CHAPTER 1
INTRODUCTION

1. Introduction

According to Rousseau -

[T]he object of a law is always general. A law always considers the subject collectively and actions abstractly, never an individual person or a particular action. Thus the law can declare that there will be privilege, but it cannot give them to anyone by name…¹

The present chapter deals with the issues and approaches of personal responsibility of public authority for their arbitrary actions and also attempts to understand as to how corruption is being perceived as one of the consequences of excessive use of its discretionary power. This Research seeks to unpack the nature of this seeming crisis in Public accountability. As further explored the nature of accountability and its effectiveness, our different visions of public Accountability reflect different histories, different experiences and different concerns. Historically, these had been harmonized by the conceptual predominance of what we will call bureaucratic Accountability².

Recent events, however, have weakened this predominance, and in doing so have catalysed inconsistencies in the differing logics that underline these different experiences. We will examine the historical roots of present-day Indian public accountability. The concept of public accountability has roots in the history which has been examined in the relevant chapter. The period 1865-1900 had been called ‘the period of collectivism’ because of outburst of regulatory legislation and the tendency to entrust more and more power to the state. It would have been

hard put to it to find words for the period since the second world war, which is an
different from his own as his own was different from that of the stuart kings. As
his generation came to recognise the need for the administrative state, they had
also to devise more efficient machinery.

A first approximation to a definition of administrative law is to say that it
is the law relating to control of government power. This, at any rate, is heart of
the subject. To outline the legal framework of government, comprising central
and local government and public corporations. Two features of central
government need detailed explanation:

1. Particular law governing services under the crown which makes civil servants
liable to dismissal at will but gives them some of the benefits of modern labour
law;

2. The parliamentary commissioner for administration, alias the ombudsman, who
since 1967 has investigated complaints against acts of maladministration by the
central government.

Former Prime Minister, Manmohan singh, favoured for limiting right to
information to protect individual privacy, he stated:

[A] fine balance is required to be maintained between the right to
information and the right to privacy. The issue of a separate legislation
on privacy is under consideration of an expert group.

He further stated:

[T]he right to information legislation should not only be about
criticising, ridiculing and running down public authorities. It should be

---

4 Ibid.
5 Ibid.
6 Ibid.
7 Ibid.
8 Ibid.
9 Aditi Tondon, ―PM bats for limiting RTI to protect individual privacy‖, The Tribune vol.132 No. 284, at I (13-10-
10 Ibid.
11 Ibid.
more about promotion transparency and accountability, spreading information and awareness and empowering our citizen. There’s need for all to work towards building an environment where citizens see the government as a partner and not as an adversary.\textsuperscript{12}

The centre’s proposal to amend the Right to Information Act met with strong resistance from social activists who maintained that these changes would sound the death-knell for the legislation. It is learnt that Sonia Gandhi personally intervened that the amendments were dropped and the legislation retained in its original form. The amendments were by the union cabinet 6 years ago but the government could not push them through in parliament because of the pressure mounted by the activists as well as the strong opposition from the left parties.\textsuperscript{13}

According to the proposed amendments, file noting by officials would be kept out of the purview of the Right to Information Act except those pertaining to social and development issues. The selection process of civil servants by public authorities like the UPSC was also proposed to keep out of the gambit of the legislation. These amendments are now stand withdrawn.\textsuperscript{14}

It is proposes that the key to our effectively responding to the Accountability crisis may lie in recognizing and exploring these latent interdependencies, it is explained as following: -

\textsuperscript{12} Id., at 9.
\textsuperscript{14} Ibid.
In India in present time every administrative authority has to use discretionary power for its functioning. Many of the things that administrative authorities are empowered to do involve the exercise of discretion: decision have to be made in the public interest, based on policy. On the other hand it is also true that there are many instances where this discretionary power has been misused. Just as the principle of reasonableness and its corollaries can be used to control the substance of an administrative decision, so the principle of natural justice can be used to enforce fair procedure. Administrative law ensures exercise of power according to law. It is an essential attribute of an open and

---

15 Supra note 3, at 8.
16 Ibid.
accountable government. It gives us principles for the exercise of power and methods by which conformity to such principles is ensured\textsuperscript{17}. To tackle the situations where administrative authority exercises their power arbitrarily Supreme Court innovated the concept of Public accountability\textsuperscript{18} and imposed the personal liability of these authorities for their actions\textsuperscript{19}.

In this research work researcher want to know as public accountability is being proved to be a good tool to control the arbitrary exercise of power. It is also true that, our Indian courts have used various Doctrinal test to achieve the general goal of prohibiting arbitrary governmental action. Dicey failed to distinguish between discretionary power and arbitrary power. While arbitrary power is repugnant to the rule of law, discretion, unless exercised improperly, is not. The modern welfare state cannot function without discretionary power. Its functions are highly complex and varied and hence its action cannot be anticipated\textsuperscript{20}.

According to a standard book on British constitutional law\textsuperscript{21}:

[I]f it is contrary to the rule of law that discretionary authority should be
given to government departments or public officers, then the rule of law
is inapplicable to any modern constitution\textsuperscript{22}.

There has been a change in the understanding of Article 14 of the Constitution of India which generally knows for guarantees the right to equality. The concept of equality and equal protection of laws in its proper spectrum encompasses social and economic justice in a political democracy\textsuperscript{23}.

Previously Article 14 is famously known for the doctrine of reasonable classification but in present time courts have moved towards the new test of arbitrariness, which means if any state action is arbitrary then it is violation of Article 14\textsuperscript{24}.

\textsuperscript{17} S.P. Sathe, \textit{Administrative Law}, 23 (1994).
\textsuperscript{18} E. P. Royappa v. State Of Tamil Nadu, AIR 1974 SC 555.
\textsuperscript{19} Ibid.
\textsuperscript{20} Supra note 17 at 9.
\textsuperscript{21} Ibid.
\textsuperscript{22} Ibid.
\textsuperscript{24} Ibid.
The concept of equality permits rational or discriminating discrimination. Conferment of special benefits or protection or rights to particular group of citizens for rational reasons is envisaged under article 14 and is implicit in the concept of equality\textsuperscript{25}.

Dr. Johnson mentioned at preface to dictionary\textsuperscript{26}.

What is obvious is not always known, and what is known is not always present\textsuperscript{27}.

Article 14 embodies a guarantee against arbitrariness. While arbitrariness doctrine has been applied often to executive actions, its application to statutes is still ambiguous. Since the doctrine of arbitrariness and the right to equality are different in scope, the application of the doctrine of arbitrariness under Article 14 is a misconceived one\textsuperscript{28}.

The simple proposition that a public authority may not act outside its powers (ultra vires) might fitly be called the central principle of administrative law\textsuperscript{29}.

Article 14 of the Indian Constitution guarantees “equality before the law” and “equal protection of the laws” Whereas the reasonable classification test was being applied by the judiciary to test the validity of any state action under Article 14, since 1974 the new doctrine of arbitrariness has been evolved\textsuperscript{30}.

