CHAPTER I
CIVIL SERVICE RULES
(General Introduction)

Civil Service
A-Object, Meaning and Scope

After the transfer of power by the British to the Indian hands the constitutional fathers decided to reconstitute the civil service in India. The old system could not be sustained due to number of reasons. The ranks of the services had been very much depleted as no recruitment of the higher services had been made during war time. A very large number of responsible posts were filled in by inexperienced persons and this state of affairs could not be tolerated for long time. So many posts were remained vacant due to retirement or opting out for Pakistan. Again the fundamental question was whether those who had served a foreign colonial government for many years will have the elasticity of temper and outlook to adjust themselves to the national self rule and whether they would be able to inspire sufficient public confidence, because the people had not forgotten the tyranny and unpatriotic activities of I.C.S & I.P. Under the older set up they were both the instrument and the craftsmen, the administration as well as the Government. The members of this higher service functioned both as administrators as well as Governor, executive councilors, and legislators. This system could not be allowed to continue under the new set up. The civil services had now to be confined only to administrative charges as different from the political charges and had to be placed under the full control of the government of the day of the centre as well as states respectively. They had now to be constituted into an efficient and impartial public services which would carry on the rapidly expanding burden of an independent and welfare state.¹

Object:

As to the object and importance of Civil service Mr. N.V. Kamath in the constituent Assembly said that with the independence of our country the responsibilities of services have become onerous. They may make or mar the efficiency of the machinery of administration, a machinery so vital for the peace and progress of the country. A country without an efficient civil service, can not make progress in spite of the earnestness of the people at the helm of affairs in the country. Where ever democratic institutions exist, experience has shown that it is essential to protect public services as far as possible from political or personal influence and to give it that position of stability and security which is vital in its successful working as an impartial efficient instrument by which government of whatever political complexion may give effect to their policies. ¹

Another member Mr. P. Subharayan observed that without an efficient civil service, it will be impossible for the Government to carry on and the continuity of policy to be kept. The importance of government administration has been in the fact that there is continually and unless there is continually there is chaos. In the contentment of civil service lies the safety of the country. ²

Sardar Patel emphasized the need of an independent civil service. He observed “Today my secretary can write a note opposed to my view. I have given the freedom to all my secretaries. I have told them” If you do not give your honest opinion then you had better to go. I will bring another secretary. I will never be displeased over a frank expression of opinion. That is what Britishers were doing with the Britishers. We Are now Sharing the responsibilities. You have agreed to share responsibility ³

From the views expressed in the constituent assembly, it appeared that the main object of the civil service is the implementation of the policies of the government, to be neutral free from political and personal influences. The object of the civil service is to make progress and safety of the country and to give true and bold advice to the Government.

¹ Constituent Assembly Debates Vol IX p. 585
² Ibid p 952
³ Ibid p 514
Civil Service
(Traditional Meaning)

We must differentiable between civil service and civil service Rules. Civil service comes first then the term civil service Rules. Both the term been different meaning. For the purpose of the thesis I have put the meaning of Civil Service first under traditional and secondly terminological or practical.

Traditional meaning:

Civil service means a professional body of officials, permanent, paid and skilled.\(^1\) Dimok says that civil service is a body of permanent full time public officials in a professional non political status and who are not members either of judiciary or the armed forces.\(^2\)

The term has been defined in Britain as those servants of Crown other than holder of political or judicial office, who is employed in a civil capacity and whose remuneration is paid wholly and directly out of monies voted by parliament *Central civil services and central civil post include a civilian service or a civilian post as the case may be of the corresponding class in defence service.\(^3\)

The term civil service is universal. We find the same and synonymous meaning in the term 'Public service' or public official.

Like India, in U.S.A. all employees of the Government are known as civil servants. In England the servants of the central are known as civil servants. However we find no definition of civil service in the constitution of India. Yet we may conclude from the above definitions and statements that civil service is composed of civil servants. They are permanent, paid and skilled and render their service to the Government and the public and who are not the members of judiciary or armed forces.

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2 DimockM.E. Public Administration. P179 Edn 1989
3 Rule (C) Central civil service classification control and appeal) ruler 1965
(i) **Significance:**

The members of the civil service execute the **law and policies** of the Government. They carry out the orders of their higher authorities. Now the state is not merely a police state exercising sovereign functions but as a **progressive democratic and welfare** state. It seeks through the civil service to ensure social **security** and **social welfare** for the common man, regulate private enterprises, exercise control **over the production**, manufacture and distribution of essential commodities, start many **enterprises seeks to** achieve equality for all and ensures equal pay for equal work. It improves slums and looks after health, education and morals of people. It takes all the steps which socioeconomic justice demand. It is the Civil service which makes the nation functional.

