CHAPTER 15 ADMINISTRATIVE LAW

Introduction:

Administrative law is that branch of law that deals with powers, functions and responsibilities of various organs of the state. There is no single universal definition of 'administrative law' because it means different things to different theorists.

Ivor Jennings defined administrative law as the law relating to administration. It determines the organization, powers and duties of administrative authorities. This formulation is too broad and general as it does not differentiate between administrative and constitutional law. It excludes the manner of exercise of powers and duties.

Administrative law is the by-product of ever increasing functions of the Governments. States are no longer police states, limited to maintaining internal order and protecting from external threats. These, no doubt continue to be the basic functions but a state that is limited to this traditional role will de-legitimize itself. With the rise of political consciousness, the citizens of a state are no longer satisfied with the state‟s provisioning of traditional services. The modern state is, therefore, striving to be a welfare state. It has taken the task to improve social and economic condition of its people. It involves undertaking a large number of complex tasks.

Development produces great economic and social changes and creates challenges in the field of health, education, pollution, inequality etc. These complex problems cannot be solved except with the growth of administration. States have also taken over a number of functions, which were previously left to private enterprise. All this has led to the origin and the growth of administrative law.

Need for Administrative Law

Mainly there are three organs of a state - legislative, executive and judiciary. The legislature is responsible for making the laws, the executive is responsible with the implementation of the laws and judiciary is responsible for reviewing laws and executive powers supervising justice and settlement of disputes.

But at times legislature is unable to come up with the required quality and quantity of legislations because of limitations of time, the technical nature of legislation and the rigidity of their enactments. Similarly, justice through judiciary is sometimes technical, expensive and slow. To fill this gap of legislature and judiciary states have empowered their executives (administrative) branch with certain powers.

The ambit of administration is wide and embraces following elements:-

1. It makes policies,
2. It executes, administers and adjudicates the law
3. It exercises legislative powers and issues rules, bye- laws and orders of a general nature.

SOURCES OF ADMINISTRATIVE LAW

1. **Constitution of India:** It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the

   Parliament has power to make laws. Similar powers are provided to States under Article 62. Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity. The Constitution also envisages tribunals, public sector and government liability which are important aspects of administrative law.

2. **Acts/ Statutes:** Acts passed by the central and state governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.
3. **Ordinances, Administrative directions, notifications and Circulars:** Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. The ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.

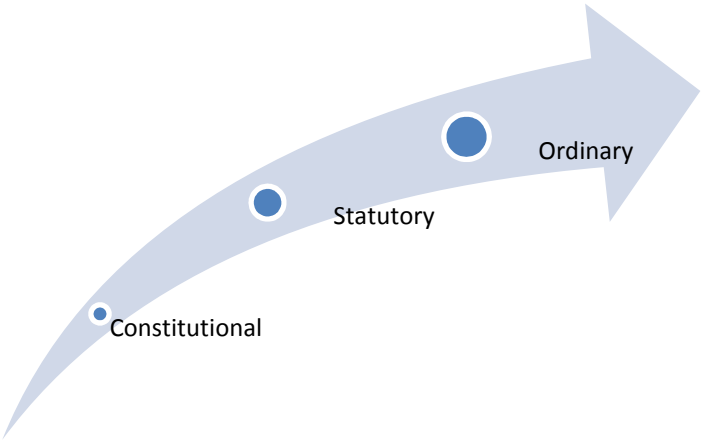
4. **Judicial decisions:** Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortuous acts of Governments servants lay down administrative law which guide their future conduct.

❖ Administrative Discretion

- It is nearly impossible for government to function without giving some discretion to its officials considering the different situations and circumstances. But since such discretion is prone to be abused therefore it is necessary to have a system in place to ensure fair exercise of such discretion.
- **Administrative Discretion** means the freedom of an administrative authority to choose from amongst various alternatives but with reference to rules of reason and justice and not according to personal whims. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular.

❖ Judicial Control over Administrative Actions

- Public administration exercises a large volume of power to meet the citizens need in modern democratic welfare state. Due to this there is a number of chances of them becoming arbitrary. So it is very necessary to control them through Judicial Control.
- The underlying object of judicial control is to ensure that the authority does not abuse (misuse) its power and the individual receives just and fair treatment.



Modes of Judicial Control

(A) Constitutional: The Constitution of India is supreme and all the organs of state derive their existence from it. Indian Constitution expressly provides for judicial review. If judiciary finds out that any law violates the Constitutional requirements, the Court has to declare it unconstitutional and therefore, void.

