authority but it is exercised by other authority where the concerned authority does not apply his mind and does not take action as per his will. In *Rambharosa Singh v. State of Bihar*<sup>15</sup>, the relevant rules empowered the District Magistrate of the place to provide public ferries on lease subject to the direction of the commissioner but instead government of Bihar state gave directions on which District Magistrate acted taking into consideration the directions of the government. The high court in the decision set aside the orders passed by the DM.

3. Non-application of mind: This could be considered as a sub-part of the aforesaid condition but is a separate condition where non-application of the mind by the authority acting without due care and caution or without a sense of responsibility in the exercise of the discretion. In *King Emperor v. Sibnath Banerji*<sup>16</sup>, an order of preventive detention was passed by the Home secretary on the recommendation made by the police authority but the order was quashed by the court on the basis of non-application of mind by the home secretary as authorized authority. The Supreme Court specifically stated in a recent judgment that the public authority passing an order must disclose due and

<sup>13</sup>6 SCC 651(1994).

<sup>14</sup>SCR 311(1966).

<sup>15</sup> AIR 370 (PAT.: 1953).

<sup>16</sup> 72 IA 241(1944-45): AIR 156 (PC: 1945).



proper application of mind and such order should record a reason behind the order<sup>17</sup>.

4. Imposing fetters on discretion: Changing circumstances leads to changing laws and policies and if the authority in exercising the discretion does not take this into consideration, it does lead to failure of exercise of discretionary powers. The circumstance of every case is different and applying same facts and policies to each case will lead to non-application of mind. For example, alcohol is dangerous for a human body but this statement is not universally applicable as alcohol is used for medical purpose also, and a complete ban on alcohol by government is failure of discretion.

#### 4. JUDICIAL BEHAVIOUR AND ADMINISTRATIVE DISCRETION

India as a nation has covered a long road of struggle and has developed with regards to judicial review and judicial behaviour on various other bodies of the states and courts have come up with very effective parameters against the arbitrary use of the discretionary power but still the conspectus of judicial review and behaviour remains halting and residual. There are two stages of judicial control mechanism of administrative discretion:

1. During the stage of delegation of discretion: Court exercise its control at the time of delegation of administrative discretion by the statutes to the administrative authority by checking the constitutionality of the law under which such delegation is made with reference to the fundamental rights under part III of the

Indian constitution. So if any law delegates vague and discretionary powers to the administrative authorities, court would declare it as ultra virus.

2. During the stage of exercise of discretion: Unlike US, India is not having Administrative Procedure Act for the judicial review of the administrative discretion so the power of judicial review arises from the constitutional configuration of the court. The court in India has always held the view that judge-proof discretion is negation of rule of law. Therefore, they have developed various formulation which are generally classified into two categories:

- (a.) That the authority is deemed not to have exercised its discretion at all, or there is failure on its part to exercise discretion. In *Purtabore co. Ltd. V. Cane Commr. Of Bihar*<sup>18</sup>, the cane commissioner in the state of Bihar reserved 99 villages for the appellant company on the order of Chief minister on which court quashed the discretion by the cane commissioner taking the ground that he abdicated his discretion on the orders of some other authority; therefore it was deemed that the authority has not exercised his discretion at all.

But this does not take away the discretion of administrative authorities to frame policies for its exercise of its discretion where in case of *Shri Rama Sugar Industries Ltd. V. State of A.P.*<sup>19</sup>, where section 21 of A.P. Sugarcane (Regulation of supply and purchase) ACT, 1961 gave permission to administrative authority to exempt tax on new factory which has

<sup>17</sup> *East Coast Railways v. Rao*, 7 SCC 678 (2010); AIR 2794 (2010).

<sup>18</sup> AIR 1896 (1970), 2 SCR 807 (1969).

<sup>19</sup> AIR 1745 (1974), 1 SCC 534 (1974).



substantially expanded but government framed the policy that only factories of cooperative sector would be exempted on which Apex court held that body empowered with statutory discretion may adopt rules and principles and such rules would not be arbitrary or against the objective of the act.

- (b.) That the authority was not able to exercise its discretion in the prescribed manner, or abuse of discretion. The courts exercise their control when there is an improper use of administrative discretion or according to English courts it is “unreasonable” or according to American court includes in “arbitrary” exercise of discretion. In *Indian Rly. Construction Co. Ltd. V. Ajay Kumar*<sup>20</sup>, the court held that in general, a discretion must be performed by the authority committed and the authority exercising the discretion should not exercise on the dictation of other authority and must not be what is forbidden or unauthorized to do.

