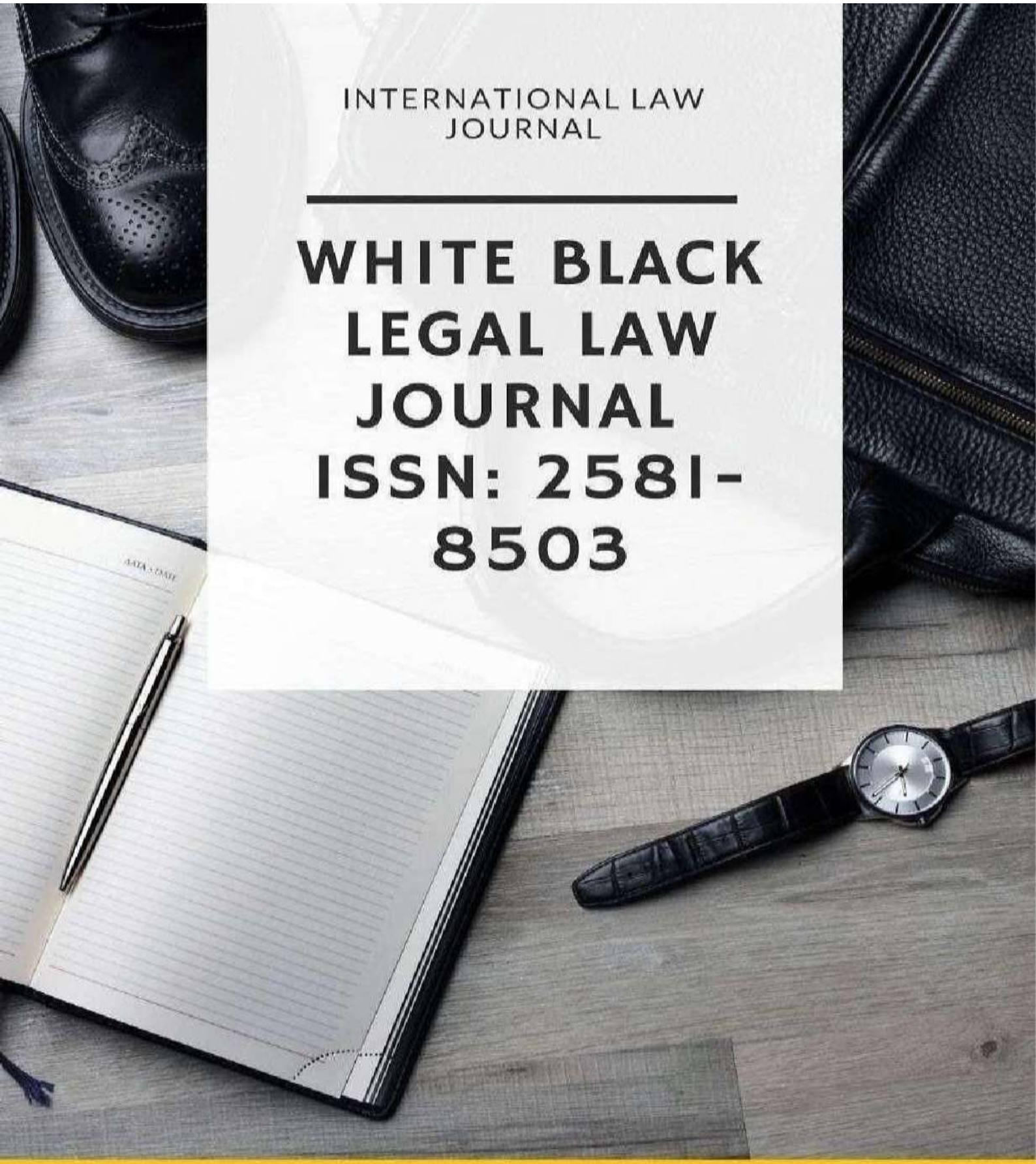

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUDICIAL OVERSIGHT OF ADMINISTRATIVE DISCRETION: BALANCING THE SCALES OF AUTHORITY

AUTHORED BY - UTKARSH PANDEY[1] & MANSI[2]

Chapter: 1 - Introduction

I. Review of Literature

- M. P. Jain and S. N. Jain's Principles of Administrative Law[3] – The book contains a very detailed explanation of all the topics relating to administrative law. The authors have mainly focused on Indian laws relating to administrative process and dealt with Indian case laws, while incorporating important elements of the development in this subject which took place in the UK, USA, and a few other countries. Additionally, various components of the concepts are argued and examined in the book. All the recent developments have been taken into account in this book.
- H. W. R. Wade and C. F. Forsyth's Administrative Law[4] – The authors have covered every substantial, complex, and procedural area in their book. It gives a thorough and insightful explanation of principle of judicial review and administrative structures which are applicable in the UK. Due to the clarity of exposition, the book is very easy to understand and clears every concept.
- C. K. Takwani's Lectures on Administrative Law[5] - The book contains a very crisp explanation of all the topics relating to administrative law. It covers all the principles and how that particular principle was developed in India. For the topic I've chosen, the book contained foreign case laws as well, to help the students understand how the cases are being dealt with