Judicial Review: The biggest check over administrative action is the power of judicial review. Judicial review is the authority of Courts to declare void the acts of the legislature and executive, if they are found in violation of provisions of the Constitution. Judicial Review is the power of the highest Court of a jurisdiction to invalidate on Constitutional grounds, the acts of other Government agency within that jurisdiction.

The judicial review is not an appeal from a decision but a review of the manner in which the decision has been made. The judicial review is concerned not with the decision but with the decision making process.

Concerns during Judicial Review

Judicial Review of the court should be concerned about the following:

1) Whether a decision making authority exceeding its power ?

2) Committed an error of law ?

3) Committed a breach of rules of natural justice ?

4) Reached a decision which no reasonable tribunal would have reached, or

5) Abused its power ?

Judicial review is exercised at two stages:
(i) at the stage of delegation of discretion, and
(ii) at the stage of exercise of administrative discretion.

(i) Judicial review at the stage of delegation of discretion

The court exercise control over delegation of discretionary powers to the administration by adjudicating upon the constitutionality of the law under which such powers are delegated with reference to the fundamental rights enunciated in Part III of the Indian Constitution. Therefore, if the law confers vague and wide discretionary power on any administrative authority, it may be declared *ultra vires* Article 14, Article 19 and other provisions of the Constitution.

- ***Administrative Discretion and Article 14:*** Right to Equality does not provide everyone should be treated equally having no regards to their situations. In fact, if unequals are treated equally, it violates the right to equality. So, classification can be made on reasonable basis. The classification should have a rational nexus with the purpose of that classification and cannot be practiced arbitrarily. Therefore court keeps an eye on government administration bodies that they do not classify without reasonable basis.

- ***Administrative Discretion and Article 19:*** Article 19 guarantees certain freedoms to the citizens of India, but they are not absolute. Reasonable restrictions can be imposed on these freedoms under the authority of law. The reasonableness of the restrictions is open to judicial review. These freedoms can also be afflicted by administrative discretion.

The general principle laid down is that the power conferred on the executive should not be arbitrary, and that it should not be left entirely to the discretion of any authority to do anything it likes without any check or control by any higher authority.

(ii) Judicial review at the stage of exercise of discretion

Courts in India have developed various formulations to control the exercise of administrative discretion, which can be grouped under two broad heads, as under:

1. Authority has not exercised its discretion properly- 'abuse of discretion'.
2. Authority is deemed not to have exercised its discretion at all- 'non-application of mind.

ABUSE OF DISCRETION

Mala fides	If the discretionary power is exercised by the authority with bad faith or dishonest intention, the action is quashed by the court. *Malafide* (bad faith) may be taken to mean dishonest intention or corrupt motive. In relation to the exercise of statutory powers it may be said to comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred.
Irrelevant considerations	If a statute confers power for one purpose, its use for a different purpose is not regarded as a valid exercise of power and is likely to be quashed by the courts. If the administrative authority takes into account factors, circumstances or events wholly irrelevant or extraneous to the purpose mentioned in the statute, then the administrative action is vitiated.
Leaving out relevant considerations	The administrative authority exercising the discretionary power is required to take into account all the relevant facts. If it leaves out relevant consideration, its action will be invalid.
Arbitrary orders	The order made should be based on facts and cogent reasoning and not on the whims and fancies of the adjudicatory authority.
Improper purpose	The discretionary power is required to be used for the purpose for which it has been given. If it is given for one purpose and used for another purpose it will amount to abuse of power.
Colourable exercise of power	Where the discretionary power is exercised by the authority on which it has been conferred ostensibly for the purpose for which it has been given but in reality for some other purpose, it is taken as colourable exercise of the discretionary power and it is declared invalid.

Non-compliance with procedural requirements and principles of natural justice	If the procedural requirement laid down in the statute is mandatory and it is not complied, the exercise of power will be bad. Whether the procedural requirement is mandatory or directory is decided by the court. Principles of natural justice are also required to be observed.
Exceeding jurisdiction:	The authority is required to exercise the power within the limits or the statute. Consequently, if the authority exceeds this limit, its action will be held to be *ultra vires* and, therefore, void.

(b) Non-application of mind

- *Acting under dictation*: Where the authority exercises its discretionary power under the instructions or dictation from superior authority it is taken as non-exercise of power by the authority and its decision or action is bad. In such condition the authority purports to act on its own but in substance the power is not exercised by it but by the other authority.

