The Judges' Gaze: Judicial Review of Administrative Discretion in India, United Kingdom, and United States of America

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Abstract

In modern welfare states, administrative authorities are entrusted with expansive discretionary powers to meet the complexities of governance. However, such delegation necessitates robust judicial oversight to prevent arbitrariness and ensure legality. This paper critically examines the judicial review of administrative discretion in India, the United Kingdom, and the United States, emphasizing how each jurisdiction has evolved mechanisms to strike a balance between effective administration and protection of individual rights. Drawing from constitutional frameworks, landmark judgments, and institutional practices, the study explores the grounds of judicial review—such as abuse of power, non-application of mind, malice, irrelevant considerations, and improper purpose—and how courts navigate the fine line between judicial activism and overreach. While India exhibits a blend of judicial activism tempered with restraint, the UK demonstrates increasing judicial assertiveness post-reforms, and the US maintains a cautious, principle-agent approach. The comparative analysis ultimately argues for India's continued commitment to a middle path, resisting both excessive intervention and undue deference, thereby preserving the integrity of administrative law and democratic governance.

INTRODUCTION

In the wake of independence, the constitution-makers were endowed with the task of transitioning our country from a "laissez-faire" or "police" state to a welfare state whereby the government would perform various functions. In a welfare state, since the government has to perform numerous functions such as provision for basic amenities, upliftment of minor/backward classes, equitable distribution of resources, sufficient opportunities for growth, etc., the legislature could not possibly make laws on every subject matter due to time constraints and lack of expertise. Furthermore, the process of enacting a statute is a lengthy process that cannot be appropriated and followed in emergency situations.[1] For example, during COVID-19, the executive authorities made several rules and regulations by using their delegated power to timely respond to life-threatening situations. In the given scenario, if the people had to wait for the legislative body to assemble and pass the law, the general public would have suffered greater losses.

At the time of independence, the delegation of legislative powers was the need of the hour, yet it had to be practiced with checks and balances. India was governed by a single ruling party, with little or no opposition, which resulted in fear of anarchy[2]. The first Chief Justice of India, H.J. Kania, said, "*In view of the fact, however, that the opposition is negligible, the position of judiciary will become all the more important. In the Legislative Assembly, a Bill could be passed and made into an Act without much difficulty. Having regard to this position of the Legislature, if the Executive which is now held responsible to the Legislature does acts which encroach upon the liberty of the subjects, the only thing which can redress against the irregular action of the Legislature is the courts*"[3]. Thus, to ensure that discretionary powers entrusted are not exercised in an arbitrary, vague, and fanciful manner, there was a need for a strong legal institution. The strong legal institution would be responsible for acting fairly at

[1] U.P.D. Kesari & Dr. Aditya Kesari, *Delegated Legislation* in *Lectures on Administrative Law, Central Law Publications* (Central Law Publications 2018).
[2] M.C. Setalvad, Judicial Review of Administrative Proceedings, 1. J. India L. Insti. (1958) https://www.jstor.org/stable/43952883 (last accessed on September 7, 2024).
[3] CJI Harilal Jekisundas

the time of reviewing the actions of the other two organs of the government, the legislature and the executive.[4]

The constituent assembly, through various provisions such as Articles 32 and 226 of the Constitution of India 1950, empowered the Supreme Court and the High Courts with the power of judicial review. However, even with the support of provisions and constitutional principles, the courts earlier deferred from intervening in the matters involving delegated powers. Nevertheless, with the passage of time, the court felt the need to intercede since discretionary powers were being exercised as per the whims and fancies of the concerned authorities[5]. It is important to note that the intercession of the courts cannot be on par with the common belief of the people that the judiciary can only be said to be free from fear or favor if it passes a verdict against the state, in favor of the individual. Since this approach would declare every development project or scheme initiated by the government ultra vires on the ground that it adversely affects the interests of some individuals. Therefore, the courts, while judicially reviewing the matter before them, have to maintain a balance between the welfare of the people and individual rights. The competent court, while exercising its jurisdiction to judicially review an administrative action, takes into account practices such as generalization of subject matter without hearing the cases, acting under dictation, non-application of mind, exercise of power in excess of jurisdiction, irrelevant consideration, non-consideration of relevant factors, mixed consideration, colourable exercise of power, and power coupled with duty. On the basis of facts and circumstances, the court has passed directions, orders, and writs declaring the administrative action illegal and void.[6] While the power has been granted to the court for protection, it is imperative to ensure that such power is exercised only in necessity. There has to be a distinction between judicial review and judicial overreach so that overeager courts do not intervene in constitutionally guaranteed domains of the other governmental organs. It has been observed that overenthusiastic judges forgetfully encroach upon matters outside their jurisdiction. An example of intrusion is *Vishaka Gupta v. State of Rajasthan*[7], whereby the judges issued legislative directions for the prevention and protection of women from sexual harassment at the workplace. Another example to indicate infiltration

[4]M.C. Setalvad, Judicial Review of Administrative Proceedings, 1. J. India L. Insti. (1958) https://www.jstor.org/stable/43952883 (last accessed on September 7, 2024).
[5] S.N. Jain, Abuse of discretion – Scope of judicial review to correct errors of law through mandamus and certiorari, 6 J. Indian L. Institute (1964) https://www.jstor.org/stable/43949807 (last viewed on September 15, 2024).
[6] C.K. Thakker (Takwani), *Judicial Review of Administrative Discretion* (Eastern Book Co. 2007).
[7] Vishaka Gupta v. Union of India, (1997) 6 S.C.C. 241 (India).

into the executive domain is *Shiv Kant Jha v. Union of India* [8],whereby the court declared inoperative a treaty signed by the Government of India with a foreign country.

While the courts in India here have decided to interfere, the courts in the United States of America, where the doctrine of judicial review evolved in the verdict of *James Marbury v. Madison*[9], have decided to be constrained by the legislative and judicial restrictions. For the purpose of ensuring that citizens are governed by laws enacted by the elected representatives rather than unelected judges, certain limitations are prescribed that are either statutory or judge-made principles, such as the presumption of constitutionality and principle (Congress)-agent (administration) relations. The practice of limited intervention is necessary, whether in the legislative or administrative domain, owing to certain experiences wherein the involvement of the court has done more harm than good. In the verdict of Dred Scott v. Stanford [10],the US Supreme Court ignored the statutory provision that protected the rights of the Black citizen and supported slavery.

