FUNDAMENTAL FREEDOMS IN INDIA AND EXERCISE OF DISCRETIONARY POWERS BY ADMINISTRATIVE AUTHORITIES: A STUDY ON JUDICIAL CONTROL THROUGH SUPREME COURT DECISIONS

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Abstract

Changing times have brought about a need for a change in the essential governance of a country, The modern society has coined the need for conferring of judicial and legislative power on the executive; and conferring of the same in the hands of the administration. The genesis of new fields of law gives rise to the need for new procedural safeguards and interpretation of the Constitution in a way it's never been done before. Administrative authorities have acquired vast discretionary power with the evolution of society from a laissez faire state to a welfare state. Generally, these discretionary powers are left to the subjective satisfaction of the officers of the administration carrying out these functions. This study deals with Administrative Discretion and there are those times when the administration takes a yard when given a foot, creating the need for various safeguards. Tackling this illegality and arbitrariness is best done by the Constitution. Fundamental rights ensured by the Constitution are a perfect deterrent to the above and it is in this knowledge that this project has been made, to understand how Fundamental Rights work together in lessening the chances of the presence of excessive, arbitrary administrative discretion.

Key words

Fundamental Freedoms, Discretionary Power, Law

Introduction

Modern Government is impossible without discretionary powers. A discretionary power is one which is extensible by its holder in his discretion based on subjective satisfaction or based on objective satisfaction. Most powers under public law are discretionary. A significant phenomenon in the present-day administrative process in modern democracy is the conferral of large discretionary powers on the administration to make decisions from case to case. A discretionary power may be vested in the government, a minister, an official or an instrumentality constituted to discharge some functions of the State.

The idea underlying such a power is to give a choice of alternatives to the decision maker, he has a range of options at his disposal and he exercises a measure of personal judgment in making the choice. It is usually conferred by a statutory provision which is

broadly worded and hardly imposes any substantive or procedural safe guards on the exercise of power. So, a discretionary power inherently has the potentiality of being abused or misused by the holder of the power. But as the state regulation of human affairs keeps increasing the vesting of large discretionary powers in the government and its officials has become inevitable one. Administrative authorities are conferred with wide discretionary powers ranging from simple ministerial functions like maintenance of records to detention of a person on the subjective satisfaction of the executive authority. As a general rule, courts have no power to interfere with the actions taken by administrative authorities in exercise of their discretionary powers.[1] This, however, does not mean that there is no control over the discretion of the administration. In *Sharp v.Wakefield*[2] , Lord Halsbury observed that discretion is not to be arbitrary, vague and fanciful, but rather legal and regular and hence, there is a need for judicial review. The purpose of judicial review is not to take away any discretionary powers conferred upon administrative authorities, but to ensure that it is properly exercised, in accordance with law.

While exercising discretionary power, it is the duty of the administrative authority to apply its mind to the facts and circumstances of the case at hand. Without this condition being satisfied, there would be clear non-application of mind and the thus failure to exercise due care and caution and hence, discretion and the action would be bad.

Lord Diplock in *Secretary of State for Education & Science v. Tameride Metropolitan Borough Council*[3] has defined it as "the very concept of Administrative Discretion involves a right to choose between more than one possible courses of action upon which there is a room for reasonable people to hold differing opinion as to what may be preferred."

In the leading case of *Sussanah Sharp v. Wakefield*,[4] Lord Halsbury stated "Discretion means when it is said that something is to be done according to the rules of reason and justice, not according to private opinion ... according to law and not humour. It is to be, not arbitrary, vague, fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to discharge of his office ought to confine himself."

Examining these definitions we can say that the decision is taken by the authority not only on the basis of evidence but also based on its discretionary power.[5] The word discretion can commonly be defined as choosing from amongst the various available alternatives without reference to any predetermined criterion, no matter how fanciful that choice may be. But when the term discretion is preceded or qualified by the word Administration it has an entirely different meaning. In this sense the word discretion means the choosing from available options is on the basis of rules of reasons and justice

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[1]Small v. Moss, (1938) 279 NY 288; DE SMITH, JUDICIAL REVIEW OF ADMINISTRATIVE ACTION 296 (1995); A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

[2](1891) AC 173 (179).

