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ADMINISTRATIVE ADJUDICATION: THE SECOND ASPECTS OF ARBITRARYNESS

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Abstract : Modern public administration has taken a leaf not only from the legislature's book but also from that of the judiciary. Administrative Adjudication is the latest addition to the administrative techniques. I will try to prove in my research paper that how do the administrative authority misuse their discretionary power applying their arbitrariness of mind. And the factors responsible for these are various clause in the parent act protects the administrative authority while they are exercising their discretionary powers. These provisions give them a lot of power. We know these powers like exclusion clause, finality clause, etc. That mean aggrieved party cannot approach to civil court for appeal. All these are a provision that leads to dictatorship and the consequences is seen usually in form of failure to exercise discretion in proper way or abuse of discretionary power.

***IndexTerms* –** Component, formatting, style, styling, insert.

I. Introduction

Administrative Adjudication means the determination of questions of a judicial or quasi-judicial nature by an administrative department or agency. Like a regular court, administrative bodies hear the parties, sift evidence, and pronounce a decision in cases where legal rights or duties are involved[1]. The administrative adjudication is origin of concept of a welfare state, which aims to provide justice to the citizens, impartially, less expensive, and speedily. On the administrative adjudication, the *Donoughmore Commission* was considered in 1932. In its report, the committee had said that judicial acts should be handed over to the courts. Judicial act should be given to departmental ministers. It was recommended that some matters should be handed over to the Ministers. In such tribunals, the appointment of independent persons, the opportunity to hear the persons affected by the Tribunal, the right to appeal, and the right to appeal in the High Court on the question of law had also spoken.

In UK, the case of Crunch Down Inquiry took place in 1955. Frank Committee was appointed for this reason. This committee has submitted its report in 1958. As a result Parliament passed the Tribunal and Check Act in 1958. It was consolidated in 1971. The Tribunal Council was established under the Act. This council has been given the right to monitor the various tribunals and structures. Under the said act, keeping in view of the administrative adjudication, the social and economic affairs have come into the hands of the tribunals.

As far as India is concerned, a public welfare state was established in India through the Constitution. So there was an increase in the state's work. Social security, public health, labor welfare, education planning, social service, public transport, agriculture, industrialization, planning etc. became the work of the state. Therefore, in such a situation, opportunities for differences between the state or the person increase. These differences are also common with the nature of nature, which is often the only thing that matters. Such disputes, where the questions of the law are less and the questions of the facts are more, it is not right to be taken to the court because this will increase the function of the court. There is already a lot of pending issues in the courts and in such cases if the disputes arising from the giant functions of the government are also turned on the court, the judicial system will collapse. Keeping in mind all these things, the 42th constitutional amendment 1976 has added path to the establishment of administrative tribunals by adding part 14 to the Constitution.

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[1] http://www.politicalsciencenotes.com/essay/public-administration/essay-on-administrative-adjudication-public-administration/13685

At present, the flood of administrative courts has come. Now almost every administrative officer is performing quasi-judicial function. From lowest administrative authority to the commissioner and even the minister of the department is also performing quasi judicial functions even though they do not have any knowledge of the law. In such a situation, whether the common man living in society hoping for justice from such an officer? This is a main research problem and the subject of my research.

The following reasons to make a administrative authority corrupt and arbitrary-

II Exclusion of Jurisdiction of Civil Court

That means in certain matter the jurisdiction of civil court is ceased and only adjudication authority can take the cognizance in such matter.

The exclusion of judicial review of action of the administrative authority effected directly or implied form the terminology used in the statute. It is not possible to take note of all the variants of such formulae. However, following are the usual modes of conferring finality on the administrative action-

a. The finality a clause in the statute may make the administrative action final by expressly barring the jurisdiction of the court.
b. It may read as: the administrative action taken under the Act *"Shall not be called in question in any legal proceeding before any Court of law."*
c. The finality clause may not expressly bar the jurisdiction of the court but otherwise declares the administrative action final. For example Section 17 (2) of the Industrial Disputes Act, 1947 provides that the award of a Labour court published under Clause (1) of section 17 "*Shall final*."
d. Sometimes the statute may not expressly so provide, yet the finality of the administrative action may be inferred by necessary implication. It may be in case the Statute is a self-contained Code which gives a right and also provides a machinery for the vindication of such right
e. Sometimes a Statute may confer finality to an action of the authority in subjective terms. For example, the State uses the expressions: "if the authority is satisfied" or "the action is desirable" or "if it appears necessary or expedient, etc. to that authority that such action should be taken.
f. Sometimes a statute allows judicial review to be sought only within a short period of time and which thereafter bars it completely. Such provisions are found in England in Statutes dealing with the compulsory acquisition and control of land.[31]

III Scope of Exclusionary Clause

A. Position in England

The foundations of judicial review were laid down in England[32] by their Lordships Coke, Holt and Mansfield. Since that time, Parliament has attempted to prevent the principle from being applied. Acts of Parliament frequently contain provisions aimed at restricting judicial review. Various formulae have been inserted into such statutes with the intent of precluding judicial intervention. In view of the Sovereignty of Parliament, it was accepted in the Nineteenth Century England, that Parliament being supreme, could exclude judicial review of any administrative action and the attitude of the courts was to accept the finality clause as final.

In **institute of Palent Agents v. Lockwood**[2], the majority of the House of lords interpreted the finality clause "as if enacted in this Act" to mean that the jurisdiction of the Court was barred. Their Lordships, preferring literal verbal construction to legal principle, declared that the clause made the regulations as unquestionable by a court of law as if they were actually incorporated in the Act.

However, as the courts jealously guarded their jurisdiction, the Lockwood doctrine was thus overruled in **Minister of Health v. Yaffee**[3]**.** Interpreting the finality clause concluded in similar language, their Lordships said that the Minister empowered to confirm a scheme under the Housing Act, 1925 was empowered to confirm only schemes which confirmed to the Act and if the scheme itself conflicted with the Act, 1925, the order was not an order within the meaning of the Act, 1925 and was not saved by the clause. Lord Dunedin, speaking for the majority of the House of Lords, said;

[2] *[1894] AC 347*
[3] *[1931] AC 494*

It is evident that it is inconceivable that the protection should extend without limit. If the Minister went out of the province altogether….it is repugnant to common sense that the order would be protected, although, if there were an act of Parliament to that effect, it could not be touched.

There has, thus, been a presumption against such restrictions on the supervisory powers of the court and the courts have, usually restrictively constructed such provisiosn.[36] Denning L.J., in **R.v. Medical Appeal Tribunal ex.P. Gilmore[4]** Said:

I find it very well settled that the remedy by certiorari is never to be taken away by any statue except by the most clear explicit words.

B. Position in India

The question of conferring finality on administrative action is to be studied under two heads i.e., (i) judicial review available under the constitution in view of Articles 32, 226, 136 and 227; and (ii) judicial remedies by way of suits, declarations or injunctions.