Since the United Kingdom does not have a written constitution, any law made by the Parliament could be said to be constitutional. For a long time, parliamentary sovereignty was followed; however, with a change in the selection process of the judges through the enactment of the Constitutional Reform Act 2005 and the Human Rights Act 1998, several judicial decisions have been pronounced that indicate strengthening the powers of the courts[11].

The courts of the three democracies, India, the U.K., and the USA, have practised judicial review of administrative action. However, each of them, owing to their legal philosophies and socio-political-economic diversification needs, has adopted its own modus operandi. Ultimately, the aim of the courts of these three countries is to create a balance between administrative actions exercised for public good and protection of private rights of the individuals.

JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION: INDIAN PERSPECTIVE

[8] Shiv Kant Jha v. Union of India, (2002) 256 I.T.R. 563 (India).
[9] James Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).
[10] Dredd Scott v. Stanford, 60 U.S. (19 How.) 393 (1857).
[11]Monica Lineberger, *If You Give a Mouse a Cookie, He Might Want a Glass of Milk: Judicial Activism in the United Kingdom*, in *Judicial Activism in Comparative Perspective*, Lori Hausegger & Raul Sanchez Urribarri, eds. (Peter Lang 2024).

There has been a shift from the ideology that man is the best judge for himself and should solely regulate his business without any state interference. Thus, the state has started intervening in matters that are just beyond maintenance of law and order. Thereby, increase the workload of the state. Hence, powers have been delegated from the Parliament to the executive to reduce their burden.[12]

The principle of delegated legislation is incorporated in the constitution of this country. Article 13(3)(a) of the Constitution of India states, "*law includes ordinance, order, bye- law, rules, regulation, notification, custom or usage having in territory of India the force of law."* [13]The ordinances, orders, bye-laws, rules, regulations, and notifications are made by the executive, not the legislature. Furthermore, the Supreme Court, in its landmark decision on Re Delhi Laws Act, observed, "*the complexity of the modern administration and the expansion of the functions of the state to the economic and social sphere have rendered it necessary to resort to new forms of legislation and give wide powers to various authorities on suitable occasions. Delegated legislation has become a present-day necessity, and it has come to stay – it is both inevitable and indispensable. The Legislature has now to make so many laws that it has no time to devote all the legislative details and sometimes the subject in which it has to legislate is of such technical nature that all it can do, is to state broad principles and leave the details to be worked out by those who are more familiar with the subject. Again, when complex scheme of Reform is to be subject of legislation, it is difficult to bring out a self – contained and complete Act straightaway, since it is not possible to foresee all the contingencies and envisage all the requirements for which provision is made."*[14] However, delegated legislation is not unrestricted or unconditional. The legislature has to lay down guidelines or policies within the contours of which such power has to be exercised. These guidelines cannot be too broad, vague, weak, or incomplete. In *Hamdard Dawakhana v. Union of India,* [15]the court held section 3 of The Drugs and Magic Remedies (Objectionable) Advertisement Act 1954 to be void since no policy had been clearly laid down for the authorities to determine which diseases could be included within the ambit of this law. These guidelines could be inferred from the preamble, provisions, or subject matter of the statute[16]. The administrative authorities have the power to modify or amend the laws as well, without impacting the essential features.

[12] U.P.D. Kesari & Dr. Aditya Kesari, *Delegated Legislation* in *Lectures on Administrative Law, Central Law Publications* (Central Law Publications 2018).
[13] INDIA CONST. art. 13(3)(a).
[14] Re Delhi Laws Act, AIR 1951 SCR 747 (India).
[15] Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 (India).
[16] Registrar of Co-operative Societies v. K. Kunjbum, AIR 1980 SC 350 (India).

In *Raj Narain Singh v. Chairman, Patna Administration Committee* [17], the authority had the power to apply the Bihar and Orissa Municipal Act 1922 in any part of Bihar subject to such modifications and restrictions as it deems fit. The authority applied the whole statute in Bihar except section 104 [18],which stated that a municipality cannot impose any tax on the local population without giving them an opportunity to be heard. Considering section 104 of the said statute to be an essential feature, the court declared the partial adoption of the laws to be ultra vires.

Through multiple decisions, the court has reiterated its position to determine the validity of the administrative discretions. The Apex Court, in its verdict in *Minerva Mills v. Union of India* [19],held that the judiciary is independent and is entrusted with the power to determine the legality of the administrative and legislative actions. Moreover, in the case of *Tata Cellular v. Union of India*[20], the court warned that the scope of judicial review should not be too restricted, or else it would make the procedure meaningless and a mere formality. However, it has been pointed out that the concern of the judicial review process is the decision-making process, not the decision itself. [21]

The court considers the validity of an action on two grounds: one is violation of the constitutional provisions, and the second is violation of the parent act granting powers. The power of the Supreme Court and the High Courts to adjudicate on the validity has been derived from Articles 32 and 226 of the Constitution of India, 1950. Article 32 grants the right to move to the Supreme Court for enforcement of the fundamental rights. Herein, the court can issue orders, directions, and writs, including writs in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warrantor[22]. In a similar fashion, under Article 226, the High Court has the power, notwithstanding the power given to the Supreme Court under Article 32, to issue directions, orders, and writs, in the nature of Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warrantor within its territorial jurisdiction against any person or authority including the government, for the enforcement of the fundamental rights and any other constitutional rights.[23]

[17] Raj Narain Singh v. Chairman, Patna Administration Committee, AIR (1954) SC 569 (India).
[18] Bihar and Orissa Municipal Act, s 103 (1922).
[19] Minerva Mills v. Union of India, AIR 1980 SC 1789 (India).
[20] Tata Cellular v. Union of India, AIR 1996 SC 11 (India).
[21] Chief Constable v. Evans, (1982) 3 All ER 141: 1982 1 WLR 1155 (India).
[22] INDIA CONST. art. 32
[23] INDIA CONST. art. 226

The courts can review the administrative actions on the following grounds:

1. Failure to exercise discretion

a) Sub–delegation

De Smith said, "*a discretionary power must, in general, be exercised only by the authority to which it has been committed"*[24]