[3]Secretary of State for Education & Science v. Tameride Metropolitan Borough Council, [1976] 3 All ER 665.

[4]Sussanah Sharp v. Wakefield,(1886-90) All ER Rep 651.

[5]CK TAKWANI, LECTURES ON ADMINISTRATIVE LAW 287 (2017).

and not on the personal whims and fancies of an individual. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular.[6]

Society and law are two completely different notions but are nonetheless strongly and irrevocably bound to each other. Thus, it is no surprise that, with the development and elaboration of society and law, the disciplines of law have also broadened. Because of the existing complex societies, it has come to be that in the general working of the organs of the state that is the executive, legislature and the judiciary, and the running of the country by the government, a lot of extended functions and discretion fall into the hands of the executive and the administration. This has been coined to be a necessary characteristic of a modern society. Administrative authorities need discretionary power to optimally make use of the power to take control of situations. For example, in case of emergency situations where quick action is needed to be taken, it would not be possible for the authority to wait for directions because that would render them useless. Instead, the authority needs to take quick decisions to handle the situation and hence such discretionary power is needed by them.

When the legislature, through procedure, confers power on the executive, the legislation granting such power is usually drafted in broad and general terms. This means that the administration is left with a large area of choice of when and how to apply the law to real, specific situations because the legislation does not distinctly specify the conditions and circumstances and norms, subject to which the executive must use the powers that have been conferred on it.

The gist of the problem is the accepted notion that broad and uninhibited powers give room for the rise of arbitrariness. It thus becomes necessary to make proper safeguards against such an eventuality. The judiciary plays the most important role in the course of controlling the functioning of the administration. It is in this attempt that the fundamental rights guaranteed by the Indian Constitution come powering through.

Exercise of Discretion in India and Judicial Review

In India, Part III of the Constitution contains the fundamental rights, where the underlying idea is that any legislative or administrative action which infringes any fundamental right is invalid. The Indian Constitution, in all its sovereignty, assures the people of this land, certain Fundamental Rights which constitute a limitation on the legislative and the executive powers of the Government, and consequently, these rights also go hand in hand in providing for control over administrative discretion.

The Courts can exercise their power over administrative discretion through Fundamental Rights in two ways:

1) By testing the validity of the law in question on the touchstone of Fundamental Rights, the Courts, to a large extent, can control the conferral of administrative discretion by declaring it unconstitutional. For this purpose, the Courts can look into both the procedural and substantive aspects of the law in question. At times, the Court can entail certain safeguards into the law to hold it constitutionally valid.

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[6] Sharp v. Wakefield, 1891 AC 173.

2) The Courts can control the actual exercise of any law in force, by invoking Fundamental Rights into the picture, especially Art. 14 of the Constitution

This paper deal with analysis of exercise of discretionary powers and how it affects rights conferred under Articles 19(1)©, (d), (e) and (g) of the Constitution of India and how juridical control is exercised.

It is a well-found position under the Constitution of India that Article 19(1) contains certain freedoms from 19(1)(a) to (g). These are however not absolute freedoms as clauses (2) to (6) of Article 19 permit the imposition of reasonable restrictions thereon by law for various stated purposes. Whether the restriction is reasonable or not is to be looked upon by the courts and for this purpose, the courts take into consideration both substantive as well as procedural aspects of the law in question.

