DISCRETIONARY POWERS & FUNDAMENTAL RIGHTS – A CRITICAL STUDY

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INTRODUCTION

AIM OF THE STUDY

'Every power corrupts and absolute power corrupts absolutely'.

'There will be government of law and not of men'.

Discretion is a tool only when properly used; like an axe, it can be a weapon for mayhem or murder. In a government of men and of laws, the portion that is a government of men, like a malignant cancer, often tends to stifle the portion that is a government of laws, which the author tries to establish in relation with the fundamental rights.

MEANING OF DISCRETIONARY POWER AND FUNDAMENTAL RIGHTS

Discretionary Power

Discretion in layman's language means choosing from amongst the various available alternatives without reference to any predetermined criterion no matter how fanciful that choice may be. But the term discretion when qualified by the word 'administration' means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims.

According to Prof Wade:

'Discretion implies power to make a choice between alternative courses of actions.'

In the words of Lard Halsbury[1]

'Discretion means when it is said that something is to be within discretion of authorities that something is to be done according to the rules of justice, not according to private opinion and according to law and not humour. It is to be, not arbitrary, vague and beneficial, but legal and regular and it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself.'

Discretion is all pervading phenomenon of modern age. It is conferred in the area of rule-making or delegated legislation. The legislature hardly gives any guidance as to what rules

[1] Sharp v. Wakefield &Rook (1891) A.C. 17

are to be made. Similarly, discretion is conferred on adjudicatory and administrative authority on a liberal basis that is power is given to apply a vague statutory standard from case to case. Rarely does the legislature make a comprehensive legislation which is complete in all details. More often the legislation is sketchy or skeletal, leaving many gaps and conferring powers on the administration to all in a way it deems necessary or reasonable or it is satisfied or is of opinion. Rarely does the legislature clearly enunciate a policy or a principle subject to which the executive may have to exercise its discretionary powers. Quite often the legislature bestows more or less unqualified discretion on the executive. Administrative discretion may be developed by such word or phrases as public interest prejudicial to public safety or security, satisfaction, reasonable etc. Thus,

'*Discretion is the power or right to make official decisions using reason and judgment to choose from among acceptable alternatives'.*

Fundamental Rights

Fundamental Rights fulfil some basic and essential conditions of good life for human progress. These are fundamental in the sense that in the absence of these rights citizens cannot develop their personality and their own self. These rights are not the same as ordinary rights of citizen. Fundamental Rights are enshrined in the Constitution. These are constitutionally protected and guaranteed to the citizens while ordinary rights are protected by the ordinary law of the country. Fundamental Rights are inviolable in ordinary situation. Only under reasonable circumstances, these rights are suspended temporarily. These are some important Fundamental Rights of Indian citizen.

- Right to Life, Freedom of Speech and Expression,
- Right to Equality,
- Right to Religion,
- Right to Personal Liberty,
- Right to Education

Every state incorporates these Fundamental Rights in their own Constitution and citizens can enjoy them. If anybody's Fundamental Rights are violated by force he or she can go to the court seeking legal assistance. Democratic countries like India, Japan, France, Switzerland and many other countries individuals without which democracy becomes meaningless. The Constitution of India has embodied a number of Fundamental Rights in Part III. Citizens can enjoy these rights within some definite limitations.

There seems to be an unresolvable tension between judicial review and democracy. On the one hand, in a democracy, the executive is elected by the majority, to implement its political programme. On the other hand, an unelected body like the courts can strike out the actions of the executive through judicial review. Are the courts not interfering with the democratic 'will' of the people when they strike out executive decisions in the course of reviewing administrative decisions? Are they not playing politics through the backdoor? A sympathiser of judicial review will not accept this criticism of judicial review. He will argue

that, rather than undermining democracy, judicial review helps to consolidate it. Democracy, it is claimed, is not only about fulfilling the 'will' of the majority. It is also operating government within frameworks of norms and values: collective and individual human rights like participation and equality, justice and fairness. These values should not be subject to a majoritarian veto in a democracy. Consequently, when the courts strike out a decision because it is unfair or arbitrary or it diminishes an individual's rights, they are supporting democracy. The values indicated above are the fundamental values, which give meaning to democracy. We shall call them the 'fundamental values'. One value, which we shall focus on in the discussion that follows, is 'individual lights' because it is the quintessential liberal value. The question then becomes how to balance the various and fundamental values against the need for the state to carry out its responsibilities effectively. **Should the courts always strike down any administrative decision because it goes against a fundamental value? Or should they balance these values with the object of reaching a reasonable result? Are there areas of political life, like national security and taxation, which are so 'politically oriented' that it is just not appropriate for the courts to intervene?**