If the lawmakers have confided their power to a particular official or authority, the power should be exercised by that particular official or authority only unless further delegation has been permitted by the parent statute. This ensures that only trustworthy people perform vital functions. In *Sahni Silk Mills v. ESI Corporation*[25], the power to recover damages was delegated to the Director–General alone. The further sub–delegation, without permission, to the Regional General was declared illegal. However, employment of a competent person to assist the delegated authority is permissible. This was held in *Pradyat Kumar v. Chief Justice of Calcutta*. [26]

b) Imposing fetters

In exercising its power, the authority should not decide a general rule that will be applied notwithstanding the facts and circumstances. The Supreme Court held the general policy to be contrary to the law in *Keshavan Bhaskaran v. State of Kerala*[27]. The law prescribed that a person has to be at least fifteen years old to avail a school leaving certificate. However, the Director – General had the discretion to forego this condition after consideration of each situation. Yet, the Director–General instead of carefully evaluating each situation, adopted a common rule that a school leaving certificate could be given if the deficiency of age is less than 2 years.

c) Acting under dictation

The power should be exercised without any external influence. However, at certain times the delegated authority acts under the dictation of a third party. Such decisions are bad in law, making them ultra vires to the constitution.

[24] De smith
[25] Sahni Silk Mills v. ESI Corporation, (1994) 5 SCC 346 (India).
[26] Pradyat Kumar v. Chief Justice of Calcutta, AIR 1956 SC 285 (India).
[27] Keshavan Bhaskaran v. State of Kerala, AIR 1961 Ker 23. (India).

In *Commissioner of Police v. Gordhandas*[28], the court set aside the cancellation order passed by the Commissioner of Police since this decision was made under the dictation of the state government. Anyway, the court demarcated between dictation and advice in *Baldev v. Union of India*[29]. The court said that an authority basing its decision on advice from the committee is not illegal.

d) Non–application of mind

The administrative authorities should apply their minds before reaching a decision. The Supreme Court in *Jagannath v. State of Orrisa* [30],held the action of the Home Minister was taken without any proper application of mind. They based their decision only on the personal satisfaction of two grounds mentioned in the statute instead of the mandatory personal satisfaction of six grounds.

e) Power coupled with duty

The parent statutes grant discretion to the administrative authorities to act on their own will. Such statutes are filled with words such as *"may", "it may be lawful"* etc. Such discretion is not absolute; it has to be exercised in accordance with the prescribed guidelines. This point can be illustrated by the *Hirday Narain v. ITO* [31]judgement. The court held that if circumstances exist for the exercising of the discretionary power, the discretionary power has to be exercised.

2. Excess/Abuse of discretion

a) Absence of power

For performing an act/omission, the administrative authority must have power vested in them by any law. If there is no such power, the action/omission is void ab initio. In *R v. Minister of Transport* [32], the act of revoking the license by the minister was ultra vires since no such act was authorized to him in the statute.

b) Exceeding jurisdiction

[28] Commissioner of Police v. Gordhandas, AIR 1952 SC 16 (India).
[29] Baldev v. Union of India, (1980) 4 SCC 321 (India).
[30] Jagannath v. State of Orissa, AIR 1966 SC 1140 (India).
[31] Hirday Narain v. ITO, (1970) 2 SCC 355 (India).
[32] R v. Minister of Transport, (1934) 1 KB 277: 1933 All ER 604 (India).

The discretion to be exercised is to be within the contours of the power delegated to them. For example, if the authority is empowered to grant medical aid to the employees, it cannot extend the medical benefits to the family members of such employees.[33]

c) Considerations

The delegated power has to be exercised on the basis of relevant considerations only. However, it is not necessary that taking irrelevant considerations into account for the purpose of reaching a decision is always malicious; it could be an honest mistake too. [34]

In *R.L. Arora v. State of Uttar Pradesh* [35],the court found the government action to be void ab initio since they themselves cannot not interpret the word "personal satisfaction" and then decide that the same has been attained. The government act of acquiring private properties for establishing factories was declared invalid because it was not in the interest of the people. Similarly, since the divisional engineer disconnected the telephone lines on the mere allegations of forward trading instead of public emergency as prescribed in the statute, it was held to be illegal. [36]

In *Prem Shankar v. Delhi Administration* [37],the court held that the social status of an offender is an irrelevant consideration for determining whether they should be handcuffed or not.

If the authority bases its decision on both relevant and irrelevant consideration, it becomes difficult to adjudicate on the issue. If a decision has been based on the relevant and irrelevant considerations which has to be determined on the personal satisfaction of the authority, such decision will be set aside. In *Dwarka Das v. State of Jammu and Kashmir*[38], the court set aside the detention order since it was a culmination of relevant and irrelevant grounds. The court in *Zora Singh v. J.M. Tandon* said, "*The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision to be vitiated, applies to cases in which the conclusion is arrived not on the assessment of objective facts or evidence, but on the basis of personal satisfaction. The reason is that whereas in cases where the decision is based on the subjective satisfaction, if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find*

[33] G.E.S. Corporation v. Workers' Union, A.I.R. 1959 SC 1191 (India).
[34] C.K. Thakker (Takwani), *Judicial Review of Administrative Discretion* (Eastern Book Co. 2007).
[35] R.L. Arora v. State of Uttar Pradesh, A.I.R. 1962 SC 764: 1962 Supp (2) SCR 149 (India).
[36] Hukum Chand v. Union of India, (1976) 2 SCC 128: AIR 1976 SC 789 (India).
[37] Prem Shankar v. Delhi Administration, A.I.R. 1970 S.C. 1536 (India).
[38] Dwarka Das v. State of Jammu and Kashmir, A.I.R. 1957 SC 164: 1956 SCR 948 (India).

out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction. But in a case where the conclusion is based on objective facts and evidence, such difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior court would not interfere if the finding can be sustained on the rest of the evidence. [39]

However, the court has to assure itself that exclusion of irrelevant considerations would have created an impact on the minds of the authorities.[40] For example, in *Pyara Lal Sharma v. State of Jammu and Kashmir*[41], the dismissal order was declared valid since the court was able to distinguish between the relevant and irrelevant grounds taken into consideration at the time of reaching the decision.

