EXECUTIVE GUIDELINES AND THE FETTERING OF ADMINISTRATIVE DISCRETION: RECONCILING POLICY CONSISTENCY WITH STATUTORY DISCRETION

Jeevadarani A, Assistant Professor of Law, School of Law, PRIST Deemed to be University, Vallam, Thanjavur – 613403, Tamil Nadu, India.

Madhumitha P, LL.M (Labour and Administrative Law), Government Law College, Tiruchirappalli, Tamil Nadu, India.

ABSTRACT

Administrative discretion is indispensable to the functioning of the modern administrative State. Legislatures frequently confer discretionary powers upon administrative authorities because statutory provisions cannot anticipate every factual situation requiring governmental intervention. At the same time, executive authorities issue guidelines, circulars, office memoranda, and policy instructions to promote uniformity and administrative efficiency. The difficulty arises when such guidelines cease to guide discretion and instead operate as rigid rules, thereby preventing the statutory authority from independently exercising the discretion conferred by legislation.

This article examines the relationship between executive guidelines and statutory administrative discretion in Indian administrative law. It analyses the principles emerging from *Commissioner of Police, Bombay v. Gordhandas Bhanji*, *Sant Ram Sharma v. State of Rajasthan*, *G.J. Fernandez v. State of Mysore*, *Union of India v. K.P. Joseph*, *Ramana Dayaram Shetty v. International Airport Authority of India*, *Union of India v. Hindustan Development Corporation*, *Punjab Communications Ltd. v. Union of India*, *Bannari Amman Sugars Ltd. v. Commercial Tax Officer*, *Tata Cellular v. Union of India*, and *Union of India v. Ashok Kumar Aggarwal*. It argues that executive guidelines may legitimately structure statutory discretion but cannot override legislation, contradict statutory rules, or convert a discretionary statutory power into an inflexible command. The article proposes the principle of "reasoned consistency," under which authorities should ordinarily follow established policy while retaining the ability to consider relevant circumstances where the governing statute permits or requires individual assessment.

Keywords: Administrative Discretion, Executive Guidelines, Administrative Instructions, Article 14, Judicial Review, Legitimate Expectation, Statutory Power, Policy Consistency.

I. INTRODUCTION

The modern administrative State requires public authorities to exercise powers that cannot always be governed by detailed legislative rules. Statutes therefore frequently confer discretion upon administrative authorities through expressions such as "may," "if satisfied," and "in the public interest." Administrative discretion is consequently a necessary feature of governance. It is not, however, an unrestricted power and must remain within the limits of the statute and constitutional principles.[1]

Executive guidelines have become an important means of organising administrative decision-making. Governments issue circulars, departmental instructions, office memoranda, and policy directions to promote uniformity, predictability, and administrative efficiency. Where statutory rules are silent, such instructions may legitimately supplement the existing legal framework, provided that they remain consistent with the governing law.[2]

The difficulty arises when an authority treats a guideline as an absolute rule and refuses to consider the circumstances of an individual case. In such circumstances, a policy intended to guide discretion may effectively eliminate the discretion granted by the legislature.

The central issue is therefore whether executive policy can promote consistency without unlawfully fettering statutory discretion.

This article examines that question through Indian administrative-law jurisprudence. It focuses on the legal status of executive guidelines, the principle against fettering discretion, Article 14, legitimate expectation, and judicial review.

A. Research Gap

Indian courts have developed substantial jurisprudence on executive instructions, statutory rules, legitimate expectation, and administrative discretion. However, these principles are often examined separately. The particular tension between policy consistency and independent statutory discretion requires an integrated analysis.

This article addresses that gap by examining when a legitimate administrative guideline

[1] Commissioner of Police, Bombay v. Gordhandas Bhanji, 1952 S.C.R. 135, 148–49.
[2] Sant Ram Sharma v. State of Rajasthan, (1968) 1 S.C.R. 111, 115.

becomes an unlawful fetter upon statutory discretion and how consistency can be maintained without sacrificing the legislative purpose.

B. Research Methodology

This article adopts a doctrinal method of research. It analyses constitutional principles and leading decisions of the Supreme Court of India concerning executive instructions, administrative discretion, Article 14, legitimate expectation, and judicial review.