(i) Exclusion of Judicial Review under the Constitution

In view of the provisions contained in Article 226 of the Constitution of India, "*ouster clauses*" do not play much significant role. It may be stated that no statutory provision can affect the power of the High courts to issue a writ. An ouster clause may be found in ordinary statutes as also in the provisions of the Constitution. Many-a-time provisions are made in a statute which administrative action, taken there under by the administrative authority or tribunal, is declared final. Such provisions are known as providing *"statutory finality"*. No ouster clause contained in any statute, whatever be its phraseology, can bar the judicial review available under Articles 32, 226, 136 of the Constitution.

In Deokinandan Prasad v. State of Bihar,[5] the Supreme court held that Section 23 of the Pension Act, 1871 which provided that suits relating to matters contained therein, could not be entertained in any court, did not bar the constitutional remedy of *judicial review*.

There are provisions in the constitution which expressly make the action of the administrative authority final. Even in such case, the remedy by way of judicial review is not held to be barred.

Article 217(3) of the Constitution provides: that "if any question arises as to the age of a judge of a High Court, the question shall be decided by the President after consultation with the Chief justice of India and the decision of the president shall be final.

Interpreting the *"finality clause"* the Supreme court in **Union of India v. J.P. Mitter**,[6] observed:

Notwitstanding the declared finality of the order of the president, it appears that it was passed on collateral consideration or the rules of natural justice were not observed or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence.

Likewise, in respect to Article 329 which bars the jurisdiction of the Courts in election disputes, it has been said that while the courts were barred from dealing with any matter which might arise while the elections were in progress and till an election petition was disposed of by an election tribunal, the jurisdiction of the Supreme court and the High courts would not be barred thereafter[7]

In Indira Nehru Gandhi v. Raj. Narain,[8] the Apex court had held, clause (4) of Article 329-A inserted by the constitution (39th Amendment) Act, 1975, which had excluded the disputed election of the prime minister from the restraints of all election laws, did not bar the remedy by way of judicial review.

Para 7 of the Tenth Schedule,[9] had provided that no court shall have jurisdiction in respect of any mater conceited with the disqualification of any member of a House under the Tenth Schedule, notwithstanding anything in the constitution.

Striking down this para 7 in **Kihoto Hollohan v. Zachillhu**,[10] the Supreme court ruled that the impugned para could not take away the writ jurisdiction of the High court and the Supreme court.

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[4] [1957] C.A., 1 Q.B. p 574

[5] *AIR 1971 SC 1409.*

[6] *AIR 1971 SC 396. See also State of Rajasthan v. Union of India, AIR 1977 SC 1361.*

[7] *Durga Shankar v. Ragluraj, AIR 1954 SC 520.*

[8] *AIR 1975 SC 2299.*

[9] *Inserted by the 52nd Amendment, 1985, (Anti-Defection, 2000)*

[10] *AIR 1993 SC 412*

It has been firmly ruled by the supreme court of India that it is the solemn duty of the courts to uphold the civil rights and liberties of the citizens against executive or legislative invasion and that the court cannot sit quiet in this situation, but must play an activist role in upholding civil liberties and the fundamental rights in Part III.[11] This power *of judicial review* has been held to be an integral and essential feature, constituting part of the basic structure of the constitution.[12]

It thus follows that any ouster clause, whatever its phraseology may be, excluding the courts intervention under Articles 32, 226, 136, 227 would be invalid and would not have the effect of barring the jurisdiction of the High courts and the Apex court over the administrative actions.

(ii) Ouster clauses in Ordinary Statues-

As regards the right of a person to seek an ordinary remedy by way of a suit for injection declaration or any other appropriate relief, section 9 of the code of civil procedure, (1908), provides that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred either expressly or by necessary implication. It, thus, itself envisages that the jurisdiction of the civil courts may be excluded expressly or implicitly.

(iii) Express Exclusion of Judicial Review-

In cases of express exclusion of the jurisdiction of the civil courts, the approach of the Courts has been to strictly interpret the "ouster clause". If the words are clear and the statue is a self-contained code, the courts would refrain from exercising jurisdiction.

In **Firm of Illuri Subbayya chetty v. State of Andhra Pradesh,[13]** Section 18-A of the *Madras General Sales Tax Act, 1939* Provided that "on suit can be instituted in any civil court to set aside or modify the assessment made under the Act. The petitioner filed a suit on the ground that the administrative authority instead of taking sale had taxed purchase also. In view of the express provision contained in section 18-A of the Act, 1939, its jurisdiction of the civil court was held to be barred. It has further been emphasized that when the jurisdiction of the civil courts is expressly excluded, the plaintiff cannot be allowed to circumvent that provisions by means of clever drafting of pleading.[14]

(iv) Implied Exclusion of Judicial Review-

Exclusion of jurisdiction of the civil courts may be inferred-if the statute containing *finality clause* is a self- contained. When the action is left the subjective satisfaction of the administrative authority i.e. where the words such as *"if satisfied"* or "if in the opinion of the authority it is just and proper." The jurisdiction of the civil courts shall be deemed to have been barred by necessary implication, when the statute creates a new right and also provides a machinery for the vindication of such right.[15]

In Premier Automobiles Ltd. V. K.S. Wadke,[16] there two unions in the plaintiff's concern, the sabha union and the Association union. On December 31, 1996 under incentive scheme an agreement was others between the company and the sabha union to cover its members and others who opted for it. Later on, due to increase in the membership of the Association Union, the Company entered into a fresh agreement with it replacing the Sabha agreement and hence in a suit filed by the Sabha Union, the court below and the High court granted injunction restraining the company from giving effect to the later agreement on the ground that it was a dispute which had arisen under the common law and the law of contract as it related to the conditions of service. In appeal, the Supreme Court ruled that the jurisdiction of the civil court, was impliedly barred as the industrial Disputes Act, 1947, being a self contained code, the subject matter could from an industrial dispute where the remedy lay under *the Act, 1947*.

Likewise, in **Upadhyaya H. Devshanker v. D.V. Solanki**,[17] the Representation of the people Act, 1950 as amended by the Amendment Act, 1966 was held to be a self contained code barring the exercise of writ jurisdiction by the High court beyond the provisions of the Act, 1950.

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[11] *I.R. Coelho v. State of T.N. AIR 2007 SC 816*
[12] *Ibid.*
[13] *AIR 164 SC 322.*
[14] *See Ram Singh v. Gram Panchayat, Mehal Kalan, AIR 1986 SC 2197.*
[15] *Raja Ram Kumar Bhargaua v. Union of India, (1988) 1 SCC 681.*
[16] *AIR 1975 SC 2238.*
[17] *(1988) 2 SCC 1*

In the instant case under Section 80-A of the Act, 1951, election petitions are to be decided by any single judge of the High court as designated by the Chief justice. The decision of the single Judge has been made appealable to the supreme court. There is no provision in the Act, 1951 for appeal against interlocutory order. In view of the Act, 1951 being a self contained code, the supreme court ruled that no appeal could lie to the division Bench against the decision of the single judge and that no other judge of the High court could hear the election petition except the one designated by the Chief justice[18].