d) Malice

Malicious acts/omissions by the administrative authorities are illegal per se. It could be an express or an implied malice. Decisions reached on extraneous facts and circumstances account for express malice. Orders given in contravention of law is implied malice. The removal of the surgeon only because he refused to act on the illegal directions of the minister was held to be a decision based on express malice.[42] In *Municipal Council of Sydney v. Campbell*[43], property acquisition was held to be against the law since it was incongruent with the purpose stated in the enactment. The court usually considers the decision of the authorities to be constitutionally valid and based on bona fide considerations; thus, the burden of proving otherwise is on the claiming party.[44]

e) Improper purpose

The discretion accorded to the administrative authorities has to be exercised for the purpose prescribed under the statute. The court in *Nalini Mohan v. District Magistrate* set aside the order that granted accommodation to those Pakistanis who visited India on medical leave. The statute prescribed accommodation only to communal violence refugees. [45]

[39] Zora Singh v. J.M. Tandon (1971), 3 SCC 834: A.I.R. 1987 SC 570 (India).
[40] Manu Bhusan v. State of West Bengal, (1973) SCC 663: AIR 1973 SC 295 (India).
[41] Pyara Lal Sharma v. State of Jammu and Kashmir, (1989) 3 SCC 448: AIR 1989 SC 1854 (India).
[42] Pratap Singh v. State of Punjab, A.I.R. 1964 SC 72: (1964) 4 SCR 733 (India).
[43] Sydney v. Campbell, (1925) AC 338: (1924) All ER 930 (India).
[44] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3 (41) (India).
[45] Nalini Mohan v. District Magistrate, A.I.R. 1951 Cal 346 (India).

While it can be clearly deciphered that courts carefully scrutinize the actions of the administrative authorities, it is vital to understand that earlier courts were reluctant to pass any order against them. For a long duration of time, the Supreme Court and the High Courts followed in the footsteps of *A.K. Roy v. Union of India* [46], which prescribed that no writ could be passed against the administrative authorities. However, this underwent a drastic change in *R.L. Arora v. State of Uttar Pradesh*.[47] Furthermore, the courts have been issuing writs of certiorari ever since K.*M. Shanmugan v. S.R.V.S. Private Limited* [48],since the decision was apparent.[49]

The ambit of the administrative actions has to be carefully defined to ensure public welfare, administrative efficiency, and protection of private rights.[50] Justice of the US Supreme Court said, *"Judicial Review gives time for the sober second thought. It interrupts the administrative process, to be sure, and makes it more time-consuming. But there are few decisions that must move pell-mell into action. The cooling period is good for most hotly contested issues. And where basic fundamental rights of the citizens are at stake, the contemplative pause, necessitated by judicial review, may be critical. The confidence of the citizen in the modern government is increased by more, rather than less, judicial review of the administrative process. It assures that basic unfairness will be corrected. And the administrator who knows he must ultimately account to a judicial body for his actions will tend to be more responsible public official*.[51]

JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION: UNITED KINGDOM PERSPECTIVE

Post–enactment of the Constitutional Reform Act 2005, the role of Lord Chancellor in judicial appointments, discipline, complaints and dismissals has been restricted. The Chief Justice has been made the head of the judiciary in Wales and England. Now, the Lord Chancellor and the Chief Justice are sharing responsibilities, along with judicial commissions. This shift ensures

[46] A.K. Roy v. Union of India, A.I.R. 1982 SC 710 (India).
[47] R.L. Arora v. State of Uttar Pradesh, A.I.R. 1962 SC 764: 1962 Supp (2) SCR 149 (India).
[48] K.M. Shanmugan v. S.R.V.S. Private Limited, A.I.R. 1963 S.C. 1626 (India).
[49]S.N. Jain, Abuse of discretion – Scope of judicial review to correct errors of law through mandamus and certiorari, 6 J. Indian L. Institute (1964) https://www.jstor.org/stable/43949807 (last viewed on September 15, 2024).
[50]M.C. Setalvad, Judicial Review of Administrative Proceedings, 1. J. India L. Insti. (1958) https://www.jstor.org/stable/43952883 (last accessed on September 7, 2024).
[51] Setalvad, *supra* note 50.

a lesser role for politics in the appointment of judges. This has led to an increase in judicial diversity in comparison to earlier appointments restricted to limited elderly male white barristers who had received education from Oxford or private schools. An increase in the judicial diversity will create room for more opinions, views, and ideologies.[52] The two commissions recommend the name of a suitable candidate to the Lord Chancellor, who can either accept or reject it. The rejection is permissible only on the ground of "*unsuitability to the office*".[53] However, since it has not been expressly defined, it can be misused to fulfil their personal political vendetta. To this date, only the recommendation of Sir Nicholas has been rejected on the basis of unsuitability to the office; however, critics speculate it could be because of his critical remarks on the judicial system. [54]

Besides political partisanship, an unwritten constitution, parliamentary sovereignty, and strict adherence to precedents have ensured a weak form of judicial review in courts. The parliamentary sovereignty only permits the courts to review the secondary legislations, those legislations that have been made by the executive or the administrative authorities.[55] An example of sovereignty of parliament is *Rothwell v. Chemical & Insulating Company.*[56] The insurance company was not liable to compensate since statplaques could not be constituted as an injury. However, with the intent to overrule this decision, the government enacted a law called The Damages Act 2009. The court refused to declare the law, made by the legislative body, constitutionally invalid.

The judicial precedent could be overturned if needed, as acknowledged by House of Lords only in its Practice Statement 1996.[57] However, it created no impact; the judicial precedent was overturned for the first time only in 2008.[58] The Human Rights Act 1998 empowered the court to declare incompatible any legislation not in consonance with the European Convention on Human Rights.[59] The courts are required to interpret the laws in consonance

[52]Kate Mallison, *Appointment, Discipline and Removal of Judges: Fundamental Reforms in the United Kingdom*, in *Judiciaries in Comparative Perspective* 154 (H.P. Lee ed., Cambridge Univ. Press 2011).
[53] Supra
[54] Supra
[55]Kate Mallison, *Appointment, Discipline and Removal of Judges: Fundamental Reforms in the United Kingdom*, in *Judiciaries in Comparative Perspective* 154 (H.P. Lee ed., Cambridge Univ. Press 2011).
[56] Rothwell v. Chemical & Insulating Co. Ltd., ([2007) UKHL 39.
[57] Practice Statement (Judicial Precedent), (1966) 1 W.L.R. 1234 (H.L.).
[58]Monica Lineberger, *If You Give a Mouse a Cookie, He Might Want a Glass of Milk: Judicial Activism in the United Kingdom*, in *Judicial Activism in Comparative Perspective* (Lori Hausegger & Raul Sanchez Urribarri eds., 1st ed. Peter Lang 2024).
[59] Monica Lineberger, *supra* note 58.

