



## Public Interest in Administrative Decisions: Interpretation and Applications of Discretionary Power

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### Abstract

The focus of this study is on the executive discretion in administration, the limits to such discretion and implications thereof for administrative justice. It tried to make obvious the role of curtailed executive discretion. The article also presents a new concept of administrative discretion as an instrument granted to public administration for unfettered resolution of cases when the law does not set it in its observance the designated ways and the clear criterions. That allows the administration to consider each unique set of circumstances and make decisions that reflect real life. But the exercise of such great powers also raises questions about how much two such freedoms must themselves be subjected to will, in order that they are not unfairly or arbitrarily abused.

The study also raises a question of the limits of administrative fruition which begs the burden to be assumed by the soothed and legal limitation, to find that it's not in conflict with individual rights, introduces differential (unequal) or special treatment between citizens. Consequently, the study includes a variety of legal steps that have been taken to limit the extent and impact of these powers. This agency is the jurisdictional control, whose function it is to assure that all administrative actions conform to the general laws but also individual liberties. What is at stake, and the question therefore becomes how greater control can be achieved through this monitoring in order to advance citizens' equality with respect to executive power. 3Judicial control can expose maladministration as well as bring relief to the victims of erroneous administrative actions.

The article also discusses the relevance of transparency in discretionary decision-making. The government should clarify the logic and principles behind policy to develop citizens' trust in administration as well as provide justice for all, he added. It also explores the value of administrative accountability in the realm of justice by establishing a model through which defective administrative decisions may be punished and giving avenues for alternatives to act or decision review via either a legal or judicial process. This helps minimize any corruption or misuse of these powers.

Through this analysis, the research intends to attempt to provide solutions in enhancing the exercise of administrative discretion and consolidating the administrative justice by increasing monitoring and review of legal norms implementation. It also encourages the establishment of administratively sound practices that would give greater transparency, equality and protection to individual rights when decisions by government departments are made.

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### Introduction

Administrative adjudications power is one of the central issue in every legal ordering – Administrative action are those through which Political action comes into contact with people and society in a most direct way. Administrative discretion is one in which administrative decision making plays a significant role. It is understandable that the public would find themselves in Mystic Meg territory when trying to second-guess the decisions made by their 'betters'.

Discretion in administration is the capacity of administration to act freely or uncontrolled by efficiency. Yet, even beyond this opacity, the discretionary bonanza is plagued by numerous other legal and ethical tensions; aside from making “the limits of administrative discretion” suspect due to arbitrariness. How are men likely to be just in the administration who enjoy such large discretionary power? It emphasizes the need for responsible management of such powers in order to protect against misuse.

Procedural justice also serves as the criterion for assessing public administrative decision-making, whereas they tend to adjust the general social interests with rights reflecting of external individuals. Granted discretionary power is the hallmark of administrative operation. But a sound legal control oversight mainly through judicial review becomes necessary to avoid perversions in the exercise, nay abuse of that power which results in denial of justice and infringement of rights. The Sphere of Discretion There is a difference between academic theories and the exercise of administrative discretion. Where administrative discretion is crafted to be exercised against transparently monitored legal standards, it can have a role for equality. But without regulation, it can also result in discrimination or injustice. Therefore, in-depth studies should be conducted on the scope of administrative discretion and its impact on judicial justice, strictly control the legal tools to better promote the practice of rule-of-law with a fair administration. In this study, it is hoped that scrutiny of the boundaries against discretionary space and mechanisms for judicial supervision and administrative accountability will contribute to the examination of administrative justice.

#### **First: The Research Problem**

The problem with the study is that there are limits to which administrative discretion is supposed to be subjected and how discretionary use of power can lead to arbitrariness of administration or influence the concept of administrative justice. The study takes account of the question of judicial supervision and its tools, which is also known as administrative review proves that those decisions made by the executive authority do not violate individual rights or constitutional principles.

