

GOVERNMENT LIABILITY AND DISCRETIONARY POWERS

Time: 3 Hours

Maximum Marks: 50

Answer ANY FIVE of the following. Each question carries TEN marks

(5 x 10 = 50)

I. "The need for 'discretion' arises because of the necessity to individualize the exercise of power by the administration". Trace the evolution of the concept of governmental discretion as an integral component of governance today.

II. "Government contracts are subject to a number of legal rules that have no private sector analogs". Do you agree with the author's view that such contracts are unique, and a parallel cannot be drawn with private contracts?

III. "The Right to Information Act is a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. It lights up the mindset of public authorities, which is clouded by suspicion and secrecy". Comment critically.

IV. "Courts, commentators, and legislatures have had little difficulty determining that a total waiver of government immunity is undesirable. However, devising standards to separate those acts that should be protected from those that should create liability has proved to be a complex task." Examine the scope of sovereign immunity as a limitation on governmental liability.

V. Aristotle once said, "If liberty and equality, as is thought by some are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost". Examine how India fares as such a democracy, with special reference to the limitations on governmental discretion imposed by the rights of its citizens.

VI. Judge Magruder in *McBee v. Bomar*, 296 F.2d 235, 237 (6<sup>th</sup> Cir. 1961), opined: "An abuse of discretion is a clear error of judgment in the conclusion reached upon a weighing of the relevant factors." Comment.

VII. How has the golden triangle of Articles 14, 19 and 21 been successful in defining and containing the scope of government discretion in India? With respect to judicial review of the exercise of such discretion, enumerate the significant legal authorities that establish the safeguards inherent in these provisions.

VIII. "In matters of discretion, it is not for the Court to put itself in the position of the concerned authority and decide whether or not it would have come to the same decision as arrived at by the authority". Do you agree with this statement? Substantiate your position.

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