IV. Exclusion to follow the Procedural Law

The Administrative Tribunal must follow natural justice in it procedure. A person can bring a service matter before the Tribunal by making an applicant can take the assistance of a legal practitioner. On receipt of application if after investigation the Tribunal is satisfied that the application is fit for adjudication or consideration, it will accept the application. However, if the Tribunal is not so satisfied, it will reject the application after recording reasons.[19]

The Tribunal is not bound to follow the procedure prescribed by the Code of Civil procedure, 1908. While functioning under the provisions of Administrative Tribunals Act and Rules framed by the Central Government, it power to regulate its own procedure.[20] Procedural rules cannot be contrary to natural justice.

The tribunal has all the powers of a Civil court in respect of calling a person, administering oath. Compelling discovery and production of documents, issuing commissions, reviewing its decision etc.[21] As regards contempt, the Tribunal has the same jurisdiction as has the High Court. It can exercise its powers in this respect as the High court exercises.[22] A person himself can make application to the Tribunal. He can take assistance of legal practitioner of his own choice.[23] All the proceedings before the tribunal shall be deemed to be judicial proceedings. [24]

V. Finality Clause as an exclusion of civil court

The provisions relating administrative finality would not bar interference by courts in cases of ultra uire acts of the administrative authority or where the state under which the authority exercises power is itself unconstitutional.

In **Munni Devi v. Gohal Chand**,[25] *the U.P. (Temporary Control of Rent and Eviction) Act, 1947* I empowered the District Magistrate to allot a vacant shop. The decisions of the Magistrate in the matter was declared final. The jurisdiction of the court was held not barred since the authority had committed a jurisdictional error and allotted a shop which was not vacant.

In ***Pabbojan Tea Co. Ltd.v.Dy. Commissioner, Lakhimpur,***[26] the Supreme court held that the finality clause contained in section 24 of the Minimum wages Act, 1941, did not bar the jurisdiction of the civil courts, if the authority, fixing the minimum wages for the tea plant workers, had violated he mandatory procedure of affording hearing before the wages were fixed.

a. Finality Clause and Void Laws

It is well ruled that finality clause would not imply that void laws be enforced without a remedy.

In **Dhulabhai v. State of M.P.**,[27] certain Notifications were issued by the Government under the Madhya Bharat Sales Tax Act, 1950. The Act, 1950 was declared ultra virus Article 301 of the Constitution and hence void. A suit was filed by the petitioner for the recovery of tax charged under these unconstitutional Notifications. Section 17 of the Act, 1950 contained a finality clause declaring that “the orders made under the Act shall not be called in questions in any court.” Upholding the maintainability of the Civil suit, in the face of the finality clause, the supreme court ruled that it was not the implication of the finality clause that void laws be enforced without any remedy.

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[18] *AIR 1970 SC 1727*
[19] *Administrative Tribunals Act, Section 19 (3).*
[20] *lbid, Section 22 (1)*
[21] *Administrative Tribunals Act, Section 22 (3).*
[22] *lbid, Section 17.*
[23] *lbid, Section 23*
[24] *Administrative Tribunals Act, Section 30*
[25] *AIR 1970 SC 1727*
[26] *AIR 1968 SC 271 See also shiv kumar Chadha v. Municipal Corpn. Of Delhi, (1993) 3 SSC 162*
[27] *AIR 1969 SC 78.*

The court, however, ruled that where a statute gave finality to the orders of the Special Tribunal, the Civil courts jurisdiction would be excluded "if there is adequate remedy to do what the civil courts would normally do in a suit."

Reiterating the law down in **Dhulabhai case**,[28] the Supreme court in **Sayed Mohd. Baquir EI-Edroos v. State of Gujarat,**[29] held that the finality clause would not bar the jurisdiction of the Civil court if the Act did not lay down the detailed procedure to be followed by the State Government in the matter and there was no detailed procedure for appeal and revisions also.

In the instant case, Explanation 2(1)(e) to the Bombay Personal Inams Abolition Act, 1952 provided that if any questions arose whether any grant was an inam, such question would be referred to the state Government and the decisions of the Government was declared final.

Since the Act, 1952 did not give any detail about the reference and to enquiry by the Government and no appeal had been provided there from, it could not be said that the case of the plaintiff had been considered by the Government in the same way as it would have been considered by the Government in the same way as it would have been considered if the case had been filed before a civil court, the finality clause in section 2(1) (e) did not bar the jurisdiction of the civil court.

Besides, the exclusion of the jurisdiction of the civil court cannot be readily inferred on the ground of availability of remedy and the forum under special statutes when the action in question is taken by the administrative authority without complying with the question of the concerned statue.

In **M.P. Electricity Board v. Vijay Timber Co.,**[30] the property of the respondent was taken over where the high power transmission electricity lines were laid. The electricity Act had barred the civil courts' jurisdiction. The court held that since the line was laid without the consent of the respondent and without any approved scheme, the jurisdiction of the civil court would not be barred as the authority had taken the action not in accordance with the provisions of the Act.

It may thus be stated that in India, "the doctrine of judicial review" which has been accepted and treated as one of the basic structure and essential feature of the basic structure and essential future of the constitution, can not be taken away by a statutory provision or even by a constitutional amendment.

However, where certain matters are committed to the jurisdiction of a tribunal or authority, and its determination is made final[31] and the civil courts are expressly debarred in exercising jurisdiction over those matters or in questioning the determination of the tribunal or authority, it would be inferred that all questions of fact and law whether simple or intricate pertaining to those matters, have to be determined exclusively by the tribunal or authority and not by the civil courts.[32]

b. Finality Clause and Policy Matters

In addition to political questions, the Supreme Court or the High Courts will not exercise their extraordinary jurisdiction in the matters of Government policy. Thus, in **Bennett Coleman & Co. v. Union of India.**[33] the question which arose before the Supreme court of India was regarding the constitutional validity and legality of the import policy for the news print adopted by the Government and legality of the import policy for the news prang adopted by the Government. The Court refused to adjudicate upon the policy matters unless it is arbitrary, capricious or mala fide.[34]

In State of **Maharastra v. Lok Shikshan Sansthan**[35] the petitioners made applications for opening schools which were rejected by the authorities. The petitioners challenged the said action by Writ petitions. The Supreme Court held that the question of policy is essentially for the State and such policy will depend upon an overall assessment and summary of the requirements of residents of particular locality and other categories of persons for whom it is essential to provide facilities for reasonable basis, it is not for the courts to interfere with the policy leading up to such assessment.