#### **Second: Research Objectives**

The main objectives of this study are:

- Analyzing the theory of administrative discretion in an administrative act.
- Stating the boundaries of administrative discretion and indicating what limits need to be put on it so that administrative arbitrariness is not violated.
- The role of judicial supervision in limiting the exercise of administrative discretion constitutes the subject matter of another article.
- Investigating administrative justice and how to ensure equality in administrative decisions.
- Legal Solutions through which to enhance the practices of administrative discretion so that these correspond with both administrative justice and protectionism of individual rights.

#### **Third: The Importance of the Research**

This is an example of the significance of this work in that, it has the fundamental legal supervision to applying administrative justice in the administrative system. These restrictions act by administering on the permissible, thus minimizing not only unconstrained arbitrary and unfair administrative action indeterminacy to which unnecessarily

give rise risks of systemic loss in confidence. Those researches also intent to put forward some practical ways of securing greater transparency and accountability on the part of executive in decision-making, which could lead to improved relationship between the executive authority and citizenry. This research also assumes a relevant importance from the point of view legal and academic, because it opens up new path for comprehension on the administrative discretion and its application to practice. It further enhances the practice of administrative justice, legal and judicial review. Finally, this examination can assist policy makers and administrative law academics in order to reform the public administration regimes and laws.

#### **Fourth: Research Methodology**

The analysis employs the logic of deconstruction and takes into account legal rules and jurisprudence that are based on doctrine of administrative discretion, contrasting this with the law applied in other legal system to address this challenge. The descriptive method is employed to address literature and other legal systems on the topic. This research will equally adopt the comparative method of studying administrative discretion in diverse legal systems.

#### **Section One**

##### **The Concept of Administrative Discretion and Its Limits**

Among the bedrock elements of administrative work in any legal order, administrative discretion is one of the most central. Judgment & decision of public administration are based more on subjective judgment than exact law or well defined standards. This delegated discretion to the administrative agency is what is known as an exercise of the scope and case manner, where a hard and fast rule would produce public injury and allows for flexibility in administration to fit new circumstances. The problems associated with bureaucratic discretion lies in the abuses of it, which in turn could result in an infringement of rights or equality. That is what you can call administrative arbitrariness.” Accordingly administrative discretion cannot be unfettered or absolute; it must be circumscribed with the help of multiple legal restraints and safeguards to ensure that it is fair and free from arbitrariness.

By administrative discretion I understand a feeling of the right which the administration has to put things in order according as, for its part, it regards them as they are at present; because there is no written law of any kind determining with precision what form this arrangement ought to take. One of the underlying rationales for this kind of flexibility is that it permits public administration to adjust quickly to changing circumstances. It also maximizes the productivity of the administrative apparatus in emergencies or when all contingencies can not be foreseen by statute. But the limits of administrative discretion is a vital concern, because when you get right down to it, then and now, this ain't just about politics; it's also the heart of a host of legal and ethical questions about when and how an administration may venture outside of its wheelhouse. Judicial review is the strongest safeguard against unbridled or illegal use of discretion. Judicial oversight is needed to ensure the government is acting properly as it makes its decisions in compliance with law and does not fall woefully short of basic norms of fairness. The legal frame work which thus must be given to the administrative systems should be with a view of making these limits in which the administration has to act, when exercising its discretionary powers.

## First Requirement

### Definition of Administrative Discretion

Administrative Discretion is the ability of government officials to make choices in formulating and implementing policy. This power is vested in the public administration to allow it to make decisions adapting itself flexibly to various states of affairs. In situations where personal judgments or administrative sense are necessary, particularly when legal disposition is impossible (Abdullah, 2018, p. 150) <sup>[7]</sup>.