As to the importance and significance Ogg opined that the work of the government would never be done if these were only secretariats of state and other heads of department, the presidents of Board, parliamentary undersecretaries junior lords and civil lords. In other words the ministers to do it. These people can not be expected to collect taxes, audit accounts, inspect factories, take census, to say nothing of keeping accounts, delivering mails and carrying messages. Such many fold tasks fall, rather to the body of officials and employees know as permanent civil service. It is this great body of men and women that translates law in to action from on end of the country to the other and brings the national government into its daily contracts with the rank and file in country less in the public eye than the ministry, this army of functionaries is not a whit less necessary to the realisation of the purpose for which government exists. ¹

Thus the civil service is essential for the government and the public as well.

(ii) **Scope**

The functions of the civil service extends to all persons, to all places for which the civil servant has been entrusted to perform his duty or to execute the law or to implement the policies of the government without any discrimination and subject the provisions of Article 14, 15, 16, 21 and 311 of the constitution.

B-Kinds and Limitation

(i) Kinds: Kinds or the division or the classification of civil service have been dealt with in chapter 2nd under clause B.

(ii) Limitation:

Civil servant should not contravene any of the provisions of the constitution, of the Acts or the rules made there under for the purpose. They should not contravene the Rule of Law' and the principle of National Justice while their function or performance.

Civil Service Rules

(Traditions Meaning)

Article 309 of the constitution provides for the Recruitment and conditions of service of person serving in the union or the state. It says that Acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the union or of any state.

According to proviso to Article 309 the president or such person as he may direct in the case of services and posts in connection with the affairs of the union and for the Governor of a state or such person as he may direct in case of services and posts in connection with affairs of the state may make rules regulating the recruitment and the conditions of services of persons appointed to such services and posts until provision in that behalf in made by or under an Act of the appropriate legislature under this Article, and any rules sp made shall have effect subject to provisions of any such Act.

CONSTITUTINAL PROVISION

(i) Examination For Appointments:-

Public Service commissions conduct examinations for appointments.

Article 320 of the constitution provides-

(1) It shall be the duty of the union and the state public service commission to conduct examination for appointment to the services of the union and the service of the state respectively.
(2) It shall be the duty of the union public service commission, if requested by any two or more states so to do to assist those states in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The union public service commission or the state public service commission as the case may be, shall be consulted:

(a) On all matters relating to methods of recruitment to civil services and for civil post.

(b) On the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers.

(c) On all disciplinary matters affecting a person serving under the government of India or the Government of a state in a civil capacity, including memorials or petitions relating to such matters.

(d) On any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a state or under the crown in India or under the Government of an Indian state, in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the consolidated Fund of India, or, as the case may be, out of the consolidated fund of the state.

(e) On any claim for the award of a person in respect of injuries sustained by a person while serving under the Government of a state in a civil capacity, and any question as to amount of any such award.

And it shall be the duty of a public service commission to advice on any matter so referred to them and on any other matter which the president, or as the case may be, the Governor of the state may refer to them.

Provided that the president as respects the All India service and also as
respects other services and posts in connection with the affairs of the union and the Governor as respects other services and posts in connection with the affairs of a state, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances it shall not be necessary for a public service commission to be consulted.

Thus where the power of conducting examination for appoint is vestal with the public service commission of the union or a state, the power of appointing persons in public services are vested with the union and state Government Public service commission is the constitutional expert body, hence the union or the state Government may consult on the matters of recruitment appointment, transfer promotion, and disciplinary matters etc. however to sub clause (3) of Article 320, in certain case consultation would not be required from public service commission.

(ii) Rules Framed by the President of India:

As per the proviso to Article 309, Governor of the states have framed rules regulating the recruitment and conditions of service of persons for their respective states. Like wise the president of India has framed the following rules for the Central (union) Government—

(i) The central civil services (classification control and Appeal) Rules 1965
(ii) Central civil services (conduct) Rules 1965
(iii) Central civil services (Temporary (Services )rules 1965
(iv) The central civil services (pension) rules 1972
(v) The central civil services (Leave) Rules 1972
(vi) The central civil services (Joining time) Rule 1979
(vii) The central civil services (Revised pay rules 1997)
(viii) Memorandum explanatory to the central civil services (Revised pay) Rules 1997
(ix) The central civil services and civil posts (upper Age limit for direct recruitment) Rules 1998
(III) Conditions of service

The following matters inter alia constitute the conditions of service of a Government employee:

(I) Salary, 1 or wages 2 including subsistence allowance during suspension, periodical increments.