Exercise of power is controlled by a variety of methods. Decisions of administrative authorities are subject to legislative supervision through committees or discussion in the legislature. They can be reviewed by an ombudsman and lastly they are subject to judicial review\textsuperscript{31}. Many of the rules of administrative law are rules of administrative law are rules for restricting the wide powers which Acts of parliament confer very freely on ministers and other authorities\textsuperscript{32}.

\textsuperscript{25} Ibid.
\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
\textsuperscript{29} \textit{Supra} note 3 at 39.
\textsuperscript{30} \textit{E. P. Royappa v. State of Tamil Nadu}, AIR 1974 SC 555
\textsuperscript{31} \textit{Supra} note 17.
\textsuperscript{32} \textit{Supra} note 3 at 23.
1.1 Problem Profile

The term Democracy has different meanings, in strict sense democracy means Government by the people, of the people and to the people. A second sense is the idea of representative democracy – Government with the consent of the people. The role of people is limited to choosing persons to represent them in law making assembly, but parliament has unlimited lawmaking power and is accountable to the people.\(^{33}\)

Through the Principle of Representative elections in UK the lawmakers choose the executive, while in USA there is separate election for the executive. Thirdly, there is a more sophisticated version of Democracy which emphasizes concepts of equality and geographical distribution of power. Unlike the United States constitution with its split between federal and state governments, its bill of rights and its separation of powers between executive and legislature, there is no legal check upon the will of whoever commands a majority in parliament.\(^{34}\)

It cannot be said that the courts always buttress undemocratic and secretive government. The problem with the courts is that their intervention is random and peripheral. In the absence of formal guidelines enacted as a bill of rights there is room for considerable.\(^{35}\)

Our constitution, being the highest law of the land not only describe the powers and functions of various organs of the state but it is also spells out the limitation thereof, if any of these organs does not observe the limitations and exceeds the bounds of their powers and jurisdiction, their acts would be declared *ultra-vires* under the constitution. For example Article 32, 136, 226, 227, 229 and 300 which comprehensively devise the modes of judicial control over different kinds of administrative actions.\(^{36}\)

Researchers observed in today’s administrative law, there have been introduced a form of a special procedure, where the application for Judicial

---


\(^{34}\) Ibid.

\(^{35}\) Id., at 44.

Review designed for the purpose of challenging government decisions and is handled by a distinct but fluctuating group of Judges. An independent and impartial judiciary said to be first condition of liberty. It is custodian of the rights of the citizens. Judicial review in India is based on the assumption that the constitution is the supreme law of the land and all government organs derive their powers from its provisions.\(^{37}\)

Today’s Democratic Government is expanding its horizon from the 19\(^{th}\) Century rule of law given by the Dicey for performing its function. Now while performing their functions they seek support from due process clause for introducing reasonability in the actions so as to exclude arbitrariness.\(^{38}\)

It is observed by researcher that there may unforeseen cases or situations faced by public authorities for which they are not vested with discretionary power without sufficient guidelines so as to maintain sanctity of rule of law. After E.P Royappa v. State of Tamilnadu\(^{39}\), Article 14 has living a role of rule of law. Now every action and decision which is arbitrary can be challenged as violation of article 14 of constitution.

Main issue is consequence of control of arbitrary power, as to who can be made liable for arbitrary decision and what can be action taken to control it. This problem is to reconcile the ideas of Democracy and the Rule of Law on the touch stone of right to equality of persons against arbitrary actions of public authorities and the need to make government genuinely accountable for their arbitrary actions.

John Alder stated that\(^{40}\)-

Everything is allowed unless forbidden by a definite law and government should not have wide discretionary power.

Discretion must be exercised properly and for this purpose law must develop control mechanism for controlling the actions of the administration with a view to

---


\(^{38}\) Ibid.

\(^{39}\) AIR 1974 SC 555

\(^{40}\) Supra note 33.
harmonizing administrative discretion with the rule of law. Article 14 hits arbitrariness of state action in any form.\textsuperscript{41}

1.2 Research Hypothesis

In the present times every administrative authority has to use discretionary power for its functioning but there are many instances where this discretionary power has been misused. The apex court innovated the concept of public accountability and imposed personal liability in cases where power is exercised arbitrarily. Public accountability is being proved to be a good tool to control the arbitrary exercise of power.

1.3 Review of Literature

The doctrinaire study will be in the form of secondary data/material collected from various sources like books, dictionaries, encyclopedias, journals, law reviews, newspapers, websites and Judicial pronouncements of Indian as well as foreign courts. In this research, researcher reviewed the following literature.

In one of the research paper, Mark Bovens in “Analyzing and Assessing Accountability: A Conceptual Framework” said that Accountability simply means that if a public officer abuses his office, either by an act of omission or commission, and in consequence of that there is an injury to an individual or the public at large, he must be held responsible for it. Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an Image of Transparency and trustworthiness\textsuperscript{42}.

So far as arbitrariness is concerned, the author in Christine N. Cimine in article “Principle of Non-Arbitrariness and lawlessness in the administration of welfare,” observed that a government can’t act in an arbitrary manner against the people, many scholars link the \textit{magna carta’s} concept of non - arbitrariness to the current Rule of Law concept to the western world of law, the great gift of the

\textsuperscript{41} Supra note 23 at 92.
magna carta, signed in 1215, was the generation that no person shall be secure from the arbitrary exercise of the power of government, the magna carta is the spiritual and legal ancestor of the concept of the rule of law.43

Principle of check and balances and the concept of ombudsman strengthen the idea of public accountability. For this, Tony blackshield & George Williams in Australian constitutional law and theory (commentary and materials) said that there is mechanism for keeping the executive in check. These include controls imposed by the executive upon itself, such as code of conduct issued and ( and enforced ) by a prime minister to regulate the behavior of his or her ministers. Other forms of accountability includes laws such as the freedom of information Act, 1982, as well as the scrutiny provided by the officers scrutiny provided by officers appointed under statute such as the Ombudsman (Ombudsman Act 1976) and Auditor-General (Auditor-General Act 1997), and by bodies like the Human Rights an qua Opportunities Commission (Human Rights And Equal Opportunity Commission Act 1986. Decision-making by ministers and their departments is also subject to its review, whether it be by tribunal (particularly under the Administrative Appeals Tribunal Act 1975) or by a court (particularly under the Administrative Decisions (Judicial Review) Act 1977), but also under the common law, as in the Tampa case above, or by the High Court through the “constitutional writs” guaranteed by s 75(v) of the Constitution. Parliament also has a key role in holding the executive to account under the conventions of responsible government.44

Rule of law ensures public accountability. Peter Leyland & Terry Woods in Administrative Law said that the idea of the rule of law comes under particular straw when there is a clash between different legal regimes, in particular between international and domestic law. International law as such is not automatically part of UK law, which has adopted a 'dualist' approach. An international treaty if it is to alter domestic land; must first be incorporated by statute into UK law.