II. ADMINISTRATIVE DISCRETION AND THE NON-FETTERING PRINCIPLE

Administrative discretion involves the power to choose between legally permissible alternatives after considering relevant circumstances. Although such discretion is necessary for effective administration, the authority exercising it must remain within the boundaries established by the enabling statute.

The Supreme Court's decision in *Commissioner of Police, Bombay v. Gordhandas Bhanji* is fundamental to this principle. The Court emphasised that where a statutory power is entrusted to a particular authority, that authority must exercise the power itself and apply its own independent judgment[3]. The statutory allocation of decision-making responsibility cannot therefore be displaced merely because another authority or the administrative hierarchy considers a different course preferable.

This principle is particularly important where executive guidelines are involved. An authority may take governmental policy into account where policy is relevant to the statutory purpose, but it cannot surrender the discretion which legislation has entrusted to it.

The distinction is consequently between guidance and fettering. Guidance assists an authority in exercising discretion; fettering occurs when the authority treats the guidance as conclusive and refuses to consider whether the circumstances of the particular case require a different decision.

A policy may therefore establish what should ordinarily be done without determining what must invariably be done.

[3] Commissioner of Police, Bombay v. Gordhandas Bhanji, 1952 S.C.R. 135, 148–49.

III. EXECUTIVE GUIDELINES AND STATUTORY RULES

The legal position concerning executive instructions was clearly stated in *Sant Ram Sharma v. State of Rajasthan*. The Supreme Court held that the Government cannot amend or supersede statutory rules through administrative instructions. At the same time, where statutory rules are silent, administrative instructions may supplement the rules, provided that they are not inconsistent with them.[4]

The distinction between supplementing and supplanting statutory rules is therefore central.

The same principle is reflected in *G.J. Fernandez v. State of Mysore*, where the Court recognised the distinction between statutory rules and executive instructions and explained that executive instructions do not automatically possess the force of statutory rules.[5]

In *Union of India v. K.P. Joseph*, the Supreme Court considered the legal effect of administrative orders and recognised that executive instructions may operate within the administrative framework where they are not inconsistent with the governing statutory rules. The decision, however, does not authorise executive instructions to override or alter statutory provisions.[6]

The principle was stated expressly in *Union of India v. Ashok Kumar Aggarwal*, where the Court held that executive instructions cannot be issued in contravention of statutory rules. They may supplement statutory provisions but cannot supplant them and must remain subordinate to the statutory framework.[7]

Thus, executive guidelines occupy a subordinate position. They may provide administrative detail and establish standards for the exercise of statutory power, but they cannot alter the substantive legal framework created by legislation.

The legal consequences of a statutory rule and an executive instruction are therefore fundamentally different: the former derives its authority from law, whereas the latter ordinarily derives from executive power and remains subordinate to the statute. A validly made subordinate legislation stands on a different footing because its legal force derives from the

[4] Sant Ram Sharma v. State of Rajasthan, (1968) 1 S.C.R. 111, 115.
[5] G.J. Fernandez v. State of Mysore, (1967) 3 S.C.R. 636, 644–45.
[6] Union of India v. K.P. Joseph, (1973) 1 S.C.C. 194, 197–98.
[7] Union of India v. Ashok Kumar Aggarwal, (2013) 16 S.C.C. 147, 172.

enabling statute.

IV. POLICY CONSISTENCY AND ARTICLE 14

Consistency in administrative decision-making is closely connected with Article 14 of the Constitution. Arbitrary departure from established standards may result in unequal treatment.

In *Ramana Dayaram Shetty v. International Airport Authority of India*, the Supreme Court held that a public authority should adhere to standards and norms that it has established and should not depart from them arbitrarily[8]. The case demonstrates the constitutional importance of consistency in public administration.

Similarly, in *Kumari Shrilekha Vidyarthi v. State of U.P.*, the Supreme Court emphasised that governmental action remains subject to the constitutional requirement of fairness and non-arbitrariness under Article 14.[9]

These principles demonstrate that policy consistency has legal significance. Where a public authority has established a standard, unexplained departure from that standard may raise an issue of arbitrariness.

However, consistency cannot mean absolute uniformity. If a statute deliberately confers discretion upon an authority, the authority must retain the ability to consider circumstances that are relevant to the statutory purpose.

