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Administrative Discretion and Article 14: Constitutional Control of Executive Decision-Making

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ABSTRACT :

The modern administration is based upon discretionary powers. Administrative agencies carry out licensing, regulation, contracting, and punishing according to laws which give much of the actual discretionary power to the executive branch. This is inevitable due to the highly specialized and dynamic nature of the administration. However, the problem is that discretionary power without any structure may easily turn into an arbitrary one. In this respect, Article 14 of the Constitution of India has turned into the most effective instrument in preventing arbitrary actions by the government and this article is explored in the paper. The paper examines the judicial tests currently applied to assess administrative discretion from traditional "Wednesbury unreasonableness" to the higher burden of proving proportionality, and raises the question of when this exercise crosses the line into adjudication of the substance of the decision, rather than simply legality. A quick reference to British and American law regarding administrative process is provided to demonstrate how a more methodical standard for India could be framed, and finally an argument is made in favor of codifying rather than litigating administrative procedure.

Keywords: Administrative discretion; Article 14; arbitrariness doctrine; judicial review; proportionality; Wednesbury unreasonableness; rule of law; separation of powers.

1. Introduction

It is fair to say that in modern India, it is actually the administration that rules the country, and not the law. Licences, tenders, welfare payments and public appointments are decided from one day to another on the basis of decisions made by officials having discretionary powers granted by the legislature, which cannot be expected to legislate for all possible situations. Discretion, therefore, is not a flaw in the legal system but the essence of it.

The issue, however, lies in the fact that if discretion goes unchecked, sooner or later a person in authority will start deciding poorly — for whatever reason — and the framers of the Constitution were aware of this danger. Article 14 of the Constitution guarantees the equality before the law and equal protection of laws and it is, indeed, the main tool for reviewing the use of discretionary power by the executive.

1.1 Research Problem

The problem, however, is that review under Article 14 has never evolved into a single standard. Post-Royappa, judicial interpretation of 'arbitrariness' has oscillated between viewing it as a minimal rationality test and something closer to a proportionality analysis, without any principle guiding when either standard is to be applied. It is thus unclear what administrators should do, litigants should expect from their challenges, and lower courts can rely upon in carrying out the exercise of review. The goal of this paper is to focus on this dilemma, rather than to question the validity of the Article 14 test, which clearly exists.

1.2 Research Questions

This paper revolves around a couple of interlinked queries. First, how was Article 14 transformed from a strict categorization test into a test for reasonableness? Second, what are the tests employed by the courts in India to test the exercise of administrative discretion, and how do they stack up against Wednesbury unreasonableness and proportionality employed in other jurisdictions? Third, at what stage does this form of review become illegitimate and begin to appear as a superfluous second opinion of policy matters? Finally, is there anything that comparative experience and legislative change can do to ensure legal predictability?

1.3 Scope of Study

It is a doctrine-based paper, largely based on decisions of the Supreme Court of India, although there will be some discussion about English and American laws as points of comparison. It will not conduct any empirical study of the actual implementation of discretion and will not cover all the provisions of

the Constitution relating to administrative action – Article 19 and Article 21 are included only to the extent they are relevant to proportionality. The paper will discuss Article 14 exclusively as a constraint to discretionary powers of the executive.

The paper will proceed as follows. Section 2 discusses what discretion actually is and where it comes from. Section 3 discusses the historical development of the doctrine under Article 14. Section 4 discusses judicial control of discretion. Section 5 discusses the limits to judicial review. Section 6 discusses briefly the UK and US cases. Section 7 discusses critically the present state of Indian law, and Sections 8 to 10 will be devoted to conclusions.

2. Conceptual Framework

2.1 What Discretion Means

Discretion is the power to choose between genuine alternatives — whether to act, how to act, or when — within whatever limits the law sets.¹ However, it is different from a strictly ministerial function, which refers to a situation in which there is no element of choice and only a certain pre-determined rule is applied to the available facts. Some legislation creates a tight structure for the exercise of discretion by providing specific criteria, while other legislation gives little structure for discretion, using terms such as “as the authority may consider fit.”

2.2 Discretion versus Arbitrariness

It is worth separating discretion from arbitrariness, because the two are often confused. Discretion exercised properly is still reasoned — guided by the purpose the power was given for. Arbitrariness is what happens when that link to purpose breaks down and the decision rests on nothing but the decision-maker's own will.² Courts have repeatedly said that even the widest discretionary power has to stay within the statute and within constitutional limits; there is no such thing as unreviewable discretion in Indian law.