44 Tony blackshield & George Williams, Australian constitutional law and theory (commentary and materials), 562-563 (2006).
Furthermore, the authors observed that the Constitutionalism means limited government and includes the ideas of the rule of law and the separation of powers as a means of restricting and controlling government. The rule of law is an umbrella for assorted ideas about the virtues of law mainly from a liberal perspective. They center upon law as reason and law as a means of control.\textsuperscript{45}

Ole Therkildsen in his article entitled, “Efficiency Accountability and Implementation: Public Sector Reforms In East And Southern America, CTR on Unrisd Programme,” said that Accountability cannot be enforced without transparency and rule of law. Both transparency and accountability are based on the right to information provision. Although the democracy system provides for accountability of government to those they governed, it is indirect through the election, but right to information makes the government accountable to the people directly.\textsuperscript{46}

1.4 Universe of Study

Though there is a worldwide issues about the Accountability of public servants to public yet the empirical study of the present research will comprise views of various sections of public, which includes basically the general public, public servants, practicing lawyers, judges/attorney and media persons and is intended to be conducted in the National capital region of Panipat, Sonipat and Karnal (Haryana).

This Research seeks to unpack the nature of this seeming crisis in Public Accountability after further exploring the nature of accountability and its effectiveness. Historically, these had been harmonized by the conceptual predominance of what is bureaucratic Accountability.

The object of this research work is to study the historical roots of present-day Indian public Accountability. The concept of accountability is divided into two parts- one is traditional concept, where member of bureaucracy are accountable to

\textsuperscript{45} Peter Leyland & Terry Woods, \textit{Administrative Law}, 21(2003)

the chain of command rather than to the people, on the other hand, and today’s accountability where public servants are accountable to public for their actions\textsuperscript{47}.

Our Indian Courts have used various Doctrinal tests to achieve the general goal of prohibiting arbitrary governmental action. Rule of Law has provided a sort of touchstone to judge and test the Administrative Law Prevailing in the country at a given time. Rule of Law, traditionally denotes the absence of arbitrary powers and for that matter is also associated with Supremacy of Courts. Therefore, in the ultimate analysis, courts should have the power to control the administrative arbitrary action.

Since about the mid-twentieth century a version of judicial review has acquired the nick-name of judicial activism, especially in U.S.A. In fact there is a thin line between judicial review and judicial activism. Rule of Law serves as the basis of Judicial Review of administrative action. The Judiciary sees to it that the executive keeps itself within the limits of law and does not overstep. The Public can approach the High Court as well as the Supreme Court in case of violation of their fundamental rights. If the power with the executive or the legislature is abused in any manner, its \textit{mala-fide} action can be quashed by the ordinary courts of law. The constitution embodies the modern concept of the rule of law with the establishment of a judicial system which should be able to work impartially and free from all influences. The government officials and the government itself are not above the law. Now by virtue of the concept of Public Accountability innovated by the Supreme Court, these officials can even be made personally liable for the arbitrary decision and the rule of law pervades the entire field of administration and regulate every organ of the state\textsuperscript{48}.

1.5 \textbf{Dicey’s Theory on Rule of Law}

There are three elements central to the theory\textsuperscript{49}:

\begin{itemize}
  \item \textit{Supra} note 2.
  \item \textit{Supra} note 37 at A-56.
  \item Peter Leyland & Terry Woods, \textit{Administrative Law}, 26 (2003).
\end{itemize}
a) The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness or even wide discretionary authority on the part of the government\(^{50}\).

b) It means equality before the law, or equal subjection to all classes to the ordinary law of land\(^{51}\).

c) Constitution is the result of the ordinary law as developed by the courts through the common law tradition\(^{52}\).

These principles can be explained as follows\(^{53}\):

Under (a) and (b), the government must govern according to the law. The question is: what is the balance between rule and discretion to be? The first propositions would be that no special laws are to apply to the executive that do not apply to the ordinary citizen; but when looking at society today, it is clear that there are many bodies that do enjoy special powers. For example, the police are given wider powers of arrest under the Police and Criminal Evidence Act 1984 and other public order legislation. The same is true of officers of the Inland Revenue. Equally, the twentieth century has seen the widespread growth of discretionary powers at the hands of public bodies, such as those established to administer the welfare state\(^{54}\).

One good example is where a person applies to the Social Fund for a loan while in receipt of mandatory benefits. There is no right of appeal from this discretionary decision for the applicant. (See also the Regulatory Reform Act 2001, which replaces sections 1 to 5 and Schedule 1 to the Deregulation and Contracting out Act 1999. The new provisions allows the special procedure to repeal primary legislation by means of delegated legislation (present in the old Act) to be used for the purpose of removing or reducing burdens on business, and

---

\(^{50}\) Ibid
\(^{51}\) Ibid
\(^{52}\) Ibid
\(^{53}\) Ibid
\(^{54}\) Id., at 27
also for the purpose of imposing burdens which are proportionate to the benefit which is expected to result from the enactment.\textsuperscript{55}

The Diceyan formulation, then clearly implies that discretionary powers of government ought to be limited. However, nowhere did Dicey elaborate in any detail on the kinds of mechanisms which would be appropriate for doing this. It is also worth noting that, at the same time, he emphatically rejected the French system of administrative law known as the \textit{droit administratif}. This was because of his emphasis on the ordinary law courts as opposed to any specialized administrative law courts, as in France. Dicey considered that the law was founded on fundamental principles of fairness that were capable of supporting equality of treatment before the courts whatever the status of the individual concerned. It is also reinforced by a belief that the rule of law is particularly relevant to the protection of equality, and that equality is related to the generality of the law. This last belief is, as has been noted before, mistaken: racial, religious and all manner of discrimination is not only compatible with but often institutionalized by general rules. For example, one aspect of the War Crimes Act 1991, s 1, provides for retrospective criminal legislation to be applied against alleged Nazi war criminals, irrespective of nationality, even if at the time of the offence they were not British citizens\textsuperscript{56}.

For Dicey, the statement in (c) above that the constitution is the result of the ordinary law, as developed by the courts through the common law tradition, meant an emphasis on judge-made law as opposed to powers that emanate from statute, or which were embodied in a codified constitutional framework. He believed that the courts, by means of developing case law, would prevent the unrestricted use of power by executive authorities and thereby protect the liberties of the citizen. In essence, the wielding of such authority in an excessive manner would be curbed precisely because it violated the spirit of our constitution\textsuperscript{57}.

\textsuperscript{55} \textit{Ibid.}
\textsuperscript{56} \textit{Ibid.}
\textsuperscript{57} \textit{Id.}, at 28.
It is interesting to compare the *droit administratif* system in France, of which Dicey was so scornful, in which the citizen can seek to secure a remedy for a grievance by means of simple application to the nearest administrative tribunal.\(^{58}\)

1.6. **Judicial review and rule of law**

The rule of law also demands that the law itself fulfills minimum standards. It is this concept with which we are concerned in the context of judicial review where the ‘rule of law’ assumes meanings encompassing principles of accountability, equality, and the absence of arbitrariness and the presence of fairness in decision-making. Judicial review is a mechanism to ensure the accountability of executive power within the constitution. As such, it allows the courts (under certain circumstances) to rule on the legality of how executive powers are exercised.