with the rights prescribed under the convention.[60]. In *Ghadian v. Godin – Mendoza*, the rent law was given a narrow interpretation. The homosexual couples were not given recognition since the statute used the words, "*husband*" and "*wife*".[61] However, in *Fitzpatrick v. Sterling Housing Association*, the rent law was interpreted broadly to include homosexual couples under the definition of "*family*." In the second mentioned case, using section 3 of the same statute, the court gave the benefit of tenancy to the homosexual partner of the deceased by construing them as "family". The inclusion of these provisions ensured the courts' movement from total judicial restraint to judicial review. [62] The verdict of *Anisminic Limited v. Foreign Compensation Commission* [63],was one of the earlier judicial pronouncements that overturned a precedent. Prior to it, any decision taken by any tribunal could not be reviewed by the court if the statute ousted their jurisdiction. It could only determine if the tribunal is competent to adjudicate on the issue. In *Smith v. East Elloe Rural District Council*[64], the court declared judicial review is impermissible if jurisdiction has been excluded by the statute, *"even when the administrative act was challenged on the ground that it has been made 'wrongfully' and in 'bad faith*".[65] Now, non-observation of natural justice, malicious intent, misinterpreting the statutory provisions, and ignoring relevant considerations are grounds on which the courts can review the decisions of the tribunals, even if the jurisdiction of the court has been excluded in the statute.[66] Another significant development was made in *Regina v. Criminal Injuries Compensation Board.* [67] The court made permissible review of the decisions passed by a non–statutory government tribunals. In *Regina v. General Council of Bar*[68]*,* the respondent was charged by the Bar Council Professional Conduct Committee for mishandling the client's money. However, aggrieved by the minuscule nature of the charge, the petitioner filed a review petition in the court seeking adjudication of the action of the committee. The court upheld the committee action and did not pass any order against them. However, it was clear that the court could intervene. In *Regina v. Advertising Standard Authority*[69], the court quashed the decision passed by a non-legal body called Advertising Standard Authority set up by the media houses jointly for regulating their conduct. The court held that if a non-legal body decides to deflect

[60] Human Rights Act, 1998, c.42, s 3(U.K.).
[61] Ghadian v. Godin – Mendoza (2004) UKHL 30.
[62] Fitzpatrick v. Sterling Housing Association, (1999) UKHL 42.
[63] Anisminic Limited v. Foreign Compensation Commission, (1969) 2 App. Cas. 147 (H.L.).
[64] Smith v. East Elloe Rural District Council, (1956) A.C. 736 (H.L.).
[65] Anisminic Limited v. Foreign Compensation Commission, (1969) 2 App. Cas. 147 (H.L.).
[66] Anisminic Ltd. v. Foreign Comp. Comm'n, (1969) 2 App. Cas. 147 (H.L.)
[67] Regina v. Criminal Injuries Compensation Board, (1967) 2 Q.B. 864 (C.A.).
[68] Regina v. General Council of Bar, (1990) W.L.R. 323 (Q.B.).
[69] Regina v. Advertising Standard Authority, The Times (London), Mar. 7, 1989.

from its prescribed rules or principles of natural justice, its decision would be set aside. The court held that the legislature had not established an authority to oversee the given subject since this non–legal body was exercising power over it. However, to ensure that such wide powers do not become a cause for disastrous results, the court in *Regina v. Panel on Take-overs and Mergers* [70],held that instead of invalidating the decision, a directive should be passed for future courses of action. Moreover, writs can be issued only when a decision has been reached by ignoring the principles of natural justice.[71]In *Council of Civil Service Union v. Minister for the Civil Service*[72], the court has brought the royal prerogatives within the ambit of its judicial review powers. The extent of the court's powers has widened to such an extent that it seems nothing can escape the scrutiny of the court. In *Regina v. Secretary of State for the Environment*[73], the court reviewed a leaflet that was published only for disseminating information on the new tax regime. While the leaflet was declared to be valid, the court made it quite clear that its power is not restricted anymore. [74]

JUDICIAL REVIEW OF ADMINISTRATIVE DISCRETION: UNITED STATES OF AMERICA PERSPECTIVE

For the purpose of regularizing the administrative powers, the Congress enacted the Administrative Procedure Act of1946. The statute grants as well as restricts the powers of the court to judicially review the actions of the administrative authorities. The statutes can oust the jurisdiction of the courts. Such actions, to be named as informal discretions, have a significant impact on the citizens.

The power of judicial review that has derived from Article III, Section 1 of the Constitution of the United States of America. Such power to be with the United States Supreme Court and other courts inferior to it, as determined by the Congress.[75] The court in *James Marbury v. Marshall*[76], noted that the court has a duty to review those actions of the administrative agencies that are alleged to be in conflict with the constitutional provisions, irrespective of whether it causes embarrassment or inconvenience to those who reached the decision. This

[70] Regina v. Panel on Takeovers & Mergers, ex parte Datafin plc, (1987) Q.B. 815 (C.A.).
[71]H.W.R. Wade, *Beyond the Law: A British Innovation in Judicial Review*, 43 Admin. L. Rev. 559 (1991), https://www.jstor.org/stable/40709686 (last visited Nov. 15, 2024).
[72] Council of Civil Services Unions v. Minister for the Civil Service, (1985) A.C. 374 (H.L.).
[73] Regina v. Secretary State for the Environment, The Times (London), Dec. 13, 1993 (Q.B. Div. Court).
[74]H.W.R. Wade, *Beyond the Law: A British Innovation in Judicial Review*, 43 Admin. L. Rev. 559 (1991), https://www.jstor.org/stable/40709686 (last visited Nov. 15, 2024).
[75] U.S. Const. art. III, s 1
[76] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

power creates fear among the general public too. It is suspect that a judge would take out their robes to play the role of a legislator. Moreover, it cannot be avoided that judges do not have any fear of losing jobs and lack accountability. However, it is still a presumption that the judiciary shall do less harm than the legislature and the executive.