  Case Law: *Commissioner of Police* v. *Gordhandas Bhanji, 1952*

  Facts: the Police Commissioner empowered to grant license for construction of cinema theatres, granted the license but later cancelled it on the discretion of the Government.

  Judgement: The cancellation order was declared bad as the Police Commissioner did not apply his mind and acted under the dictation of the Government.

- ***Self restriction:*** If the authority imposes fetters on its discretion by announcing rules of policy to be applied by it rigidly to all cases coming before it for decision, its action or decision will be bad. The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and the authority should not imposes fetters on its discretion by adopting fixed rule of policy to be applied rigidly to all cases coming before it.

- *Acting mechanically and without due care:* Non-application of mind to an issue that requires an exercise of discretion on the part of the authority will render the decision bad in law.

(B) Statutory: The method of statutory review can be divided into two parts:

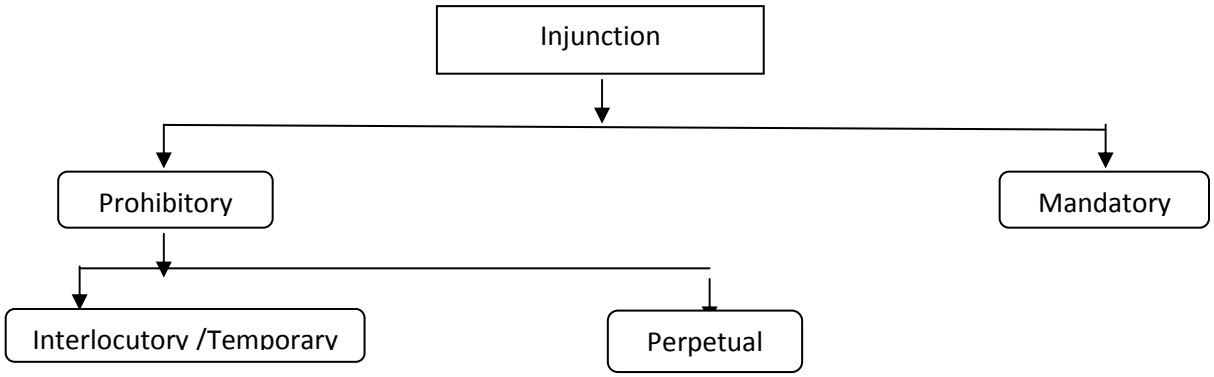
(i) *Statutory appeals:* There are some Acts, which provide for an appeal from statutory tribunal to the High Court on point of law. e.g. Section 30 Workmen's Compensation Act, 1923.

(ii) *Reference to the High Court or statement of case:* There are several statutes, which provide for a reference or statement of case by an administrative tribunal to the High Court

(C) Ordinary or Equitable

Apart from the remedies as discuss above there are certain ordinary remedies, which are available to person against the administration, the ordinary courts in exercise of the power provide the ordinary remedies under the ordinary law against the administrative authorities. These remedies are also called equitable remedies and include:

1. **Injunction:** An injunction is a preventive remedy. It is a judicial process by which one who has invaded or is threatening to invade the rights of another is restrained from continuing or commencing such wrongful act. In India, the law with regard to injunctions has been laid down in the Specific Relief Act, 1963. Injunction is issued for restraining a person to act contrary to law or in excess of its statutory powers. An injunction can be issued to both administrative and quasi-judicial bodies. Injunction is highly useful remedy to prevent a statutory body from doing an ultra vires act, apart from the cases where it is available against private individuals.
   (a) ***Prohibitory Injunction****:* Prohibitory injunction forbids the defendant to do a wrongful act, which would infringe the right of the plaintiff. A prohibitory injunction may be
      (1) *Interlocutory or temporary injunction:* Temporary injunctions are such as to continue until a specified time or until the further order of the court. It is granted as an interim measure to preserve *status quo* until the case is heard and decided. Temporary injunction may be granted at any stage of a suit. Temporary injunctions are regulated by the Civil Procedure Code and are provisional in nature.
      (2) *Perpetual injunction:* A perpetual injunction is granted at the conclusion of the proceedings and is definitive of the rights of the parties, but it need not be expressed to have perpetual effect, it may be awarded for a fixed period or for a fixed period with leave to apply for an extension or for an indefinite period terminable when conditions imposed on the defendant have been complied with; or its operation may be suspended for a period during which the defendant is given the opportunity to comply with the conditions imposed on him, the plaintiff being given leave to reply at the end of that time.
   (b) ***Mandatory injunction:*** When to prevent the breach of an obligation it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts. The mandatory injunction may be taken as a command to do a particular act to restore things to their former condition or to undo, that which has been done. It prohibits the defendant from continuing with a wrongful act and also imposes duty on him to do a positive act.