Freedom of Speech and Expression and Exercise of Discretion

Art. 19(1) (a) guarantees to all citizens the right to freedom of speech and expression. According to clause (2) however, the State may make a law imposing reasonable restrictions on this freedom in the interest of "*the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.*"[7]

The common principle or belief is that unrestricted or unguided discretion for the administration without any procedural safeguards or legislative policy should not be given to an administrative officer to regulate the freedom of speech and expression. What is also to be remembered is that any discretion wanting to be exercised against this provision has to be only for the purposes mentioned in Art 19(2). This principle was illustrated in the case of *State v. Baboo Lal*[8] where under the Dramatic Performance Act 1876, the district magistrate was authorized to prohibit public dramatic performances of, scandalous or defamatory nature, corrupting persons or arousing or likely to arouse feelings of disaffection towards the Government. The Act made no provisions for the Magistrate to give reasons for his decision and neither was there any provision for a higher authority to review or reconsider the order passed by the Magistrate. Plus, the aggrieved party was not provided with an opportunity to make a representation against the prohibitory order. In the light of all these ambiguities and arbitrariness in the provision, the Act was struck down as unconstitutional.

At the same time, the court can issue certain safeguards against improper use and make a law good as against being too broad to impose restrictions on freedom of speech. In *Virendra v. State of Punjab*[9], Sec. 2(1) (a) Punjab Special Powers (Press) Act, 1876 empowered the State Government to prohibit the publication of any matter relating to a particular subject for a maximum period of two months in any issue of the newspaper if the Government was satisfied that "such an action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to affect public order." The aggrieved party could make a

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[7] MAHENDRA PAL SINGH, V.N. SHUKLA'S CONSTITUTION OF INDIA 148 (2017).

[8] State v. Baboo Lal, AIR 1956 All 571.

[9] Virendra v. State of Punjab, AIR 1957 SC 896.

representation against the order to the government which after considering the same could modify, confirm or rescind the order. This provision was challenged on the grounds that it gave very broad powers to the Government to curtail the freedom of speech, and that the discretion conferred on the executive was uncontrolled and arbitrary and so unreasonable under Article 19(2) of the Constitution. The Supreme Court held that the law was enacted for preserving the safety of the State and for maintaining public order in the context of the serious tension existing amongst various communities in the State. It also stated that the Government was charged with the preservation of law and order in the State, and being in possession of all the material facts was the best authority to take anticipatory action for preventing any threatened breach of peace. Sec 2(1)(a) was held to be valid as the powers was to be exercised for the specific purposes mentioned in the section and the restrictions to be imposed if any, was to be for a limited period and was also reviewable.

State of Bihar v. K.K Misra[10] is an example of how presence of safeguards in a provision can be the deciding factor of it being valid or invalid. Under sec. 144 of the Criminal Procedural Code, in cases where, in the opinion of a district Magistrate or any other Magistrate (not being a third class Magistrate) especially empowered by the State Government or the District Magistrate, there is sufficient ground for proceeding under that section and immediate prevention or speedy remedy is desirable, he may, by a written order stating the material facts of the case direct any person to abstain from a certain act if the Magistrate considers that such direction is likely to prevent a disturbance of public tranquility or riot or an affray. The Magistrate may annul or alter the order on the application of a member of public after giving him an opportunity of hearing. If such an application were to be rejected, the Magistrate had to state his reasons for doing so and such an order would remain in force for two months at the most.

The concerned section was upheld to be valid by the Supreme Court[11] citing that the guidelines in the provision aimed at removing arbitrariness and not encouraging it. However as stated before, in *State of Bihar v. K.K. Misra*, the Supreme Court quashed the provision as under the said provision, the State Government could extend the life of an order passed by the Magistrate under sec. 114(1) beyond two months of it was necessary for preventing danger to human life, health and safety or a likelihood of a riot etc. The power of the government was characterised as "an independent power" which was not to be exercised judicially and was thus "open to be exercised arbitrarily." Additionally, there was no provision for the party to make a representation against the order and nor was the order temporary in nature. Consequently, the Supreme Court held the provision unconstitutional Art. 19(1) (b) and (3): The Right to Assemble

Art. 19(1) (b) guarantees freedom to assemble peacefully and without arms, but clause (3) provides for impositions of reasonable restrictions on this right by law. However, this does not validate conferring of uncontrolled discretion on the administration to regulate freedom of assembly.