(II) Leave, 4 Provident fund, 5 gratuity 6

(III) Promotion, 7 seniority 8

(IV) Tenure or termination of service 8

(V) Superannuation, 10 Pension 11

(VI) Transfer, deputation 12

(VII) Disciplinary proceeding. 13

On the other hand, the following have been held not to constitute conditions of service

(a) Conditions relating to recruitment and appointment, because they operate prior to commencement of service itself 14

(b) A provision placing an embargo on prosecution of a Government Servant

(iv) Object:

The object of the Rules is to regulate the recruitment and conditions of service, serving in the union or a state in civil post.

(v) Meaning:

We find no definition of civil service rules in the constitution. The rules framed by the Governors of states and president of India (as above) are the rules under which the

1 Accountant General Vs Bakshi Air 1962 Sc 505 (510)
2 Ibid
3 General Manager Vs Rangachari AIR 1962 SC 38 (40)
4 Accountant General Vs Bakshi AIR 1962 SC 505 (510)
5 Sunil Vs Ajit (1954) 58 C.w.N. 483 (485)
6 Kameshwar Vs State of Bihar AIR 1962 Sc 1166 (1170)
7 Ibid
8 Appanna Vs state of Mysore AIR 1965 Mus 19 (22)
9 N.W.F. Prov. Vs suraj Narayan AIR 1940 PC 112
10 Kameshwar Vs state of Bihar AIR 1962 Sc 913
11 Accountant General Vs Bakshi AIR 1962 SC 505 (510)
12 State of Mysore Vs Bellary Air 1965 Sc 868
13 Gerawal Vs state of Punjab AIR 1959 Sc 582 (Para)
14 Patel Vs state of Gujrat AIR 1965 Guj. 23 (40)
15 State of Punjab Vs Kallash Nath AIR 1989 Sc 558
recruitments and appointments are made and conditions of services are fixed in favour of the persons serving in the states or in the union, by the Governor of the State and president of India respectively.

(vi) Scope

The civil service Rules so framed applies to Government servant concerned right from his appointment till his retirement and after his death to his family as regards compassionate appointment, family benefit and pension etc.

(vii) Kinds

See above, the kinds of Rules framed by the president of India, for the central Government.

(viii) Limitation:

The power conferred by article 309 of the constitution is subject to the opening words of the Article which govern not only the power of the legislators but also the rule making power conferred by the proviso. Hence if any Rule contravenes any of the provisions of the constitution e.g. Article 14, 15 16, 19, 299, 234, 310(1) 4, 311(2), the rule shall be void.

The Civil Service Rule as Framed by the Governors of the states and president of India (See above) are known as civil service Rules at present. These rules so framed are concerned with the civil servants only Hence I put these civil service Rules under the traditional concept for the purpose of the thesis.

TERMINOLOGICAL MEANING OF CIVIL AND SERVICE

(i) Civil

The term civil is comprehen her enough both in meaning and scope. The meaning of the civil denotes to citizens. Pertaing to private rights and remedies of citizens, pertaining to ordinary life and affairs of a citizen and civil as distinguished from military. Civil means

2 Yadav Vs state of Haryana AIR 1981 SC 561 Para 46
3 State of W.B. vs Nripen Bagchi AIR 1966 Sc 447 (450)
4 Motilal Vs Union of India AIR 1965 Punj 444 (448)
5 Motiram Vs N.E.F. Rly Air 1964 SC 600 (610)
6 Legal Glossary विधी राम्यावस्थैः—द्वारा भारत सरकार विधि एवं न्याय नंत्रालय विधायी विधान राजपत्रा 2005
Janpad Nagarik, Vyawahara, vayavaharka diwani, samajik, shistha, sabhya. It is termed civil to mean the law of the civitas or state. Population i.e. people is one of the essential ingredients of a state means citizen or residents of a country. A country which lies to the south of Himalya and North of the ocean is called Bharata and Bharatiyas are the people of this country.