There are relatively few mechanisms by which we can challenge the operation of the state; however, judicial review allows the courts to rule on the legality of decisions made by the state and, in some cases, overturn them. This is a powerful weapon for the individual, ensuring that those in power do not exceed their authority. For this reason, judicial review is an essential topic within any course on constitutional and administrative law. As stated previously, not all executive decisions are open to judicial review. To qualify, all of the following condition must be satisfied\(^ {59}\):

1. The decision must be made by a public body, as a ‘public law’ remedy, judicial review is only available where the decision has been made by a public (rather than a private) body\(^ {60}\).

To understand this condition, there is case law –

**In R v. Disciplinary Committee of the Jockey Club, ex parte Aga Khan\(^ {61}\)**

In this case, a horse belonging to the Aga Khan was disqualified from a race by the Disciplinary Committee after failing a drugs test. The Aga Khan sought judicial review of the Committee’s decision. It was held by the court that the Jockey Club was not a public body and, therefore, its decisions were not

---

\(^{58}\) Ibid.


\(^{60}\) Ibid.

\(^{61}\) [1993] 2 All ER 853
subject to judicial review. The relationship between the Club and its members was a matter for the private law. Here necessary to mention that, Modern Writers have criticized Dicey’s views on Rule of Law, on the following grounds-

1) Absolute equality is Impossible.
2) Practically impossible to have equality
3) The executive enjoys vast discretionary powers
4) Special Tribunals administering special laws have become common feature of administration in U.K.
   a) Discretionary power is inevitable-
      1) Dicey exclude discretionary power from his Rule of Law.
      2) He insisted that administrative authorities should not be given wide discretionary power.
      3) He failed to distinguish arbitrary power from discretionary power.

As Wade rightly remarked-

If it is contrary to the Rule of Law that discretionary authority should be given to government department or public officers, then the Rule of Law is inapplicable to modern constitution.

In case, State of U.P. v. Johri Mai Supreme Court observed that, though discretionary powers are not beyond the pale of judicial review the public authorities are given sufficient elbow space for a proper exercise of discretion.

Administrative function deals with the nature of the powers of the administration and the way in which this power is exercised, moreover the administrative powers generally looks into the aspect like how the rules,
regulations and byelaws are made by the subordinate law making bodies and how that subordinate law making authorities are controlled, regulated and functioned. But administrative function is not concerned with the content of that subordinate legislation.\textsuperscript{68}

\textbf{1.7 Good governance and Public Accountability}

The growth of constitutionalism and Democracy has given rise to the concept of administrative Accountability.\textsuperscript{69} This raises the question of administrative responsibility. The concept of accountability is confronted with many challenges facing modern government. One major challenge facing nations all over the world is the lack of trust in government. Thus the demand for accountability is a powerful tool for change and the search for accountability procedures and institutions adapted to a democracy is a major change for rethinking established notions of accountability.\textsuperscript{70}

Accountability is the relationship between two or parties in which one recognizes an obligation to give an account of its actions to the others. Some form of public accountability is fundamental to most conceptions of democracy. Without an acceptance and understanding of these both sides, it is extremely doubtful whether the maximum requirements for democratic governance can be met.\textsuperscript{71}

The promotion of democracy and open pluralistic societies; the strengthening of transparent, accountable, efficient and effective national and local government; reinforcement of rule of law.\textsuperscript{72}

Features of good governance\textsuperscript{73}-

\textsuperscript{69} Atm Obadullah, Democracy and Good Governance – The Role of Ombudsman, 21 (2001).
\textsuperscript{70} Id., at 22.
\textsuperscript{71} Id., at 24.
\textsuperscript{72} Id., at 9.
\textsuperscript{73} Id., at 10.
1.8 PLAN OF STUDY

The study has been planned in various chapters briefly discussed and described below:

(I) Introduction
(II) International Perspective and Rule of Law
(III) Rule of Law and Equality Before Law under Indian Constitution
(IV) Historical Background of Public Accountability in India.
(V) Scope of Public Accountability
(VI) Judicial Attitude towards Public Accountability and Rule of Law
(VII) Empirical Study and Public Accountability
(VIII) Conclusion & Suggestions

\[^{74}Ibid\]
1.8.1 Introduction

Although, complete absence of Discretionary Powers, or absence of Inequality are not possible in this administrative age, yet the concept of Rule of Law has been developed and is prevalent in common law countries such as India.

1.8.1.1 The public accountability an assessment tool for strengthen rule of law

In recent years, there has been a drive to strengthen existing public Accountability arrangements and to design new ones. What causes corruption is non-implementation of the Rule of Law.

This lack of Accountability comes primarily from the lack of transparency, for example, when public official do not inform or explain what they are doing, corruption thrives in secret places and evades public places. The system of secrecy is less for safeguarding public or national interest and move safeguarding government’s Reputation, its maximize arbitrary practices and manipulating the situation to citizens.\(^{75}\)

Accountability is the key requirement of good governance. Accountability cannot be enforced without transparency and rule of law. Both transparency and accountability are based on the right to information provision. Although the democratic system provides for accountability of government towards the governed, it is indirect through the election, but right to information makes the government accountable to the people directly. This prompts the question whether Accountability arrangements actually work\(^{76}\).

1.8.1.2 Method of assessing accountability: a constitutional perspective\(^{77}\)

Dream dare win mention the three methods for the assessment of public accountability but here researcher takes the method of assessing the accountability from Constitutional perspective\(^{78}\).

---


\(^{76}\) Id., at 21.


\(^{78}\) Ibid.
1. Central idea - Accountability is essential in order to withstand the ever-present tendency toward power concentration and abuse of powers in the executive branch\(^79\).

2. Central evaluation criterion - The extent to which an Accountability arrangement curtails the abuse of executive power and privilege\(^80\).

3. Concrete evaluation questions – It is based upon the following \(^81\):

   a. Does the Accountability forum have enough investigative powers and information-processing capacity to credibly evaluate executive behaviour, particularly regarding conformity of executive action with laws, regulations and norms? \(^82\)

   b. Does the Accountability forum have incentives to engage executive actors in relevant questioning and debate and is their interaction focused on conformity of actions with laws and norms? \(^83\)

   c. Does the Accountability forum possess credible sanctions to punish and deter executive misbehaviour? \(^84\)

1.8.1.2.1 Meaning of public accountability

The growth of constitutionalism and Democracy has given rise to the concept of administrative Accountability\(^85\). Democracy would be considered more as a system of governance than a form of government, where it is opposed to arbitrary rule and guarantees equality of treatment and equal protection of law and government to remain accountable and transparent for their actions and policies to the people at large\(^86\). Public accountability cannot be enforced without transparency, where Right to Information is tool to find out the arbitrariness in

---

\(^{79}\) Ibid.

\(^{80}\) Ibid.

\(^{81}\) Ibid.

\(^{82}\) Ibid.

\(^{83}\) Ibid.

\(^{84}\) Ibid.

\(^{85}\) Supra note 75 at 17.

\(^{86}\) Ibid.
action of public authority and Rule of Law (under article 14 of Indian constitution who required separation of power and judicial review of government authority.\textsuperscript{87}

\textbf{1.8.1.2.2 Administrative discretion is permissible -}

Researchers observed that legislature is often compelled to confer vast discretionary powers because it is not always possible to lay down standards or norms for the exercise of administrative powers.