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[10]State of Bihar v. K.K. Misra. AIR 1971 SC 1667.

[11]Madhu Limaye v. S.D.M.Monghyr, AIR 1971 SC 2486.

Himmat Lal v. Police Commissioner,[12] gave rise to the question of validity of a certain provision which provided that no public meeting would be held on a public street without the written permission of the authorized officer. There were no safeguards laid down for the exercise of power of the concerned officer. The provision was struck down by the court as there was an absence of guidelines to the concerned officer as to the circumstances under which he could refuse permission to hold a public meeting. Lack of procedural safeguards against misuse of power and room for arbitrariness on part of the officer in charge also played the deciding factor in the concerned law being struck down by the court on grounds of excessive delegation of arbitrary power.

Freedom to form Association under Article 19(1)© and restrictions under 19 (4)

The right to form associations is the life blood of democracy because without such a right, it may become impossible to form political parties in the country. So, it is guaranteed as a fundamental right under Article 19(1) (c) subject to reasonable restrictions as being imposed thereon, in the interest of public order or morality under clause (4) of Article 19. As the right to form association is the most valuable right in democracy, the Supreme Court has been more scrutinizing as regard legislations conferring power on the executive to restrict this right.

The important case where the Supreme Court acted to protect the right to form association by controlling the discretionary power in the name of public order and morality is *State of Madras v.V.G.Row herein after referred as V.G. Row.*[13] In this case, an order of the Madras State Government declaring a society was challenged. The State Government declared by virtue of Section 15(2)(b) of the Indian Criminal law Amendment Act, whereby an unlawful association is one which is declared to be unlawful by the Government under the power thereon conferred. The respondent argued that the impugned order infringes the fundamental right guaranteed on him by Article 19(1) (c) of the Constitution of India to form associations and unions. Also the law in question obligates the Government to place the materials on which it acted before an advisory board and to be bound by its decision. But the court held that such summary and largely one sided review by an advisory board could not be substitute for judicial inquiry. The Supreme Court pointed out that the right to form association had a very wide and varied scope for its exercise and its curtailment was fraught with serious potential reactions in religious, political and economic fields. Therefore, regarding freedom of association only in very exceptional circumstances that too within very narrow limits, the formula of subjective satisfaction and its review by an advisory board is to be permitted.

At times the Government recognition of an association may affect the right to form association. In such situations, Article 19(1) (c) would control the power of the Government to recognize associations. In *Ramakrishnan v President, District Board,*[14] a Government Order empowering the Director of Public Instructions to recognize any teachers Union, or to forbid its existence and perverting the teachers in municipal

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[12]Himmat Lal v. Police Commissioner, AIR1973 SC 87.

[13]State of Madras v. V.G.Row, AIR 1952 SC 196. [hereinafter, VG ROW]

[14]Ramakrishnan v President, District Board,AIR 1952 Mad 253.

service not to form an association without the previous permission of the municipality as held bad as the exercise of the fundamental right to form association could not be made subject to discretionary control of administrative authorities.

Subsequent to the Supreme Court's decision in *V.G. Row*,[15] the parliament enacted the Unlawful Activities (Prevention) Act, 1967 conferring power on the central Government to declare an association unlawful subject to the safeguard of assessment by a tribunal whether there is sufficient cause for declaring the association unlawful.

In *Jamat-E-Islami Hind v. Union of India*[16], the ban against the Jamaat-E- Islammi Hind by the Tribunal was challenged before the Supreme Court. The Supreme Court however quashed the order on the ground that there was no objective determination of the factual basis for the notification that banned the association.

Again, when VHP was declared unlawful in 1995 by the Unlawful Activities (Prevention) Act, the ban was negative by Tribunal. It ruled that the notification has been issued on extraneous consideration; it was issued for collateral purposes and not for the purpose of maintaining peace and tranquility in society.

Thus, from the decisions of the Supreme Court and the Tribunals, we can infer that the court has given utmost importance and has taken stringent measures to protect the freedom to form associations from being curtailed by the authorities by virtue of their discretionary power.