JUDICIAL OVERSEE OF DISCRETIONARY POWERS

Due to parliamentary supremacy no legal limits exist in England on the conferment of discretion on the administrative authorities. But that is not true of the other common law countries whose written constitution determine and regulate the competence of the legislature particularly through the enumeration of the basic rights of individuals. Thus, since the early years of the commencement of the constitution the courts in India have established that an unguided discretion conferred upon the administrative authorities may not be consistent with the basic right guaranteed in part-III thereof and have accordingly invalidate such conferment in several cases.

The rule of law requiring that the administration can interfere with the right of an individual only with the authority of law and that the authorisation is clearly limited in its content, subject matter, purpose and extent so that the interference is measurable and to a certain extent is foreseeable and calculable by the citizen.

The court has consistently insisted that the legislature must observe certain constitutional limits in granting discretion to the administrative authorities but they have not insisted upon a rigid criterion. The actions of the administration can be checked at the judicial level as well. The Constitution of India has provided the judiciary with the power to review. The courts can keep a check upon any arbitrary exercise of discretionary powers by the administration. The courts can take up cases of discretion upon receiving a cause as well as *suo moto*. The courts can control it at two stages.

A. Control at the stage of delegation of discretion.
B. Control of the exercise of discretion.

These are discussed in detail below.

LEGAL FRAMEWORK

Judicial Control

Judicial control mechanism of administrative discretion is exercised at two stages.

A. **Control at the stage of delegation of discretion.**

1) Administrative discretion and art 14.
2) Administrative discretion and art 19, 21, 22 etc.

B. **Control at the state of exercise of discretion.**

1) Abuse of discretion- when the authority has not exercised its discretion properly.

   (i) Unreasonable exercise of discretion.
   (ii) Mixed motives.
   (iii) Bad Faith.
   (iv) Subjective Satisfaction.
   (v) Relevant and Irrelevant consideration.
   (vi) Legitimate expectation.
   (vii)Proportionality

2) Non application of mind- the authority is deemed not to have exercised its discretion at all.

   (i) Abdication and dictation of discretion.
   (ii) Fettering of discretion.
   (iii) Estoppel.
   (iv) Delegation of discretion.
   (v) Acting Mechanically

ADMINISTRATIVE DISCRETION AND FUNDAMENTAL RIGHTS

Fundamental rights control the executive and legislative powers of the government. And it has also the control over the administrative discretion. No Law may provide administrative finality, because court has jurisdiction to check the administrative discretion. If discretion is against fundamental rights it must be void and declared unconstitutional by the court. Court will focus on some protective principles when it may be necessary during exercise discretionary power in respect of fundamental rights. Discretion can be controlled in a limited jurisdiction with the effect of Fundamental rights. Court has also time to time discus on the legality of such laws, which provide discretionary power. To fulfil this object court shall view the summary and making procedure of such law. If court finds these laws against constitution, it will be declared unconstitutional. Administration cannot violate article 14 & 19 when they will exercise discretionary powers.

(1) Abuse of Discretion

An authority shall be deemed to have abused its jurisdiction when it exercises its power for an improper purpose or on extraneous consideration, or in bad faith, or leaves out a relevant consideration or does not exercise the power by itself but of the instance and discretion of someone else.