\textbf{a) Any action of state per se arbitrary is denial of equality of protection by law -}

In \textit{E P Royappa v. State of Tamil Nadu}\textsuperscript{88} the Supreme Court said that ‘Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits.’\textsuperscript{89}

From a positivistic point of view, equality is antithetic to arbitrariness.\textsuperscript{90}

In \textit{A.L Kalra v. Project and Equipment Corporation}\textsuperscript{91} Supreme Court held that article 14 strikes at Arbitrariness in executive or administrative actions because any action that is arbitrary must necessary involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to arrive at conclusion of discriminatory treatment. An action per se arbitrary itself denies equality of protection of law.\textsuperscript{92}

\textbf{b) Administrative Discretion or Wednesbury Test :-}

In, \textit{Narayan Sharma v. Pankaj Kr. Lehkar}\textsuperscript{93}, the Supreme Court observed that where executive action is taken by the administrative authority arbitrarily, it would be struck down. Statutory discretion must be based upon reasonable grounds can’t extend to Arbitrariness, which is violation of Rule of Law or

\textsuperscript{87} Ibid.
\textsuperscript{88} AIR1974 SC 555.
\textsuperscript{89} Ibid.
\textsuperscript{90} Ameernissa Begum v. Mehboob Begum AIR 1952 SC 91; Ram Prasad v State of Bihar AIR 1953 SC 215.
\textsuperscript{91} AIR 1984 SC1361.
\textsuperscript{92} Ibid.
\textsuperscript{93} AIR 2000 SC 72.
envisaged in article 14. Although Discretionary power not beyond the “Judicial Review”\textsuperscript{94}.

In \textit{Delhi Science forums & others v. Union of India}\textsuperscript{95}

N.P. Singh, J. observed that:

[T]he petitioner in writ petitions have questioned the power of the Central Government to grant licensee to different non-Government companies to establish and maintain Telecommunications System in the country and the validity of the procedure adopted by the Central Government for the said grant petition contended that delegation of authority by licensee to private body and non-Governmental companies in telecommunication affairs against economic interest and dangerous for national security, Supreme Court further passed instructions to Government and regulatory authority to function as public trustees to serve public good - petition dismissed.

C) \textbf{Discretion of the Judiciary to invoke test of unreasonableness, for judging Arbitrariness}

\textit{In Associated Provisional Picture House v. Wednesbury Corporation}\textsuperscript{96}, Supreme Court ruled that court shouldn’t interfere with the administrator’s decision; Unless it is illogical or suffers from procedural impropriety or its shocking the conscience of court. Administrative action, subject to control by Judicial review only on three grounds\textsuperscript{97}:-

\begin{itemize}
  \item [a)] If it’s illegal
  \item [b)] If it’s irrational
  \item [c)] If it’s suffer from procedural impropriety
\end{itemize}

\textsuperscript{94} \textit{Ibid.}
\textsuperscript{95} \textit{AIR 1996 SC 1356.}
\textsuperscript{96} (1947) 2 All ER 640.
\textsuperscript{97} \textit{Ibid.}
1.8.1.3 Due process of law

This concept Due Process of Law Guarantee that the Government and the State Governments, respectively, will not deprive a person of his or her life, liberty, or property without Due Process of Law. An administrative agency thus may not deprive anyone of life, liberty, or property without a reasonable opportunity, appropriate under the circumstances, to challenge the agency's action. People must be given fair warning of the limits that an agency will place on their actions. Federal courts routinely uphold very broad delegations of authority. When reviewing administrative agency actions, courts ask whether the agency afforded those under its jurisdiction due process of law as guaranteed by the U.S. Constitution. The U.S. Supreme Court has held it improper for a state agency to deny Welfare benefits to applicants who meet the conditions for entitlement to those benefits as defined by the legislature. The state must afford due process (in these cases, an oral hearing) before it can terminate benefits\(^98\).

1.8.2 Principle of Non Arbitrariness

In past, the lawless administration of welfare might have been resolved by application of procedural due process protection.

There exists a concept of non-arbitrariness that impose limitation on the administration of welfare benefits but without any binding rules, regulations, policies and legal procedures. The concept of Non-Arbitrariness within various jurisprudential doctrines and potential applicability of the concept, limits arbitrary governmental action in the welfare context.

The Definition of Arbitrariness - It employed here draws together common elements from numerous sources including judicial decisions, scholars and legal dictionar.s. Law dictionary define Arbitrary\(^99\)-

Arbitrary is Without adequate determining principles it is not based in reason without fair, solid, and substantial cause and not governed by any fixed rules or standards\(^100\)

---


a) **Origin of the Principle of Non-arbitrariness in India**

According to researcher presently it is a concept that government shall not act arbitrarily. This Principle of Non-arbitrariness even though not expressly in Indian Constitution, but are deeply rooted in the historical development of our case laws.

In case of *Secretary to government transport department v. Munu Swamy*\(^{101}\) Supreme Court held that predisposition to decide for or against one party without proper regard to the true merits of the dispute is bias\(^ {102}\).

In another case of *State of U.P. v. Mohd. Nooh*\(^ {103}\) the Honorable court quashed the order of dismissal after holding inter alia that the rules of natural justice were generously violated\(^ {104}\).

In another case of *International Airport Authority v. K.D. Bali*\(^ {105}\) Supreme Court observed that, the purity of administration requires that the party to the proceedings should not have apprehension that the authority is biased and likely to decide against the party\(^ {106}\).

In *A.K Kraipak v. U.O.I*\(^ {107}\) - While functioning, administrative powers aim at providing fair and just action\(^ {108}\).

1.9 **International Perspective and Rule of Law**

a) **Rule of Law under administrative law**

The basis of Administrative Law is the 'Doctrine of the Rule of Law'. It was expounded for the first time by Sri Edward Coke, and was developed by Prof. A.V Dicey in his book 'The law of the Constitution' published in 1885. According

---

\(^{100}\) *Ibid.*  
\(^{101}\) AIR 1088 SC 2232.  
\(^{102}\) *Ibid.*  
\(^{103}\) AIR 1958 SC 86.  
\(^{104}\) *Ibid.*  
\(^{105}\) AIR 1988 SC 1099.  
\(^{106}\) *Ibid.*  
\(^{107}\) AIR 1970 SC 150.  
to Coke, in a battle against King, he should be under God and the Law thereby the Supremacy of Law is established. Dicey regarded Rule of Law as the bedrock of the British Legal System: 'this doctrine is accepted in the constitutions of U.S.A. and India\textsuperscript{109}.

The concept of non-arbitrariness is foundational to American Law and has some relevance for welfare program that is administered without rules or standards. Many of specific prohibition found in Magna Carta have been incorporated into our current constitutional scheme. Courts and scholars also acknowledge that Magna Carta was among the first documents to specifically prohibit arbitrary government action and that these concepts formed the basis of our current “Rule of Law” values.\textsuperscript{110}

America Supreme Court Justice have noted that the Magna Carta was designed to secure individual against the arbitrary power of government and that Magna Carta is the basis of our current concept of Rule of Law. In America, Contemporary equal protection analysis emerges from the concept of arbitrariness first articulated in case, Yick Wo v. Hopkins\textsuperscript{111}, US Supreme Court observed that when we consider the nature and the theory of our institution of government. They do not means to leave the room for the play and action of purely personal and arbitrary power. The very idea that no man may be compelled to hold his life, or the means of living, or any material right essential to enjoyment of life, at the mere will of another, seems to be intolerable in any countries freedom prevails. After the Supreme Court’s decision there raises a similar concerns about equality, fairness and rationality\textsuperscript{112}.