Freedom to move freely and Right to settle in any part of India under Article 19(1) (d) and 19(1) (e) and Discretionary Power

Article 19(1) (d) gives to every citizen the right to move freely throughout the territory of India and Article 19(1) (e) guarantees to every citizen the right to reside and settle in any part of India. The reasonable restrictions are contained in Article 19(5), where the State can make a law imposing reasonable restrictions on these rights in the interests of general public or for the protection of the interest of any scheduled tribes.

States commonly pass laws authorizing the executive to extern a person from a particular area in the interest of public peace and safety. Analysing such laws passed under Article 19 (1) (d) or (e), we find. In some cases, the person whose activities are dangerous to public peace can be externed, but in others, the category of persons who could be externed is specified. Then, in some cases a person externed from an area is free to choose any other place for his stay, but in others the place to which he could go may be specified by the executive. The scheme of the statutes is usually such that an externment order can be made only for a limited period.

In *Dr. Khare v. Delhi*[17] the Law which authorizes the District Magistrate could order externment of a person from any area on being satisfied that such an order was necessary to prevent him from acting in any way prejudicial to public safety or maintenance of public order was challenged. The Supreme Court ruled that a law

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[15] VG ROW, supra note 13.

[16] Jamat-E-Islami Hind v. Union of India,(1995) 1 SCC 428.

[17] Dr. Khare v. Delhi, AIR 1950 SC 211.

providing for externment was not bad merely because it left the desirability of making an externment order to the subjective satisfaction of a particular officer, because like preventive detention, externment was largely precautionary and based on suspicion.

In *Gurbachan v. State of Bombay,*[18] the Supreme Court held that the provision of the statute empowering Commissioner of Police to serve an externment order for a period of 2 years to a person, if in his opinion the movement or acts of a person concerned were expected to cause danger or harm to a person or property.

In *Hari v. Deputy Commissioner of Police*[19] , Sec. 57 of the Bombay Police Act was challenged. It authorized any of the officers specified to extern certain convicted persons from the area within his jurisdiction if he had reason to believe that such a person was likely to commit an offence similar to that of which he was convicted. It was contended that the law stood vitiated as there was no advisory board to scrutinize the action of the police officer and also that the case was initiated by the police itself and they itself judged the matter and thereby contended the violation of Principles of natural justice. But the Supreme Court rejected all these arguments by holding that there was no universal rule that the absence of an advisory board would necessarily make such decision unconstitutional and also found that the case could be initiated by the inspector and order of externment could be made by the Commissioner of Police. In this case, the court held that Section 57 of the impugned Act is plainly meant to prevent a person who has been proved to be criminal from acting in a way which may be a repetition of his criminal propensities. In doing so, the State may have to curb an individual's activities and put fetters on his complete freedom of movement and residence in order to secure the greatest good of society.

Examining a few contrary judgments, in *State of Madhya Pradesh v. Bharat Singh*[20] , the Supreme Court invalidated a statutory provision which gave power to an executive authority to specify the area where an externee was to stay, because of the absence of procedural safeguard of hearing. Under the Act, a District Magistrate, or the State Government, could extern a person from any place in the State and require him to remain in a specified place in the State if the authority concerned was satisfied that his activities were likely to be prejudicial to the security of State or maintenance of public order. This particular law was subject to the safeguard that the grounds for making the order were to be given to the person concerned and there was an advisory council and the Government was required to act in accordance with its opinion. The Supreme Court found that no hearing was provided for selecting the place where the externee was to reside. In the Court's opinion, the person concerned may not be able to get means of livelihood in the specified place and the statute made no provisions for the same

It is clear from the case above, the existence of judicial rethinking of its earlier liberalism towards the laws concerning externment of persons. The strict approach in the matter of externment depicted in Bharat Singh is apparent in the later Supreme Court case of *Prem Chand v. Union of India*[21]. In this, Court emphasized that mere apprehension of any police officer is not enough, and there must be clear and present danger based upon credible material which makes the movements and acts of persons in question

[18]Gurbachan v. State of Bombay, AIR 1952 SC 221.