Persons those who gave than serves a sovereign, socialist, secular, democratic Republic India and its constitution were are the people of India. Persons whose parent was born in the territory of India or who has been ordinarily resident in the territory there of for not less than 5 years immediately preceding the commencement of the constitution of India shall be the citizen of India.

Thus the term civil embraces under it the synonymous word like civilian, citizen, civic, subjects, praja, people, janpada, vayavahara, vyavaharika, Diwani, Samajik, Shistha sabhya etc.

For the purpose of the thesis I propose the meaning of the civil to be the praja, people or citizen in a simple way.

(ii) Service:

In its grammatical sense the action of serving is know as service. As per ancient Indian Literatures service was considered synonymous to the duties (5 yajans) performed for the welfare of the people by the king and the kings duty was known as Raja dharma. The action performed by the king or what he had commanded to his servants to work per the welfene of the people was regarded as service without any discrimination.

1 Law Dictionary: Eastern Book company from -lawrs Home Indore
2 Tondon M.P.-Junsprudence "Legal theory 15" edn. 1992 P. 40 All. Law Agency Audhanbed
3 Preamble of the constitution of India
4 Article 5 of the Constitution of India
5 Legal Glossary विवेक रामायण 1988
6 दूरविक प्रजा सजन्त्य पुजा नयेन कोष्टम च सं प्रवृत्तय।
   अपवानतो चिन्हु राजस्व्य पंचर्व यज्ञ : कसिता दूरविकमवधि ।
7 प्रजा मुख यज्ञ प्रजानां वाहिते हितसः\
   नात्सियं हितायदः प्रजानां तु विं वित्ता
   तस्मानिष्यसिद्ध तो राजा कुर्मः दर्शनु शासनम्
   अर्थत्थ युल मुल्यन्यमन्यसं सविश्वर्य ।
   —कौटिल्य अर्थसात्र ।—19
8 एवं चरण सदायुक्तः राजर्गिणि
   हितेषु वैथ लोकेष सवानु मुनानु, नियोजयेत ।
   —मुनु IX 324
9 वर्षिकम् तथा भासान यथेन्द्रो मित्रवर्षिति
   तद्भवमि वर्षितु व राजु दारिद्रयसः
   —मुन सX 304
The protection of the subjects by the king was treated as service\(^1\) even his life was valueless in case he failed to protect the people\(^2\). The administration of justice was the duty of the king which was also considerate as service or Raja haring. It was also for the king to do justice according to dharma\(^3\).

The highest dharma (i.e duty or service of a king is the protection and welfare of the subjects and putting down the wicked\(^4\). He was not about the law but was treated as custodian of people. All his duties or service were regulated within the framework of Rajdharma. Impartiality was the main characteristic while awarding punishments to offenders even to his own family members\(^5\) or to himself\(^6\) and as such awarding impartial punishment was also treated as fair service to the society.

Like wise protection of minors and women’s property\(^7\) and taking care of disabled, poor, and suffering from disease were also within the ambit of service of the king\(^8\). Similar view have been stated in mahabharata shantiparva\(^9\) as also by vasistha specially for wive of solders who had no means of livelihood\(^10\).

\(^1\) शत्रुस्वर्ण परोम्याः प्रजानाग्नि पालनम्।
जिन्दिक्षत केसरी हि राजा धर्मेन युद्धात।।
विकोशश्रोतः सरस्य राज्यं भविष्यति दर्श्यु।
शर्ममय मुत्या स तु न जीविति।—मनु, VII 143 –144

\(^2\) यथायथस्थ सिद्धितः स्या तदसामान्यस्य वै प्रजा।
सोदयस्य सिद्धियो धर्मम् एव नूताहिः सृष्टिः।।—महाभारत शास्ति पर्व 58–23

\(^3\) प्रत्येक देशदर्शने हेतुमुखः।
अद्वादापुरुष, गार्जुन निष्क्रियानि पृथक पृथक्।।
—मनु, VIII 3

\(^4\) नूत्तरस्य परोस्माः प्रजाम् परिशलनम्।
उद्विधाय नित्ये न नैद्येऽते बिना ेहुँ।।
—सुक्र 127–28

\(^5\) यथायथस्य कवयत्स्या दक्षागमनस्य वै प्रजा।
सोदयस्य सिद्धियो धर्मम् एव नूताहिः सृष्टिः।।
—महाभारत शास्ति पर्व 58–23

\(^6\) विभावर्य सहस्त्रवत, गार्जुन, पुत्र, पुत्रिहितः।
ना द्रष्टो नाम राजसमलिकः स्वस्वर्णी निष्क्रियः।।
—मनु, VIII 335