2.3 Where Discretion Comes From

Three sources matter most. Statutory delegation lets the executive fill in details Parliament left open. Inherent executive power, recognised under Articles 73 and 162, covers policy choices made without specific statutory backing. And quasi-judicial functions give authorities the job of applying open-textured standards — ‘public interest’, ‘fit and proper person’ — to individual cases. Each carries its own risk: delegation can shade into an abdication of Parliament's own job if the guiding policy is too thin;³ inherent power is harder to pin down procedurally; and quasi-judicial power raises natural justice concerns of its own.

2.4 Dicey and the Rule of Law

Dicey famously distrusted wide official discretion, treating it as incompatible with a rule of law built on fixed, known rules.⁴ Later scholarship has pushed back on this, arguing that discretion can be reconciled with the rule of law if it is structured, confined and checked rather than eliminated.⁵ Article 14 is best understood as exactly that kind of check — not a demand that discretion disappear, but an insistence that it answer to reason.

3. Article 14: Doctrinal Evolution

3.1 The Classification Test

Early Article 14 cases read the clause through the reasonable classification test. A classification survived scrutiny in Anwar Ali Sarkar's case⁶ if it rested on an intelligible differentia and that differentia had a rational link to the object of the law. The test worked well enough for openly discriminatory statutes but struggled with administrative action that was unfair without being a ‘classification’ in any formal sense — an arbitrary contract award, say, or a licence pulled for no good reason.

3.2 The Arbitrariness Doctrine

That changed with Royappa, where the Court held that an arbitrary act is, by definition, an unequal one, and is therefore caught by Article 14.⁷ Maneka Gandhi carried the idea further, treating reasonableness as something that runs through Article 14 as a whole rather than attaching only to classification.⁸ After Maneka Gandhi, an executive decision could fail under Article 14 simply for being arbitrary, whether or not any classification was involved.

¹M.P. Jain & S.N. Jain, *Principles of Administrative Law* (LexisNexis, 8th edn, 2018), Vol. I, Ch. 8.

²See *Rohtas Industries Ltd. v. S.D. Agarwal*, AIR 1969 SC 707.

³See *In re Delhi Laws Act*, 1912, AIR 1951 SC 332.

⁴A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan, 10th edn, 1959), pp. 202–203.

⁵Kenneth Culp Davis, *Discretionary Justice: A Preliminary Inquiry* (Louisiana State University Press, 1969), Ch. 4.

⁶*State of West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

⁷*E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

⁸*Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

3.3 Reaching Executive Action

This shift mattered most for administrative law because it brought ordinary executive dealings — contracts, licences, employment decisions — squarely within Article 14's reach. *Ramana Dayaram Shetty* held that government action always carries a public element and must therefore be guided by reason, not whim,⁹ which meant the State could no longer claim the same freedom a private party has to simply pick whoever it wants to deal with.

4. Judicial Review of Administrative Discretion

4.1 Grounds of Review

Courts strike down discretionary decisions on a handful of overlapping grounds: unreasonableness, where no reasonable authority could have reached the decision; *mala fides*, where power is used for a purpose other than the one it was given for;¹⁰ non-application of mind, where relevant factors are ignored or irrelevant ones are taken into account; and excessive delegation, where the statute itself gives too little guidance to begin with.

4.2 *Wednesbury* and the Indian Standard

The English *Wednesbury* test asks only whether a decision is so unreasonable that no sensible authority could have made it — a deliberately high bar.¹¹ Indian courts borrowed this standard early on, but the arbitrariness doctrine has, in practice, often gone further, looking not just at whether the outcome was rational but at whether the process behind it was fair.

4.3 Legitimate Expectation and Proportionality

Two further tools deserve mention. Legitimate expectation requires an authority to honour a representation or settled practice an individual has reasonably relied on, absent an overriding public interest to the contrary.¹² Proportionality, set out in *Om Kumar*, asks whether the means chosen actually fit the end pursued and whether a less drastic option was available.¹³ It is a tighter, more structured inquiry than *Wednesbury*, and Indian courts now use it mainly in cases involving administrative penalties.

4.4 A Few Illustrative Cases

Kraipak extended natural justice to administrative, not just quasi-judicial, decisions.¹⁴ *Ajay Hasia* confirmed arbitrariness as an independent ground of challenge under Article 14, separate from classification.¹⁵ And in *Shrilekha Vidyarthi*, the wholesale termination of government counsel without individual justification was struck down as arbitrary, showing how far Article 14 now reaches into contractual territory once thought beyond its reach.¹⁶

5. Limits of Judicial Control

This expansion has its critics, and for good reason. Courts have repeatedly said that judicial review is about the fairness of the process, not the merits of the outcome;¹⁷ a court that starts asking whether it would have made the same decision has stopped reviewing and started governing. In economic policy especially, judges have shown real restraint, recognising that resource allocation and technical judgment calls are the executive's job, not theirs.¹⁸ A policy being arguably wrong, or simply not the best available option, is not by itself arbitrariness. And some matters — political questions, pure expediency — still sit at the edge of what courts will touch at all, even if that edge has narrowed considerably since *Royappa*.