[1] Research Scholar, University of Lucknow
[2] Civil Judge, Jharkhand Judicial Services
[3] MP Jain, SN Jain, *Principles of Administrative Law* (7th edn, Amita Dhanda(ed), LexisNexis 2017).
[4] HWR Wade, CF Forsyth, *Administrative Law* (11th edn, Oxford University Press 2014)
[5] CK Takwani, *Lectures on Administrative Law* (6th edn, EBC 2018)

in foreign countries and how they inspired the Indian judges to inculcate those principles in Indian case laws.

- Zaim M Nedjatigil, Judicial Control of Administrative Discretion: a Comparative Study[6] – The article presents a very clear understanding of what is judicial control over discretionary powers of the administration and also includes the jurisprudential view of how to interpret words and phrases such as "may", "if he thinks fit", etc.
- Judicial Control and Exercise of Discretion[7] - The article has defined administrative discretion and explained why judicial control is necessary in layman's terms making it very simple for the readers to understand. It explains all the grounds of judicial review using an Indian case law under each ground.

II. Statement of Problem

Due to an increase in the powers conferred over the administration, it is necessary to have a check and balance over such discretionary powers which are exercised by the administration.

III. Limitations and Scope

The research project will cover grounds on the basis of which the Courts control the actual exercise of discretionary powers. Due to the paucity of time, the research project will focus mainly on the grounds ascertained by the judiciary to invalidate the administrative action that was caused by the unfettered administrative discretion.

IV. Research Objectives

1. To understand administrative discretion
2. To understand the grounds under which the courts can exercise control over such discretion
3. To understand the forms of judicial control

[6] Zain M Nedjatigil, 'Judicial Control of Administrative Discretion: a Comparative Study' (Sage Journals, April 1985) <https://doi.org/10.1177%2F147377958501400202> accessed 12 April 2022.
[7] Law Teacher, 'Judicial Control and Exercise of Discretion' (Lawteacher.net, April 2022) <https://www.lawteacher.net/free-law-essays/constitutional-law/judicial-control-and-exercise-of-discretion-constitutional-law-essay.php?vref=1> accessed 16 April 2022

V. Hypothesis

It appears that the Courts can exercise control over all those discretionary powers of the administration which are against – the principle of natural justice and the doctrine of rule of law.

VI. Research Questions

1. Whether the Courts can exercise control over the discretionary powers of the administration?
2. What are the forms of judicial control that can be exercised to control administrative discretion?
3. What are the grounds under which such controls can be exercised?

VII. Research Methodology

For this research, the researcher undertakes qualitative legal research. The entire research is purely doctrinal as the study involves a comparative study of the traditional Westminster form of Government, Westminster form of Government, and Presidential form of Government for which the author has relied on the qualitative aspect. It is analytic, conceptual, and comparative research by nature as the researcher tries to understand and analyze various forms of government and do a comparative study. The researcher shall use the 4th edition of OSCOLA as a uniform citation method for footnotes and bibliography.

Chapter: 2 - Concept of Administration and Administrative Law

I. Growth of Administrative Law

For ages, there has been a systematic manner in which accountability has been demanded from the administrations. This accountability has been sought through different mechanisms in common and civil law countries. Globalization and international law have brought greater convergence in both the grounds of accountability and the mechanisms through which it is obtained. Despite these global developments, the influence of country-specific mechanisms continues.

Over the years, the administrative law has tremendously developed, so much that it has become more defined as a method in the democratic countries, and has presumed a more recognizable system in the present era to the extent that it is now identified as a branch of public law, a subject which is separate and distinct from constitutional law[8]. This expansion is a direct effect of the expansion of administrative powers and functions. The states have obtained tremendous powers to provide for the state's defense and internal security. For example, the Indian Government had enacted the National Security act in 1980 and had conferred discretionary powers to the administration to interfere with the personal freedom of the citizens.

The Administration develops policies, leads the legislature, executes and administers the law, and makes numerous decisions. They have legislative powers and issue a variety of regulations, bye-laws, and orders. This is known as delegated legislation or subordinate legislation in administrative law. The administration was given broad authority to award, cancel, or revoke licenses, impose sanctions, and take different actions based on its judgement or subjective satisfaction[9]. To allow the administration to carry out its rulemaking, adjudicatory, and other discretionary and regulatory tasks efficiently, it has been granted broad powers of inquiry, inspection, search and seizure, and supervision[10].