[19]Hari v. Deputy Commissioner of Police, AIR 1956 SC 559.

[20]State of Madhya Pradesh v. Bharat Singh, AIR1967 SC 1170.

[21]Prem Chand v. Union of India, AIR 1981 SC 613.

dangerous. The court portrayed externment of a person to "economic hara-kiri and psychic distress". The court strongly stated that externment provisions have to be read strictly and that "any police apprehension is not enough. Some ground or other is not adequate. There must be a clear and present danger based upon creditable material which makes the movements and acts of the person in question alarming or dangerous or fraught with violence" [22]

We can infer from the above cases that while a law may authorise the executive to extern a person in its subjective satisfaction, the law, to be valid, needs to contain some vital procedural safeguards These include providing grounds for externment, and an opportunity to appeal against thereof. After proper scrutiny of the whole situation, it is safe to say that the Supreme Court has permitted the Legislature to concede a large amount of discretion to the Executive as far as imposing restrictions on this right goes.

However, in the more recent scenario, referring to cases like *State of Madhya Pradesh v. Baldeo Prasad*[23] and *Bharat Singh* case, it is inferred that off late, in the case of right association, the existence of an advisory board has been found to be inadequate and there has been insistence on reference to a judicial tribunal for declaring an association unlawful. It is conclusively safe to say that the fundamental right to movement and residence requires better protection than it has received so far.

Discretionary Powers and Freedom of Trade and Commerce

Article 19(1)(g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business. The area of trade, commerce and business is at present under rigorous administrative regulation. Broad powers to regulate trade and commerce have been conferred on administrative authorities through statutes and rules. These powers include licensing, price fixing, requisitioning of stocks, or regulating movement of commodities, Article 19(1)(g) empowers all the citizens of India to practice any profession, or to carry on any trade, commerce or business. At the same time, Art. 19(6) empower the State to make any law imposing reasonable restrictions on the exercise of this right, in the interest of the general public.

In *M/S Dwaraka Prasad Laxmi Narain v. State of Uttar Pradesh*, clause 4(3) of the UP Coal Control order, 1953 which conferred absolute power on the licensing authority to grant or refuse to grant, renew or reuse to renew, suspend, revoke, cancel or modify any license was challenged. The general principle in this connection is that the power conferred on the executive should not be arbitrary, unregulated and it "*should not be left entirely to the discretion of any authority to do anything it likes without any check or control by a higher authority. A law or order which confers arbitrary and uncontrolled power on the executive in the matter of regulating trade or business in normal available commodities cannot but be held to be unreasonable.*"[24] This case is probably the first leading case which laid down the proposition that a law conferring arbitrary and unguided powers on the administrative authorities will be invalid under Art.19 (1) (g). Clause 4(3) of the impugned order authorized the licensing authority to grant, refuse, renew or refuse to renew, suspend, cancel revoke or modify any license for reasons to be recorded, but clause 3(2) (b) was held to be invalid because grounds on which an exemption could be

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[22] Id.

[23] State of Madhya Pradesh v. Baldeo Prasad,AIR 1961 SC 293.

[24] Dwarka Prasad v. State of U.P., AIR 1954 SC 224.

given were not mentioned thus giving the controller unrestricted and arbitrary powers to make exemptions.

The question as to how much discretion can be conferred on the executive to control and regulate the right of trade and commerce has been raised in a number of cases. Generally speaking, discretion is not unregulated or arbitrary if the circumstances in, or the grounds on, which it can be exercised are stated, or if the law lay down the policy to achieve which the discretion is to be exercised, or if there are enough procedural safeguards in the law to provide security against the misuse of the discretion. In case of trades which are illegal, dangerous, immoral or injurious to health and welfare of the people, same standards do not apply as to, and a greater discretionary authority may be left with the executive to regulate such trades than is permissible.