## 5. ABUSE OF DISCRETION

When discretion is conferred to administrative authority, it must be exercised within the limitations of law. As Markose says, “When the mode of exercising according a valid power is improper or unreasonable, there is an abuse of power”<sup>21</sup>. For example, a principle of a school dismisses a teacher who was having red hair. It is unreasonable as a teacher should be judged by her teaching skills. Therefore, principle used his discretion and exercised

his power in an improper way leading to abuse of discretion.

**Wednesbury’s Principle:** Wednesbury’s principle is a principle laid down by the House of Lords in *Associate Provisional Picture Houses v. Wednesbury Corpn.*<sup>22</sup>, states that when an administrative authority is given discretion, it should be exercised in the interest of public and the authorities should eliminate the irrelevant matter and must include the relevant matter while determination of the matter.

If an act by administrative authority is without jurisdiction or is in excess of power conferred by the statute or there is abuse or misuse of power, the court can interfere. In such an eventuality, mere facts that the authority denies the charge of mala fide or oblique motive or of its having taken into consideration improper or irrelevant matter does not preclude the court from enquiring into the truth of allegations leveled against the authority and granting appropriate relief to the aggrieved party<sup>23</sup>.

Abuse of discretion may be inferred from the following circumstances:

1. Acting without jurisdiction;
2. Exceeding jurisdiction;
3. Arbitrary action;
4. Irrelevant consideration;
5. Leaving out relevant consideration;
6. Mixed consideration;
7. Mala fide;
8. Improper object;
9. Fraud on constitution;
10. Non-observance of natural justice;

<sup>20</sup> IAD 482 (Delhi: 2000), 83 DLT 242 (2000), 52 DRJ 598 (2000), ILLJ 1160 (Del.: 2000)

<sup>21</sup> Judicial Control of Administrative Action in India 417 (1956).

<sup>22</sup> 1 ER 498 (ALL.: 1947).

<sup>23</sup> State of U.P. V. Mohd. Nooh, AIR 86 (1958): SCR 595 (1958); Singh v. State of Punjab, AIR 72 (1964): 4 SCR 733 (1964).



11. Doctrine of proportionality;
12. Doctrine of legitimate expectation;
13. Unreasonableness.

## 6. ADMINISTRATIVE DISCRETION AND FUNDAMENTAL RIGHTS

Part III<sup>24</sup> of the constitution of India conferring fundamental rights is the life line for the citizens residing within the territory of India which protects them from abusive power, discrimination, arbitrary action etc. and maintains equality amongst people (article 14), restricts discrimination (article 15), provides personal life and liberty (article 21), freedom of religion (article 25-28) speech and expression (article 19) and various other liberties demanded and required by a citizen and these fundamental rights provides an additional dimension to the judiciary to have a control on administrative action.

### a. Article 22

Article 22 of the constitution provides for the safeguards to the person arrested or detained and gives wide range of powers to the administration authorities to exercise their discretion in these matters. The amount of administrative discretion in the matters of detention is huge with negligible specific legislative provisions or test for the purpose<sup>25</sup> which might lead to arbitrary use of the discretion. The court cannot scrutinize grounds of the efficiency of executive action or whether the grounds are true or false<sup>26</sup>. The judiciary is having a limited control

over the administrative discretion in these matters or rather just a superficial control and they can only interfere till questioning the efficiency and grounds for the detention but the major role is of the authorities with discretion.

### b. Article 19

Article 19(1) (a) and article 19(2) is conferred with freedom of speech and expression to the citizens and the restrictions which are imposed in exercising this right respectively. Though article 19 is within the constitution of India as a fundamental right and infringement of the right is within the jurisdictional ambit of judiciary but when required necessarily government and administration is also conferred with discretion for maintaining law and order. In *Virendra Singh v. State of Punjab*<sup>27</sup>, the Punjab Special Power (press) Act, 1956 was in question as the act provided discretionary powers to the government and executive on the matters related to printing and newspapers to take actions to preserve communal harmony within the state on which court held that there is nothing wrong in not imposing restrictions on the powers of the government as at the time of passing the act Punjab state was going through communal violence phase and it is the duty of the state government to maintain law and order which may compel them to take necessary steps to maintain peace.

