

Interrelation of Judicial and Administrative Discretion

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Abstract: *Discretion is one of the top contexts to be known. There has been much debate about the extent of power of discretion. Every aspect has its own limitations and that limitation always binds on discretion too. Discretion is the most typical one for all professional workers. Power vested in the hands of the authorities is the source of discretion as far as authoritative side is concerned. Discretion is always tuned with responsibility. This paper gives an overview on how its responsibility is interconnected with Judiciary and administration.*

1. Introduction

Discretion is the power or right to decide a decision based on facts and circumstances. It is the ability to determine a verdict. The concept of discretion arises when there are differences of opinions¹. Discretion can be said as the power coupled with duty. The biggest question is how discretion is fitting into the system of living? Regarding this question can discretion be considered supreme? Everything is based on decision making, but at times decision made can be right or wrong, because decision is taken only by normal human being. It is very well known human beings are prone to make mistakes. From this it is concluded the supremacy of discretion is only partially fulfilled.

2. Judicial Discretion and Its Supremacy

In legal system law is the only vehicle for the entire judicial system to be carried in order to reach the people. In my personal opinion law is said to be a circle drawn around every individual where they don't want to cross the circle because of fear over punishment. According to human psychology it is well known humans do not think alike. So people dare to cross that circle there arises the control exercised by administrative authorities and lead by judiciary and there commence the process of discretion.

When Judiciary is concerned the power of courts is not restricted within its boundary. It does not mean judiciary can encroach other independent bodies because there is a concept of separation of power. No limitation in its boundary is explained in the case of **kulwinder Singh and others vs. state of Punjab and others**²

The petition was filed to quash the FIR dated 16.09.2009 under section 406/498-A IPC registered at police station Tripuri town, Patiala on the basis of compromise effected between the parties. The learned counsel for petitioners the same and there was also divorce petition filed on basis of compromise. After the issue of notice of motion the parties were directed to appear in Illaqa magistrate for recording their statement of compromise. Accordingly the procedures were carried on. The question raised in this case was whether non compoundable offences can be compounded by sec482 of Criminal Penal Code., the High court has the power to allow the non-compoundable offences to be

compounded and there can be no bar restricted by sec 320 of Criminal Penal Code. Hence the Judiciary looks only to secure the ends of justice.

3. Administrative Discretion

In public administration, administrative discretion is the flexible exercising of judgement and decision making by administrative agencies³. It simply means these agencies are also conferred power by law. The power given is distributed based on their position they hold. For example in a department, the chief executive officer holds more power than his subordinates.

Need for Judiciary

Sometimes the decision of higher authority is more sufficient. Then there is no need for judicial interference. The need arises when law is violated or any right of individual is affected. Then the link between administration and judiciary becomes so close; because the solution for every violation by administration is taken to court of law for its discretion. It is the duty of the court to provide discretion and that is the basic reason why court exists. This is clear from below case. In the case of

Industrial union department vs. American petroleum institute⁴

The secretary of labour was required to state all exposure risks and limits as given by the occupational safety and health act of 1970. However the secretary did not record the exposure to the substance benzene at 10ppm (parts per million) would cause leukaemia and exposure to 1ppm would not. Justice Warren Burger concluded there is a statute for requirement of risks and the secretary has failed to uphold his duty. This decision by court was set right because citizen's life was meant to be most important objective.

Judiciary and Process of Abuse

The biggest problem in administrative discretion is the abuse of discretion. Abuse is failure of promoting reasonable judgement. The administrative authorities are providing with sufficient autonomy and power. But abuse occurs in several ways like bias, influence by another body, etc. at this point court plays a role to solve abuse and to protect citizens⁵.

In the case of

U. P. Financial Corporation vs. Gem Cap (India) Pvt, Ltd⁶

It was stated that the courts cannot interfere in an area where the administrative authority has discretion to decide upon any matter.

The Supreme Court reiterated this position, In the case of

Tata Cellular v. Union of India⁷

The court by looking into the grounds decided that an administrative decision could be interfered with, by the court. It was also held that irrationality is a feature of the Wednesbury principle and it is one of the said grounds of judicial review.

4. Conclusion

Over the year's governmental fields have steadily grown in number and has gained its own importance. As its field gets wider the control and the execution of control in it also gets wider. In India, the judiciary exercises its control over all administrative authority whenever there is a necessity. This control helps to maintain a better balance when disputes arise in administration itself or in between administration and judiciary. For smooth governance there is a need for co-ordination. How does this co-ordination arise? The co-ordination arises only when there is strong law and self-interest. This strong law is necessary for social control and for the promotion of future society. Our Indian government is already backed by this strong law. Hence both the fields are interconnected strongly and wisely.

References

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