Therefore, two forms of administrative error are possible:

1. Arbitrary departure from an established policy, which may undermine equality and fairness; and

2. Mechanical adherence to policy, which may unlawfully restrict statutory discretion.

The appropriate objective is consequently not rigid uniformity but reasoned consistency.

[8] Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 S.C.C. 489, 503–04.
[9] Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 S.C.C. 212, 226–27.

V. LEGITIMATE EXPECTATION AND ADMINISTRATIVE POLICY

The doctrine of legitimate expectation provides another basis for examining executive consistency.

In *Union of India v. Hindustan Development Corporation*, the Supreme Court recognised that legitimate expectation may arise from an express representation or consistent past practice of a public authority. However, legitimate expectation does not automatically create an enforceable substantive right.[10]

The doctrine is primarily concerned with fairness. Where Government has consistently followed a particular policy, affected persons may reasonably expect that the policy will not be abandoned arbitrarily.

At the same time, governmental policy cannot be permanently frozen.

In *Punjab Communications Ltd. v. Union of India*, the Supreme Court recognised that Government may change its policy where the change is justified by relevant considerations and does not offend the applicable legal standards of reasonableness and non-arbitrariness.[11]

Similarly, in *Bannari Amman Sugars Ltd. v. Commercial Tax Officer*, the Court recognised that governmental policy may be altered and that a policy decision is not ordinarily invalid merely because it defeats an earlier expectation. At the same time, the exercise of governmental power remains subject to constitutional and legal limitations.[12]

Legitimate expectation therefore protects against arbitrary administrative inconsistency without converting every policy into an immutable legal right.

This distinction is particularly important where the policy concerns a statutory discretion. A person may expect that a policy will ordinarily be followed, but that expectation cannot eliminate the discretion which the legislature has itself conferred.

[10] Union of India v. Hindustan Development Corp., (1993) 3 S.C.C. 499, 540–41.
[11] Punjab Communications Ltd. v. Union of India, (1999) 4 S.C.C. 727, 739–40.
[12] Bannari Amman Sugars Ltd. v. Commercial Tax Officer, (2005) 1 S.C.C. 625, 633–38.

VI. WHEN DOES A GUIDELINE BECOME A FETTER?

Whether an executive guideline unlawfully fetters discretion depends primarily upon the statutory context and the manner in which the guideline operates.

First, the parent statute must be examined. Where legislation expressly requires an authority to consider specified circumstances, an executive instruction cannot remove that requirement.

Second, the legal source of the guideline is relevant. A rule validly made under statutory authority may possess legal force, whereas an internal administrative circular ordinarily cannot create substantive obligations contrary to legislation.[13]

Third, the purpose of the guideline matters. A policy intended to promote efficiency and uniformity may legitimately structure discretion. A policy that creates restrictions unsupported by legislation raises a different legal issue.

Fourth, the actual operation of the guideline must be considered. An instruction described as "guidance" may nevertheless operate as a mandatory rule if officials are never permitted to consider exceptional circumstances.

Finally, the availability of individual consideration is significant. A policy is less likely to constitute an unlawful fetter when it establishes what should ordinarily be done but permits the authority to consider relevant exceptional circumstances.

The essential question is therefore not what the guideline is called, but whether the authority remains capable of genuinely exercising the statutory discretion.

VII. JUDICIAL REVIEW

Judicial review provides the principal mechanism for ensuring that executive guidelines remain within statutory and constitutional limits.

In *Tata Cellular v. Union of India*, the Supreme Court explained that judicial review is primarily concerned with the legality of the decision-making process rather than substituting

[13] G.J. Fernandez v. State of Mysore, (1967) 3 S.C.R. 636, 644–45; Sant Ram Sharma v. State of Rajasthan, (1968) 1 S.C.R. 111, 115.

the court's own decision for that of the administrative authority.[14]

Accordingly, a court examining an executive guideline may consider whether:

1. the authority acted within its statutory jurisdiction;
2. the guideline is consistent with the parent statute;
3. relevant considerations were taken into account;
4. irrelevant considerations were excluded;
5. the authority genuinely exercised its discretion; and
6. the decision was arbitrary, irrational, or otherwise unlawful.

Judicial review therefore protects the boundary between legitimate executive policy-making and unlawful alteration of statutory power.

The courts do not ordinarily determine which lawful policy the Government should adopt. Their role is to ensure that administrative power is exercised according to law.