The administrative discretion depends on a balancing of evidence and conditions prevailing, as important means for realizing the administrative justice in some situations that can be more complicated or not capable of regulation under the law. Administrative discretion allows public administration to take decisions in accordance with the social and economic requirements. At the same time, these decisions should not be enclaved from legal or judicial scrutiny (Mahmoud, 2019, p. 221) <sup>[28]</sup>. But administrative discretion is not unfettered. But such authority must be subject to legal constraints that make it possible to avoid injustices and inequalities. It also must be fair to the public good and individual rights. Administrative discretion is a mechanism the administration can use to move quickly on issues. But, it is submitted, that must not be abused to the point of being an instrument of administrative arbitrariness or an encroachment on personal rights.

### First: Discretionary Power in Administrative Law

Discretionary power is the natural law permission granted to public administration to take effective action or make a decision as to determine how best to implement policy when several alternative methods can be used. The law however does not demand that the authority adhere to established standards and uniform procedures in taking these decisions; it is free to adopt such solutions as, under the relevant circumstances, it deems most suitable. Judicial discretion by analogy is not uncommon, in that most legal rules are couched in instrumental language so that no set of legal principles (even those repealed by federal law have been differently formulated as state common law) has an application precisely fitting every case (Jaber, 2020, p. 78) <sup>[11]</sup>. Discretionary authority is a key feature of the administrative system, which provides to the public administration the authority to act quickly and effectively in complicated and negotiable situations. Discretionary power notwithstanding, the executive should still make these decisions in accordance to the general principles of justice and human rights. This power, therefore should be closely defined in law to prevent abuse or misuse (Sherif, 2017, p. 115).

### Second: The Importance of Administrative Discretion in Public Administration Practices

It is administrative discretion allowing for flexibility that is a means of enhancing the efficiency of that same administrative system. Administrative discretion enables public administration to adjust to unanticipated circumstances and rapid social and economic change. Most legal systems depend on this authority so that the administration can respond with flexibility and in a timely manner to situations for which the law is either not detailed enough or consistent enough (Sherif, 2019, p. 233). Public administration through the use of administrative discretion can work to solve the complex problems involved when public agencies deal with issues related to employment,

licensing and distribution of public monies. The mere existence of such discretion allows decision making which is adaptable to 'just' conditions at the point in time, where it furthers the ends of justice and/or public interest. But there are also limits to executive discretion. In the exercise of its discretion, an administration should adhere to general principles regarding transparency and equality. The administrative discretion, that is to say, causes some degree of discretion, freedom for the public authorities in reaching the decision on one side but this freedom must be exercised within the legal boundaries under which it should not infringe human right and justice (Mustafa, 2018, p. 143) <sup>[29]</sup>.

## The Second Requirement

### Limits on Administrative Discretion

The discretion of the government, while necessary for flexibility in public administration is not absolute nor unbounded. This discretion is judicially circumscribed to prevent public officers from abusing their power, or that decision-making is inflamed contrary to the rights of individuals and administrative justice. This constraint is an essential part of any legal structure that purports both to constrain administrative discretion and establish some balance between bureaucratic power and individual liberty.

### First: Legal Limits on Administrative Discretion

Control factors which have to establish the limits of discretion of public administration in making decisions, but also that those decisions are based on fundamental legal values such as justice and equality. The executive can't just do whatever it wants outside of established rules and norms. The legislation imposes procedural obligations which dictate how decisions are made (Ibrahim, 2020, p. 112) <sup>[1]</sup>, such as:

- The administration's promise to disclose the bases and calculus that underpinned its decisions.
- Decision-making should be transparent to ensure arbitrary or capricious exercise of administrative discretion.
- The need to avoid any discrimination between persons in the implementation of laws and legislation (Issa, 2017, p. 189) <sup>[4]</sup>.

A violation of those standards by the administration might just result in exactly that sort of arbitrary administrative decision that can successfully be challenged in court. That means the administration has some flexibility.

