CHAPTER

16

ADMINISTRATIVE LAW

Covering-

- Introduction
- Need for Administrative Law
- Sources of Administrative Law
- Administrative Discretion
- Judicial Control over Administrative Actions
- Principles of Natural Justice
- Exceptions to Natural Justice
- Liability
- Quasi-Contractual Liability
- Suit Against state in torts
- Damages
- Liability of the public servant
- Liability of public corporation
- Self Test Questions

EXPECTED MARKS COVERAGE (1 to 5)

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ADMINISTRATIVE LAW

INTRODUCTION

Administrative law is that branch of law that deals with **powers, functions and responsibilities of various organs of the state.**

Administrative law *is the law relating to administration. It determines the organisation, power and duties of the administrative authorities.*

Administrative law is the **by-product of ever increasing functions of the Governments**.

NEED FOR ADMINISTRATIVE LAW

The modern state typically has three organs- **legislative, executive and judiciary**.
Traditionally, the legislature was tasked with the making of laws, the executive with the implementation of the laws and judiciary with the administration of justice and settlement of disputes.

However, this traditional demarcation of role has been found wanting in meeting the challenges of present era. The **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. The traditional administration of justice through judiciary is technical, expensive and dilatory.

The **states have empowered their executive (administrative) branch to fill in the gaps of legislature** and judiciary. This has led to an **all pervasive presence of administration in the life of a modern citizen**.

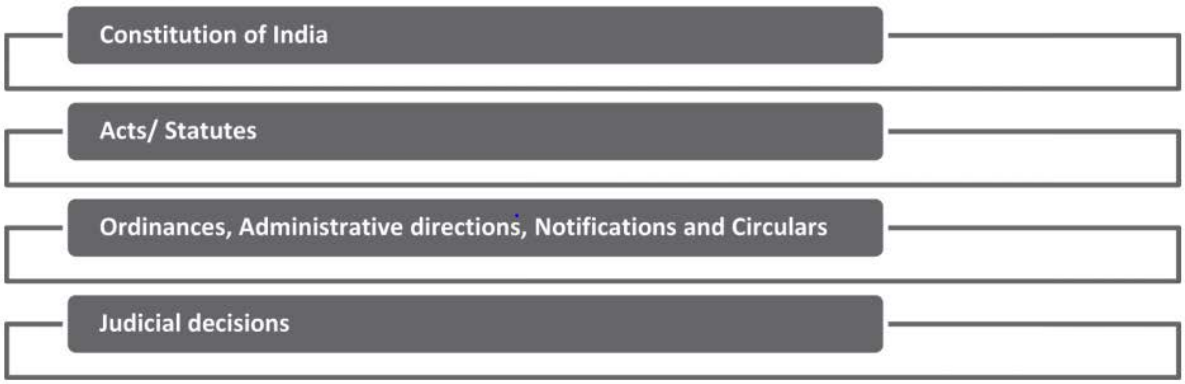
The ambit of administration is wide and embraces **following elements within its ambit:-**

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.

The ever-increasing administrative functions have created a vast new complex of relations between the administration and the citizen. The **modern administration is present everywhere in the daily life of an individual** and it has assumed a tremendous capacity to affect their rights and liberties.

SOURCES OF ADMINISTRATIVE LAW

*There are **four** principal sources of **administrative law in India:-***



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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.**
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**. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. **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.**

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** What are the four principal sources of administrative law in India?

ADMINISTRATIVE DISCRETION

It 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** ***(confusing)*** **and fanciful** *(unrealistic)***, but legal and regular**.

Administration has become a highly complicated job needing a **good deal of flexibility** apart from technical knowledge, expertise and know-how. **Freedom to choose from various alternatives** allows the administration to fashion its **best response to various situations**.

JUDICIAL CONTROL OVER ADMINISTRATIVE ACTIONS

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Any country which claims to have a rule of law cannot have *a government authority which has no checks on its power*. Administrative organs have wide powers and their exercise of discretion can be vitiated by a number of factors. Therefore, **the government must also provide for proper redressed mechanism**. For India, it is of special significance because of the proclaimed objectives of Indian polity to build a socialistic pattern of society that has led to huge proliferation of administrative agencies and processes.

In India the modes of judicial control of administrative action can be conveniently **grouped into three heads:**

1. CONSTITUTIONAL

The Constitution of India is supreme and **all the organs of state derive their existence from i**t. Indian Constitution expressly provides for judicial review. Consequently, **an Act passed by the legislature is required to be in conformity with the requirements of the Constitution** and it is for the judiciary to decide whether or not that Act is in conformity with the Constitutional requirements. **If it is found in violation of the Constitutional provisions 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 **power of judicial review controls not only the legislative but also the executive or administrative act**.

In ***Mansukhlal Vithaldas Chauhan v State of Gujarat,*** the Supreme Court held that while exercising the power of judicial review the **court is to confine itself to the question of legality**. Its concern should be:

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**.