Administrative law's task is to ensure that governmental functions are carried out in accordance with

[8] MP Jain, *Indian Constitutional Law* (8th edn, Jasti Chelameswar (ed), Dama Seshadri Naidu(ed), LexisNexis 2018).
[9] ibid.
[10] ibid.

the law, proper legal principles, and rules of reason and justice, and that adequate control mechanisms, judicial and otherwise, exist to check administrative abuses without unduly obstructing the administration's ability to carry out its functions efficiently[11].

II. Rule of Law

The notion of supremacy of law is embodied in the Rule of Law. It is a basic and essential requirement for a well-organized and disciplined society. A. V. Dicey in his book, the Law of the Constitution[12] had defined the Rule of Law as - "*the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness of prerogative, or even wide discretionary authority on the part of the government*". However, he asserted that there was no administrative Law in Britain. The concept of creating distinct entities to deal with conflicts involving the government and keeping such things out of the scope of common courts was foreign to British law and fundamentally contradicted English norms and customs. Around the same time, Maitland in his book, Constitutional History of England[13], had perceived the emergence of administrative law in Britain. After the cases, *Board of Education v Rice*[14] and *Local Government Board v Arlidge*[15], Dicey himself became conscious of its emergence of it in Britain.

Traditionally, the Rule of Law indicated the lack of arbitrary powers; hence, one could oppose the expansion of the administration's arbitrary/discretionary powers and argue for their restriction through procedures and other methods. Similarly, the Rule of Law is also linked with the supremacy of courts. In the end, courts should have the authority to regulate administrative conduct, and any decline of that authority should be condemned. Administrative Law revolves around the judicial control of administrative activities. In *ADM Jabalpur v Shivkant Shukla*[16], the Court had held that – "*the significant derivative from the Rule of Law in the sphere of Administrative Law is judicial review of administrative action to ensure that the Administration acts according to law*". In the *State of Madhya Pradesh v Thakur Bharat Singh*[17], the Court had held that the Indian Constitution is based

[11] MP Jain, SN Jain, *Principles of Administrative Law* (7th edn, Amita Dhanda(ed), LexisNexis 2017).
[12] AV Dicey, *Law of the Constitution* (8th edn, Macmillam and Co 1915).
[13] Frederic William Maitland, *The Constitutional History of England* (1st edn, Cambridge University Press 1920)
[14] 1911 AC 179.
[15] 1915 AC 129.
[16] AIR 1976 SC 1207.
[17] AIR 1967 SC 1170.

on a number of ideas, one of which is the Rule of Law, which includes judicial review of arbitrary executive action. The Executive has no inherent authority of its own, and all of its authorities flow and originate from the law - this concept serves as the foundation for judicial review of administrative action, since the judiciary ensures that the executive stays within the bounds of the law and does not overstep it. The notion of the Rule of Law would lose its vitality if the State's instrumentalities were not saddled with the task of carrying out their functions in a fair and just way[18]. The Rule of Law had banished any unguided and uncanalised or arbitrary discretion even in matters that were till recently considered to be within the legitimate sphere of a public functionary as a repository of Executive Power[19]. The Rule of Law necessitates that any abuse of authority by a public official will be subject to the oversight of the Courts[20].

The Court in the *A. K. Kraipak*[21] case also said, "*The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised.*". In *Haryana Finance Corporation v Jagdamba Oil Mills*[22], the Court had stated that the Quasi-Judicial authorities are also obliged to follow the doctrine of the Rule of Law and act fairly.

To ensure that judicial activism does not devolve into judicial adventurism, the courts must exercise caution and restraint.

[18] *AK Kraipak v UoI*, AIR 1970 SC 150, 13.
[19] *State of Punjab and ors v Brijeshwar Singh Chahal and ors*, AIR 2016 SC 1629.
[20] *State of Punjab v Khanchand*, AIR 1974 SC 543.
[21] AIR 1970 SC 150.
[22] AIR 2002 SC 834.

Chapter: 3 - Need for Judicial Control

The administrative process is subject to judicial control, which the Courts undertake. Legislative and judicial control over the administration are types of external control. While the purpose of legislative and executive control of administration is primarily to control the policy and expenditure of the government, judicial control is the control that ensures the legality of administrative actions and thus, protects citizens whenever the official authority encroaches upon their constitutional or statutory rights[23]. The judicial control stems from the doctrine of the Rule of Law. According to Lord Bryce, there is no greater test of a government's quality than the efficiency and independence of its judicial system.