2. **Declaratory Action:** In some cases where wrong has been done to a person by an administrative act, declaratory judgments may be the appropriate remedy. Declaration may be taken as a judicial order issued by the court declaring rights of the parties without giving any further relief.

3. **Action for damages:** If any injury is caused to an individual by wrongful or negligent acts of the Government servant, the aggrieved person can file suit for the recovery of damages from the Government concerned.

PRINCIPLES OF NATURAL JUSTICE

One of the most important principles in the administration of justice is that justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system. Natural justice is a concept of Common Law and represents procedural principles developed by judges.

Principles of natural justice are not precise rules of unchanging content; their scope varies according to the context. Nevertheless it provides the foundation on which the whole super-structure of judicial control of administrative action is based. In India, the principles of natural justice are derived from Article *14* and *21* of the Constitution. The courts have always insisted that the administrative agencies must follow a minimum of fair procedure, i.e. principles of natural justice. The principle of natural justice includes –

Rule against bias (*nemojudex in causa sua*) According to this rule no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. Bias can be of the following three types:

- **Pecuniary -** The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication. Thus a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.
- **Personal -** There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.
- **Subject matter -** A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute.

Subject Matter Bias can further be classified into -

a) Partiality or connection to the issue
b) Departmental bias
c) Prior utterances and pre-judgment of issues
d) Acting under dictation

Rule of fair hearing (*audi alteram partem*): The second principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. Following are the ingredients of the rule of fair hearing:

(a) ***Right to notice:*** Hearing starts with the notice by the authority concerned to the affected person. Unless a person knows the case against him, he cannot defend himself. Therefore, before the proceedings start, the authority concerned is required to give to the

affected person the notice of the case against him. The proceedings started without giving notice to the affected party, would violate the principles of natural justice.

The notice must give sufficient time to the person concerned to prepare his case. The notice must be adequate and reasonable. The notice is required to be clear and unambiguous.

(b) ***Right to present case and evidence:*** The party against whom proceedings have been initiated must be given full opportunity to present his or her case and the evidence in support of it. The reply is usually in the written form and the party is also given an opportunity to present the case orally though it is not mandatory.

(c) ***Right to rebut adverse evidence:*** For the hearing to be fair the adjudicating authority is not only required to disclose to the person concerned the evidence or material to be taken against him but also to provide an opportunity to rebut the evidence or material.

1. ***Cross-examination*****:** Examination of a witness by the adverse party is called cross-examination.
   The main aim of cross-examination is the detection of falsehood in the testimony of the witness.

2. ***Legal Representation:*** Ordinarily the representation through a lawyer in the administrative adjudication is not considered as an indispensable part of the fair hearing. However, in certain situations denial of the right to legal representation amounts to violation of natural justice. Thus where the case involves a question of law or matter which is complicated and technical or where the person is illiterate or expert evidence is on record or the prosecution is conducted by legally trained persons, the denial of legal representation will amount to violation of natural justice because in such conditions the party may not be able to meet the case effectively and therefore he must be given the opportunity to engage professional assistance to make his right to be heard meaningful.

(d) ***Disclosure of evidence:*** A party must be given full opportunity to explain every material that is sought to be relied upon against him. Unless all the material (e.g. reports, statements, documents, evidence) on which the proceeding is based is disclosed to the party, he cannot defend himself properly.

(e) ***Speaking orders:*** A speaking order is an order which speaks for itself or tell its own story. It is also known as reasoned decision. The decision or order should contain reason in its support. In addition to the decision itself, party also has a right to know the reason behind that decision as principle of Natural Justice.

This is the reason while giving a decision many executive authorities are under an obligation to state the reason for their decision.

Exceptions to Natural Justice

1. ***Statutory Exclusion:*** The principle of natural justice may be excluded by the statutory provision. When the statute expressly or by necessary implication excludes the application of the principles of natural justice the courts do not ignore the statutory mandate. But one thing may be noted that in India, Parliament is not supreme and therefore statutory exclusion is not final. The statute must stand the test of constitutional provision.

2. ***Emergency:*** In exceptional cases of urgency or emergency where prompt and preventive action is required the principles of natural justice need not be observed. Thus,

the pre-decisional hearing may be excluded where the prompt action is required to be taken in the interest of the public safety or public morality and any delay in administrative order because of pre-decisional hearing before the action may cause injury to the public interest and public safety.