### Second: Judicial Oversight of Administrative Discretion

Judicial review is thought to be a key device through which administrative discretion should not overrule. Judicial control does not mean to step in directly into the decision-process, just review if the public administration's decisions are legal. its "interest" in the matter). The role of the judiciary is to see that the acts of administration are kept within bounds fixed by law, justice and equality. Laws are made by man, therefore a citizen can appeal in the case of laws that he or she thinks irrational and unjust. While the public administration has discretionary power, its acts can be reviewed by administrative courts if they violate individual rights or ideals of justice (Fouad, 2016, p. 98) <sup>[21]</sup>. Judicial authorities may restrict the exercise of discretion in administrative decision making when they find such to be arbitrary and not within the mandate that were given. This judicial control is seen as a legal 'safeguard' of the rights and interests of citizens versus public administration powers (Abdul Hamid, 2019, p. 205) <sup>[20]</sup>.

Judicial errors preserve for citizens recourse against rulings which they believe arbitrary or illegal. There are also administrative tribunals that make decisions of a judicial nature, but they are not part of the court; their decisions can still be scrutinized by an ordinary court if challenged (Fouad, 2016, p. 98) <sup>[21]</sup>. Exercise of discretion may be challenged by the court as arbitrary or ultra vires challenge in case it exceeds its authority. Some describe this 'judicial supervision' as a legal defense of individuals and a harmonization between the powers of public administration and citizens (Abdul Hamid, 2019, p. 205) <sup>[20]</sup>.

## Section Two

### The Impact of Administrative Discretion on Administrative Justice

This part explores the meaning of administrative discretion and its effect on administrative justice, as well as how it can facilitate just results or not it is not exercised properly. Administrative Authority is derived from the discretionary powers of public administration to act in personal and social matters. But crucial as flexibility is, it can also come with a heavy price if limits are skirted or discretion is misused.

#### Administrative Discretion and its Impact on Justice

But for the fact that administrative abstract has a determining content which is able independently to determine some discretionary administration measures in relation to public rights and guarantees, there should not be any other such non-norm regulated cases. It is decisions like these that permit the government to provide rapid responses in Acritical situations or where the issues are complicated. A instead of needing all answers at once. In such a context, exercise of administrative discretion contributes to the realization of administrative justice if only it is exercised in a balanced and just way by considering all the particular circumstances of a case and providing similar operation for like cases. The Administrative Discretion, Although Beneficial, Can Have A Negative Side Of Course this discretion can also be a problem when the discretion is abused or if it lacks legal clarification. In some cases, abuse of administrative discretion may result in discrimination or irrationality in decision-making, challenging the guiding principle of justice, as well as infringing upon individual's right. Thus, as its powers of administrative discretion are to be exercised against the background of statutes and legal principles which protect individual rights and which prevent decisions based on prejudice.

As a power of dispensing from the specific provision, also as an abuse of the statutory Powers enacted to protect administrative justice. One of the most typical among these types is arbitrary administration—the act made based on discretion either making decisions out of rights violation or for preference a group not others. One major way to minimize the risk of arbitrariness is judicial review. Judicial review is a recourse available to persons who believe that their rights have been breached by an administrative decision that is framed in terms of discretionary power. Judicial control is responsible that the discretionary activities of public administration are in accordance to legal fundamentals and do not violate individual rights. Judicial review is not only about whether decisions can be overturned but also about whether those decisions are in accordance with administrative justice and do not prejudice the rights of a specific person or group. On account of the review, there will be no arbitrary

and discriminatory implementation of administrative decisions and this increase in popular credibility.

Public confidence is one of the most significant determinants conducive to making any administrative system work. When unfair or arbitrary discretionary decisions are taken by the public administration, this can lead to a loss of trust in the system. This results in public dissatisfaction, since people do not trust that the administrative system will guarantee their rights. It is thus necessary for the executive powers to develop instruments that control transparency and parity in exercising the administrative discretionary power. This involves establishing judicial review of decisions to support clear and foreseeable decision making.

