Transparency in Administration –
A legal perspective.

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Equation of Transparency

ACCESS TO INFORMATION

+ ACCESS TO THE REASON FOR A DECISION

= TRANSPARENCY
• **Administrative Law: Need, Concept, Scope and Evolution**

• **Delegated Legislation:** Meaning, need, merits & De-merits, which can be delegated and which cannot be delegated – Judicial Review

• **Various Functions of an Administrator:** Executive functions, judicial functions, quasi-judicial functions.

• **Judicial Review of administrative Action:** Meaning, Object, Nature & Scope
  
  – Discretionary powers and judicial review [where transparency could slip]
    
    • Failure to exercise Discretion
    • Sub-delegation
    • Imposing fetters on discretion
    • Acting under discretion
    • Non-application of mind
    • Power coupled with duty.

  – Excess or abuse of power [where transparency could miss]
    
    • Absence of Power
    • Exceeding jurisdiction
    • Irrelevant consideration
    • Leaving out relevant consideration
    • Conclusion based on subjective satisfaction/ objective satisfaction
    • Mala fide
    • Colorable exercise of power
    • Legitimate expectations

• **Principles of Natural Justice**
• State is no more a ‘police state’
• The functions of State ‘leap and bounced’
• State instrumentality is also put to test in terms of performance, objectivity and functionality.
• “Administrative law is the law concerning the powers and procedures of administrative agencies, including especially the law governing judicial review of administrative action” – K.C. Davis.
• “Administrative law relating to the control of governmental power” – Prof. Wade.
• “Administrative law deals with that breach of constitutional law with powers and duties of administrative authorities, the procedure followed by them in exercising the powers and discharging the duties and the remedies available to an aggrieved person when his rights are affected by any action of such authorities”
Reasons for the growth of Administrative Law

- There is a radical change in the philosophy of state.
- Rule of Law
- Judicial system proved inadequate to decide and settle all types of disputes
- Legislative process is inadequate (no time)
- There is a scope of experimentation
- Administrative authorities can avoid technicalities
- Administrative authorities can take preventive measures

It is necessary not only for the individualization of the administrative power but also because it is humanly impossible to lay down a rule for every conceivable eventuality in the complex art of modern government – so is the reason the Administrators are conferred discretionary powers.
Meaning of Discretion

• Discretion in layman’s language means choosing from amongst the various available alternatives without reference to any predetermined criterion, no matter how fanciful that choice may be.

• Ex: A person writing his will has such discretion to dispose of his property in any manner, no matter how arbitrary or fanciful it may be.

• But the term ‘discretion’ when qualified by the word ‘administrative’ has somewhat different overtones. ‘Discretion’ in this sense means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful, but legal and regular.
• Transparency -- in terms of both *information disclosure (RTI)* and **access to decision-making** is therefore very important as it better enables civil society to:
  – hold government and/or key decision-makers to account;
  – promote good governance;
  – improve public policy and efficiency;
  – combat corruption.
Control over delegation of discretion

stage of delegation of discretion

After delegation of discretion

By testing the constitutionality of the parent legislation (with reference to FR)
Unlike India, in US there is “Administrative Procedure Act”- to regulating the way of exercising the administrative discretion. This has resulted into various malfunctioning of the Administrative Discretion like -

Some times Administrators don’t exercise discretion at all – like
- Sub-delegation
- Acting mechanically (non application of mind)
- Imposing fetters on discretion
- Acting under dictation
- Non-application of mind
- Power coupled with duty.

Some times Administrators exercise discretion but, ‘abusively’ like-
- Abuse of power.
- Mala fides
- Improper purpose
- Irrelevant considerations
- Leaving out relevant considerations
- Colourable exercise of power.
- Judicial discretion
- Unreasonableness
Mr. Narasappa, a railway employee, whose posting was at level crossing. In that route the rail comes twice in a day, at 10am and at 4pm. Hid job is restricted to opening and closing the gates twice in a day. For the rest of the day he sits idle. To use his time more profitably for himself, he kept a boy at his work station for closing and opening the railway gate – did Narasappa do any thing wrong ? If so what was that?
Mr. X, is a retired RTO. After his retirement, Mr. Y was appointed as RTO. who is not well-versed with rules of practices of RTO office. Hence, Mr. Y requested X to come to the office on daily basis and sit in the office to guide him on the rule of practice. At the instance of Mr. X, RTO Y started issuing & cancelling licenses – debate.
In an order under Preventive Detention Laws, Mr. X, detainee, was given all the six grounds of reasons under which an arrest is permissible under the law.