Forms of Judicial Control are as follows:

1. Judicial review of administrative acts and decisions;
2. Statutory appeal against administrative acts and decisions to the Courts;
3. Suit against the government, central or local, by a private party, under the law of tort or contract;
4. Private criminal actions brought against a public official, as well as civil actions brought against a public officer for damages, or based on contracts made by them, and
5. Extra-ordinary remedies under writs

Judicial control is needed over the administrative process to curb:

1. Jurisdictional Error: There can be a lack of jurisdiction, excess of jurisdiction, or abuse of jurisdiction. In these situations, the Courts can reject an administrative action on the grounds of being ultra vires. In case of lack of jurisdiction, the tribunal or the authority lacks the power to decide the matter or to pass an order. Under excess of jurisdiction, such situations are covered wherein the authority initially had the jurisdiction but later on exceeded it thus, making it illegal. Abuse of jurisdiction occurs when the powers are not exercised in a *bona fide* manner and are exercised unfairly and arbitrarily.

[23] MP Jain, SN Jain, *Principles of Administrative Law* (7th edn, Amita Dhanda(ed), LexisNexis 2017).

2. Error of Law: This type of cases occurs when an official misinterprets the law and puts duties on the citizen that are not laid down in the legislation. In legal terms, this is referred to as misfeasance. Such cases can be resolved by the courts.
3. Error of Fact: This type of cases is the outcome of an error in discovering cases and actions done based on incorrect assumptions. Any person who has been harmed by a public official's mistake of judgement may seek remedy in court.
4. Procedural Impropriety/ Error of Procedure: In a democracy, "due procedure" is the foundation of governmental activity. Administration procedure guarantees accountability, transparency, and justice. If the established procedure is not followed, the courts can be called in, and the legitimacy of administrative measures can be called into question. In *Ridge v Baldwin*[24], the House of Lords applied the theory of natural justice to administrative judgments.
5. Abuse of Authority: If a public official uses his or her office in a vengeful manner to injure another person or for personal benefit, the court might be asked to intervene. Malfeasance is the legal term for this. The courts have the authority to intervene in order to redress administrative conduct wrongdoing.

[24] [1964] AC 40.

Chapter: 4 - Discretionary Powers of the Administration

I. Discretionary powers

The administration's rule-application responsibilities might be either ministerial or discretionary. A ministerial role is one in which the applicable legislation defines the obligation to be fulfilled by the concerned authority in clear words, leaving nothing to the authority's discretion or judgement. It does not include investigation into contested facts or making decisions. The concerned authority operates in complete accordance with the law, which imposes on it a simple and defined responsibility over which it has no alternative. A minor discretionary element does not make a function non-ministerial.[25] But because of the intricacy of socio-economic situations that modern administrations must deal with, the range of ministerial tasks is quite limited, whereas the range of discretionary activities is much wider. More often, the administration is required to handle complex issues which include investigation of facts, making choices, and use of discretion before deciding what action to take. Discretion implies the power to make a choice between alternative courses of action.[26] Discretion is conferred in the area of rule-making or delegated legislation, e.g., when the legislative formula states that the government may create regulations that it deems necessary to carry out the aims of the Act, the government is effectively granted considerable discretion and option in making rules. The Legislature frequently grants the executive unqualified or unrestricted discretion. Administrative discretion may be denoted by words or phrases such as "public interest", "public purpose", "prejudicial to public safety or security", "satisfaction", "belief", "efficient", "reasonable", etc.[27]

The requirement for "discretion" emanates from the administration's need to individualize its use of authority. When a statute grants the competent authority discretionary power to be exercised, the Court cannot instruct the competent authority to use discretion in a specific manner, but it may always direct the competent authority to execute the discretion granted in accordance with the law[28]. Judicial Control of administrative discretion has two parts: first, to make the Legislature to abstain from conferring too wide or un-channelized discretionary powers, and second, the requirement for a post-

[25] *Sharif Ahmad v RTA Meerut*, AIR 1981 SC 209, 215.
[26] KC Davis, *Discretionary Justice a Preliminary Injuiry* (LSU Press 1969).
[27] Ernst Freund, 'Administrative Powers Over Person and Property' (1929) 4(9) Indiana Law Journal 625.
[28] *Suresh Estates Private Limited v Municipal Corporation of Greater Mumbai*, (2007) 14 SCC 439, 451.

decisional review process to guarantee that administrative authorities fulfil their tasks in accordance with the law and within express or inferred legal restrictions. The Indian Courts have often tried to restrict the conferral of vast discretionary powers by citing the Fundamental Rights provided by the Constitution[29], as well as some substantive and procedural limitations in the use of the powers.

II. Judicial Control over Discretionary Powers

There are two methods to keep a check on use of discretionary powers: application of the procedural safeguard of natural justice and application of the doctrine of excessive delegation in relation to delegated legislation.