But the blanket of necessity should not lead discretion to arbitrary action on which judiciary should have a close eye. In *Himat Lal K. Shah v. Commr. of Police*<sup>28</sup>, Rule 7 under section 44 of the Bombay Police Act,

<sup>24</sup> Indian Const. art. 12-35.

<sup>25</sup> *Gopalan v. State of Madras*, AIR 27 (1950), SCR 88 (1950).

<sup>26</sup> *Bombay v. Vaidya*, AIR 157 (1952): SCR 167 (1951).

<sup>27</sup> AIR 896 (1957), SCR 308 (1958).

<sup>28</sup> I SCC 227 (1973): AIR 87 (1973).



1951 provided powers beyond the boundaries of the constitution to the police commissioner of Bombay to grant or refuse permission for any public meeting on street which was by default a violation of article 19(1) (b)<sup>29</sup> and article 19 (3) which provides for reasonable restriction within article 19 (1) (b) was struck down by Supreme court on being unreasonable restriction on exercise of fundamental rights and section 15(2)(b) under criminal amendment act, 1908 as amended by Madras act, 1950 gave unrestricted power to state government to struck down any association as unlawful was also struck down by apex court in *State of Madras v. V.G. Row*<sup>30</sup> as being unconstitutional and allowing unauthorized use of discretion.

#### c. article 14

Administrative discretion is a combination of two words “Administrative” and “Discretion” where administrative authorities are having discretion to do something according to their will for the welfare of society beyond others personal discretion which is contradictory to basic fundamental right of right to equality<sup>31</sup> within the constitution of India. Every individual is having discretion but to a personal level and administrative discretion is very different from personal discretion where earlier one is having no restriction or limitation<sup>32</sup> and later is attached with reasonable restrictions. Professor A.V. Dicey says “Administrative Discretion is against the equality, and it becomes the

cause of arbitrariness, discrimination and unjust”. As powers conferred with the administrative officers are wide, this may lead to abuse of article 14 (right to equality) so the Indian courts apply the “doctrine of proportionality” for examine the validity of the provisions with the help of article 14 of the Indian constitution and it acts as regulators to such grant of power.<sup>33</sup>

**Doctrine of proportionality:** Doctrine of proportionality evolved from the courts of England when courts stated reviewing the administrative actions which expressly or impliedly affected the rights. As per Indian context, the concept of proportionality was in existence since beginning where courts had power to decide the reasonableness of restriction on fundamental rights, but in *India v. G Ganayutham*<sup>34</sup>, apex court of India in the light of decision of House of Lords in *Council of Civil services Unions v. Minister of Civil Services*,<sup>35</sup> expressly held that in proportionality of the restriction on the right is also a ground on which an administrative action could be impugned other then the basic grounds such as illegality, irrationality and procedural impropriety.<sup>36</sup>

Article 14 and administrative discretion are functioning simultaneously where administrative discretion within its jurisdiction is able to balance the proper functioning of the authorities without hampering the fundamental rights of the citizens mainly right to equality. Any rule or

<sup>29</sup> To assemble peaceably and without arms.

<sup>30</sup> AIR 196 (1952).

<sup>31</sup> Indian Const. art. 14.

<sup>32</sup> S.P. SATHE, *Administrative law* 400 (7<sup>TH</sup> ed. 2004).

<sup>33</sup> S.P. SATHE, *Administrative Law* 388-399 (7<sup>TH</sup> ed. 2004).

<sup>34</sup> 7 SSC 463 (1997).

<sup>35</sup> AC 374 (1985), 3 ER 935 (ALL.: 1984).

<sup>36</sup> S.P. SATHE, *Administrative law* 444 (7<sup>TH</sup> ed. 2004).



statute which confers discretionary powers to the authorities, which is violative of fundamental rights, is unconstitutional.

Article 14 and article 19 acts as a regulator to check discretion exercised by the administrative authorities as to whether they should not be arbitrary or beyond the powers.<sup>37</sup>

## 7. ADMINISTRATIVE DISCRETION AND RULE OF LAW

The concept of rule of law is understood as law being the sovereign authority and state is not governed by ruler but by the law. A.V.Dicey used the phrase “rule of law” for the first time in 1875.<sup>38</sup> Rule of law is the basic principle for governing and functioning of various nations around the world. The concept of rule of law is not specifically mentioned within the constitution of India but it has existed and evolved through precedents. Rule of law mandates the state to function and perform their duties in just and fair manner and within the scope of law<sup>39</sup> and the primary essential feature of rule of law is the absence of arbitrary power within the authorities and functionaries<sup>40</sup>.