In *Krishan Chand Arora v. Commissioner of Police*,[25] the appellant applied to the commissioner for a license to run an eating house. The commissioner rejected the application. The appellant challenged the order of the commissioner by claiming exercise of uncontrolled powers of the commissioner by claiming that Section 39 of the Calcutta Police Act, which conferred naked and uncontrolled powers on the commissioner to grant or refuse a license is violative of Article 19(1)(g), the court held that an unqualified discretion cannot be conferred on an authority to grant or refuse to grant license.

In *Union of India v. Ammam Ramalingam*,[26] a provision of the Gold Control Act was challenged on the ground of violation of fundamental freedom trade, but court found that the Act provides safeguards for proper exercise of discretion. But in the absence proper criteria or guidelines discretion is given then it is liable to be struck down was held in *A.N. Parasuraman v. State of Tamil Nadu*.[27]

Looking at a differing judicial approach, in *C. Lingam v. Union of India*[28] certain control orders were issued under Sec. 3(2) (d) of the Essentials Commodities Act, 1955 that introduced a permit system for the sale of rice and paddy. This was challenged on the grounds that it conferred arbitrary powers in the matter of issuing or withholding of permits and there was no provision for appeal or revision against refusal to grant a permit. Rejecting the argument, the court stated that the permits were to be issued by the State Government or District Collectors who were expected to discharge their duties on a responsible manner. The Dwarka Prasad case was distinguished on the ground that there the power of licensing could be conferred on any person. The absence of a provision for repeal was held not to be bad because an affected person could always approach the State Government to review the matter when a permit was refused by the District Collector.

It is clear from the above case that if safeguards are provided against arbitrary exercise of power, the law may be upheld. On the same note, statutory provisions often confer power on the executive to fix prices of essential commodities.

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[25]Krishan Chand Arora v. Commissioner of Police, AIR 1961 SC 705.

[26]Union of India v. Ammam Ramalingam,AIR 1985 SC 1013.

[27]A.N. Parasuraman v. State of Tamil Nadu,AIR 1990 SC 40.

[28]C. Lingam v. Union of India,AIR 1971 SC 474.

In *Union of India v. Bhanamal Gulzarimal* [29], a very wide power to fix prices of iron and steel was actually upheld. Clause 11-B of the Iron and Steel Control Order, 1941 authorized the controller to fix maxi um prices for the sale of the commodity. The prices could differ for iron and steel obtainable from different sources and could include allowances for contribution to and payment from, an equalisation fund established by the controller. The Controller's power was upheld to be valid as opposed to being unbridled or arbitrary as the policy had been laid down in Section 3 of the Parent Act, the Essentials Commodities Act, under which the order was made. The argument put forth was that while in Dwarka Prasad, there was a price fixing policy, there was no such policy. The Court held that it would be unreasonable to suggest that, in the absence of such a provision as were to be found in Dwarka Prasad., clause 11-B of the Iron and Steel Control Order, 1941 should be struck down.

On the whole, it seems that in the matter of price fixing, the administration enjoys a good deal of flexibility and it is extremely difficult to challenge a price-fixing order in court. Wide and vague factors laid down in the statutory provisions for the guidance of the administrative authority has been upheld Even a general statement of policy in the parent Act was accepted in Bhanamal as providing a sufficient safeguard against administrative discretion. However, a law that gives unchannelized power to an authority on the whole on its subjective consideration, without provision for review by a superior authority, has been held to be an unreasonable restriction and consequently, been struck down as bad law by the courts on several occasions as we have seen in cases above. One can infer that the basic reason for this division in approach by the Courts is probably because areas in price fixing are mainly economic in nature which the courts can evaluate only superficially and most of the times, as we have seen, they concede to administrative judgment in this regard. Plus, there is the added notion that there is less danger of abuse of power by the executive and of administrative discrimination in cases of price-fixing orders as compared to an order of general applicability where administrative action in individualized.