The structure of judicial review in this area illustrates the harmonization of two competing values: first, since the Legislation has bestowed power on an administrative authority, and the Courts have not been granted the jurisdiction to hear appeals against its decision, it demonstrates that trust has been placed in the authority's judgement rather than the Courts', and secondly, The authorities must operate within the limitations of law and power, and because the legislature cannot have meant for the executive to be the last judge of the extent of its own powers, the Courts must step in to maintain administration within the bounds of the law[30]. The interaction of these 2 values determines the scope of judicial review of discretionary powers of the administration.

The extent of judicial review in this area was summarized by the Apex Court in the case of *Pratap Singh v State of Punjab*[31], wherein the Court had said, "*...the Court is not an appellate forum where the correctness of the order of the Government could be canvasses and, indeed, it has no jurisdiction to substitute its own view… for the entirety of the power, jurisdiction and discretion… is vested by law in the Government. The only question which could be considered by the Court is whether the authority vested with the power has paid attention to or taken into account circumstances, events, or matters wholly extraneous to the purpose for which the power was vested, or whether proceedings have been initiated mala fide for satisfying a private or personal grudge of the authority*". The exercise of authority, whether legislative or administrative, will be overturned if it is plainly arbitrary

[29] KC Davis, *Discretionary Justice a Preliminary Injuiry* (LSU Press 1969).
[30] MP Jain, SN Jain, *Principles of Administrative Law* (7th edn, Amita Dhanda(ed), LexisNexis 2017).
[31] AIR 1964 SC 72, 83.

or incorrect, or if there is a failure to evaluate or apply one's mind to the relevant facts, or if it is founded on facts that do not exist. If the action or decision is unreasonable or such that no reasonable person would reach such a judgement, the Court is justified in intervening with it[32].

To avoid arbitrariness and bias, the principles of judicial review would apply to the exercise of contractual powers by the Governmental entity. As a result, the Court's role is limited to the issue of legality. Its concern should be to see the following issues[33] –

- Whether a decision-making authority has exceeded its power?
- Whether a decision-making authority has committed an error of law?
- Whether a decision-making authority has committed a breach of principles of natural justice?
- Whether a decision-making authority has reached a decision that no reasonable tribunal would have reached?
- Whether a decision-making authority has abused its powers?

Scope of Judicial Review

Administrative action is defined as a broad range of Governmental actions in which the repositories of authority may perform any type of statutory duty of an executive, quasi-judicial, or quasi-legislative nature. The authority in which the discretion is placed can be ordered to use the discretion but not in a certain way. The administrative action is open to judicial scrutiny for illegality, irrationality, and procedural impropriety.[34]

The Courts would not enter on the merits of the case by embarking upon inquiry into the facts. It is up to the authority to make its own conclusions from the material before it.[35] Whilst exercising judicial review, the Court is only required to assess whether a decision is rightfully reached. It could not impose its own decision on the authorities.[36]

[32] *State of Uttar Pradesh v Renu Sagar Power Co*, (1988) 4 SCC 59, 86.
[33] *Tata Cellular v Union of India*, (1994) 6 SCC 651.
[34] *Indian Railway Construction Co Ltd v Ajay Kumar*, (2003) 4 SCC 579.
[35] *P Kasilingam v PSG College of Technology*, (1981) 1 SCC 405.
[36] *State of Jharkhand and ors v CWE Soma Consortium*, AIR 2016 SC 3366.

An exercise of power may involve two elements: an objective and a subjective component The presence of the former is a prerequisite for using the latter authority, or the former is a jurisdictional fact that is amenable to judicial scrutiny but not the latter.[37] Given that the Courts do not inquire into the merits of an administrative decision, it follows that if the authority has not acted in accordance with the law, the Courts would simply quash the administrative action in issue rather than ordering the authority to behave in a specific manner. When a public authority is given the ability to decide a subject, the writ of *mandamus* does not lie to force that authority to make a certain conclusion. If the authority with whom the discretion is entrusted under the Act does not act independently and passes an order based on instructions or orders from another authority, the Court will quash the decision and issue a *mandamus* to that authority requiring it to use its own discretion.[38]

Extent of Judicial Review

The idea of total, unrestricted legislative discretion has been rejected by the courts. Even when a legislation contains terminology that appears to grant the administrative authority in question "total discretion", the judgement may never be considered unrestrained.[39] It is an undying principle of administrative law that there is nothing like unfettered discretion immune from judicial reviewability[40]. Justice Krishna Iyer in *Baldev Raj v Union of India*[41] had opined, "*absolute power is anathema under the Indian Constitution*" and that "*naked and arbitrary exercise of power is bad in law*". All administrative power placed in a public authority must be established with a system of controls informed by both relevance and reasons; relevance in respect to the purpose it tries to serve and reason in relation to the method in which it strives to do so. The designated authority's administrative power shall be employed within stated boundaries at the reasonable discretion of the designated authority. The delegation of unlimited and unchecked power to such authorities violates the Constitution entirely.[42]