#### The First Requirement

##### Administrative Discretion and the Achievement of Justice

Administrative discretion is one of the basic weapons which, to a large extent, public administration uses for deciding on matters concerning individuals and also the society. In situations where every fact cannot be incorporated into hard and fast legal rules, discretionary power provides an excellent method for the administration of justice. The discretion which is inherent in administration may vary and allows the public administration to decide what is just or equitable under the given circumstances and on the basis of all available information.

#### First: Administrative Discretion and Ensuring Individual Rights

Where administrative discretion is used properly, it can serve to prevent decisions from being made in an oppressive manner. In many such instances the law is not sufficiently precise to ascertain final judicial ties and that's where administration intervenes in the Commission of administrative justice. That means that administrative discretion allows the administration to have options in assessing each individual's particular situation. For example, it may be best for the government to judge each case on its own merits in a licensing or employment situation (Abdul Hadi, 2018, p. 135) <sup>[22]</sup>. The principle of executive discretion gives the administration leeway to implement laws in light of practicalities. Not to say I have no flexibility: But the decision before me is not whether to grant the administration carte blanche or to deny it any, a false choice that can be avoided where decisions need be made by a decisionmaker who considers all of the relevant information in those cases not barred. Hence this scope exists to ensure all humans are held under same regulation and treated well without discrimination.

#### Second: The Role of Administrative Discretion in Promoting Justice

The discretionary power of the administration are an inevitable tool of justice, particularly when the circumstances call for flexibility. Sometimes a particular situation may need an application which is done on humanitarian or social criteria. For example, whether to help victims of a disaster, or to temporarily suspend certain laws in the event of natural catastrophe administrative discretion allows the judgment of policy makers between public need and individual claims (Fouad, 2020, p. 201) <sup>[19]</sup>. But such arbitrary power should be subjected to a judicial review so that it does not become an instrument of abuse, or, what is worse, become a tool of administrative aggression or vengeance against individuals.

Justice in administration is the sufficiency of transparency and equality in making decisions that do not impede any party by biased or discriminatory choices, followed by applying impartial liability determinants according to legal norms.

### **The Second Requirement**

#### **Problems of Administrative Discretion and Its Negative Effects**

Administrative discretion has its merits in dealing with public affairs and providing expedient relief, and yet also dangers of vices which are likely to impair the system of administrative justice. Administrative discretion is one of the most significant problems with the process, since without proper controls administrative discretion has a potential for administrative arbitrariness and abuse, which also put human rights at risk.

#### **First: The Risks of Administrative Arbitrariness in Decision-Making**

Arbitrary administration is present when leaders make decisions at their discretion in violation of human rights. An example of this is choosing favorites or discriminating against people. If the executive have discretionary authority extensive and unlimited, without judicial interposition or legislative superintendence; it will be an arbitrary discretion of some servant of the state, not ruled by any fixed law, and subject to all personal biases in favor or prejudice (Abdullah, 2019, 167) <sup>[26]</sup>.

### **The Second Requirement**

#### **Problems of Administrative Discretion and Its impact**

While it is administrative discretion that brings about the merits of governing administration and an applied solution, there are also risks associated with it that could unregulated administrative justice. A serious issue is the risks related to administrative arbitrariness and the arbitrary use of vested discretion, which may lead to violations of fundamental rights.

#### **First: The Risks of Administrative Arbitrariness in Decision-Making**

Arbitrary administration is exercising discretionary authority unreasonably or without proper cause. One such thing is to take decisions by showing favoritism or discrimination among people. As far as the administration having legitimate powers not subject to judicial review and legal accountability, there they could be open to getting swayed by politics or even personal interests that end up turning against justice. (Abdullah, 2019, 167) <sup>[26]</sup>. Where decisions of bias or just subversion of legal and ethical standards are being made taking it to be based on Executive discretion, the outrage is caused among the people who suffer from such arbitrariness. For instance, if one is hired or licensed based on who you know then we have downright violated the individual.