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[28] *Dhulabhai v. State of M.P. AIR 1969 SC 78*

[29] *AIR 1981 SC 2017*

[30] *(1997) 1 SCC 68*

[31] *See e.g. the Administrative Tribunals Act, 1985*

[32] *Custodian of Evacuee Property v. Jafran Begum, AIR 1968 SC 169.*

[33] *AIR 1973 SC 106*

[34] *lbid, Per Ray, J., at p. 117.*

[35] *AIR 1973 Sc 588*

In **Nagraj v. State of A.P.,**[36] under the proviso of Article309 of the Constitution of India, the Government of Andhra Pradesh issued a notification reducing the age of superannuatiran of all government servants from 58 to 55 years. The said action was challenged in the Supreme court under Article 32 of the Constitution. Dismissing the petitions filed under Article 32, the court held the affair to be as policy matter.

In ***Shri Sitaram Sugar Mills,v. Union of India,***[37] the Government fixed the price of levy sugar by grouping Sugar factories on the basis of geographical location. Certain sugar Companies challenged the said action as arbitrary, unreasonable and ultra vires. Upholding the policy decision of the Central Government, the Supreme court dismissed the petitions.

However, the requirement is that when the Government lays down a particular policy, it must be followed and applied uniformly to all the person who are similarly situated.[38] There is no jurisdiction whatsoever to depart from the principle of policy. The Government must act fairly and rationally. It cannot at its sweet will depart from a policy. The Government must act fairly and rationally. It cannot at its sweet will depart from a policy adopted by it without rational justification. That would be clearly violative of Article 14 of the Constitution.[39]

c. Finality Clause and Conclusive Evidence

Another device excluding judicial control is by way of extending special probative forces to certain administrative actions. Under this mode of exclusion, the decisions of an administrative authority on particular issues are given finality by making it 'conclusive evidence' that the statutory provisions have been complied with. Thus, section 35 of the Indian Companies Act, 1958, makes a certificate of incorporation given by the Registrar of Joint Stock companies to be conclusive evidence that all the requirements of the Act have been complied with. In such a case, no adverse private interest is involved and the conclusiveness is but fair in the public interest.

The other instance f conclusive evidence is found in the provisions of the Land Acquisition Laws Section 6 (3) of the land Acquisition Act, 1894, stipulates that the declaration of the State Government is conclusive evidence that the land is required for a public purpose.[40] The Supreme court has held that unless it is unless it is shown that there was colorable exercise of power, the court cannot go behind the declaration of public purpose under section 6(3) of the Act.[41]

VI. Exercise of Discretionary Power

Discretion is conferred on the administration on the assumption that it will exercises the same to the facts and circurnstances of the case in hand. If there is failure on the part of the administration to exercise discretion, the action will be bad. An authority can be fail to exercise his discretionary by following ways-

a. Acting mechanically- Statutory discretion cannot be said to have ……..exercised by an authority when it passes an order mechanically without considering faction and circumstances of each case. Such a situation may happen when the authority had taken only one view of its power of has become lazy or has relied on its subordinates.

There is provision under the Estate Duty Act, 1953 that the Central Government may on the application of the person accountable for estate duty accept any property passing on the death of the deceased in satisfaction of estate duty. The Supreme Court held in **Assistant *Collector of Estate Duty v. Prayag Das Agrawal.***[42] that the Government was not bound to accept any property offered, and its power to accept or not to accept was discretionary but the government cannot act mechanically in refusing such a request made by the person concerned and act on the assurnption that "its discretion was unfettered" and the Government must consider the application on the merits and in the exercise of sound administrative judgment".

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[36] *AIR 1985 SC 551: Asif Hamid v. State of J. and K., AIR 1989 SC 1899*
[37] *AIR 1990 SC 1277.*
[38] *State of Mysore v. Srinivas Murthy, AIR 1976 SC 1104*
[39] *lbid, at pp. 1108-09*
[40] *Somavanit v. State of Punjab, AIR 1963 Sc 151: Lilavati Bai v. State of Bombay, AIR 1957 SC 521.*
[41] *Jage Ram v. State of Haryana, AIR 1971 SC 1033*
[42] *AIR 1981 S.C. 1263*

In ***Merugu Satya Narayana v. State of A.P.,***[43] the affidavit in justification of detention was field by the subordinate and not the detaining authority. The court said that the subordinate authority "does not say how he came to know about the subjective authority" does not say how he came to know about the subjective satisfaction of the District Magistate. He does not say that he has access to the file or he is making the affidavit on the basis of the record maintained by the District Magistrate".[44] The court held that the detaining authority had acted mechanically and abdicated its power to the subordinates.

b. Abdication of Function-A situation may happen that discretion has been conferred on an authority but it leaves it to be exercised by the subordinates without acting itself in such a fact of situation an order made by the subordinate is bad A situation of "abdication of functions" arose in **Manik Chandra v. State.**[45] where the scheme of nationalization of certain bus routes was published by the Manager of the State Road relevant statute provided that it was the corporation which was to consider the scheme.

c. Imposing fetters on the exercise of discretion-An authority having discretion must exercise the same after considering individual cases. However, there is failure to exercise discretion on the part of the authority concerned, if instead that authority imposes fetters on its discretion by adopting fixed rules of policy to be applied in all cases coming before it. What is expected of the authority is that it must consider facts of each case, apply its mind and decide the same on merits. If and general rule is pronounced to be applied in all cases, there is no question of considering the facts of an individual case at all and exercising discretion by the authority.

Thus, in **Gell v. Teja Noora,**[46] under the Bombay Police act, 1863 the Commissioner of Police had discretion to refuse to grant a licence for any land conveyance which he may consider to be insufficiently sound or otherwise unfit for the conveyance of the public Instead of applying this discretionary power to individual cases, he issued a general order setting forth the details of construction of each carriage which he required to be adopted in each Victoria presented to him for licence. He stated that he had a sample Victoria prepared, and that all new victrias must conform to the patterns. The court held the order bad as the commissioner had imposed fetters on his discretion by self-imposed rules of policy and failed to consider in respect of each individual carriage whether it was fit for the conveyance of the public.

Again, in **Keshavan Bhaskaran v. State of Kerala,**[47] the relevant rule laid down that no school leaving certificate would be given to any person unless he had completed fifteen years of age. However, discretion was given to the Director to grant exemption from this rule in deserving cases under certain circumstances. But the director had made an invariable rule of not granting exemption unless the deficiency in age was less than two years. It was held that the rule of policy was contrary to law.

However, policy decision pronounced by the government was upheld in **Rama Sugar Industries v. State of A.P.**[48] In this case a tax was imposed on the purchases of sugarcane but the government was empowered to exempt any new sugar factory from payment of tax for a period of three years. Acting under it, the government by way of policy decision decided to grant such exemption only in favour of the co-operative sector. The said policy was challenged by the appellant. The Constitution Bench by a majority of 3:2 upheld the decision of the government.