Discretion in the context of the exercise of power by public functionaries means to distinguish between right and wrong and therefore, whosoever has the authority to act at the discretion, is bound

[37] *State of Gujarat v Jamnadas*, AIR 1974 SC 2233.
[38] *Mansukh Lal Vitthal Das Chauhan v State of Gujarat*, (1997) 7 SCC 622.
[39] *Padfield v Minister of Agriculture*, (1968) AC 997.
[40] MP Jain, SN Jain, *Principles of Administrative Law* (7th edn, Amita Dhanda(ed), LexisNexis 2017).
[41] AIR 1981 SC 70.
[42] *Suman Gupta v State of Jammu and Kashmir*, (1983) 4 SCC 339.

by rule of law and reason[43]. In the case of *State of Bihar v PP Sharma*[44], the Court had opined that – "*The power given to an administrative authority to act in its discretion is not power to act adarbitrarium. It is not a despotic power, nor hedged with arbitrariness, nor legal irresponsibility to exercise discretionary power in excess of the statutory ground, disregarding the prescribed conditions for an ulterior motive. If done, it brings the authority concerned into conflict with the law. When the power is exercised mala fide, it undoubtedly gets vitiated by the colorable exercise of power.*".

To regulate discretionary powers in certain circumstances and contingencies, the Courts have articulated some propositions and applied certain principles or tests. The doctrine of fairness, often known as the duty to act fairly and reasonably, is a doctrine established in administrative law to guarantee the rule of law and to prevent failures of justice when administrative action is taken.[45] The Court's primary goal is to guarantee that the authority in question exercises its discretion in accordance with the law. The executive shall not exceed its authority, according to the basic premise of any jurisprudence founded on the rule of law. This is also known as the *ultra vires* principle. Over time, the Courts have given the concept a broader interpretation in order to exert control over discretionary decisions.

Grounds of Judicial Review

Abuse of Power by the Authority

The sub-classification under the abuse of power by the authority is as follows[46]:

a) *Mala fide* exercise of power – cases in which the motivation for an administrative action is personal hatred, spite, revenge, or personal advantage to the authority or its relatives or friends. Even though it is difficult to assess whether the authority has exceeded its powers in a specific case due to the wide language in which the legislation in issue may have vested power in it, the administrative action may be considered bad if the purpose behind the action

[43] *Union of India v Kuldeep Singh*, (2004) 2 SCC 590.
[44] AIR 1991 SC 1260.
[45] *Assistant Excise Commissioner v Issac Peter*, (1994) 4 SCC 104.
[46] *Kihoto Hollohan v Zachillu*, AIR 1993 SC 412, 101.

is dishonest. In *Jaichand v State of West Bengal*[47], the Apex Court had observed that a *mala fide* exercise of authority does not always indicate moral turpitude as a matter of law, and it merely implies that the statutory power is used for reasons other than those for which it is intended by law. *Mala fide* exercise of authority is harmful because it amounts to power abuse. In *Pratap Singh v State of Punjab*[48], the term "*mala fide*" was used by the court to initiate an administrative action against an individual for satisfying the authority's private or personal animosity.

It is well-settled law that the allegations of *mala fide* cannot be based on surmises and conjectures. It should be based on a factual matrix.[49] And, the burden of proving *mala fide* lies on the person who alleges it. A mere allegation is not enough. The party making such allegation is under the legal obligation to place specific materials before the Court to substantiate the said allegations. There has to be very strong and convincing evidence to establish the allegations of *mala fide* specifically and definitely alleged in the petition as the same cannot merely be presumed. The presumption under law is in favor of the *bonafide* of the order unless contradicted by acceptable material[50]. Fraud on power voids the order if it is not exercised *bona fide* for the end design, and implies that a power not conferred is exercised under the cloak of a power conferred. But if an act can legitimately be referred to as the power conferred, the intention of the person exercising the power or the effect of his exercise of power is irrelevant[51].

There is a distinction between the exercise of power in good faith and misuse in bad faith. The former arises wherein the authority misused its power in breach of law, i.e., by taking into account *bona fide* and with best intentions some extraneous matter or by ignoring relevant matters. That would render the impugned act or order *ultra vires*. Whereas, the misuse in bad faith arises when the power is exercised for an improper motive, i.e., to satisfy a private or personal grudge or for wreaking vengeance. Power is exercised maliciously if its repository is motivated by personal animosity

[47] AIR 1967 SC 483, 485.
[48] *Pratap Singh v State of Punjab*, AIR 1964 SC 72.
[49] *Bank of India v I Jogram*, (2007) 7 SCC 236.
[50] *Chandra Prakash Singh v Chairman Purvanchal Gramin Bank*, (2008) 12 SCC 292.
[51] *Makhan Singh Tarsikka v State of Punjab*, AIR 1964 SC 381.

towards those who are directly affected by its exercise. Use of power for an alien purpose other than the one for which power is conferred is *mala fide* use of power[52].