(Jagannath vs. State of Orissa AIR 1966 SC 1140)

“Formation of opinion is subjective but the existence of the circumstances relevant to the inference is sine qua non for action must be demonstrable” – Justice Hidayatulla. Examples: renewal of licenses, approval of building plans, issuing food licenses,

Forwarding a case to the disciplinary committee, by an administrator cannot be done mechanically. He must apply his mind to find out whether these is any reason to to initiate disciplinary action or not?

Exercising Discretion under dictation

• when the authority does not consider the matter itself but exercise its discretion under the dictation of a superior authority. This would amount to non exercise of Discretion and is bad at law.

• Although the authority purports, to act itself yet, in effect it is not so as it does not take the action in question in its own judgment as is intended by the statute.
• The Bombay Police Act 1902 granted authority to the commissioner of police to grant license for the construction of Cinema theatres.

• The commissioner granted license to the respondent on the recommendation of an advisory committee but later cancelled it at the direction of state govt.

• The court held that cancellation order bad as it had come from govt. and the commissioner merely acted as transmitting again

(The Commissioner of Police v. Gorhardas Bhanji AIR 1952)
• Statute provides discretionary power in the language of advisory like “may”, “as he deems fit”, “if it is lawful”. - remember there a duty behind this.

• Residents of a municipality moved Sub-divisional Magistrate under section 133 of Cr.P.C for abetment of nuisance. Some private construction work was going on in a colony, whereby the drainage got blocked causing inconvenience to the people. The residents brought the same to the notice of sub-divisional Magistrate, but he did not act upon that. While the residents of the colony moving the court against the builders, made the sub-divisional Magistrate a party for not discharging his duty.

  *(Ratlam Municipality vs. Vardichand 1980 2 SCC 355)*
• The appellant, a civil surgeon in the employment of the state government, was initially granted leave preparatory to retirement, but, subsequently, it was revoked, and he was placed under suspension and disciplinary action was started against him on the charge that he had accepted a bribe of Rs. 16/- from some patient prior to going on leave.

• The appellant alleged that the disciplinary action against him had been initiated at the instance of the Chief Minister to wreak personal vengeance on him as he had refused to yield to the illegal demands of the Chief Minister and members of his family.

• The Supreme Court accepted the contention, held the exercise of power to be mala fide and quashed the order.
  
  • Pratap Singh v. State of Punjab (1963)
  • 1964 AIR 72, 1964 SCR (4) 733
• Under the schemes prepared by the State Road Transport Corporation, certain transport routes were proposed to be nationalized.

• The routes proposed to be nationalized are at the directions of the Chief Minister.

• The charge against him was that the particular routes had been selected because he sought to take vengeance on the private operators on those routes, as they were his political opponents.

• It was said that the Chief Minister had acted mala fide in giving the directions. (C. S. ROWJEE AND OTHERS vs. ANDHRA PRADESH STATE ROAD TRANSPORT CORPORATION 1964 AIR 962, 1964 SCR (6) 330)

• Similarly, malice was proved against the local ministers in acquiring land for local mandi (market)  
  
  (State of Punjab v. Gurdial Singh)
• The distribution of cement was in favour of certain builders in return for the donations given by them to certain foundations of which the Chief Minister was a trustee. It was a clear case of mala fide exercise of power.

(P.B. Samant v. State of Maharashtra 1982 (1) BomCR 367)
the petitioner was detained under the Defence of India Rules, 1962 to prevent him from acting in a manner prejudicial to the maintenance of 'law and order' whereas the rules permitted detention to prevent subversion of 'public order'. The court struck down the order as in its opinion, the two concept were not the same, 'law and order' being wider then public order.