Dicey’s ‘administrative law’ was a translation of the French droit administratif, and it was this, rather than any British conception, that Dicey denounced. He regarded it as a prime virtue of the rule of law that all cases came before the ordinary courts, and that the same general rules applied to an action

---

\textsuperscript{110} Id., at 463.
\textsuperscript{111} 118 U.S. 356 (1886) 369-370, cited in Supra note 104.
\textsuperscript{112} Ibid.
against a government officials as applied to an action against a private individual. Under the French system, with its special administrative courts, actions against officials or the state are in many cases subject to a separate system of judicature. What Dicey meant by ‘administrative law’ was a special system of courts for administrative cases. Even in Dicey’s generation this was an unusual sense of the expression. But once that sense is appreciated, the paradox disappears.\textsuperscript{113}

Dicey’s denunciation of the French system was based on his mistaken conclusion that the administrative courts of France, culminating in the \textit{conseil d’Etat}, must exist for the purpose of giving to officials ‘a whole body of special rights, privileges, or prerogative as against private citizens’, so as to make them a law unto themselves. It has long been realized that this picture was wrong, but it has become a traditional caricature.\textsuperscript{114}

Even today English judges can speak as if droit administratif was a system putting the executive above the law. But in fact the French administrative law has a system of compensation for the acts of public officers which is in some respect more generous than that of English law. The reality is that the French \textit{conseil d’Etat} is widely admired and has served as a model for the countries. At the time when English administrative law was in a state of relapse there were those who advocated importing the French system in Britain. Undoubtedly the French administrative courts have succeeded in imposing a genuinely judicial control over upon the executive and in raising the standard of administration. They are impartial and objective courts of law in the fullest sense. Many of the legal doctrines which they have developed have their counterparts in English law, since the demands of fair and lawful administration are similar in both countries.\textsuperscript{115}

\subsection*{1.10 \hspace{1em} Rule of Law and Equality Before Law under Indian Constitution}

Latin expression for the Rule of Law is \textit{la legalite}. Rule of Law is quite similar to American expression “Due Process of Law” which connotes government on principles of law and not of men; Law must really Rule and that Justice should

\begin{itemize}
  \item \textsuperscript{113} \textit{Supra} note 59 at 24.
  \item \textsuperscript{114} \textit{Ibid}.
  \item \textsuperscript{115} \textit{Id.}, at 24.
\end{itemize}
Prevails. It means conduct of legal proceedings according to the established Principles and Rules safeguarding Individual and Group Rights. Rule of law is therefore the sole basis of administrative law.  

1.10.1 Concept of Rule of Law

A.V Dicey said:

[I]t means, in the first place, the absolute supremacy or predominance of regular Law as opposed to the influence of arbitrary power, and excludes the existence of Arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone; a man may with us be punished for a breach of law, but he can be punished for nothing else. It means, again, equality before the law, or the equal subjection of all classes to the ordinary law courts; the ‘Rule of Law’ in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals; there can be with us nothing really corresponding to the ‘administrative law’ (droit administratif) or the ‘administrative tribunals’ (tribunaux administratifs) of France. The notion which lies at the bottom of the ‘administrative law’ known to foreign countries is, that affairs or disputes in which the Government or its servants are concerned are beyond the sphere of the Civil courts and must be dealt with by special and more or less official bodies. This idea is utterly unknown to the law of England, and indeed is fundamentally inconsistent with our traditions and customs.

1.11 Rule of Law and the Constitution of India

In India, the meaning of Rule of Law has been much expanded. It is regarded as a part of the basic structure of the constitution and therefore it cannot be abrogated

\[116\] V.D Kulshrestha’s, Landmarks in Indian Legal and Constitutional History, 483(2009).
\[118\] Id., at 121.
or destroyed even by Parliament. It is also regarded as a part of natural justice. The concept of ‘Rule of Law’ is used in contradistinction to the rule of man. In the system in which Rule of Law prevails, it is the law that rules through the instrumentality of man. Every organ of the state under the Constitution of India is regulated and controlled by the Rule of Law. Absence of arbitrary power has been held to be the first essential of the Rule of Law. The Rule of Law requires that the discretion conferred upon executive authorities must be contained within clearly defined limits. Free legal aid for poor and speedy trial in criminal cases has been held to be necessary adjuncts to the Rule of Law. The Rule of Law permeates the entire fabric of the Constitution of India and it forms one of its basic features. The Rule of Law excludes arbitrariness.\textsuperscript{119}

The constitution of India makes provision not only for the establishment of the majesty of law but also for its preservation. These provisions may be explained as follows- Establishment of Rule of Law the following provisions of the Constitution of India establish firmly the Rule of Law in the country\textsuperscript{120}

1) **Article 13-**

The constitution of India has been made the supreme law of the country and other laws are required to be in conformity with the constitution. Any law which is founded in violation of any provision of the constitution is declared invalid. Part III of the constitution of India guarantees the fundamental rights\textsuperscript{121}.

2) **Article 14-**

Article 14 of the constitution of India provides for equality before the law or of the equal protection of the laws. According to Article 14, the state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. ‘Equality before law’ implies absence of any special privilege in

\textsuperscript{119} Kailash Rai, *Administrative Law*, 36 (2011)
\textsuperscript{120} Id., at 37.
\textsuperscript{121} Ibid.
favour of any individual. Article 14 strikes at arbitrariness in state action because an arbitrary action will involve negation of equality\textsuperscript{122}.

If the state action is arbitrary or irrational; it would be treated as being against article 14. An arbitrary act cannot be valid on the ground of reasonable action and doctrine of reasonable classification has been evolved only as a subsidiary rule for testing whether a particular action is arbitrary or not. Right to equality affords protection not only against discriminatory laws passed by the legislature but also prevent arbitrary discretion being vested in the executive. Often administrative authorities are given wide discretionary powers\textsuperscript{123}.

In such conditions, the statute which confers such discretionary powers on the administrative authorities should lay down some guidelines or principles according to which the administrative authorities are to exercise them. The statute should contain clear legislative policy for which the discretion is to be exercised. If the statute does not contain a clear legislature policy or guidelines for the exercise of the discretion conferred by it on the government or the administrative authorities, the statute itself will be discriminatory and, therefore against article 14 and the way in which it is applied will not be material. Equality is antithetic to arbitrariness\textsuperscript{124}.

**Exception to rule of equality**

However, it is to be noted that there are a few exceptions to the rule of equality\textsuperscript{125}. However, it is notable that such exceptions are found even in England. Such exceptions have been created by the constitution which is the supreme law of the country and, therefore, the person enjoying such privileges cannot be said to be above law\textsuperscript{126}.