3. ***Interim disciplinary action:*** The rules of natural justice are not attracted in the case of interim disciplinary action. For example, the order of suspension of an employee pending an inquiry against him is not final but interim order and the application of the rules of natural justice is not attracted in the case of such order.

Case Law: Abhay Kumar v. K. Srinivasan

Facts: An order was passed by the college authority debarring the student from entering the premises of the college and attending the class till the pendency of a criminal case against him for stabbing a student. The rules of natural justice were not applicable in such case.

Judgement: The Court held that the order was interim and not final. It was preventive in nature. It was passed with the object to maintain peace in the campus.

4. ***Academic evaluation:*** Where a student is removed from an educational institution on the grounds of unsatisfactory academic performance, the rule of natural justice can be ignored.

5. ***Impracticability:*** Where the authority deals with a large number of person it is not practicable to give all of them opportunity of being heard and therefore in such condition the court does not insist on the observance of the rules of natural justice.

Case Law: P. Radhakrishna v. Osmania University

Facts: The entire M.B.A. entrance examination was cancelled on the ground of mass copying. No opportunity of being heard was given before cancelling the exam.

Judgement: The court held that it was not possible to give all the examinees the opportunity of being heard before the cancellation of the examination.

Effect of Failure of Natural Justice

Liability of state

The Constitution of India allows the central and the state governments to enter into contracts.

Essentials of Valid Contract with the Government:

A contract with the government will be valid and binding only if the following conditions are followed:

1. The contract must be in the name of President or Governor of a particular state.
2. The contract must be executed i.e. in writing.
3. The execution should be done by a person who is authorised by the President or the Governor.

If the contract made with the government by complying all the above given essentials then the president or the governor shall be personally liable. The Supreme Court has made it clear that the above essentials are mandatory and therefore the contract made in contravention thereof is void and therefore cannot be ratified and cannot be enforced.

Quasi-Contractual Liability

According to section 70 of the Indian Contracts Act, 1872, where a person lawfully does anything for another person or delivers anything to him such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore, the thing so done or delivered. If the requirements of section 70 of the Indian Contract Act are fulfilled, even the Government will be liable to pay compensation for the work actually done or services rendered by the State.

Tortious Liability

A tort is a civil wrong arising out of breach of a civil duty or breach of non-contractual obligation and the only remedy for which is damages. The essential requirement for the tort is beach of duty towards people in general. Although tort is a civil wrong, yet it would be wrong to think that all civil wrongs are torts. A civil wrong which arises out of the breach of contact cannot be put in the category of tort as it is different from a civil wrong arising out of the breach of duty towards public in general.

When the responsibility of the act of one person falls on another person, it is called **vicarious liability.** For example, when the servant of a person harms another person through his act, we held the servant as well as his master liable for the act done by the servant. Similarly, sometimes the state is held vicariously liable for the torts committed by its servants in the exercise of their duty.

Case Law: State of Rajasthan v. Vidyawati

Facts: The driver of a jeep, owned and maintained by the State of Rajasthan for the official use of the Collector of the district, drove it rashly and negligently while taking it back from the workshop to the residence of the Collector after repairs, and knocked down a pedestrian and fatally injured him.

Judgement: The State was sued for damages. The Supreme Court held that the State was vicariously liable for damages caused by the negligence of the driver. It decided that the immunity for State action can only be claimed if the act in question was done in the course of the exercise of sovereign functions.

Damages: It may happen that a public servant may be negligent in exercise of his duty. It may, however, be difficult to recover compensation from him. From the point of view of the aggrieved person, compensation is more important than punishment. Therefore, like all other employers the State must be made vicariously liable for the wrongful acts of its servants.

The Courts in India are now becoming conscious about increasing cases of excesses and negligence on the part of the administration resulting in the negation of personal liberty. Hence, they are coming forward with the pronouncements holding the Government liable for damages even in those cases where the plea of sovereign function could have negative the governmental liability.

Liability of the Public Servant

Liability of the State must be distinguished from the liability of individual officers of the State. If the government officers have acted outside the scope of their powers or have acted illegally, they are liable personally.

But an officer acting in discharge of his duty without bias or *malafides* could not be held personally liable for the loss caused to other person. However, such acts have to be done in pursuance of his official duty and they must not be *ultra vires* his powers.