(Ram Manohar Lohia v. State of Bihar AIR 1966 SC)
Irrelevant considerations - 2

- Mr. X was ordered for compulsory retirement the reason for such order was one adverse entry made by him in a file several years prior to the order.

(D. Ramaswami v. State of Tamil Nadu AIR 1982)
the tenders for running a restaurant were invited by Airport Authority from 'registered second class hoteliers'. It was clearly stipulated that acceptance of tender would rest with the Airport Director who can reject or accept any tender without assigning any reason. The highest tender was accepted but the tenderer was not a hotelier at all. A writ petition was filed by a person who was himself neither a tenderer nor a hotelier.

(R.D. Shetty v. International Airport Authority AIR 1979)

His grievance was, if an essential condition could be ignored in the tender, he could have been a tenderer.
the petitioner was detained with a view to preventing him from engaging in transporting smuggled goods.

The detaining authority based its decision on the detent’s confessional statement before the custom officers, but the fact having bearing on the question whether his confession was voluntary or not were not placed before authority.

It was held that since the authority did not consider vital facts relevant to the detention of the petitioner the detention order was bad.

Ashadevi v. K. Shivraj AIR 1979 SC
• The satisfaction of the executive must be based on right test and right construction of a statute and as materials which had probative value and were such as natural human being would consider connected with the fact in respect of which the satisfaction was to be reached. The satisfaction ought to be based on relevant and non-extraneous consideration.
RTI & Transparency
The largest role played by RTI has been in “institutionalizing social audits” as an implicit part of governance.

The RTI Act has lot of impact on the Indian Administration in fostering greater Transparency in functioning of public authorities:

- disclosure of information regarding government rules, regulations and decisions.
- every public authority is mandated to ‘maintain all records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act’.
- The public authorities are required to make pro-active disclosures through publication of relevant documents.
- Besides, the public authorities are also required to ‘provide as much information to the public at regular intervals through various means of communication, including internet, so that the public have minimum resort to the use of this Act to obtain information’.
Access to information

• Act Facilitate the access to information, a citizen has the right to:
  • Inspection of works, documents, records.
  • Taking notes, extracts or certified copies of the documents or records.
  • Taking certified sample of material.
  • Obtaining information in electronic form is also available.
Concept of Right to Information started taking shape in 1970’s by liberal interpretation by the judiciary in various Fundamental Rights specially the right to freedom of speech and expression.

In the case of Bennete Coleman and co Vs Union of India (1973), the majority opinion of the Supreme Court then put it “Freedom of speech and expression includes within it compass the right of all citizens to read and be informed”

Similarly, In 1975 during National Emergency, Supreme Court of India held that “Information gathering” is a right to every person.

The 1981 Manubhai Shah vs. Life Insurance Corporation of India (LIC) reaffirmed the same point.
There was increasing demand on the governments of Andhra Pradesh and Telangana to enhance the quality of their Public Financial Management (PFM) services.

In view of providing robust electronic system that would boost transparency and accountability in the Finance Departments Public Finance Management System was developed.

It provides transparency in:
- Budget Management,
- Expenditure Management,
- Payroll Management,
- Debt Management,
- Cash Management and
- Accounts Management.

Online payment system

In addition, there was a need for an effective PFM solution that would ensure smooth flow of information. The client was looking for a partner with strong capabilities, who would assist them in streamlining operations.
“Comprehensive Financial Management System (CFMS) vision is to establish an **enterprise-wide** Financial Management System that enhances **efficiency** in financial transactions, **effectiveness** in control, **transparency** in operations, **accountability** at all levels, **sustainability** in the long run and to all stakeholders.”
• Improved capability of Planning and Budget Management through a collaborative approach between various divisions.
• Improved Revenue Management by developing a system of capturing and monitoring revenue targets, collections/refunds and realization on a real time basis enabling greater control and strengthening revenue collection mechanism.
• Improved Expenditure Management
• Improved Accounts Management
• Improved Debt and Investment Management
• Improved Human Resources Management like payroll & pension
• Improved Ways & Means Management that would include real time decision support mechanism.