These exception permits under reasonable classification, but it prohibits “Class Legislation”.

\textsuperscript{122} Ibid.
\textsuperscript{123} Ibid.
\textsuperscript{124} \textit{Id.}, at 38.
\textsuperscript{125} Ibid.
\textsuperscript{126} \textit{Id.}, at 39.
In case, *Ram krishan Dalmia v. Justice S.R Tendulkar*\(^{127}\), Supreme Court observed in this case Reasonable Classification as exception to the Equality before Law or Rule of Law. Test for the reasonable classification is –

a) Classification must be based upon Intelligible Differentia, which must distinguish person grouped together and person left out of group.

b) This Intelligible Differentia must have a rational relation to the object, which sought to be achieved by statute in question.

3) **Article 19**\(^{128}\)

Article 19 guaranteed six fundamental freedoms to the citizen of India. These Right to Freedom is not absolute, but subject to reasonable restriction, these restriction will be valid only if the following conditions are fulfilled \(^{129}\)–

a) Restrictions have been imposed by the state as defined in article 12.

b) Restriction has been imposed by law and the law is a valid law. The executive cannot impose the restriction without there being a law authorizing it to do so.

c) Restriction must be on any of the grounds mentioned in clause (2) to (6) of article 19.

d) Restriction must be reasonable

1.12 **Historical background of public accountability in India.**

A reading in Chanakya's *Arthashastra* which was written in 4th century BC is worth mentioning here as it gives guidelines on administration practices which were to be followed in order to achieve the social welfare objectives. Study of Ancient system of good Governance throws some light on the evolution of the present Governance as well as accountability of public servants. No doubt its concept of accountability has been evolved by the judiciary but this system of

\(^{127}\) AIR 1958 SC 538.

\(^{128}\) See Also, Article 20, 21, 265 and 300-A of Constitution of India.

\(^{129}\) *Supra* note 122.
Governance and Accountability has been borrowed from the ancient system and its relevance can be even seen in present time\textsuperscript{130}

1.13 Scope of Public Accountability

Accountability is one of those golden concepts that no one can be against. It is increasingly used in political discourse and policy documents because it conveys an Image of Transparency and trustworthiness. However, its evocative powers make it also a very elusive concept because it can mean many different things to different people, as anyone studying Accountability will soon discover\textsuperscript{131}.

This whole study nevertheless tries to develop an analytical framework for the empirical study of Accountability arrangements in the public domain. It starts from a narrow, relational definition of Accountability and distinguishes a number of indicators that can be used to identify and classify Accountability arrangements\textsuperscript{132}.

Furthermore, it develops perspectives to assess and evaluate Accountability arrangements in the public domain. A government can’t act in an arbitrary manner against the people, many scholars link the \textit{magna carta’s} concept of non-arbitrariness to the current Rule of Law concept to the western world of law, the great gift of the \textit{magna carta}, signed in 1215, was the notion that no person shall be secure from the arbitrary exercise of the power of government, the \textit{magna carta} is the spiritual and legal ancestor of the concept of the Rule of Law. Principle underlying the regulations of arbitrariness in administrative actions are:\textsuperscript{133}

1. Rationality
2. Clarity
3. Fairness
4. Equality
5. Accountability

\textsuperscript{130} \textit{Ibid.}
\textsuperscript{131} \textit{Supra} note 116 at 471.
\textsuperscript{132} \textit{Ibid.}
\textsuperscript{133} \textit{Ibid.}
6. Reviewability
7. Vagueness

1.13.1 Accountability and Judicial Review

In recent years accountability has been one of the key issues stressed by the new public management\textsuperscript{134}. Indian legal system relies upon the both to ensure that governmental actions accord with legal and constitutional limits and effective reviewability will arise in the vagueness and non-delegation context.

Doctrine of non-delegation, requires that – delegation to administrative agencies be accompanied by “intelligible principles” enhance the likelihood of meaningful judicial review by requiring the standards upon which courts can assess compliance.

The power of an independent judiciary to review the decisions of the other two organs of the government is considered an integral aspect of the Rule of Law and the Indian Constitution does everything possible to put in place this mechanism. Judges of the Supreme Court and the High Courts are appointed by the President in ‘consultation’ with relevant judges of these courts\textsuperscript{135}.

Subsequent to the decision in Supreme Court Advocates on Record Association v. Union of India\textsuperscript{136}, judges of the higher judiciary are in essence appointed by the judiciary itself. Detailed provisions have also been made to provide judges security of tenure\textsuperscript{137}, and protect their salaries, allowances and privileges\textsuperscript{138}. Legislative bodies are barred from debating the conduct of judges unless dealing with impeachment motions\textsuperscript{139}. In fact, on a closer look, it seems that the Indian judiciary has become over-independent in that there are not many checks on its powers and the functioning/conduct of judges. The judiciary, for instance, resists any attempt to introduce accountability measures and impeaching

\textsuperscript{135} Articles 124(2) and 217.
\textsuperscript{136} (1993) 4 SCC 441. See Also In Re, Presidential Reference, AIR 1999 SC 1.
\textsuperscript{137} Articles 124 and 218.
\textsuperscript{138} Articles 125 and 221.
\textsuperscript{139} Articles 121 and 211.
judges so far has proved to be an almost impossible even in suitable cases. The remedy to approach the Supreme Court for violation of fundamental rights under Article 32 is in itself a fundamental right\textsuperscript{140}.

1.13.2 Public Accountability of Administrative Authority – In Right to Information

Here the area for research will be about the test –

Is this Right appropriate tool to strengthen the Rule of Law: “every citizen has a corresponding duty to expose corruption wherever he finds it and to expose it if possible with the proof so that even if the state machinery doesn’t take action against the corrupt people, when time comes, people are able to take action, either by rejecting them as their representative or by compelling the state by public awareness to take action against them”\textsuperscript{141}.

It is not surprising, therefore, that an overwhelming number of complaints are directly related to the work of public administrative bodies. Administrative organs still do not apply principles of good administration.

1.13.3 Public Accountability is One of Branch of Good Governance Based upon Rule of Law

The concepts of public administration have changed over the past 50 years and that good governance is now conceived of by citizens – as being accountable, transparent, decentralized and ensuring fair procedures. Governance has become a fashionable world. In the concise oxford English dictionary, there is a slight difference between the definitions of ‘Government’ (“The act or manner of governing”). This appears to imply that while ‘Government’ is what government do, ‘Governance’ is not necessarily restricted to governments. ‘Governance’ would then continue to include law and order, the assurance of basic needs and services, mechanisms for the settlement of disputes, a good judicial system, and so on, but would be guided by a vision of equality and social justice. To explore the changing roles of public administration and democratic governance to make

\textsuperscript{140} A Similar (in fact wider) power is vested with the High Courts under Article 226.

governments more responsive to citizens needs and more effective in providing Public services.\textsuperscript{142}

It would be firmly wedded not merely to the Rule of Law but also to the protection of civil liberties, and would be an integral part of a democratic system (not necessary of a parliamentary or presidential kind). It would be grounded on a right relationship between the state and civil society.