Dissenting with the majority, Mathew, J. rightly observed. We thing that by the policy decisions the government had precluded itself from considering the applications of the petitioners and the appellant on their merits. In fact the government, by marking the policy decisions, had shut its ears to the merits of the individual applications. Referring to a classic work of learned author,[49] His Lordship further observed.

"Gernally speaking, an authority entrusted with a discretion must not, by adopting a rule or policy, disable itself from exercising it discretion in individual cases. There is no objection in formulating a rule or policy. But the rule it frames or the policy it adopts must not be based on considerations extraneous to those, resolving to refuse all applications or all applications of a certain class or all applications except those of a certain class"[50]

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[43] *AIR 1982 SC 1543*
[44] *AIR 1982 SC 1543*
[45] *AIR 1973 Gau 1; also D. Satyanarayan v. State of A.P. AIR 1979 AP 259*
[46] *(1907) 27 ILR Bom. 307*
[47] *AIR 1961 Ker. 23*
[48] *AIR 1974 SC 1945*
[49]*De Smith, Judicial Review of Administrative Action, 1980, P. 295*
[50]*Gurbuksh Singh v. State of Punjab, Air 1980 Sc 1632.*

d. Acting under dictation- Sometimes, it so happens that an authority entrusted with discretion does not exercise the discretion but acts under a dictation by a superior authority. In law, such a situation amounts to non-exercise of its discretion by the authority and is bad Although the authority purports to act on its own but in effect the power is exercised by another. The authority concerned does not apply its mind and take action on its own judgment, even though it was so intended by the statute.

Thus, in **Commissioner of Police v. Gordhandas Bhanji,[51]** under the Bombay Police Act, 1902 the Commissioner of Police was authorized to grant licences for the construction of cinema theatres. The Commissioner granted a licence to the respondent, But later on, he cancelled it at the direction of the State Government. The Supreme court held the cancellation order bad as the Commissioner had acted merely as an agent of the Government.

Again, in **Pratapore Company Ltd. v. Cane Commissioner of Bihar,[52]** the power was conferred on the Cane Commissioner to reserve sugarcane areas for the respective sugar factories. But at the dictation of the Chief Minister, he excluded 99 villages from the area reserved by him in favour of the appellant company. The Court quashed the action of the Cane Commissioner on the ground that he exercised his discretion at the dictation of other authority; and therefore it was deemed that there was no exercise of discretion at all.

Similarly, in orient paper mills v. Union of India,[53] the relevant statute had empowered the Deputy Superintendent to levy excise but he ordered levy of excise in accordance with the directions issued by the collector. The Supreme court quashed the order passed by the Deputy Superintendent.

In **State of Punjab v. Suraj Prakash,[54]** the State Government issued instructions to the Consolidation officer functioning under the East Punjab Holdings Consolidation and prevention of (fragmentation) Act, 1948. The Supreme court held that the State Government could not issue such instructions as there was no provision under the Act empowering the State Government to give any such instructions to the consolidation officer.

In **State of Punjab v. Hari Kishan,[55]** an application was made to the licensing authority for grant of a cinema licence. Instead of dealing with it, the licensing authority forwarded it to the state Government which rejected the same. The Supreme court held that the Act empowered the licensing authority to deal with the applications for licences, the state Government can come in the picture as an appellate authority. It was, therefore, not proper for the state Government to assume to itself the power and authority to deal with the applications on merits in the first instance.

e. Non-application of mind- Where an authority is given discretion, the said authority must exercise the same after applying its mind to the facts and circumstances of the case in hand. If this requirement is not satisfied, there is a clear case of non-application of mind on the part of the authority concerned. Such a flaw may arise where the authority might be acting mechanically, without due care and caution or without a sense of responsibility in exercise of its discretion. In such a situation also there is failure to exercise discretion and the action is bad.

Thus, in **Emperor v. Sibnath Banerji,[56]** an order of preventive detention was issued in a routine manner on the recommendation of police authorities and the home Secretary had not applied his mind and satisfied himself that the impugned order was called for. The order of preventive detention was quashed on the ground of non-application of mind by the Home Secretary. It was held that Home secretary's personal satisfaction was a condition precedent to the issue of detention order, otherwise it would be liable to be set aside.

Again, in **Jagannath v. State of Orissa,[57]** a preventive detention case, six grounds were verbatim reproduced from the relevant provision of the statute. Supporting the order, the Home Minster filed affidavit stating that his personal satisfaction to detain the petitioner was based on two grounds. The court ruled that the order was bad as the Minster had not applied has mind to all the grounds mentioned therein.

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[51] *AIR 1952 SC 16*
[52] *AIR 1970 SC 1896*
[53] *AIR 1970 SC 1498*
[54] *AIR 1963 SC 507*
[55] *AIR 1966 SC 1081*
[56] *AIR 1945 PC 156*
[57] *AIR 1966 SC 1140*

In **Barium Chemicals Ltd. v. Company Law Board**[58], the Central government passed an order of investigation against the petitioner company under the provisions of companies act, 1956, the Government was given power to issue such order if, there are circumstances suggesting fraud on the part of the management. The supreme court held that it was necessary for the Government to mention the circumstances which led to the impugned action so that the same may be examined by the court. Hidayatullah, J. observed.

"No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as sine que non for action must be demonstrable. If the action is questioned on the ground that no circumstances leading to an interference of the kind contemplated by the section exist, the action might be exposed to inference unless the existence of the circumstances is made out".[59]

In ***Management of Monghyr v. Labour Court,***[60] under section 10 of the industrial Disputes Act, 1917, an order of reference was made by the government on the ground that an industrial dispute exists or is apprehender". The management contended that there was non-application of mind on the part of government in as much as either the industrial dispute existed or it could be apprehended but it could not be both. Considering the facts and circumstances of the case, the Supreme court held the order or reference valid on the ground that the industrial dispute existed when the reference was made and therefore, the words "or is apprehended" were mere surplusage.

In ***Abdul Razak Abdul Wahab v. Commr. Of Police,***[61] under the Gujarat Prevention of Anti-Social Activities Act, 1985, an order of detention was passed. But the detenue was already in jail when the order of detention was passed. His bail application was also rejected by the competent court and thereafter no further application was made. In These circurnstances the court refused to accept the 'bald statement of the detaining authority that "there are full possibilities that you may be released on bail" and allowed the petition.

f. Abuse of discretion

When discretionary power is conferred on an administrative authority, it is required to be exercised according to law But as markose[62] remarks, when the mode of exercising a valid power is improper or unreasonable, there is an abuse of power', There are various forms of abuse of discretion. The circumstances from which abuse of discretion may be interred are following.

g. Exceeding Jurisdiction- An administrative authority is required to exercise discretionary power within the limits of the statute. An action or decision going beyond what is authorized by law is ultra vires. For example, if the administrative authority is empowered to control the price of bread it will be in excess of its jurisdiction be control the price of butter. The entire order will be uitrs vires and void for exceeding jurisdiction.