(i) Mala Fide

Mala fide or bad faith means dishonest intention or corrupt motive. At times, the court uses the phrase 'mala fide' in the broad sense of any improper exercise or abuse of power. In this sense mala fide is equated with any ultra- vires exercise of administrative power. However, the term 'mala fide' here has not been used in the broad sense but in narrow sense of exercise of power with dishonest intent or corrupt motive. Mala fide in this narrow sense, would include those cases where the motive behind an administrative action is personal animosity itself or its relatives or friends. Mala fide exercise of discretionary power is bad as it amounts to abuse of power.

In *Pratap Singh v. Punjab*[2] , the appellant a civil surgeon in the employment of the state govt. was placed under suspension and a disciplinary action was started against him on the charges of bribe. The appellant alleged that disciplinary action had been initiated at the instance of Chief Ministry to wreak personal vengeance on him. From the sequence of events, certain tape recordings and the absence of an affidavit denying allegations, the court concluded that charge of mala fide is proved. This case shows that even if govt. has legal power to take disciplinary action for misconduct against a civil servant, it could not so if the action was activated out of malice.

In *Rowjee v. State of Andhra Pradesh*[3],the court held that Chief Minister had acted mala fide in giving directions regarding the selection of particular transport route for nationalization, as he sought to take vengeance against the private operators on those routes, as they were his political opponent.

In *G. Sadananda v. State of Kerala,*[4] the petitioner, a kerosene dealer was detained under the Defense of India Rules, to prevent him from acting in a manner prejudicial to the maintenance of supplies and services essential to the life of community. The facts were brought before the court to show that the D.S.P. made a false report against the petitioner in order to benefit his relative in the same trade by eliminating the petitioner from the trade, by obtaining the distributorship for kerosene. The D.S.P. filed no affidavit to controvert allegations, and the affidavit filed on behalf of govt. by the Home Secretary was very defective. The Supreme Court declared the order of detention to be clearly and plainly mala fide. The burden of providing mala fide is on individual making the allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for public benefit. The petitioner should produce sufficient material to convince the court of the mala fide of the govt. The burden of the

[2] AIR 1964 SC
[3]AIR 1967 SC
[4] AIR 1966 SC

individual is not easy to discharge as it requires going in to the motives or the state of mind of an authority, and it is hardly possible for an individual to know the same and it is all the more difficult to establish it before a court.

The difficulties inherent in proving mala fides are brought by Supreme Court in *E.P.Royappa v. State of Tamil Nadu*[5] although majority felt that these were circumstances to create suspicious about the bonafides of the govt. nevertheless the court refused to declare the action malafide as suspicion could not take the place of proof and proof needed here is high degree of proof.

Malafide may also be inferred from the authority ignoring apparent facts either deliberately or sheer avoidance. Because of the difficulty of proving malafide, only a few cases have occurred so far in which administrative orders may have been quashed on this ground.

(ii) Irrelevant Consideration

A discretionary power must be exercised on relevant and not on irrelevant or extraneous considerations. It means that power must be exercised taking in to account the consideration mentioned in the statute. If the statute mentions no such considerations, the power is to be exercised on considerations relevant for the purpose for which it is conferred. If the authority concerned bags attention to or takes in to account wholly irrelevant or extraneous circumstance, events or matters then the administrative action is ultra-vires and will be quashed. Even when a statute does not fully spell out the relevant criterion or consideration and may appear to confer power in almost unlimited terms, the court may, by looking in to the purpose, tenor and provision of the act, assess whether extraneous or irrelevant consideration have been applied by the administrative in arriving at its decision.

In *Ram Manohar Lohia v. State of Bihar*[6],the petitioner was detained under the Defence of India Rules, 1962 to prevent him from acting in a manner prejudical to the maintenance of 'law and order' whereas the rules permitted detention to prevent subversion of 'public order'. The court struck down the order as in its opinion, the two concept were not the same, 'law and order' being wider then public order.

In *Barium Chemicals Ltd. v. Company Law Board,*[7] the Company Law Board exercising its powers under Sec. 273 of the Companies Act 1956 ordered on investigation in to the affairs of Barium Chemicals Ltd. However, the basis of the exercise of discretion for ordering investigation was that due to faulty planning the co. incurrent a loss as a result of which the value of the shares had fallen and many eminent persons had resigned from the board of directors. The court quashed the order of the board on the ground that the basis of exercise of discretion is extraneous to the factors mentions in sec. 237 for such exercise of discretion.