Although the doctrine of Separation is a part of the basic structure, yet the Rule of law cannot be brushed aside so blatantly. To uphold the Doctrine of Separation of Power, the law still gives wide discretion and autonomy to the Executive to exercise its functions without undue interference from the Court. In the 2005 judgment of *Sidheswar Sahakari Sakhar Karkhana Ltd. v. Union of India*[30] the court upheld the view that it will not interfere in an administrative decision unless it is contrary to law, arbitrary, unreasonable or inconsistent with the Constitution. Subsequently in, *Sukh Dev Kumar and Ors v. State of Himachal Pradhesh and Ors*[31] also the Supreme Court relied on this position of law. Thus we can see that there is a great amount of freedom given to administrative authorities to exercise their discretion unless it is in contravention of fundamental freedoms or fundamental rights.

Conclusion

All the fundamental freedoms under Article 19 are better protected by the judiciary. But on an analysis we can see that there is no uniformity in judicial attitude towards the protection of various fundamental freedoms. In some cases, the courts demand better

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[29]Union of India v.Bhanamal Gulzarimal, AIR 1960 SC 475.

[30]Sidheswar Sahakari Sakhar Karkhana Ltd v. Union of India, (2005) 3 SCC 369.

[31]Sukhdev Singh v. State of Himachal Pradesh, (2015) 580 DB 167.

procedural safeguards than in others. In cases of freedom of trade, speech and association, the courts have insisted on more substantial safeguards than in case of freedoms of movement or residence. As far as conferring of unregulated and unguided discretion on administration is concerned, the judiciary has remained consistent in its course of rejecting orders and laws by declaring them invalid especially in areas concerning fundamental freedom contained in Articles 19.

There have been times however, when this approach of the Judiciary has been diluted by the courts while accepting and upholding broad and unclear policies contained in statutes conferring administrative discretion bordering the lines of being unregulated. Additionally, many a times, the so called standard to be laid down by the executive finds itself within the folds of the preamble to the statute, and not in the substantive clause that confers discretion on the authority. This tends to raise the question as to how much imposing of standards can be done to control the executive.

Another interesting aspect of the judicial attitude is with regard to the need for existence of an advisory board as a control mechanism over the exercise of administrative discretion. In cases of right of association, it was held by the Supreme Court that since there is an advisory board preventive detention cases, it does not mean that it will also be sufficient in case of restraint on the right of association whereas in cases of restraint on the right to movement or residence, the Supreme Court has decided that an advisory board was necessary in such cases. This dichotomy may be due to the fact that in a democracy right to association needs better protection as it forms the basic element of the entire democratic process, it being the basis of organization of political parties, while right of residence or movement only affect the concerned individual personally. Thus, in cases of freedom of association, the court have shown a disinclination to leave the matters finally in the executive hands without judicial control.

There are no standardized set of procedural safeguards under different fundamental freedoms. However, as far as upholding of law conferring discretionary power on the administration is concerned, the Judiciary seems to be persistent about having more procedural safeguards in cases such as freedom of speech trade and association as compared to other Fundamental Rights such as freedom of movement and residence. The weakest link in the chain is the Right of Movement where the Judiciary has seemingly found it unnecessary to insist on such a safeguard such as that of an advisory board for externment of a person from a local area. The concept of an advisory board is probably the minimum amount of safeguard that the Judiciary should impose keeping in mind the term "reasonable" within the corners of fundamental freedoms.

Fundamental freedoms are of such character and hold so much ambiguous authority for the Judiciary, that if exploited to their full use, can go a very long way in wiping out the dangers of administrative discretion; a recent development which is cause a good deal of anxiety among the people. Fundamental freedoms are as real as the air we breathe, substantial, and independently and jointly, a powerful force to reckon with while dealing with something that is anything as remotely close to arbitrary. It all depends on how the Judiciary chooses to interpret the same. We live in a democratic country and for the purpose of the same, it is important that a balance be struck between Governmental control and individual freedom. Fundamental Rights, prudently used, can go a long way in ensuring the same.