#### **Second: The impact of Administrative Discretion on Trust in the Administrative System**

One of the major adverse outcomes of administrative arbitrariness is loss of confidence. If the public feel that they are discriminated or receive injustice as a result of an unfair administrative decision, it will create a decline in trust toward administrative system. For example, if people sense that laws or processes are being applied unfairly towards them, they may be less cooperative and more

resistant to government command. Public trust in administrative bodies and officials is essential to the administration of justice. So an effective administrative discretion supervisory system must be established to guarantee justice and fairness of decision-making, along with a high degree of authoritative credibility to the administration (Abdul Rahman, 2017, p. 112) <sup>[27]</sup>.

### **Section Three**

#### **Guarantees for the Application of Administrative Discretion and the Development of Oversight**

This section considers the necessary procedural safeguards which ensure that administrative discretion complies with "administrative justice". With judicial supervisory and legal review mechanisms that this discretion is being exercised fairly and not to the disadvantage of individual rights. While administrative discretion is needed to enhance the flexibility of public administration, legal restraints are required to restrain such discretion and make it just and protective (Abdullah, 2018, p. 248) <sup>[8]</sup>.

In order that the agency's discretionary powers should not be abused, protections of law are necessary to forestall any arbitrary or capricious use of this weapon which could lead to victimization and oppression. These protections are comprised of a legal review of discretionary decisions and legally constrained discretion. There also must be provisions for review of discretionary decisions by courts or superior administrative authorities to prevent abuse (Abdul Rahman, 2020, p. 92) <sup>[19]</sup>.

A function of the judiciary also, is as an important legal curb on administrative caprice. It is a significant weapon the armory to thwart injustice, and ward off executive arbitrariness. And to allow for federal court review of agency decisions if those are believed to be arbitrary, or outside the authority delegated by statute. Accordingly, judicial supervision contributes the existence of justice on the basis that every action must not violate justice's fundamental principles.

Instruments of control over discretionary administration are required to generate effectiveness by administrative power (Mustafa, 2019, p. 156) <sup>[4]</sup>. This could include enhancing internal accountability of the executive, alongside public scrutiny of discretion-exercise in public bodies. Judicial review should be further developed so challenges to discretionary decisions are allowed expeditiously and efficiently (Saleh, 2021, p. 220) <sup>[18]</sup>, contributing to increased accountability (Abdullah, 2014, p. 102) <sup>[5]</sup>.

There's also a need for training judges in administrative law to make sure they know enough about questions of discretion, she added. Additional safeguards could also be added to prevent administrative assessments being exposed to established legal principles.

### **First Requirement**

#### **Legal Guarantees for the Application of Administrative Discretion**

##### **1. Legal Guarantees within the Framework of Administrative Legislation**

Guarantees are an institution of administrative law that which is intended to prevent the use of arbitrary power beyond the scope prescribed by the law as well as to secure its equitable exercise (Abdul Qader, 2012, p. 45). The laws aim to narrow options for, and remove uncertainty about, exercising this power in the manner that respects individual due process rights and ensures statutory authority is exercised only after finding it appropriate under legal criteria.

- **Laws on the Control over Administrative Discretion:** Administrative discretion is the power of authority given by law to an executive official to determine when, whether or how a particular decision should be made considering some specific factors or circumstances. To attempt to control this power, administrative law prescribes certain cages within which it must be exercised and governed by constitutional values and legal norms. For instance laws may ossify some particular constituents of the discretion by requiring that such discretionary decision contain, amongst other things, considerations of public interest or individual right protection or equal opportunity (Al-Tawati, 2010, p. 123) <sup>[15]</sup>.
- **Adjudication of discretion:** The possibility of legal reviewers in the adjudication of such discretions is one of the most significant due process rights for ensuring fair exercise of discretion. Persons whose rights have been invaded by an act of administrative discretion may if they so choose to contest such act before a court of competent jurisdiction (such as the Administrative Court). Legal Review legal review of decisions is important because it provides for the possibility of review by a body independent for all practical purposes from the administration, namely the Administrative Judiciary Court or a similar judicial forum (Iraqi Law No. 60 of 1989, Administrative Organization Law, Article 10).