[5] AIR 1974 SC
[6] AIR 1966 SC
[7] AIR 1967 SC

In *D. Ramaswami v. State of Tamil Nadu* [8], the order of compulsory retirement of a government servant was struck down as it was passed fallowing close upon needs of his promotion to a higher post. The basis of retirement was one adverse entry in his confidential file several years prior to his promotion.

(iii) Leaving out relevant consideration

If in exercising its discretionary power an administrative authority ignores relevant considerations, its action will be invalid. An authority must take in to account the consideration which a statute prescribes expressly and impliedly. It was difficult to establish that the authority had left out relevant considerations because of the absence of reasons. Therefore, not much case law has occurred under this head with the courts insistence on the supply of reasons by administrative authorities at least to them and also their tendency to look in to the govt. record; this ground has become important one.

In *Rampur Distillery Co. v. Company Law Board,*[9] the Company Law Board acting under Sec. 326 of Companies Act 1956, refused to give its approval for renewing the managing agency at the co. concerned on the ground of past grossly improper misconduct of the managing director of the managing agent in relation to various other companies of which he was director. The SC thought it did not find any fault in taking in to consideration the best conduct, held the order bad because the board did not take in to consideration that present acts which were very relevant factors in judging suitability.

In *Ashadevi v. K. Shivraj,*[10] the petitioner was detained with a view to preventing him from engaging in transporting smuggled goods. The detaining authority based its decision on the detent's confessional statement before the custom officers, but the fact having bearing on the question whether his confession was voluntary or not were not placed before authority. It was held that since the authority did not consider vital facts relevant to the detention of the petitioner the detention order was bad.

(iv) Mixed Considerations

The attitude of judiciary on the question of exceed consideration does not depict a uniform approach of all types of cases. In preventive detention cases, the courts have taken a strict view of the matter and have held such orders invalid if based on any irrelevant ground along with relevant grounds.

Shibban Lal v. State of U.P.[11] (AIR 1954 SC): The petitioner was detained on two grounds, first that his activities were prejudicial to the maintenance of supplies of essentials to community and second that his activities were injurious to the maintenance of public order. Later govt. revoked his detention on the first ground as either it was unsubstantial

[8] AIR 1982 SC
[9] (1969) 2 SCC
[10] AIR 1979 SC
[11] AIR 1954 SC

or non- existent but continued it on the second. The court quashed the original detention order.

(v) Unreasonable exercise of discretion

'Unreasonableness' may also mean that even though the authority has acted according to law in the sense that it has not acted on irrelevant grounds or exercised power for an improper purpose, yet it has given more weight to some factors then they deserved as compared with other factors. Unreasonableness may furnish a ground for intervention by the court when the constitution of India or statute so requires A. 14 of the constitution guarantees equality before law but the courts have permitted reasonable classification to the made.

In Maneka Gandhi v. Union Of India[12] ,it was held that an order made under Passport Act, 1967 could be declared bad if it so drastic in nature, as to be imposing unreasonable restrictions on the individual freedom.

In *R.D. Shetty v. International Airport Authority*[13],the tenders for running a restaurant were invited by Airport Authority from 'registered second class hoteliers'. It was clearly stipulated that acceptance of tender would rest with the Airport Director who can reject or accept any tender without assigning any reason. The highest tender was accepted but the tenderer was not a hotelier at all. A writ petition was filed by a person who was himself neither a tenderer nor a hotelier. His grievance was that he was in the same position as the successful tenderer because if an essential condition could be ignored the in the tender case why not in the petition.