The Apex Court in *Pratap Singh v State of Punjab*[53] had emphasized that *mala fide* should be established only by direct evidence, i.e., that must be discernible from the order impugned or must be shown from the noting in the file which preceded the order[54]. If bad faith would vitiate the order, this can be determined as a fair and unavoidable inference from the facts. *Mala fide* can also be inferred by the authority neglecting apparent facts, either intentionally or unintentionally.

b) Improper purpose/ colorable exercise of power/ malice in law/ legal *mala fide* If a legislation grants authority for one purpose, its use for another will not be considered a legal use of that power, and it may be revoked. In the legal sense, passing an order for illegal purposes constitutes malice.[55] To determine the unauthorized purpose or improper purpose in a particular case, it is necessary to go into the motives or the real reasons for which the administrative action has been taken[56]. The expression "colorable exercise of authority" is sometimes used by the Court to condemn abuse of discretion. It signifies that the authority is attempting to do something else that it is not entitled to do under the statute in issue under the "color" or "garb" of the power provided on purpose. When the exercise of power does not serve the purpose envisaged under the statute, it amounts to a colorable exercise of power[57]

It is irrelevant in this context to determine whether the authority is operating in good or bad faith. What matters is whether the intended objective is one that is sanctioned by the legislation that grants authority to the authority in question. "Legal malice" or "malice in law" refers to conduct that is done without legal justification. It is an act committed unjustly and willfully without reasonable or plausible cause, and it is not always motivated by ill will and hatred. It is a conscious act that disregards the rights of others. When the State is accused of malice, it can never be due to personal

[52] *Express News Paper Pvt Ltd v Union of India*, (1986) 1 SCC 133.
[53] AIR 1964 SC 72, 83.
[54] *Delhi Development Authority v UEE Electricals Engineering Pvt Ltd*, (2004) 11 SCC 213.
[55] *Ravi Yashwant Bhoir v District Collector Raigad*, AIR 2012 SC 1339.
[56] *In re Manick Chand Mahata v Corporation of Calcutta*, ILR 1921 Cal 916.
[57] *Srinivasa Cooperative House Building Society Ltd v Madam Gurumurthy Sastry*, (1994) 4 SCC 675.

ill will or spite on the part of the State. It is an action performed with an oblique or indirect object. It refers to the use of statutory power for purposes other than those authorized by law.

c) Irrelevant or extraneous considerations – A discretionary power must be used for relevant reasons and not for irrelevant or extraneous reasons. If no particular considerations are mentioned in the legislation, the authority is to be used based on considerations pertinent to the purpose for which it is bestowed. If the authority involved pays attention to or considers entirely irrelevant or extraneous circumstances, events, or things, the administrative decision is *ultra vires* and will be quashed. If the decision is affected by extraneous factors that should not have been considered, it cannot stand and must be corrected, regardless of the nature of the statutory body or the status of the constitutional functionary, even if it was made in good faith.[58] Exercise of administrative or executive power should not be based on any extraneous considerations[59]. Humanitarian consideration cannot trump the demands of fairness and transparency[60].

It is well established that the exercise of administrative authority is vitiated if the power is exercised without due deliberation or application of mind to pertinent factors, and such exercise is considered as blatantly erroneous.[61]

Judicial intervention on the ground that facts and circumstances are irrelevant or extraneous to the conclusion of the authority for taking action certainly falls short of judicial intervention on the ground of insufficiency or unsatisfactory character of the reasons. How short it falls is a matter which it may not be easy to articulate; judicial intervention on this basis would depend on the subject matter involved and the judges' opinion.

d) Mixed Considerations – Orders based partly on relevant and partly on irrelevant or extraneous considerations are known as mixed considerations. The Court while dealing with such cases

[58] *RK Jain v Union of India*, (1993) 4 SCC 119.
[59] *V Purushottamrao v Union of India*, (2001) 10 SCC 305, 25.
[60] *Hitendra Singh and ors v Dr PD Krishi Vidyapeeth*, AIR 2014 SC 1635.
[61] *MP Police Establishment v State of MP*, (2004) 8 SCC 788, 29.

had not taken a uniform approach. In the case of *Dwarka Das v State of Jammu and Kashmir*[62], the Court had added a rider, "*In applying those principles, however, the Court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority*.". Thus, if some ground of comparatively unessential character is defective then the order based on subjective satisfaction would not be invalid. However, the Court does not seem to take the same strict view in other cases not involving personal liberty.