The court follows the principle of presumption of constitutionality and agency. Following the first principle, the court prima facie assumes every action of the administration to be valid on the basis that it has been undertaken to fulfila statutory objective that is in compliance with the provisions of the constitution. The second principle views the Congress and the administrative agencies in the relationship of principle and agent. The principle has delegated their powers to the agent on their own accord. This creates a fiduciary relationship between them. Such delegated powers have to be exercised within the described limits. Thus, the court shall exercise the same deference as it would have exercised if the Congress had acted on their own. However, this practice highlighted strict judicial restraint.[77] The judiciary was held to be the "*least dangerous branch"* that "*lacked sword and purse".* Thus, its decision always needed the support of the other two organs of the government. Nonetheless, there has been a change in the judicial position; it now exercises a strong form of judicial review.[78]

Under the American system, 'discretion' could be categorized into five categories. They are individualizing discretion, executing discretion, policy-making discretion, unbridled discretion, and numinous discretion. Individualizing discretion permits the administrative officials to deviate from the statute to ensure its enforcement. This has been made permissible to ensure fairness and flexibility. However, such a practice is not free from criticism. While some believe that this will enrich the experience of the people, others want the powers of the officers to be restricted according to the limits in the statutes. In such cases, the court exercises limited discretion. The court adjudicates on the matter by taking into consideration such as to what extent the official is allowed to deflect from the statute, what factors necessitate this deflection, or if any irrelevant considerations have caused deflection. The court only interferes when the decision is highly unacceptable. In *Airmark Corporation v. Federal Aviation Administration (FAA*), the court held the discretion exercised by the FAA to be "*grossly inconsistent and patently arbitrarily"* only because it was highly unacceptable. Even then, it

[77]Steven O. Ludd, *Judicial Review of Administrative Discretion: Friend or Foe of the Administrative Process*, 16 Admin. Theory & Praxis 2, (1994), https://www.jstor.org/stable/25611092 (last visited Sept. 25, 2024).
[78]Richard L. Pacelle Jr., *The Complementary Use of Judicial Activism*, in *Judicial Activism in Comparative Perspective* (Lori Hausegger & Raul Sanchez Urribarri eds., Peter Lang 2024).

pointed out that the FAA is the only authority for determining which air carriers are to be exempted from complying with the deadlines.[79] The executing discretion is exercised when broad, vague, and incomplete guidelines have been mentioned in the statute by the Congress, which could be intentional or unintentional. The court does not strike down such legislation, but exercises substantive judicial review powers over it. In *Coal Exporters Association of the United States v. United States*[80], the court declared the actions of the administrative authorities to be invalid, even when the guidelines were not adequate, on the basis of the reading of the law. Under the policy-making discretion, the authorities perform functions similar to the law making. They fill the gaps left behind, those gaps that have been left either in public interest or want of subject matter expertise. The court practices the highest level of judicial restraint in such matters to ensure that policies are made on the basis of popular will and technical knowledge, which cannot be best understood by the judges. In *WNCN Listeners Guild v. Federal Communications Commission (FCC),* [81]the court clarified that agencies should be permitted to carry out the policy – making functions without the intervention of the court. The court does not have legislative powers and does not hold technical knowledge on the required subject. The court just have the jurisdiction to determine if the agencies have acted within the statutory powers.[82] In *Chevron U.S.A. Incorporation v. Natural Resources Defense Council*[83]*,* the court held that if the intention of the legislature could be derived from the statute, the agencies would follow that intention. If no intention could be deciphered; the agencies shall act exclusively. Unbridled discretion precludes the courts from reviewing any act or omission. Such discretion is granted either through statutory provisions [84]or decisions of the courts. One such provision is section 701(a)(1) of the Administrative Procedure Act of 1946. It could either be an express or an implied exclusion. Implied inclusion can be inferred through the use of traditional tools such as reading of legislative history or the enactment. If such a discretion has been evolved through the means of judicial pronouncements, it is not immutable. In this scenario, the court is competent to deal with the matter. The court can only determine if the issue at hand deals with unbridled discretion.[85] This form of discretion has always been entrusted to the agencies to deal with the military and foreign affairs.[86] This is to ensure that

[79] Airmark Corporation v. Federal Aviator Airmark, 758 F.2d 685 (D.C. Cir. 1985).
[80] Coal Exporters Association of the United States v. United States, 745 F. 2d 76 (D.C. Cir. 1984).
[81] WNCN Listeners Guild v. FCC, 610 F. 2d 838 (D.C. Cir. 1979).
[82] Deukmejian v. Nuclear Regulatory Commission, 751 F. 2d 1287 (D.C. Cir. 1984).
[83] Chevron U.S.A. Incorporation v. Natural Resources Defense Council, Incorporation, 467 U.S. 837 (1984).
[84] Administrative Procedure Act, 5 U.S.C. s 701(a)(1) (1946).
[85] Johson v. Robinson, 415 U.S. 361, 367 (1974).
[86] Miranda v. Secretary of Treasure, 766 F.2d 1 (1st Cir. 1985).

foreign and military matters are regulated by the political branches. In *Heckler v. Chaney*, the court had to adjudicate on the matter of whether non-exercise of the discretionary power by the Food and Drug Administrator (FDA) could be reviewed by the court. The court could not intervene since its jurisdiction had been excluded by the statute. The court held, "*the danger that agencies may not carry out their delegated powers with sufficient vigor does not necessarily lead to the conclusion that courts are the most appropriate body to police this aspect of their performance*."[87]Numinous discretion covers situations where the administrative agencies are required to take a decision in a situation that is uncertain, with no single "right" or "wrong" answer. The court cannot expect such decisions to conform to high standards of correctness or no probability of error. An example is the Food and Drug Administration Peanut Butter deal. The FDA was required to decide if the peanut butter should consist of eighty–seven or ninety–two percent peanut. After nine years, it decided on the percentage. Anyhow, no court can determine what percentage would have been the best option. If, in such situations, the court intervenes, it will just be replacing the numinous discretion of the agency with the numinous discretion of its own. Hence, the court, instead of reviewing the decision, it can review if all the relevant factors were taken into account by the agencies when reaching a decision.[88]

Thus, from the reading of different types of discretion, it can be seen that the court has the jurisdiction to adjudicate on the matter concerning the review of administrative discretions. However, it has exercised its discretions, subject to limitations imposed either through statutes or common-law judgements.