The Supreme Court accepted the plea of locus standi in challenging the administrative action J. Bhagwati held:

(i) Exercise of discretion is an inseparable part of sound administration.
(ii) It is well settled rule of act law that an executive authority must be rigorously held to the standard by which it professes its action to be judged.
(iii) It is indeed unthinkable that in a democracy government by the rule of the executive government or any of its officers should posses arbitrary powers over the interest of an individual. Every action of the govt. must be influenced with reasons and should be free from arbitrariness.
(iv) The government cannot be permitted to say that it will give jobs or enter into contract only in favour of those having gray hair or belonging to a particular party. Exercise of discretion must not be arbitrary, fanciful and influenced by extraneous considerations. In matters of discretion the choice must be dictated by public interest and must not be unprincipled or unreasonable.[14]

[12] AIR 1979 SC
[13] AIR 1979 3 SC
[14] Srilekha Vidyarthi V State of U.P AIR 1991 SC (P-64 A. Jain)

(vi) Subjective Satisfaction

The satisfaction of the executive must be based on right test and right construction of a statute and as materials which had probative value and were such as national human being would consider connected with the fact in respect of which the satisfaction was to be reached. The satisfaction ought to be based on relevant and non-extraneous consideration

In *State of Rajasthan v. Union Of India*,[15] the Supreme Court observed that although the court could not go into the correctness of the decision, if the satisfaction of the president was based on malafide or wholly extraneous or irrelevant ground, the court would have jurisdiction to examine it because in that case there would be no satisfaction of the president. Although the satisfaction of the president could not be challenged, the existence of the satisfaction could be challenged.

(2) Failure to exercise discretion (On Application of Mind)

Where discretion has been conferred on an authority it is expected to exercise the same by applying its mind to the facts and circumstances of the case in hand, otherwise its action or decision will be bad and the authority is deemed to have boiled to exercise its discretion; the authority may not apply its mind to the vital facts, or may not comply with the condition precedent for the exercise of its power, or it may act mechanically or without due cure or it may abdicate its power to someone else, or it may out under the dictation of superior, or it ay impose fetters on the exercise of its discretionary powers. These categories are not exclusive but overlapping

(i) Abdication of functions

An authority to whom discretion has been granted by a statute may leave it to be exercised by the subordinates without acting itself an order made by subordinate is not valid.

In *Manikchand V. Sate* [16], the scheme of nationalization of certain bus route was published by the manager of the state road transport corporation without the corporation itself considering the scheme though the statute required that it was the corporation which was to consider the scheme.

(ii) Acting under dictation

A situation of the authority not exercising discretion crises when the authority does not consider the matter itself but exercise its discretion under the dictation of a superior authority. This in law would amount to non exercise of its power by authority and will be bad. Although the authority purports, to act itself yet, in effect it is not so as it does not take the action in question in its own judgment as is intended by the statute.

[15] AIR 1977 SC
[16] AIR 1973

In *Commissioner of Police v. Gorhardas Bhanji,*[17] the Bombay police act 1902 granted authority to the commissioner of police to grant license for the construction of Cinema theatres. The commissioner granted license to the respondent on the recommendation of an advisory committee but later cancelled it at the direction of state govt. The court held that cancellation order bad as it had come from govt. and the commissioner merely acted as transmitting again.

In *Purtabpore Co. Ltd. v. Canee Comm. of Bihar,*[18] the Cane commissioner who had the power to reserve sugarcane areas for sugar factories, at the dictation of C.M. excluded 99 villages from the area reserved by him in favour of the appellant company. The court quashed the exercise of discretion on ground that he abdicates his power by exercising it at the dictation of some other authority. There is, however a difference between seeking advice or assistance and being dictated. Advice or assistance may be taken so long as the authority concerned does not mechanically act on it, and itself take the final decision.

(iii) Imposing fetters on the exercise of discretion

When a statute confers power on an authority to apply a standard (as is the case in administrative discretion) it is expected of it to apply it from case to case, not to fetter its discretion by declaration of rules or policy to be followed by it uniformly in all cases. What is expected of the authority is that it should consider each case on its merit and then decide it. If instead, it lays down a general rule to be applicable to each and every case, then it is preventing itself from exercising its mind according to the circumstances of each case and this amount to going against what statute had intended the authority to do.