Liability of Public Corporation

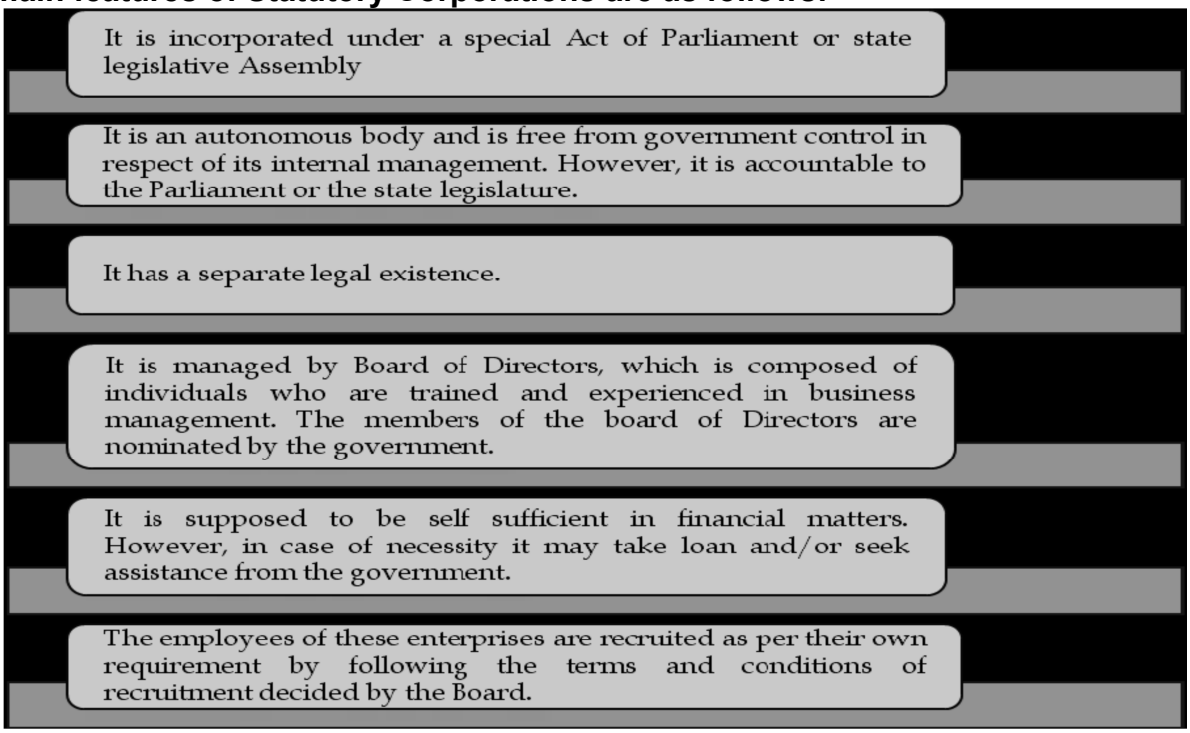
The term 'Statutory Corporation' (or Public Corporation) refers to such organisations which are incorporated under the special Acts of the Parliament/State Legislative Assemblies. Its management pattern, its powers and functions, the area of activity, rules and regulations for its employees and its relationship with government departments, etc. are specified in the concerned Act. It may be noted that more than one corporation can also be established under the same Act. State Electricity Boards and State Financial Corporation fall in this category.

The Public Corporation (Statutory Corporation) is a body having an entity separate and independent from the government. It is not a department or organ of the government. Consequently, its employees are not regarded as Government, and therefore government will not be liable for any act done by the employees of Public Corporation. On the principle of Vicarious Liability, corporation is liable to pay damages for the wrong done by their officers or servants.

Examples of Public Corporation

Life Insurance Corporation, Food Corporation of India (FCI), Oil and Natural Gas Corporation (ONGC), Air India, State Bank of India, Reserve Bank of India, Employees State Insurance Corporation, Central Warehousing Corporation, Damodar Valley Corporation, National Textile Corporation, Industrial Finance Corporation of India (IFCI), Tourism Corporation of India, Minerals and Metals Trading Corporation (MMTC) etc are some of the examples of Public Corporations.

The main features of Statutory Corporations are as follows:



The public corporation (statutory corporation) is a body having an entity separate and independent from the Government. It is not a department or organ of the Government. Consequently, its employees are not regarded as Government servants and therefore they are not entitled to the protection of Article 311 of the Constitution. It is to be also noted that a public corporation is included within the meaning of „State" under Article12 and therefore the Fundamental Rights can be enforced against it. Public corporations are included with the meaning of „other authorities" and therefore it is subject to the writ jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution.