

Administrative Discretion and Judicial Control

THE TRADITIONAL THEORY OF 'LAISSEZ FAIRE' HAS BEEN GIVEN UP BY THE STATE AND THE OLD 'POLICE STATE' HAS NOW BECOME A 'WELFARE STATE'. AS RESULT OF THIS CHANGE OF POLICY THE GOVERNMENTAL FUNCTIONS HAVE INCREASED AND THE ADMINISTRATIVE AUTHORITIES HAVE ACQUIRED VAST DISCRETIONARY POWERS IN ADDITION TO THE LEGISLATIVE AND JUDICIAL FUNCTIONS.

Discretionary power refers to the power to decide or act according to one's own judgement. In other words, discretionary power confers to the executive authority a power to choose one among the various available alternatives. In a large number of statutes, the phrases like "if it appears expedient", "if it is in the public interest", "if it is found necessary", "where the authority thinks fit" etc. Whenever power is conferred to an authority by using the above stated phrases, the authority gets a discretionary power and the final decision is left to the subjective satisfaction of the authority.

Discretionary powers conferred on the executive authorities may range from simple ministerial function like maintenance of births and deaths register to powers which seriously affect the rights of an individual e.g., acquisition of property, regulation of trade, industry or business, investigation of a crime and arrest of the accused, search and seizure, confiscation and destruction of property, preventive detention of a person, granting permit to

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