Whether the mixed considerations would lead to the quashing of an administrative action or not depends on the Court's judgment on whether or not the exclusion of the irrelevant or non-existent grounds would have affected the ultimate decision.

An administrative order based on both relevant and irrelevant or extraneous conditions is not invalid if the Court is satisfied that the authority would have passed the order even on the basis of the relevant and existing grounds and that the exclusion of the irrelevant or non-existent grounds would not have affected its ultimate decision. Additionally, when an order contains some valid and some invalid portions, and these are severable, and if after exclusion of the invalid part, the rest of the order remains viable and self-contained, the Court is not bound to quash the entire order. It can quash the invalid portion of the order and allow the rest of the order to stand if the invalid portion is not an integral part of the order and its deletion does not render the valid portion curtailed and ineffective.

e) Leaving out relevant considerations –In case the statute does not prescribe any considerations but confers power in a general way, the Court may still imply some relevant considerations for the exercise of the power and quash an order because the concerned authority did not take these into account. Though a statute may give *prima facie* an almost unlimited discretion to take administrative action, the Court may imply some limitation on this power and this may go to the extent that it may be difficult to say whether the Court is merely concerned with the legality of the order or it is going into the merits of the case[63].

[62] AIR 1957 SC 164, 168.
[63] *Ranjit Singh v Union of India*, AIR 1981 SC 461.

f) Judicial Discretion – At times, the Courts have used the phrase "judicial discretion" to restrict the exercise of discretionary power by an authority. Exercise of discretion must always be guided by standards or norms so that it does not degenerate into arbitrariness and operate unequally on persons similarly situated. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.

Through the use of the term "judicial discretion", the Court would read implied limitations into statutory powers[64] and quash an administrative order if the authority crossed those limitations.

Non-compliance with procedural requirements

If the Court holds the procedure to be required, an exercise of discretionary power may be unlawful because the authority did not follow the procedural requirements outlined in the legislation. When a legislation specifies a method for exercising authority, the statutory authority must follow that procedure.[65]

Administrative Discrimination

This is provided under article 14 of the Indian Constitution – it secures all persons in India not only against arbitrary laws but also against the arbitrary application of laws, and ensures nondiscrimination in State action both in legislative and administrative spheres[66]. When administrative discretion is granted according to a statutory norm or policy. Then, under Article 14, discretion used in violation of a standard or policy can be contested. In *A L Kalra v Project and Equipment Corporation of India Ltd*[67], the Court had ruled that article 14 prohibits arbitrariness in administrative action since arbitrary action must unavoidably include the antithesis of equality. An arbitrary conduct in and of itself denies equality of protection under the law.

Where administrative action is challenged under article 14 as being discriminatory, the concern for Constitutional Courts and primary reviewing Courts is whether the amount of discrimination used is correct, whether it is excessive, and if it is related to the administrator's intended goal.

[64] *Registrar Trade Marks v Ashok Chandra Rakhit*, AIR 1955 SC 558.
[65] *Indian Banks Association v Devkala Consultancy Services*, (2004) 11 SCC 1.
[66] *State of West Bengal v Anwar Ali*, AIR 1952 SC 75.
[67] AIR 1984 SC 1361, 1367.

Chapter: 5 - Conclusion

The *Wednesbury* test is used to determine the legality of an administrative order or statutory discretion.[68] The scope of judicial review of administrative action is restricted to the validity of the decision-making process rather than the legality of the order itself. Paradoxically, extensive discretionary powers are conferred on the administrative organs assuming more and more functions. Consequently, this nature of affairs exceedingly impinges on the right of the citizens. Vesting of discretion is proper as long as it is exercised purposively, judicially, and without prejudice. But with broader discretion, the chances of abuse of such discretion also increase. This necessitated the need for means for controlling the administration's discretionary powers. In this connection, the Courts have played a significant role in the contours of the Fundamental Rights. They have laid down certain grounds under which the courts can review the discretionary powers exercised by the Administration to ensure there are checks and balances while maintaining separation of powers.

The court would have to be very careful when considering their authority to exercise discretion because it is clearly prohibited to delve into the merits of each case. It is, however, permitted to investigate the way in which the authority was exercised. In practice, it is hard for courts to control the way in which powers are exercised without delving into the merits of the case. In India, a judge must determine a case "on the merits" when he or she grounds the decision on the fundamental problems and finds technical and procedural defenses to be either insignificant or overcome. Furthermore, jurisprudence in India holds that courts are not obliged to replace administrative discretion for their own decision. In such circumstances, the courts ensure that administrative discretion is appropriately exercised. No one's fundamental rights may be violated, not by another person, not even by the state. Courts have firmly believed in this principle, and it has therefore been effectively implemented.

[68] *Union of India v Ganayutham*, (1997) 7 SCC 463.

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