1. Judicial review at the stage of delegation of discretion

Any law can be challenged on the ground that it is violative of the Constitution and **therefore laws conferring administrative discretion can thus also be challenged under the Constitution**. In the case of delegated legislation the Constitutional courts have often been satisfied with vague or broad statements of policy, but usually **it has not been so in the cases where administrative discretion has been conferred in matters relating to fundamental rights**.

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**.

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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

Article14 of the Constitution of India provides for **equality before law**. **It prevents arbitrary discretion being vested in the executive**. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. Right to equality **affords protection not only against discretionary laws passed by legislature** but **also prevents arbitrary discretion being vested in the executive.**

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.

In a large number of cases, the question as to **how much discretion can be conferred on the executive to control and regulate trade and business has been raised**. 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.

2. *Judicial review at the stage of exercise of discretion*

No law can clothe administrative action with a complete finality even if the law says so, for the **courts always examine the ambit and even the mode of its exercise to check its conformity with fundamental rights**. The courts in India have developed various formulations to control the exercise of administrative discretion, which can be grouped **under two broad heads, as under:**

(i)	Authority has not exercised its discretion properly- '**abuse of discretion**'.
(ii)	Authority is deemed not to have exercised its discretion at all- '**non-application of mind**.

(a) Abuse of discretion

(i)	***Mala fides:*** If the discretionary power is exercised by the authority **with bad faith** or **dishonest intention**, the action is quashed by the court.
(ii)	***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.
(iii)	***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.
(iv)	***Arbitrary orders:*** The order made should be based on **facts and cogent** *(concrete)* **reasoning** and not on the whims and fancies of the adjudicatory authority.
(v)	***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.
(vi)	***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.

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(vii) ***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.
(viii) ***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

(i) ***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**. The authority entrusted with the powers does not take action on its own judgment and does not apply its mind.
(ii) ***Self restriction:*** The authority entrusted with the discretionary power is required to exercise it after considering the individual cases and the authority **should not imposes** fetters *(hinderance)* on its discretion **by adopting fixed rule of policy to be applied rigidly to all cases coming before it.**
(iii) ***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.

NKJ–CLASSROOM PRACTICE
Q. 1. Write a short note on: (i) Judicial relief at the stage of delegation of discretion (ii) Judicial relief at the stage of exercise of administrative discretion.

2 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**.

3. ORDINARY OR EQUITABLE

Apart from the remedies as discuss above there are **certain ordinary remedies**, which **are available to person against the administratio**n. 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.

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(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 interlocutory or temporary injunction or perpetual injunction. **(i)** ***Interlocutory or temporary injunction:*** Temporary injunctions are such as **to continue until a specified time or until the further order of the court**. (Section 37 for the Specific Relief Act). It is granted as an interim measure to preserve *status quo* until the case is heard and decided. **(ii)** ***Perpetual injunction:*** A perpetual injunction is granted **at the conclusion of the proceedings and is definitive** of the rights of the parties.
(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.**

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.* Thus a declaratory decree declares the rights of the parties.

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.

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** Briefly enumerate the various modes of judicial control of administrative action in India.

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.** In India, the principles of natural justice are derived from **Article *14* and *21* of the Constitution.**

The concept of natural justice has undergone a tremendous change over a period of time. In the past, it was thought that it included just two rules: rule against bias and **rule of fair hearing**. In the course of time many sub-rules were added.

1. Rule against bias (*nemojudex in causa sua*):

According to this rule **no person should be made a judge in his own cause**. The rule against bias has two main aspects- one, *that the judge must not have any direct personal stake in the matter* at hand and two, *there must not be any real likelihood of bias*.

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Bias can be of the following three types:

(a)	**Pecuniary bias:** 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.
(b)	**Personal bias:** 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 f**riend of the party, or related to him through family, professional or business ti**es. The *judge might also be hostile* to one of the parties to a case.
(c)	***Subject matter bias:*** 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.

2. 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**. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and **should be given opportunity to submit his explanation thereto**. 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. Consequently, notice may be taken as the starting point of hearing. Unless a person knows the case against him, he cannot defend himself. 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.
(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.** **(i)** ***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. **(ii)** ***Legal Representation:*** 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, the **denial of legal representation will amount to violation of natural justice**.
(d)	***Disclosure of evidence:*** A party must be given full opportunity to explain **every material that is sought to be relied upon against him.**
(e)	***Speaking orders:*** ***Reasoned decision*** may be taken to mean a decision **which contains reason in its support.** When the **adjudicatory bodies give reasons in support** of their decisions, the decisions are treated as reasoned decision. It is **also called speaking order**. In such condition the **order speaks for itself or it tells its own story**. Reason based judgments and orders allow the party affected by it to go into the **merits of the decision and if not satisfied, exercise his right to appeal against the judgment**/ order.

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EXCEPTIONS TO NATURAL JUSTICE

Though the normal rule is that a person who is affected by administrative action is entitled to claim natural justice, that requirement may be excluded under certain exceptional circumstances.