In *Gell v. Teja Noora,*[19] the commissioner of police had discretion to refuse to grant a licence for any land conveyance which he might consisting to be insufficiently sound or otherwise comfit far conveyance of the public. Instead of applying his discretion to grant licence or not, he issued a general order setting details of construction which are required to be adopted for licence. The court held the order illegal. The position is well established that the exercise of statutory discretion cannot be followed by adopting rigid policy or a mechanical rule. A case somewhat going against this proposition to.

In *Shri Ram Sugar industries v. State of A.P.,*[20] a tax was levied on the purchase of sugarcane by sugar factories but the government was given power to exempt from payment of tax any new sugar factory. However, the government made it a policy to grant exception only to factories in the co-operative sectors and on the basis of this polity denied exception to the appellant. Court upheld the action of the government The majority justified its view on the ground that it was open to the government to adopt a policy to make a grant only to a certain classes and not to some other class.

[17] AIR 1952 SC
[18] AIR 1970 SC
[19] (1903) LR Bom
[20] AIR 1974 SC

Justice Mathew delivering the dissenting opinion. The minority emphasized that an authority entrusted with a discretion must not by adopting a rule of policy disable itself from exercising its discretion in individual case.

(iv) Delegation of Discretion

Delegation means transfer or transmission of discretion from a superior authority to a subordinate. It may take place when the law either expressly or impliedly provide for such possibility.

In *Ganpati Singh v. State of Ajmer,*[21] the power to issue certain rule was conferred on the commissioner but he delegated the power to district magistrate the could held that Chief Commissioner action in delegating his power was ultra vires.

(v) Acting Mechanically

An authority cannot be said to exercise statuary discretion when it passes an order mechanically and without applying its mines to the facts and circumstances of the case. This may happen either because the authority has taken one view of tis power or because of inertia or laziness or because of the its reliance on the subordinates.

In Nand Lal v. Bar Council of Gujarat,[22] it was held that in forwarding a case to the disciplinary committee the council could not act mechanically and it must apply its mind to find out whether these is any reason to believe that any advocate has been guilty of misconduct.

In *Jaswant Singh v. State of Punjab*[23]*:* Under prevention of corruption act, 1947 the sanction of govt. is necessary for prosecuting a public servant of certain offences. It has been held that the sanction under the act is not intended to be an automatic formality. The facts consisting the offence charged should be placed before the sanctioning authority which should decide the matter after applying its mind to them.

In *G. Sadanand v. State of Kerala*,[24] the Supreme Court commented adversely on the casual manner in which the deciding authority had acted in passing the order. The order was quashed with a short reminder to the administration that it should be more careful in exercising its powers. The court pointed out that casual use of unfettered power by them may ultimately pose a serious threat to basic values of the democratic way of life.

LIMITATIONS

[21] AIR 1955 SC
[22] AIR 1981 SC
[23] AIR 1958 SC
[24] AIR 1966 SC

The judicial remedies mentioned above under the 'Rule of Law' system provide an effective control against official excesses or abuse of power and in protecting the liberties and rights of the citizens. But judicial control has certain limitations.

- In the first place all administrative actions are not subject to judicial control. There are many kinds of administrative actions, which cannot be reviewed by the law courts. Then there is a tendency on the part of the legislature also to exclude by law certain administrative acts from the jurisdiction of the judiciary. For example, in India the administration of Evacuee Property act, 1950 vests final judicial powers in the Custodians and Custodian General of Evacuee Property and the law courts have no jurisdiction to interfere in the decision made under this Act.
- Second, even in those administrative actions which are within its jurisdiction, the judiciary cannot by itself take cognisance of excesses on the part of officials. It can intervene only on the request of somebody who has been affected or is likely to be affected by an official action. Human nature being what it is, legalism is the last sphere in which it would like to enter. We are always reluctant to enter the precincts of judiciary and prefer to continue to put up with minor injustices of administration. That means that a negligible fraction of the cases of administrative excesses would come before the judiciary and that too after a person has already suffered.
- Third, the judicial process is very slow and cumbersome. The courts follow certain set technical pattern of procedure beyond the comprehension of a layman and then the procedure is so lengthy that it cannot be known as to when the final judgment shall be given. There have been instances when cases have been pending with the courts for years together. Sometimes the decision of the court comes when the damage has been done beyond repair: "Justice delayed is justice denied". An aggrieved person cannot wait indefinitely to avail himself of the judicial remedy. The dilatory judicial procedure will not in any way console the sufferer or reconcile his afflicted mind. Tired of the delay he will lose hope and become a victim of bureaucracy.
- Fourth, sometimes the remedies offered by the law courts are in adequate and ineffective. In many cases, especially relating to business activities, mere announcement of an administrative action or even a reminder concerning a proposed action may cause an injury to the individual against whom not even a suit can be filed in the law court.
- Fifth, the government may deprive the person of the remedy granted to him by the court by changing the law or rules thereof. In a case the High Court ordered that the petitioners be promoted to the senior posts of Professors class I and that direct selection for these posts contravenes the provision of the States Reorganisation act in as much as it changes the conditions of service of the petitioners to their disadvantages. The Government did promote the petitioners thereby giving effect to the judgement of the court. But after some time these posts were withdrawn on the ground of financial stringency and the persons were reverted to their substantive posts.
- Sixth, judicial action is incredibly expensive and cannot therefore be taken advantage of by many people. Filing a suit means paying the court fee, fee of the lawyer engaged and cost of producing witnesses and undergoing all inconveniences which only those