It an authority is empowered to award a claim for the medical aid of employees, it will be exceeding in its jurisdiction in granting the said benefit to the family members of the employees.[63]

Similarity, if under the relevant regulation the management is empowered to dismiss a teacher, the said power cannot be exercised to dismiss the principal.[64]

h. Irrelevant considerations- A discretionary power conferred on an administrative authority by a statue must be exercised on relevant and not on irrelevant or extraneous considerations. It means that the power must be exercised on considerations relevant to the purpose for which it is conferred. If the authority takes into account wholly irrelevant or extraneous circumstances, the exercise of power by the authority will be ultra vires and the action bad.

58 *AIR 1967 SC 295*
59 *Lbid, at p. 325*
60 *AIR 1978 SC 1428*
61 *AIR 1989 SC 2265*
62 *Judicial Control of Administrative Action in India 417 (1956)*
63 *Calcutta Electricity Supply Corpn. V. Worker's Union, AIR 1959 SC 1191*
64 *Chaudhary v. Datta AIR 1958 SC 722*

Thus, *in* ***Ram Manohar Lohla v. State of Bihar,***[65] under the Defence of India Rules, the authority was empowered to detain a person to prevent subversion of "public order". The petitioner was detained with the view to prevent him from acting in a manner prejudicial to the maintenance of "law and order", The court set, asides order of detention. In the opinion of the court, the concept of "law and order" was wider than the concept of "public order".

Again, *in* ***R.L. Arora v. State of U.P.***[66] under the Land Acquisition Act, 1894, the State Government was empowered to acquire land for a company if the Government was satisfied that such acquisition is heeded for the construction of a work and that such work is likely to prove useful to the public. But the land was acquired for a private company for the construction of a factory for manufacturing of textile machinery. Conceding that it was a matter of subjective satisfaction of the Government, the Supreme court held that since the sanction was given by the Government on irrelevant and extraneous considerations, it was invalid.

In ***Rohtas Industries Ltd. v. Agrawal,***[67] under the Companies Act, 1956, an order of investigation was issued against the petitioner company on two grounds. Firstly, it was stated that there were a number of complaints of misconduct against one of the leading directors of the company in relation to other companies under his control. Secondly, the appellant Company had arranged to sell preference shares of the face value of rupees three lacs of another company held by it for inadequate consideration. The Supreme court held the order invalid since the former ground was not relevant while there was no evidence about the other.

In ***Hukam Chand v. Union of India,***[68] the relevant rule authorized the Divisional Engineer to disconnect any telephone on the occurrence of a public emergency'. The petitioner's telephone was disconnected on the ground that it was used for illegal satta purposes. The supreme court held that it was an extraneous consideration and quashed the order of disconnection.

In ***State of M.P. v. Ramshanker,***[69] a teacher had taken part in RSS and Jan Sangh activities and on the basis of policed report in respect his services were terminated Declaring the order as illegal and invalid, Chinnappa Reddy J observed.

"Politics is no crime ….is Government service such a heaven that only angels should seek entry into it. We do not have the slightest doubt that the whole business of seeking police reports about the political faith, belief and association and the past political activity of a candidate for public employment is repugnant to the basis rights guaranteed by the Constitution and entirely misplaced in a democratic republic dedicated to the ideals set forth in the preamble. We think it offends the Fundamental Rights guaranteed by Articles 14 & 16 of the Constitution to deny employment to an individual because of his political affinities, unless such affinities are considered likely to affect the intently and efficiency of the individual's service"[44]

In ***Sant Raj v. O.P. Singh,***[70] the services of the appellants were terminated and reference was made to the labour court. It was held by the labour court that the termination was illegal and invalid but relief of reinstatement was not granted. In integrity and efficiency of the individual's Service"[71]

"Ordinarily where the termination of services is found to be bad and illegal, in the field of industrial relations a declaration follows that the workman continues to be in service and has to be reinstated in service with full back wages".[72]

Thus, the discretion was exercised on irrelevant or extraneous considerations not germane to determination.

i. leaving out relevant consideration- It the administrative authority fails to take into account relevant considerations, the exercise of power would be bad. It is very difficult to prove that certain relevant factors have not been taken into consideration by the authority. However, it can be interred from detailed reasons given in the impugned order. Sometimes, the relevant considerations are prescribed by the statute itself, e.g."regard shall be had to", "must have' regard to" etc.

Thus, the matter so specified must be taken into consideration.

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[65]*AIR 1966 SC 740*
[66]*AIR 1962 SC 764*
[67]*AIR 1969 SC 707*
[68]*AIR 1976 SC 789*
[69] *AIR 1983 SC 374*
[70] *AIR 1985 SC 617*
[71] *lbid, at p. 376*
[72] *lbid, at pp. 617-18*

In ***Rampur Distillery Co. v. Company Law Board,***[73] the Company Law Board acting under section 326 of the companies Act, 1956 refused to give its approval for renewing the managing agency of the company. The reason given by the Board by its action was that Vivian Bose Commission had harshly criticized the dealings of the Managing Director Mr. Dalmia. The court conceded that the past conduct of the Directors was a relevant consideration, but before taking a final decision, it should take into account their present acts also which sere relevant factors in judging suitability.

In ***Nizamuddin v. State of W.B.***[74] an order of detention was passed against internal Security Act, 1971 (MISA). The order was made on a solitary ground of theft in respect of which a criminal case was filed and subsequently dropped. This fact was not brought to the notice of the detaining authority. The supreme court observed that it would be most unfair to the person sought to be detained not to disclose the pendency of a criminal case against him to the District Magistrate.

In ***Ashadevi v. K. Shivraj,***[75] the petitioner was detained with a view to preventing him form engaging in transporting smuggled goods. The order of detention was based on the detenuse's confessional statement made before the Customs Authorities. But the facts having bearing on the question whether his confession was voluntary or not were not placed before the detaining authority. As it was not done, the order was held to be bad and invalid.

Again, *in* ***Dharamdas v. Police Commr.***[76] the petitioner was detained on certain grounds. A material fact regarding subsequent of dolente in some of the criminal causes was not brought to the notice of the detaining authority at the time of arriving at subjective satisfaction. The order of detention was quashed by the Supreme court because vital facts were not considered by the detaining authority before issuing the detention order.

In ***Shri Sitaram Sugar Co. Ltd v. Union of India***[77], the government was required to pay to the seller the compensation for levy sugar under section 3 (3-c) of the Essential Commodities Act, 1955 "having regard to" the matters mentioned in clauses (a) to (d) of sub-section (3-c). The supreme court held that "there is sufficient compliance if the government has addressed its mind to the factors mentioned in clauses (a) to (d), amongst other factors which the government may reasonably consider to be relevant and has come to a conclusion which any reasonable person, placed in the position of government, would have come to" Having done so, it is for the government to determine with reference to what it reasonably considers to be relevant for the purpose.[78]

j. Mixed considerations- Sometimes, it so happens that the order is not wholly based on irrelevant or extraneous considerations, it is founded partly on relevant and existent considerations and partly on irrelevant or non-existent considerations. Judicial pronouncements do not depict a uniform approach on this point.

In ***Dhiraj Lal v. Commr. Of Income Tax,***[79] there was a question before the Supreme court whether the appellant wde liable to assessment or not. The tribunal relying on relevant was well as irrelevant materials held the appellant liable. The court quashed the order of assessment because of the use of inadmissible material

In ***Shibban Lal v. State of U.P.***[80], the petitioner was detained on two grounds. Later the government revoked an order of detention on one of the grounds but continued detention on the other ground. The Court quashed the original detention order.

Similarly, *In* ***Dwarka Das v. State of J. & K,***[81] where the order of detention was based on relevant and irrelevant considerations, the Supreme court quashed it.

In ***State of Gujarat v. chasmanlal Soni,***[82] the Supreme court held valid a detention order based on mixed grounds. In this case an order of detention was passed against the détente taking into account various smuggling activates. Each activity of the defenue can be said to be a separate ground by itself for which an order of detention can be passed. Therefore, even it one of the grounds is irrelevant, extraneous or non-existent, an order cannot be said to be invalid or inoperative.

[73] *AIR 1970 SC 1789*
[74] *AIR 1974 SC 2353*
[75] *AIR 1979 SC 447*
[76] *AIR 1989 SC 1282*
[77] *AIR 1990 SC 1282*
[78] *AIR 1990 SC 1277, at pp. 1290-92*
[79] *AIR 1955 SC 271*
[80] *AIR 1954 SC 179*
[81] *AIR 1957 SC 164*
[82] *AIR 1981 SC 1480*

Again, in ***Madhukar v. Hingwe,***[83] the Supreme court ruled that it an order of allotment of a house is made to a persons who is both an evictee as well as a government servant, then if one of the grounds of other reason operates, i.e. he was an evictee and still continued to be an evictee then the allotment would continue'.

In ***Payare Lal Sharma v. Managing Director***[84] the services of the petitioner were terminated on two factors (i) unauthorized absence from duty and (ii) taking part into active politics. It was established that no notice was given to the delinquent regarding taking part into active politics. The order was, however uphold by the Supreme court on the plea that the order of termination can be supported on the ground of remaining unauthrosedly absent from duty".

k. Mala fide- In its popular sense, mala fide means dishonest intention or corrupt motive, de smith[85] states that in relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice A power is exercised maliciously it its repository is motivated by personal animosity towards those who are directly affected by its exercise. A power is exercised fraudulently if its repository intends to achieve an Object other than that for which he believes the power to have been conferred.

Thus, *in* ***Pratap Singh v. State of Pubjab,***[86] the appellant who was a civil surgeon had proceeded on leave preparatory to retirement. The leave which was initially gratned was revoked subsequently. The appellant was suspended, a departmental inquiry was held against him and ultimately has was removed from service. The appellant alleged that proceedings had been initiated against him at the instance of the Chief minister to wreck personal vengeance on him as he had refused to yield to the illegal demands of the former. The court concluded that the charge of mala fide exercise of power was proved and, accordingly, quashed the governmental action.

Similarly, in **Rowjee v. State of A.P.**[87]**,** under the schemes prepared by the State Road Transport Corporation, certain transport routes were proposed to be nationalized. The schemes owed their origin to the directions by the Chief Minister. It was alleged by the petitioners that the chief Minister had acted mala fide in giving the directions. The charge against him was that the particular routes had been selected with a view to taking vengeance against the private transport operators of that area as they were his political opponents. From the facts and circumstances of the case and in absence of an affidavit from the Chief Minister denying the charge against him, the court concluded that mala fide on the part of the chief minister was established and quashed the order.

Again, *in* ***State of Punjab v. Gurdial Singh,***[88] The land Acquisition proceedings for acquiring the land of the petitioners for a mandi were challenged on the grounds that they were mala fide. It was alleged that the proceedings were started at the behest to satisfy his personal vendetta against the land holders. In absence of any affidavit by the Minister denying the allegations, the Court held the proceeding mala fide. Krishna lyer, J. observed.

"Not that this land is needed for the mandi, in the judgment of the Government, but that the mandi need is hijacked to reach the private destination of depriving an enemy of his land through back-seat driving of the statutory engine.[89]

In ***Shivajirao Patil v. Mahesh Madhav Gosavi,***[90] the daughter of the than Chief Minister of Maharashtra, appeared for M.D. Examination along with other students, one of the students who failed at the examination field a writ petition in the High court of Bombay. Relying upon the circumstances the High Court held that altering and tampering with the mark sheets had been by the person conducting the examination at the behest of the then chief Minister. The Chief Minister resigned but filed appeal in the supreme court contending the judgment of the High court (the Supreme Court remarked that there was the question of giving any clean ohit to the then Chief Minister Speaking for the court. Mukhan. J. (as he then was) observed that it has to be borne in mind that things are happening in public life which were never even anticipated before and there are several gaining instances of mistiest of power by men in authority and position. This is a phenomenon which the courts are bound to take judicial notice.

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[83] *AIR 1987 SC 570*
[84] *AIR 1989 SC 1854*
[85] *Judicial Review of Administrative Action, 1980, pp. 335-36*
[86] *AIR 1964 SC 72*
[87] *AIR 1964 SC 72*
[88] *AIR 1980 SC 319*
[89] *lbid, at p. 321*
[90] *AIR 1987 SC 294.*

Similarly, in collector, **Allahabad v. Raja Ram Jaiswal,**[91] the land of the pelitioners was situated in the vicinity of the campus of Hindi Sahitya Samrnetan, Prayag. The petitioners wanted to construct and start a cinema theatre. But this was objected to by the sammelan. The objection was overruled and the certificate was granted. Thereupon the Sammelan approached the Government to acquire the land of the petitioners and the notification under section 4 of the land acquisition act was issued which was challenged by the petitioners as mala fide exercise of power by the Government. Looking to the facts and circumstances the court concluded that the proceeding was mala fide.

In ***G. Sadanandan v. State of Kerala,***[92] the petitioner la kerosene deafer, alleged that his detention was unjustified was the moving spirit behind his detention was Deputy Supdt. Of Police (civil Supplies Cell) who made a false report against him so that he could be eliminated as a whole sale kerosene dealer and the relatives of the concerned officer might benefit by obtaining distributorship for kerosene. In the absence of counter-affidavit from the government to controvert the allegations made against him, the court concluded that the detention of the petitioner was the result of mala fides.

l. Improper purpose: Collateral Purpose- If statutory power is conferred for one purpose but it is exercised for a different purpose, that is abuse of power, the action may be quashed. Improper purpose must be distinguished from mala fide exercise of power. In the latter, personal ill-will or malice is present. Whereas in the former it may not be so, and the action of the authority may be bona fide and honest but it may be different from what is contemplated by the statute, so it may be set aside.

Thus, in **Nalini v. District Magistrate,**[93] under the relevant statue power was conferred on the authority to rehabilitate person displaced from Pakistan as a result of communal viotence but it was exercised to accommodate a person who had come from Pakistan on a Medical Leave. The order was set aside.

Similarly, *In Ahmedabad Mfg. And calico Printing Co v. Municipal Corporation Ahmedabad,*[94] the relevant statute empowered the Commissioner to disapprove the construction of any building if it contravented any of the provisions of the statute. If the said power is exercised to bring pressure on the company to provide drainage facility to its other existing buildings, the order cannot be upheld.

In **State of Bombay v. K.P. Krishnan,**[95] the workmen resorted to go slow during the year. On this ground the government refused to make a reference. The Supreme court held that the reason was not germane to the scope of the Act and quashed the order.

Again, *in* ***State of Mysore v. P.R. Kulkarni,***[96] certain officiating wireless operators were reverted as Police constables. They alleged that the real object of reversion was to appoint a person junior to the petitioners. Accepting the allegation the High Court allowed the petition. In course of judgment, the court observed that there was misconception that “Unless the petitioners were reverted, the number of Wireless Operators would exceed the number required in the new state of Bombay”. Dismissing the appeal, the Supreme Court said “misuse of power or misapplication of power…are terms correctly employed to describe the use of the power in this illegal fashion”.

m. Colourable exercise of power- Where the authority resorts to exercise power ostensibly for the authorized end, but in reality for some other purpose it is called colourable exercise of power. Viewed in this light, colorable exercise means that under the “Colour” or “Guise” of legality, the authority seek to do something which is not authorized by law in question. In this sense, “colourable exercise of power” would not appear to be a distinct ground of judicial review of administrative discretion but would be covered by the grounds already mentioned, viz., improper purpose or irrelevant considerations. Thus, in **somawanti v. State of Punjab,**[97] the Supreme court said.

“Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the state Government to be satisfied about …..subject to one exception. The exception is that it there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party…….if it appears that what the Government is satisfied about is not a public

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[91]*AIR 1985 SC 1622*
[92]*AIR 1966 SC 1925*
[93]*AIR 1951 Cal. 346*
[94] *AIR 1956 Bom 317*
[95] *AIR 1960 SC 1223*
[96] *AIR 1972 SC 2170*
[97] *AIR 1963 SC 151*

but private purpose or no-purpose at all the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity".[98]

n. Reasonable exercise of power- A discretionary power conferred on an administrative authority is required to exercised reasonably. Where the power is exercised unreasonable there is abuse of power and the action of the administrative authority will be ultra vires. The word 'reasonable' has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know.[99]

Similarly, the term 'unreasonable' means more than one thing. It may include many things, e.g., irrelevant or extraneous consideration, improper purpose or mala fide etc. it is frequently used as a general description of things that must not be done.[100]

In the leading cause of **Roberts v. Hopewood,[101]** the local authority was empowered to pay "such wages as it may thing fit". In exercise of this power, the wages were fixed at F4 per week to the lowest grade worker in 1921-22. The Court ruled that though the discretion was conferred, it was not exercised reasonably and the action was bad. Lord Wrenbury observed.

"A person in whom is vested discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably".[102]

In **Pyx Granite Co. v Minister of Housing & Local Govt.,[103]** Lord Denning stated that "although the planning authorities are given very wide powers to impose "such conditions as they think fit", nevertheless, law says that those conditions to be valid, must fairly and reasonably relate to the permitted development".[104]

Unreasonableness may be a good ground for judicial intervention when the Constitution of India or statute so requires. For instance, Article 14 of the Constitution guarantees equality before law but the court have permitted reasonable classification. Even though the law is valid under the said constitutional provision, a discriminatory action may still be violative of the postulate of equality. Further, Article 19 requires only reasonable restrictions to be imposed on the rights guaranteed therein. In **Maneka Gandhi v. Union of India,[105]** the supreme court held that an order passed under section 10 (3) (c) of the Passport Act, 1967, empowering for impounding a passport, could be declared bad under Art. 19 (1) (a) and (g) if it imposes unreasonable restrictions on the freedoms covered by the two clauses.

Sometimes, law may require administrative behaviour to be reasonable. This means that there must be "reasonable ground to believe" by an authority to take action. In several cases the courts have stated that the authority should consider the question fairly and reasonably before taking action. Thus, in **Sheonath v. Appellate Assistant Commissioner,[106]** the Court held that there must be some material on the basis of which reasonable belief can be founded for initiating reassessment proceedings under the income Tax Act, 1922.

In **Mansa Ram v. Pathak,[107]** when the appellant was in government service, he entered the premises of the owner as tenant, As per statement of the appellant, he entered the premises not on the basis of any allotment order but on the basis of assurance by the landlord that he would be treated as tenant under the relevant Rent Act. After the death of the original owner, legal proceedings were started by his heirs. Allotment officer passed an order against the appellant. His view was that the appellant was occupying the premises improperly. The Supreme court set aside the order holding the action to be unreasonable exercise of power.

[98] *lbid, at p. 164.*
[99] *A solicitor, Re, 1945 KB 368 (371)*
[100] *Associated Provincial Picture Houses Ltd. v. Wrenbury Corpn (1948) 1 KB 223*
[101] *(1925) AC 578*
[102] *lbid at p 613*
[103] *(1958) 1 All ER 625*
[104] *Ibid at P.633*
[105] *AIR 1978 SC 597*
[106] *AIR 1971 SC 2451*
[107] *AIR 1983 SC 1239*

In **Indian Express News Papers v. Union of India,**[108] the Government imposed import duty on the newspaper. The petitioners contended that the action of the government was unreasonable and violative of Article 19 of the Constitution. Accepting the contention, the supreme court held that the power was not exercised by the government reasonably.

In ***Ranjit Thakur v. Union of India,***[109] the accused was serving in the army. He disobeyed the order of a superior officer to eat food. He was sentenced to one year's R.I. and also dismissed from service with disqualification of being declared unfit for any further civil employment. The Supreme court held that the punishment was thoroughly unreasonable which "Cannot be allowed to remain uncorrected in judicial review".

[108] *AIR 1985 SC 515*
[109] *AIR 1987 SC 2386*