(a) ***Statutory Exclusion:*** The principle of natural justice may be **excluded by the statutory provision**. However, the principles of natural justice are not incapable of exclusion. The statute may exclude them. 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.**
(b) ***Emergency:*** In exceptional cases of urgency or emergency **where prompt and preventive action is required** the principles of natural justice need not be observed.
(c) ***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.
(d) ***Academic evaluation:*** Where a student is removed from an **educational institution on the grounds of unsatisfactory academic performanc**e, the requirement of pre-decisional hearing is excluded.
(e) ***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.

EFFECT OF FAILURE OF NATURAL JUSTICE

When an authority required observing natural justice in making an order fails to do so, should the order made by it be regarded as **void or voidable?**

Generally speaking, a **voidable order** means that the order was **legally valid at its inception**, and it **remains valid until it is set aside or quashed by the courts,** that is, it has legal effect up to the time it is quashed.

On the other hand, a **void order is no order** at all from its inception; it is a **nullity and void *ab initio***.

In most cases a person affected by such an order cannot be sure ***whether the order is really valid or not until the court decided the matter.*** Therefore, the affected person cannot just ignore the order treating it as a nullity. **He has to go to a Court for an authoritative determination** as to the nature of the order is void.

LIABILITY

The liability of the government can

either be contractual or
tortious.

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1. LIABILITY OF STATE OR GOVERNMENT IN CONTRACT

The Constitution of India allows the **central and the state governments to enter into contracts**. According to its provisions a contract with the Government of the Union or state will be **valid and binding only i**f the **following conditions are followed:**

(a)	The contract with the Government must be ***made in the name*** **of the President or the Governor**, as the case may be.
(b)	The contract ***must be executed*** on behalf of the **President or the Governor of** the State as the case may be. The word executed indicates that a contract with the Government will be valid **only when it is in writing.**
(c)	A ***person duly authorized by*** the President or the Governor of the State, as the case may be, **must execute the contract.**

Article 299 (2) of the Constitution makes it clear that ***neither the President nor the Governor shall be personally liable*** in respect of any contract or assurance made or executed for the purposes of the Constitution or for the purposes of any enactment relating to the Government of India. Subject to the provisions of Article 299 (1), the other provisions of **the general law of contract apply even to the Government contract.**

Effect of a valid contract with Government

As soon as a contract is executed with the Government in accordance with Article 299, **the whole law of contract as contained in the Indian Contract Act, 1872** comes into operation. In India the remedy for the breach of a contract with Government is **simply a suit for damages**.

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** The liability of the government can either be contractual or tortious. Discuss..

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 forme**r 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.

2. SUIT AGAINST STATE IN TORTS

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.**

When the responsibility of the act of one person falls on another person, it is called **vicarious liability**.

sometimes the **state is held vicariously liable for the torts committed by its servants** in the exercise of their duty. The State would o**f course not be liable if the acts done were necessary for protection life or propert**y. Acts such as judicial or *quasi judicial* decisions **done in good faith** would not invite any liability.

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In India **Article 300** of the Constitution declares that the **Government of India or of a State may be sued for the tortious acts of its servants.** rule is, however, **subject to any such law made by the Parliament or the State Legislature.**

In ***Kasturi Lal v. State of U. P***, the **Government was not held** liable for the tort committed by its servant because the tort was said to have been committed by him in **the course of the discharge of statutory duties**.

NKJ–CLASSROOM PRACTICE	
MODULE	**Q. 1.** The liability of the State is vicarious for the wrongful acts of its servants. Comment.

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**

LIABILITY OF THE PUBLIC SERVANT

Liability of the State must be distinguished from the **liability of individual officers of the State**.

So far as the **liability of individual officers** is concerned, if **they have acted outside the scope of their powers** or have acted illegally, they are liable to same extent as any **other private citizen would be**.

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.**

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.**

On principles of **vicarious liability**, **corporation is liable to pay damages for 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.

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THE MAIN FEATURES OF STATUTORY CORPORATIONS ARE AS FOLLOWS:

- It is incorporated under a special Act of Parliament or state legislative Assembly
- It is an autonomous body and is free from government control in respect of its internal management. However, it is accountable to the Parliament or the state legislature
- It has a separate legal existence
- It is managed by Board of Directors, which is composed of Individuals who are trained and experienced in business management. The members of board of Directors are nominated by the government
- It is supposed to be self sufficient in financial matters. However, in case of necessity it may take loan and/or seek assistance from the government
- The employees of the enterprises are recruited as per their own requirements by following the terms and conditions of recruitment decided by the Board

SELF TEST QUESTIONS

FROM PAST CS EXAMS

FROM ICSI MODULE

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What are the four principal sources of administrative law in India?
2. Briefly enumerate the various modes of judicial control of administrative action in India.
3. Write a short note on:
   (a) Judicial relief at the stage of delegation of discretion
   (b) Judicial relief at the stage of exercise of administrative discretion.
4. The liability of the government can either be contractual or tortious. Discuss.
5. The liability of the State is vicarious for the wrongful acts of its servants. Comment.

Q. 1.

Answer to Question No. 1:-

Q. 2.

Answer to Question No. 1:-