In India comprises statutory laws which guarantee time bound delivery of services for various public services rendered by the Government to citizen and provides mechanism for punishing the errant public servant who is deficient in providing the service stipulated under the statute.\textsuperscript{143} Right to Service legislation are meant to reduce corruption among the government officials and to increase transparency and public Accountability.\textsuperscript{144}

1.14 Judicial Attitude towards Public Accountability and Rule of Law

1.14.1 Judicial Attitude towards Public Accountability

In \textit{Dhananjay Sharma v. state of Haryana}\textsuperscript{145}, Faizan Uddin, observed that:

[I]n the present case before us it appears the concerned police officials deliberately clogged their mind and shut their eyes to the realities and the fact that the primary duties and function of the members of the police force is to prevent and detect the crime, to take such measures to ensure the safety of the life, property and liberty of the citizens and accord such protection in that behalf as may be necessary and thereby serve the community and at the same time obey the orders issued to them by the competent authorities with regard to prevention of commission of offences and public nuisance etc. It was this object for which the police force was conceived and it was this purpose for which it exists. But to


\textsuperscript{145} AIR 1995 SC 1795
our dismay, it is distressing to note that quite often when every morning one opens the newspapers and goes through its various columns, one feels very muchanguished and depressed in reading reports of custodial rapes and deaths, kidnapping, abduction and faked police encounters and all sorts of other offences and lawlessness by the police personnel, of which countless glaring and concrete examples are not lacking. It is in common knowledge that in recent times our administrative system is passing through a most practical phase, particularly, the policing system which is not as effective as it ought to be and unless some practical correctional steps and measures are taken without further delay, the danger looms large when the whole orderly society may be in jeopardy. It would, indeed, be a sad day if the general public starts entertaining an impression that the police force does not exist for the protection of society's benefits but it operates mainly for its own benefit and, once such an impression comes to prevail, it would lead to disastrous consequences.\footnote{Ibid.}

\textbf{1.14.2 Judicial Attitude towards Rule of Law.}

More important, however, has been the judicial employment of Article 14 to develop a broad principle of reasonableness. In, \textit{E P Royappa v State of Tamil Nadu}\footnote{AIR 1974 SC 555.} the Court said that, ‘Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined and confined” within traditional and doctrinaire limits.\footnote{Ibid.} From a positivistic point of view, equality is antithetic to arbitrariness.\footnote{\textit{Ameernissa Begum v. Mehboob Begum} AIR 1952 SC 91; \textit{Ram Prasad v. State Of Bihar} AIR 1953 SC 215.}

In \textit{Kesavanda Bharti v. State of Kerala}\footnote{(1973) 4 SCC 255}, the Supreme Court enunciated the Rule of Law as one of the most important aspects of the doctrine of basic structure.
1.14.3 Judicial attitude towards arbitrary acts and public authority accountability towards general public, review of administrative action- It’s a mode to strengthen rule of law:

Judicial review is the power of courts to review statutes and governmental action to determine whether they confirm to rules and principles laid down in constitution. Judicial review is based on the idea that a constitution, which dictates the nature, functions and limits of a government, is the supreme law, consequently any action by government that violates the principles of its constitution are invalid\textsuperscript{151}.

In Democratic countries, like India, the Judiciary is given a place of great significance, the courts, primarily a resolving mechanism. The Primary function of the court is to settle disputes and dispense justice between one citizen and another. But courts also resolve disputes between the citizen and state (other organs of state itself). The responsibilities which a court carries on a country with a written constitution (i.e.-India) are very onerous, in comparison to the countries where there is no written constitution (i.e. Britain)\textsuperscript{152}.

We can distinguish our countries in two kinds\textsuperscript{153}, one is Countries where written constitution, the courts do interpret the provisions of the constitution and thus give meaning to the cold letters of the constitution. Here, courts act as supreme interpreter, protector and guardian of the supremacy of the constitution by keeping all the authorities, i.e. legislative, executive, administrative, judicial or quasi-judicial within legal bounds. Other is Countries where no written constitution, Here court interprets the laws but not the constitution\textsuperscript{154}.

\textsuperscript{152} Ibid.
\textsuperscript{153} Ibid.
\textsuperscript{154} Ibid.
1.15 Conclusion

Bribery is inescapable in government decision-making in many countries in the Asia-Pacific region. The state and its instrumentalities, which are entrusted with the responsibility of distributing resources in a fair and non-discriminatory manner, often conduct their activities in an arbitrary manner. This arbitrariness is further promoted by irrelevant criteria infused into the decision-making process on account of corruption. This violates the rule of law and leads to the arbitrariness on account of corruption has become institutionalized in India. This means that decisions are taken in fair manner only as an exception. The impact this effect has on the citizenry is profound, as people do not have faith in the criminal justice, or the civil justice systems\textsuperscript{155}.

One of the important consequences of corruption is widespread discrimination. Power holders exercise their discretion to discriminate against people, with bribe-givers receiving favourable treatment and the people who do not give bribes being unfairly victimized. Discrimination in administration due to bribery and other forms of corruption promotes a sense of frustration and helplessness among the victimized as there are no effective mechanisms for redress. Inevitably, the victims of this discrimination tend to be the poor, whose capacity to give bribes is far less than that of the middle or upper classes\textsuperscript{156}.

Corruption takes place on account of abuse of the discretionary powers vested with the government in decision-making. Notwithstanding the fact that economic reforms have removed some of the traditional rules relating to the exercise of discretion by government officials, there are still a number of areas in which the government remains the sole authority for exercising discretion. While privatization is not the only answer to removing corruption, it is important to infuse enforceable mechanisms of transparency and accountability that will promote fair, non-discriminatory, and reasonable exercise of discretion\textsuperscript{157}.

\textsuperscript{155} C. Raj Kumar, \textit{Corruption And Human Rights In India}, 30-31 (2011)
\textsuperscript{156} \textit{Ibid}
\textsuperscript{157} \textit{Ibid}.
Discretionary power for government officials becomes a fertile ground for abuse and, thus, corruption becomes a norm. In many countries in Asia, where a significant section of the populace is ignorant of its rights and is also impoverished, it is important to ensure that abuses of discretion do not take place. Even if corrective mechanisms in the form of institutions and anti-corruption agencies are in place and are effective (which is anyway not the case), it is important to create accountable structures for the administrators, particularly when they have discretionary power. Further, as far as possible, these discretionary powers should be limited and in due course made on the basis of objective and determinable criteria so that opportunities for bribery and other forms of corruption are reduced, if no altogether eliminated\textsuperscript{158}. Establishing a rule-of-law society becomes essential for ensuring low levels of corruptions in governance. The need for a political will in the form of the commitment of the leaders of a particular state or government becomes essential for the eradication of corruption. In this regard, Quah notes, ‘Success occurs where three conditions are met: comprehensive anticorruption legislation is enacted; an independent anticorruption agency is provided with sufficient personnel and resources; and the independent agency fairly enforces the anti-corruption laws. The success of Singapore and Hong Kong in substantially eliminating corruption is a useful case in point for many countries in Asia to examine the need for ensuring independent that fight corruption\textsuperscript{159}.

\textsuperscript{158} Ibid.  
\textsuperscript{159} Ibid.