“No man.....is so high that he is above the law. No officer of the law may set that law to defiance with impunity. All the officers of the government from highest to the lowest are the creatures of the law and are bound to obey it”<sup>41</sup>, the aforesaid mentioned quotes signifies the reality of the developing society where law is the only supreme authority present and no human is above the law. Over the time, philosophers have come up and interpreted rule of law with administrative discretion and tried to correlate whether both the concept are parallel, contradictory or supportive in nature to each other. Dicey in his concept denies the rule by ruler or king. Ivor Jennings was not in favour of it contradicted dicey stating that government needs to be supported with discretionary powers for the welfare and cure of the societal problems<sup>42</sup>. J.F. Garner took one step further and equated the concept of rule of law with the natural law, a normative ideal on which the legal system should look up to. Schwartz agreed with Garner that it is necessary to provide discretion to the administrative authorities and it would be supportive to the rule of law if the step by discretion is within the purview of law. Justice Douglas did agree with Schwartz and stated “control of discretion is always crucial to effective judicial review. Since decision is at the heart of agency power, the administrative law is all about the control of discretion”<sup>43</sup>. Prof. Wade was one amongst the philosophers who warns the courts and predicates that the

<sup>37</sup> Umar K. Mohammed, Administrative discretion vis-à-vis Right to Equality, Conclusion (Dec. 24, 2017, 4:40 PM), [https://www.academia.edu/30011331/ADMINISTRATIVE\\_DISCRETION\\_VIS-A-VIS\\_ARTICLE\\_14](https://www.academia.edu/30011331/ADMINISTRATIVE_DISCRETION_VIS-A-VIS_ARTICLE_14).

<sup>38</sup> A.V.Dicey, Stubbs’ Constitutional History of Britain, Nation 20 154 (4<sup>th</sup> March, 1875), also see A.V.Dicey, The Rule of Law 67 (1980).

<sup>39</sup> Gandhi v. Narayan, AIR 2295 (1975); Gupta v. Union of India, AIR 149 (1982).

<sup>40</sup> Jaisinghani v. Union of India; AIR 1427 (1969).

<sup>41</sup> Quoted in P. C. Jain, Administrative Adjudication: A Comparative of France, UK, USA and India 158 (1981).

<sup>42</sup> H.W.R. Wade, Quasi-judicial and its background, Cambridge law Journal 216-240 (1949).

<sup>43</sup> Wade, supra, 606.



court as, therefore, to draw the line between the mistake made intra-virus and mistake made ultra-virus<sup>44</sup>.

It is not universal fact that discretion leads to arbitrariness and in the landmark case of *Centre of Public Interest Litigation v. Union of India*<sup>45</sup>; it is a presumption that discretion would be exercised within the ambit rule of law.

### 8. CONCLUSION

#### “Discretion is a better part of valor”

Administrative discretion is an essential and necessary part of administrative authorities’ as well Indian democracy where the word discretion is to be taken in a positive connotation forming rules and regulations and ultimately releasing the burden of legislation if it fails to do so. “With great power comes great responsibility” and responsibility here is exercise of powers within the ceiling to maintain a balance. This paper concludes that the concept of administrative discretion is like double edged sword. It is mandatory on one hand irrespective of the fact that if it is contrary to right to equality or any other basic principle of Indian Constitution and on the other hand, it restricts the unlimited exercise of discretion. The role of Judiciary is exceptional as a guardian to prevent the misuse of the powers given to the administrative authorities. It is very essential to strike a balance between judiciary and administrative authorities. The face of Indian legal system is painted with the ideals of both of them but being separate organs of government, there might be a collision of thoughts on the same set of facts. Judicial

Review comes into picture when this discretion leads to some gross violation fundamental rights or if it destroys the basic structure. A major challenge faced by the judiciary here would be of interpreting “what is extreme or gross violation of right” and “what type of unreasonable discretion could lead to such violation”.

In the exercise of this discretion the judiciary has to maintain the dignity of the power so provided to it as a separate organ under the realm of the protection of fundamental rights of all and preserving the principles of natural justice at all costs.

As quoted by Justice Krishna Iyer, that “Judicial Activism gets it’s most noteworthy reward when its request a wipe of few tears from few eyes.”

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<sup>44</sup> H. W. R. Wade, *Administrative Law* 70-71(1971).

<sup>45</sup> 3 SCC 1 (2012).