VIII. RECONCILING POLICY CONSISTENCY WITH STATUTORY DISCRETION

The apparent conflict between consistency and discretion can be reconciled through the principle of reasoned consistency.

First, executive guidelines must remain subordinate to legislation and valid statutory rules.

Second, where the statute confers discretion, policy may establish general standards for its exercise without converting those standards into absolute commands.

Third, the decision-maker must remain capable of considering circumstances which the statute makes relevant.

Fourth, where an established policy is departed from, the departure should be supported by relevant reasons connected with the statutory purpose or legitimate administrative

[14] Tata Cellular v. Union of India, (1994) 6 S.C.C. 651, 677–78.

considerations.

This approach protects both administrative efficiency and the rule of law.

Without policy, discretion may become inconsistent and unpredictable.

Without discretion, policy may become rigid and frustrate the legislative purpose.

The appropriate model is therefore structured discretion: policy provides a framework for decision-making, while the statutory authority retains the responsibility to exercise its own judgment.

The principle of reasoned consistency does not require every case to produce the same result. Rather, it requires like cases to be treated consistently while preserving the authority's capacity to distinguish cases where legally relevant circumstances differ. In this sense, consistency operates as a discipline upon discretion, not as a substitute for discretion.

This approach also reconciles Article 14 with legislative choice. Article 14 discourages arbitrary departures from established standards, while statutory discretion recognises that different factual circumstances may legitimately produce different outcomes. The administrative authority must therefore be consistent in principle while remaining responsive to legally relevant differences in individual cases.

IX. CONCLUSION

Executive guidelines are an important instrument of modern administration. They promote consistency, predictability, and efficiency and can assist public authorities in implementing legislation effectively. Their legitimacy, however, depends upon their relationship with the statutory framework.

The Supreme Court's jurisprudence establishes that executive instructions may supplement statutory rules but cannot supplant or override them. *Sant Ram Sharma*, *G.J. Fernandez*, *K.P. Joseph*, and *Ashok Kumar Aggarwal* establish the subordinate position of executive instructions[15]. *Gordhandas Bhanji* protects the independent exercise of statutory discretion,

[15] Sant Ram Sharma v. State of Rajasthan, (1968) 1 S.C.R. 111, 115; G.J. Fernandez v. State of Mysore, (1967) 3 S.C.R. 636, 644–45; Union of India v. K.P. Joseph, (1973) 1 S.C.C. 194, 197–98; Union of India v. Ashok Kumar Aggarwal, (2013) 16 S.C.C. 147, 172.

while *Ramana Dayaram Shetty* and *Shrilekha Vidyarthi* demonstrate the constitutional importance of fairness and consistency[16]. *Hindustan Development Corporation*, *Punjab Communications*, and *Bannari Amman Sugars* further demonstrate that legitimate expectation protects fairness without permanently freezing governmental policy.[17]

The central distinction is therefore between guidance and fettering.

A guideline is legitimate when it structures statutory discretion while leaving the decision-maker capable of considering relevant circumstances. It becomes legally problematic when it operates as an inflexible command and prevents the authority from exercising the discretion entrusted to it by legislation.

The appropriate standard is neither unrestricted discretion nor absolute uniformity. It is reasoned consistency within statutory limits.

Executive policy may therefore structure statutory discretion, but it cannot replace the statutory judgment entrusted to the administrative authority. Maintaining this balance enables the State to achieve coherent administration without permitting executive instructions to become an indirect means of altering legislation.

The principle of reasoned consistency thus offers a workable middle path. It preserves the administrative advantages of policy-based decision-making while ensuring that statutory discretion remains real, not merely formal. In a constitutional administrative State, consistency should discipline discretion, but it should never extinguish it.

[16] Commissioner of Police, Bombay v. Gordhandas Bhanji, 1952 S.C.R. 135, 148–49; Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 S.C.C. 489, 503–04; Kumari Shrilekha Vidyarthi v. State of U.P., (1991) 1 S.C.C. 212, 226–27.

[17] Union of India v. Hindustan Development Corp., (1993) 3 S.C.C. 499, 540–41; Punjab Communications Ltd. v. Union of India, (1999) 4 S.C.C. 727, 739–40; Bannari Amman Sugars Ltd. v. Commercial Tax Officer, (2005) 1 S.C.C. 625, 633–38.