CONCLUSION: WHAT IS BEST FOR INDIA

JUDICIAL DISCRETION

It is necessary to understand that the meaning of law is not always changed post-adjudication of a dispute. It changes in just a small number of cases. Such changes become a general norm that becomes binding throughout the territory of the country.

Through the exercise of judicial interpretation, the court adopts a new interpretation of the law. The judges encounter situations that do not require adoption of one correct answer; instead, choice can be made from various legitimate options. The decision has to be made by

[87] Heckler v. Chaney, 470 U.S. 821 (1985).
[88]Charles H. Koch, Jr., *Judicial Review of Administrative Discretion*, 54 Geo. Wash. L. Rev. 469 (1985).

weighing relevant considerations. The court for this purpose examines the statutory provisions, judicial precedents, and core values of the legal system. In which cases the court should apply judicial discretion is difficult to ascertain; it has to be determined from the views of the legal community. However, judicial discretion is never absolute; it has to be in consonance with the substantive and procedural framework. [89]

At the time of exercising the discretion, the judges should aim to achieve two goals: one to minimize the gap between law and life and the second, protection of the democracy. Thus, an attempt should be made to give the original text of the statute a dynamic meaning with the changing political, social, cultural, and economic circumstances. Advocating for this, Justice Brennan said, *"We current Justices read the Constitution in the only way we can as the Twentieth Century Americans. We look to the history of the time of framing and to the intervening history of interpretation. But the ultimate question must be, what do the words of the text mean in our time? For the genius of the Constitution rests not in any static meaning it might have had in a world that is dead and gone, but in the adaptability of its great principles to cope with current problems and current needs. What the constitutional fundamentals meant to the wisdom of other times cannot be their measure to the vision of our time. The vision of their time. Similarly, what those fundamentals mean for us, our descendants will learn, cannot be their measure to the vision of their time."* [90]Even, Roscoe Pound held, "*Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and of the need of change. Law must be stable and yet it cannot stand still.*[91]*"* The role of the judges to protect the democracy is tested each day. Their roles cannot be restricted to the time of war. War is every day; what is peaceful for one could be a war for another. [92]

JUDICIAL ACTIVISM AND JUDICIAL RESTRAINT

It is difficult to define "judicial activism" and "judicial restraint". Nonetheless, the author has attempted to understand these two concepts on the basis of different definitions given by different academicians.

[89]Aharon Barak, *On Judging*, in *Judges as Guardians of Constitutionalism and Human Rights* 23 (Martin Scheinin ed., Edward Elgar Publ'g 2016), http://doi.org/10.4337/9781785365867.00008 (last visited Nov. 23, 2024).
[90]Justice Willam Brennan
[91]Roscoe Pound
[92]Aharon Barak, *On Judging*, in *Judges as Guardians of Constitutionalism and Human Rights* 23 (Martin Scheinin ed., Edward Elgar Publ'g 2016), http://doi.org/10.4337/9781785365867.00008 (last visited Nov. 23, 2024).

The courts can be said to engage in judicial activism if:

1. a legislation is written in the judgement.[93]
2. a duly enacted statute by the legislature has been declared unconstitutional and invalid. [94]
3. any act / omission has been done that is contrary to the will of other organs of the government.[95]

Dickson has enlisted four parameters to determine if the court has indulged in judicial activism. Those are interpretation of statutory provision in an unexpected manner, dismissal of the government's views on the issue, refusal of strict compliance with the judicial precedents, and development of common law. [96]

The court has practiced judicial restraint if:

It is defined as the practice of the judge to focus solely on the issues that need to be decided for the purpose of resolving the disputes between the parties. [97]An academician explained it as the focus of the courts only on the facts of the dispute and question of law presented to it.[98]Justice Scalia said, "*Court to ground its decision in some sources of authority external to the judge's will."* [99]is judicial discretion. Diedrich held that the court is restrained if it respects the decisions and actions of the other branches of the government[100].

COMPARING THE PRACTICES ADOPTED BY THE COURTS IN INDIA, UNITED KINGDOM, AND UNITED STATES OF AMERICA

INDIA

The Supreme Court and High Courts in India, through various constitutional provisions have been empowered to review the administrative actions of the state. Moreover, grounds to

[93]Monica Lineberger, *If You Give a Mouse a Cookie, He Might Want a Glass of Milk: Judicial Activism in the United Kingdom*, in *Judicial Activism in Comparative Perspective* (Lori Hausegger & Raul Sanchez Urribarri eds., 1st ed. Peter Lang 2024).
[94]G. Jones, *Proper Judicial Activism*, 14 Regent U. L. Rev. 141 (2001), https://www.regent.edu/law-review/ (last visited Nov. 23, 2024).
[95]Richard A. Posner, *The Federal Courts: Challenge and Reform* (Harvard Univ. Press 1999).
[96]B. Dickson, *Activism and Restraint with the UK Supreme Court*, 21 Eur. J. Curr. Legal Issues 1 (2015).
[97]J.P. Stevens, *Judicial Restraint*, 22 San Diego L. Rev. 123 (1985).
[98]L.F. Powell, Jr., *Stare Decisis and Judicial Restraint*, 47 Wash. & Lee L. Rev. 469 (1990).
[99]J.F. Manning, *Justice Scalia and the Idea of Judicial Restraint*, 115 Mich. L. Rev. 1355 (2017).
[100]J.S. Diedrich, *Article III, Judicial Restraint, and This Supreme Court*, 72 SMU L. Rev. 501 (2019).

review those actions have been clearly earmarked in the judicial pronouncements. The grounds are sub-delegation, generalized policies for each matter, acting under dictation, non–application of mind, absence of power, exceeding jurisdiction, irrelevant consideration, ignoring relevant consideration, mixed considerations, malice, and improper purpose.[101] However, the court can only adjudicate on the process of decision-making rather than the decision itself. The power of the court cannot replace the power of the executive[102]. This ensures that the court performs its functions without encroaching into the domain of the administrative agencies.