## 2. Internal and External Oversight of Administrative Discretion

There are a variety of ways to control discretion management imposed internal controls and external oversight by independent organizations, such as the courts and various government monitoring agencies (Zakaria, 2015, p. 75) <sup>[12]</sup>.

- **Internal Administrative Oversight:** The internal accountability is essential for the impartiality of discretionary decisions taken by managers and directives. Such negligence also involves setting up clear procedures to guarantee that any discretionary decision is made in accordance with the law and sound. Some internal mechanisms include:
  - **Internal audit procedures:** This refers to organization's internal personnel scrutinizing as an internal auditor, and may be ensured that discretionary decisions are in compliance with the prevailing law (Al-Zawi, 2016, p. 88).
  - **Administrative Training:** This includes training administrative staff in the use of discretionary authority in a fair and reasonable manner as required by law.
- **External Legal Oversight:** External legal control pertains to independent organizations which see to it that discretionary decision-making authority is not over-reached. This failure may involve judicial or regulatory oversight.
  - **Administrative Courts:** Administrative courts examine discretionary decisions on appeal by aggrieved individuals. People can take this decision on administrative courts if they think that

discretionary acts were decided contrary to the law or arbitrary.

- **Independent Oversight Bodies:** External supervision may be provided by independent institutions (e.g., the Board of Supreme Audit or government audit bodies) who reviews discretionary decisions and assesses if they conform to their legal context (Supreme Administrative Court of Iraq, Decision No. 24/2017, issued by the Administrative Judiciary Court)

## 3. Mechanisms for Legal Review of Discretionary Decisions

Judicial review over discretionary acts is a basic safeguard for the impartial and just implementation by administrative authorities. The process of taking a legal review is like the avenue where people can appeal if they receive a decision going beyond their authority or eroding their right (Ali, 2018, p. 140) <sup>[10]</sup>.

- **Mechanism for Appealing Discretionary Decisions:** A legal tool provided to citizens for appealing discretionary acts, such an appeal may also be made with regard to the administrative judiciary. People had the right to appeal against their decisions if they felt they were unfair or made beyond the limits of someone's authority.
  - The appeal can take, on the one hand, the form of misuse of the delegate's discretion by administration or she did not take into account fundamental legal principles like justice and equality (Khaled, 2017, p. 155).
  - Laws often prescribe deadlines for filing appeals to serve the interest of justice and expeditious resolution of matters.
- **The role of legislation in regulating the review mechanism:** The principle of the rule-based legitimacy also appears to/contribute in specifying legislations the procedures through which legal oversight over discretion may occur -that is, who can claim an appeal and what are the appropriate/relevant steps required.
  - The law will also stipulate what factors are relevant for appeal- whether it is an appeal on the grounds that there has been a procedural fault or that the decision of the authority in administrative matters leaves that judicial organ without legal boundary (Iraqi Legislation No.27/2010, Administrative Judiciary Law, Article 5)

### The Second Requirement

#### Judicial Oversight of Administrative Discretion and the Development of Review Mechanisms

##### 1. The Role of the Administrative Judiciary in Ensuring Justice

Administrative Judiciary is the most significant and necessary legal protection from arbitrary and unfair acts of the administrative system against individuals. The administrative court has to control the discretionary decision of a agency and examine if it is compatible with general legal principles, such as those related to equal treatment, proportionality and protection of individuals' rights (Abdul Qadir, 2012, p. 150) <sup>[23]</sup>.

