

UNIVERSITY OF COLOMBO

SOME ASPECTS OF JUDICIAL CONTROL
OF ADMINISTRATIVE DISCRETION
A STUDY OF DISCRETIONARY POWERS
ITS EXERCISE AND LIMITATION THEREOF

A DISSERTATION SUBMITTED
TO THE FACULTY OF LAW
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ABSTRACT

The essence of decision making by Administrative Bodies may be said to be the discretion exercised by them. K.C. Davis the pioneer writer on discretion observed "Writers about law and government characteristically recognise the role of discretion and explore all around the perimeter of it but seldom penetrate it". Therefore it will be useful to consider the nature of discretionary power and judicial control of such powers and limitation thereof.

This study examines the importance and relevance of judicial review and the attitude of Courts and writers regarding the extent of such review especially in relation to the exercise of discretionary powers.

The Restraint and Activist models of review are considered and the relevance of judicial review to the concept of Rule of Law and Separation of Powers discussed. An analysis of the concept of discretion is made and the views of leading writers in this regard are discussed. Consideration has been given to the view of K.C. Davis and its relevance today. The relationship between other closely connected concepts with discretion such as fairness and arbitrariness is also briefly made. The concept of unreasonableness as a ground of review is discussed and the development of the Wednesbury unreasonableness considered. The attitude of Courts to accepting unreasonableness as a ground of review, particularly in relation to English and South African decisions is also considered. The development of the concept of Patent Unreasonableness in Canada in a somewhat different manner from the corresponding Wednesbury Principle in England is noted. The recent development of the review of the prerogative in several jurisdictions is considered with reference to the leading decisions of such jurisdictions.

The latter half of the study consists of some of the principles developed in the judicial review of discretionary powers. Judicial review of improper motive and purpose is considered and the development of the 'no evidence'

concept discussed. Thereafter review on the ground of irrelevant consideration is discussed and finally an analysis of the subjectively phrased clauses granting discretionary powers considered and the trend of recent decisions in this regard analysed. In discussing these aspects a comparative approach is adopted and an attempt is made to discuss not only some of the leading English and Sri Lankan decisions but also the decisions of the Commonwealth, South Africa and a few other countries.