If an attempt is made to understand the judicial practice in terms of the definition of judicial activism and judicial restraint, it can be said that courts in the country are actively involved in judicial activism. This conclusion has been arrived at since:

1. The judiciary invalidates the rules, regulations, and bye-laws made by the executive if found contradictory to the constitution. Such action could be said to be against the will of the elected representatives and their agents, which are the legislature and the executive.
2. The judges' resort to judicial legislation under Article 142 of the Constitution of India for doing "complete justice" between the parties to the dispute. [103]The examples are *D. Veluswamy v. D. Patchaiammal* [104]and *Vishaka Gupta v. State of Rajasthan*.[105]
3. The courts waive the requirement to strictly conform with the judicial precedents. There has been a transition from *Aeltemesh Rein v. Union of India* [106]to *Prem Shankar Shukla v. Delhi Administrator*.[107] While in the former case, the court unhappily followed the footsteps of earlier judgements of non-intervention into the functions of the executive, in the latter the court finally objected against the non – use of the discretion by the administrative agencies.

However, it cannot be overlooked that attempts to adhere to self- restraint have also been made in compliance with the constitutional provision of Article 50, which prescribes that the state

[101]C.K. Thakker (Takwani), *Judicial Review of Administrative Discretion* (Eastern Book Co. 2007).
[102]Chief Constable v. Evans, (1982) 3 All ER 141 (H.L.).; (1982) 1 W.L.R. 1155 (H.L.).
[103]Ind. Const. art. 142.
[104]D Veluswamy v. D Patchaiammal, (2011) 3 S.C.C. 479.
[105]Vishaka Gupta v. State of Rajasthan, (1997) 6 S.C.C. 241.
[106]Aeltemesh Rein v. Union of India, A.I.R. 1988 S.C. 1768.
[107]Prem Shankar v. Delhi Administration, A.I.R. 1970 S.C. 1536.

is mandated to take measures to separate the executive from the judiciary[108]. Thus, it can be stated that judicial activism with a hint of judicial restraint has been adopted.

UNITED KINGDOM

Owing to the changes in the political structure of the country by passage of the Constitutional Reform Act 2005, the judges have been given the freedom to engage in judicial activism. The courts are no longer bound by the shackles of unwritten constitution, parliamentary sovereignty, strict adherence to judicial precedents, and lack of judicial diversity. [109]There has been a complete shift in the practice, from self–restraint to over–involvement. The author concludes this because the court legislates within its judgments and interprets laws in an unanticipated manner. This could be seen in *Fitzpatrick v. Sterling Housing Association*[110]. Further, the judicial precedents are being overturned, as in *Anisminic Limited v Foreign Compensation Commission*.[111] Moreover, the will of other organs of the government are being ignored, as in *Regina v. Advertising Standard Authority*[112].

UNITED STATES OF AMERICA

The courts in the US are entrusted with the responsibility of judicial review to keep the other two branches in check. However, the power is limited by the principles such as presumption of constitutionality and principle–agency. [113]

The court seems to strike a balance between judicial activism and judicial restraint. It is often the case that the court goes against the will of the other organs, such as in *Coal Exporters Association of the United States v. United States*[114]. However, even then it practices high self–restraint if the executive is exercising its power in the nature of individualized discretion, making policies, unbridled discretion, and numinous discretion. In the exercise of individualizing discretion, the court rarely interferes with the decision; it usually adjudicates on the procedure adopted for decision–making. In policy–making discretion, the court ensures

[108]Ind. Const. art. 50.
[109]Monica Lineberger, *If You Give a Mouse a Cookie, He Might Want a Glass of Milk: Judicial Activism in the United Kingdom*, in *Judicial Activism in Comparative Perspective* 101 (Lori Hausegger & Raul Sanchez Urribarri eds., 1st ed. Peter Lang 2024).
[110]Fitzpatrick v. Sterling Housing Association, (1999) UKHL 42.
[111]Anisminic Limited v. Foreign Compensation Commission, (1969) 2 App. Cas. 147 (H.L.).
[112]Regina v. Advertising Standard Authority, The Times (London)
[113]Steven O. Ludd, *Judicial Review of Administrative Discretion: Friend or Foe of the Administrative Process*, 16 Admin. Theory & Praxis 2 (1994), https://www.jstor.org/stable/25611092 (last visited Sept. 25, 2024).
[114]Coal Exporters Association of the United States v. United States, 745 F. 2d 76 (D.C. Cir. 1984).

that policies are made by the representatives elected by the general public. This was reiterated in *WNCN Listeners Guild v. Federal Communications Commission*.[115] Under unbridled discretion, the court does not have the power to adjudicate if its jurisdiction has been excluded through statute. For numinous discretion, since it is difficult to reach a single "right" or "wrong" answer, the court just determines the matter by considering if the relevant factors were taken into account by the administrative authorities for reaching the decision. The court is not eager to review such kinds of decisions. [116]

Hence, it can be seen that courts do not shy away from move against the wishes of the two branches of the government. Yet, at the same time, it attempts to not transgress too much.

PRACTICE TO BE FOLLOWED IN INDIA

The courts in India actively indulge in adjudication of matters left for the administrative agencies. They strike down legislation/rules/bye-laws/regulations/decisions that are not in conformity with the constitutional principles. At the same time, it ensures not to replace its decision with the decision of the authority. [117]Moreover, it intervenes only if there are grounds such as sub-delegation, generalized policies for each matter, acting under dictation, non–application of mind, absence of power, exceeding jurisdiction, irrelevant consideration, ignoring relevant consideration, mixed considerations, malice, and improper purpose. [118]

In the United Kingdom, there is excessive interference by the courts, which has the tendency to stall the administrative efforts and increase the burden of the courts. In the United States of America, certain discretionary powers are absolutely outside the jurisdiction of the courts, which makes administrative officials completely unaccountable for some actions/omissions. Consequently, such practices should not be adopted in our country. Hence, India should continue its current practice.

[115]WNCN Listeners Guild v. FCC, 610 F. 2d 838 (D.C. Cir. 1979).
[116]Charles H. Koch, Jr., *Judicial Review of Administrative Discretion*, 54 Geo. Wash. L. Rev. 469 (1985).
[117]Chief Constable v. Evans, (1982) 3 All ER 141 (H.L.); (1982) 1 WLR 1155 (H.L.).
[118]C.K. Thakker (Takwani), *Judicial Review of Administrative Discretion* (Eastern Book Co. 2007).