- **Judicial Oversight:** Judicial Review is a remedy administrative courts offer to review discretionary decisions which may infringe on one's rights or over step the boundaries of authority of those in public administration (Iraqi Law No. 49 act of 1979, Regulation forms for administrative courts). In this respect, this criticism is a necessary defense against arbitrary or fundamental-rights-violating decisions (Al-Tawati, 2013, p. 95) <sup>[16]</sup>.
- **Specialized Judicial Institutions:** One of the most important judicial safeguard is the presence of specialized administrative courts that are competent for such cases. The administrative judiciary enjoys independence and fair application, in order to secure both justice and protection for the rights of people from illegitimate arbitrariness (Abdullah, 2016, p. 185) <sup>[6]</sup>.

## 2. Developing Judicial Oversight Mechanisms to Increase Efficiency

To guarantee the force of judicial review over discretionary decisions, we should establish a set of measures to speed up and simplify the trial itself in addition to protecting human rights. Fundamentally, this means modernizing and improving the judicial process so that people can appeal discretionary decisions in a timely and cost-efficient manner.

- **Acceleration of judicial processes:** Judicial supervision demands that the process be rapid and that there is no unnecessary delay in dispensing justice. In several legal systems, discretionary decisions are subject to a limitative appeal before the administrative courts, which tends to shorten the wait for litigants to see disputes being settled (Zakaria, 2015, p. 220) <sup>[13]</sup>.
- **Enhancement of the cooperation between judiciary and administration:** In a bid to enhance efficiency in judicial supervision the judiciary should come up with scheme of cooperation and mutual action while exercising its oversight over public administration. That includes sharing information and understanding on how to apply legal legislation uniformly (Al-Zawawi, 2017, p. 128) <sup>[2]</sup>.

## Conclusion

The study concludes that discretion is axiomatic for public administration. Bureaucratic officials receive discretionary power to act flexibly when there is an emergency or a problem that the law cannot foresee with sufficient precision. This authority is to be used to further administrative justice and parity among people. But administrative discretion is not untrammelled; but regulated by legal controls so that it does not become administrative caprice or an instrument of discrimination.

Although administrative discretion is a useful mechanism to enable flexibility in governance, it is not without any risk when it comes to its possible unlawful or unfair use. This led to the question of where should the limits of administrative discretion be found, and how it was possible for it to be exercised in conformity with legal principles and individual rights. Secondly, the availability of judicial oversight and internal review procedures represent important safeguards to prevent that -administrative discretion results in legal or administrative distortions.

## Findings

1. In real life context, administrative discretion, empowers public administration to calculate possible decisions on a 'case by case' basis according to the personally judgments of administrators.
2. Even when administrative discretion covers some cases that the interest of justice and equity requires, it shall be based on clear legal restrictions in order to prevent abuse by administration or discrimination.
3. This judicial control is one of the most important security measures for guaranteeing application of administrative justice, individuals who may be adversely affected by discretionary decisions may bring them before a court and ensure that they comply with law and safeguard their rights.
4. A system of judicial review of the court should be established or further developed to keep in bounds such emergency powers and exceptions, if only as a means to secure justice and reduce administrative arbitrariness.
5. And it is the exercise of wide administrative discretion, together with effective judicial control and open evaluation process can ensure the realization of administrative justice and transparency in the working of government.

## Recommendations

1. To fix legal standards to govern administrative discretion, giving latitude but within "well-marked bounds" so that there would be no deviation from the legal norms.
2. Expand the control of the judiciary in overseeing administrative discretion, by extending its powers to carry out a total review over all decisions on individual interest.
3. Enhancing the judiciary by reforming the system for appealing discretionary administrative decisions to provide an efficient fast-track process.
4. Creating transparency in discretionary adjudication by publishing the legal and administrative grounds for how the administration decided, building confidence in the administrative system.
5. Provide further training to judges and officials on removal of discretionary authority in a manner consistent with legal and ethical standards, such that it is fairly and impartially implemented.
6. Formulation of plans or laws to safeguard people against administrative arbitrariness during an emergency or crisis, while being vigilant that the same be subject to constant scrutiny.

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