6. Comparative Perspective

English law organises review around illegality, irrationality and procedural impropriety, following Lord Diplock's well-known formulation in the *GCHQ* case,¹⁹ with proportionality now layered on top in cases engaging Convention rights since the Human Rights Act 1998. American law takes a different route, using tiered scrutiny under the Equal Protection Clause — ordinary rational basis review for most regulation, heightened scrutiny for fundamental rights or suspect classifications²⁰ — backed by a statutory framework, the Administrative Procedure Act, that spells out when agency action counts as

⁹*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489.

¹⁰See *State of Punjab v. Gurdial Singh*, (1980) 2 SCC 471.

¹¹*Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*, [1948] 1 KB 223 (CA).

¹²*Union of India v. Hindustan Development Corporation*, (1993) 3 SCC 499.

¹³*Om Kumar v. Union of India*, (2001) 2 SCC 386.

¹⁴*A.K. Kraipak v. Union of India*, (1969) 2 SCC 262.

¹⁵*Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722.

¹⁶*Shrilekha Vidyarthi v. State of U.P.*, (1991) 1 SCC 212.

¹⁷See *Tata Cellular v. Union of India*, (1994) 6 SCC 651.

¹⁸See *Balco Employees' Union v. Union of India*, (2002) 2 SCC 333.

¹⁹*Council of Civil Service Unions v. Minister for the Civil Service*, [1985] AC 374 (HL).

²⁰See generally Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (Wolters Kluwer, 6th edn, 2019), Ch. 9.

'arbitrary' or 'capricious' in the first place.²¹ Both systems, in their own way, give courts a tiered or codified structure to work with. Indian law, by contrast, still runs mostly on one open-ended word.

7. Critical Analysis

The core criticism of Indian arbitrariness review is that it is too open-textured to apply predictably.²² Asking whether something is 'fair' or 'reasonable' sounds simple, but without a fixed yardstick it leaves real room for courts to reach whatever outcome feels right and reason backward from there. The case law bears this out: broadly similar facts sometimes get a deferential *Wednesbury*-style look and sometimes get full proportionality treatment, with little explanation for the difference. Much of this, it seems fair to say, traces back to the absence of any general administrative procedure statute in India — unlike the position in the United States — which leaves courts building the entire structure of review case by case, with all the unevenness that implies.

8. Findings of the Study

1. Article 14, once focused on classification alone, now stands as an independent safeguard against state action, which encompasses both legislative and executive/ administrative acts.
2. The Indian judiciary relies upon three tests –classification, *Wednesbury*-type irrationality, and proportionality –without any clear choice of the test.
3. The arbitrariness test has in reality been used to widen judicial scrutiny into areas like governmental contracts, which were beyond the reach of the classification test.
4. The inherent danger of moving into the area of merits review exists when a case based on arbitrariness comes before the court.
5. Foreign examples indicate that a structured system of review minimises the element of uncertainty, which is absent in India.

9. Suggestions

1. There is need for courts to apply a more systematic proportionality test to cases that affect rights and livelihoods, instead of using an informal notion of 'arbitrariness'.
2. Degree of review needs to depend on the kind of power involved, showing greater deference to genuine policies and closer examination to individual decisions that impact rights.
3. Enactment of an administrative procedure law based on the American experience will provide administrators and litigants a better understanding of what is required of them.
4. There is need for appellate courts to state explicitly which standard is being applied to which kind of decision, rather than keeping it implicit.
5. There is potential for further research to study, through empirical observation, the extent to which this doctrinal inconsistency translates into practice in lower courts and tribunals.

10. Conclusion

Article 14 has served its purpose well in keeping administrative discretion clean in India, and this can be credited to the change from classification to arbitrariness. However, this open-ended nature of the doctrine has come at a price — uncertainty in its application and always the danger of judicial review becoming more like an evaluation of policy decisions rather than review. A well-defined concept of proportionality in line with an understanding of judicial deference can go some way in solving this problem, and codification of administrative procedure law can solve it even further. The problem is not discretion but discretionary abuse.

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²¹Administrative Procedure Act, 1946, 5 U.S.C. § 706(2)(A).

²²See Rajeev Dhavan, 'Guarding Article 14', (1985) 27 Journal of the Indian Law Institute 179.

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