\(^7\) बालद्द्वारिकः, रिक्षः तवद्याज्ञा पदमायेत।
यावत स्यात्मानावतथा य स वाहिते शराधि।।
—मनु, VIII 27

\(^8\) वाराणसुज्जृवण्य स्वयंस्य निष्क्रियान् दह।
पतिभतासु च सीता किया स्वाति रायु।।
—मनु, VIII 28

\(^9\) कुप्पानाग्नि वृद्धानां च योगिनां।
योगसेषां च वृद्धि च नित्येव प्रक्षेप्तेत।।
आद्रमेशु यथा कलं देशमथ्यं भोजनम्।
स दै तरावताः सत्संरक्षाय निर्धारयान।
—महाभारत शास्ति पर्व 88, 24–25

\(^10\) अन्यथा: सिद्धिः रघु।।
विशिष्ट अनन्याय XIX
In medieval period when the Muslims ruled in India similar function performed by the Muslim rules were treated as service, through approved authority was Quran. During British period specially commencing from 1858 we find that term "Civil Service": Prior thereto it was termed only service, but the meaning was same as that of Civil Services.

Civil Service:
(Terminological or practical meaning)

Action of serving is known as service. The term service is qualified by the word civil. Hence the function or execution performed by the civil servant in lieu of his duty is civil service."

As earlier explained civil means the civilian, citizen, subjects, Praja, people etc. and service the actual working or actual function. The civil servants are appointed mostly to serve the people Hence any service performed by the civil servant in lieu of his duty may be called the civil service. This civil service is execution or performance of duty or implementation of law and policies of the Government. If any executive authority passes any order, he performs his duty interested under the law because he is duty bound to pass such order and his passing such order would come within the ambit of civil service. The following functions are civil service of execution of law Moving quasi judicial functions, making rules under delegated legislation. Passing orders in original and Appeal case, supply of essential commodities, granting or rejecting license, quarry lease, maintenance of law and order, operating Lathicharge or giving order for lathicharge or firing, apprehending the offenders imposing penalties, passing orders for sentence, confiscating property under legal process making audit of accounts, making allotment of funds, allotment of lands, recovery of taxes and land revenue, with holding of pay, increment, suspending, removing or dismissing an employee from service etc.

Civil Service Rules
(Terminological and practical meaning)

The civil servant perform their duties or execute the law through their mind., mind is dynamic and internal matter. No direct evidence is available as to the actual working of mind. While execution ordinary mind of the civil servant is transformed into the legal mind.
There fore the law requires accuracy and fairness in exaction. As yet no method developed to control the mind of the civil servant while execution. Hence a method or a principle requires to control the mind of the civil servant: A minimum proof must be produced for fairness in action. The civil servant must follow the following rule for civil service or execution before he proceeds and also during execution-

That he would perform his duty or execute of law-

(i) With balanced mind, care and caution (I have suggested to make a note on this issue)

(ii) Without fear or favour

(iii) Free from political & personal influence

(iv) Without any prejudice or bias

(v) With object of the law

(vi) In public interest

(vii) As per the rule of law and principles of natural justice

Principles of natural justice. There rules may be said to be the civil service Rule as per the terminology and practical meaning of civil service Rules

(i) **Object of the Rules:** Accuracy and fairness in execution

(ii) **Scope**

The said rule would extent to all persons and all places for which civil servant is entrusted to performs his duties.

(iii) **Limitation**

While execution, the civil servant should not contravant only of the provisions of the constitution, Acts Rule made their under, the rule of law or the principle of natural justice.

**Civil Service under the constitution:**

In Britain, theoretically the civil service holds office during the pleasure of the crown, but in practice, its permanent and independent position is secured partly through conventions and partly through the orders in council.

In India theoretically the civil service holds office during pleasure of president and Governor of the states. But practically this pleasure by Article 311 (2) &(2) of the constitution.
Article 16 provides equality of opportunity in public employment subject the reservations made in this Article. At the same time Article 14 provides the principle of equality in appointments and conditions of service. Article 320 says for examination by public service commission of union and states. Article 15 provides discriminative and 21 provides arbitrary actions of the disciplinary Authorities. Article 309 provides for the rules regulating the recruitment and conditions or service of the civil servant. Article 311 provides security of service of the employees. Thus a clear, independent scheme of civil service is incorporation in the constitution in free from political influences.