who can afford can bear. This keeps many people away from the court who prefer to suffer. On account of heavy cost and great inconvenience the judicial remedies are of little advantage.

- Last, the highly technical nature of most of the administrative actions saps the force of judicial review. The judges are only legal experts and they may have little knowledge of the technicalities and complexities of administrative problems. Their legal bent of mind may hinder them in arriving at a right decision. They have to follow the prescribed procedures and observe some formalities. W. A. Robson writes, "The liability of the individual official for wrong doing committed in the course of his duty is essentially a relic from past centuries when government was in the hands of a few prominent, independent and substantial persons, so called Public Officers, who were in no way responsible to ministers or elected legislatures or councils. Such a doctrine is utterly unsuited to the Twentieth Century State, in which the Public Officer has been superseded by armies of anonymous and obscure civil servants acting directly under the orders of their superiors, who are ultimately responsible to an elected body. The exclusive liability of the individual officer is a doctrine typical of a highly individual Common Law. It is of decreasing value today, and is small recompense for an irresponsible state." Besides, the judges have their own whims and prejudices. That is why the modern trend is towards the establishment of Administrative Tribunals, which consist of person's expert in technical matters.

CONCLUSION

Administrative discretion must be conferred but it must be limited. And some restriction must be imposed. It means a procedure should be established for the administration. So I want to point out some suggestions, which are given blow-

- Without discretion administrative officers cannot get the success in their aim. They cannot achieve welfare concept so it is necessity that state should confer discretion, but it must not access.
- When state provide discretion some rules (restrictions) should be imposed at that time. These restrictions must be followed during excising the discretion.
- The wordings of the act must be doubtless and clear, under which discretion is conferred.
- Legislative should establish a procedure to administrative officers, they must follow it during exercise their discretion. If they are failed to follow it. They must be punished.
- If any person is injured with discretion, remedy must be provided to him.
- Discretion must comes under the jurisdiction of judicial review not only certain grounds e.i. mala-fide intention, arbitrariness, discrimination and irrelevant consideration, but on reasonable grounds also. Because day by day new problems are rising.

After the above discussion, I want to say that discretion must be conferred with some limits. Without discretion administration cannot run smoothly in a welfare state. It is a necessary element in exercise of powers. But limits and standard are also required to be established. Without limits and restrictions administrative discretion becomes absolute. Aristotle has rightly that power corrupts and absolute power corrupts absolutely. Discretion develop creativeness in government. Discretion must be in all administrative actions but at the same time it is necessary to impound arrangement and check discretion to uphold the principle of rule of law in administration least cases of injustice go unheeded and scot-free. Although it is true that discretion is necessary to running the administration but absolute discretion cannot be granted. If discretion is without restrictions then there will be dictatorial rule and rule of law will vanish from the country. Without discretion no policy can be carried out in the country. If absolute discretion is conferred, democratic norms will not realized.

