

THE ROLE OF JUDICIARY IN RESTRAINING DISCRETIONARY POWERS

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ABSTRACT

The study is aimed at to analyze the role of judiciary in controlling the administrative discretion because the Constitutional provisions and the principles of natural justice demand that the public administration be restricted to its legal limits, any act out side the defined limits should not only be unjustified but be treated as the violation of established rules. In this regard, an attempt has been made to, first, examine the administrative discretion and then the need for imposition of restraints on discretionary powers in the light of administrative law, for this concept is the essence of administrative law, which not only place restrictions on plain excess of power but it governs the abuse of power.

INTRODUCTION

In view of the possibilities that exist in public administration for the abuse of power, judicial review of administrative discretion is invoked to operate as a safeguard against all possible violations of fundamental human rights. Judicial review is based on the principle that discretion can be validly exercised only within its true limits.

For quite long period, since the inception of Pakistan, it has been hardly recognized that the executive authorities in our country need proper guidance in the field of discretionary power. This is the area, in particular, where most of the administrative acts have all the forms of legality on its face but in fact the exercise of power to some extent would have a concealed partiality. In such like situation it appears to be no consciousness that administrators should follow a procedure, which is consonant with the requirements of natural justice. Even in the so called less developed societies, the will of the administrator is not exercised habitually or entirely as such, wholly free from the constraints of acknowledged rules of action or principles of decision. On the other hand it is equally true that in no administrative system, administration is carried out wholly by rules without any recourse to the will of the administrator and his personal sense of what should be done to achieve a just result in the cause before him. In Pakistan the will

element, generally predominates the public administration sector. In order to properly regulate the exercising administrative discretion, some countries have found it desirable to establish administrative tribunals. They are parts of administrative law. They have bridged the gulf that existed between the sphere of law and that of administration.

Some experts who have made an examination of the structure of public administration in Pakistan have concluded that so far no ideological break has been taken place with the past. Therefore, in Pakistan's bureaucratic culture the British philosophy still persists. Haider (1970) is, therefore, of the view that national bureaucracy is responsible for the subsistence of colonial practices in the public administration. They (bureaucrats) are interested primarily in making minor adjustments in the system of administration but do not seem to be well prepared to accept institutional innovations.

Administrative Discretion and the Law

Administration in the twentieth century, takes on extra importance as government expands the field of its regulatory powers over the property and affairs of private persons. The action of administration is of much significance but for any constitutional system, it is impossible to allow the administration a perfectly free hand in the discharge of its duties. Even, Prettyman (1958) goes to the